****ATTENTION****

The City Council meeting will be held in a hybrid format that includes both in-person AND Zoom. Councilmembers may choose to attend the meeting virtually or in person at the **Billings Public Library Community Room**. In order to honor the Right of Participation and the Right to Know in Article II, sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: www.billingsmt.gov and click on "Your Government," "City Council," and "Agendas & Minutes".
- View the meeting:
  - On Community 7 TV - Channel 7 or Channel 507 – Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)*
  - Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
  - On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
  - In-Person – capacity is limited to approximately 15 spectators with overflow available in the lobby. Mask and social distancing requirements will be enforced.

Citizens may submit public comment via the following methods:

- Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- Email: Council@billingsmt.gov.
  - Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- Attend the meeting in person - capacity is limited to approximately 15 spectators with overflow available in lobby. Mask and social distancing requirements will be enforced. Speakers may be asked to exit after speaking to comply with social distancing protocols.
- Attend the meeting virtually by registering at Zoom.us and "join a meeting", enter the Webinar ID and Passcode indicated below. Click on *Zoom Meeting Instructions* and *Zoom Hybrid Meeting Details* below for more information. Attendees are asked to register by Noon the day of the meeting. After registering, a link into the meeting will be sent to the attendee. The link will allow you to attend, view and participate in the meeting on your computer, laptop or smart phone. (You must have the Zoom App on your device Click Here to Download Zoom App) To provide public comment at the appropriate time, click on the "raise hand" icon located at the bottom of the screen and the moderator will unmute your device.
  - **Don't have a smart phone, computer or laptop?** That's okay -- you can attend a Zoom meeting using your **landline phone.** Call the Zoom phone number, **1.253.215.8782** to join the meeting and follow the operator's instructions. Want to give public comment? Simply *"raise your hand"* by pressing *9 and the moderator will give you permission to speak when it is your turn. **Note this is a long distance toll number and charges may apply depending on your plan.*
- Click Here for City Council Zoom Hybrid Meeting Details and Schedule
- Click Here for Zoom Meeting Instructions for Attendees (as guests)

Webinar ID: 825 3103 3993
Passcode: 641931

Or join by phone: US: +1-253-215-8782

The practice of receiving phone calls to a specific Public Comment telephone line has been discontinued. Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov,

CITY OF Billings

VISION STATEMENT:
"The Magic City: A diverse, welcoming community where people prosper and business succeeds."

CITY COUNCIL
REGULAR BUSINESS MEETING

AGENDA

Billings Public Library and remotely via Zoom. Please see coversheet for details and instructions for viewing and participation.

May 24, 2021

5:30 P.M.

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Boyett

ROLL CALL: Councilmembers present on roll call were: ☐ Shaw, ☐ Yakawich, ☐ Neese, ☐ Ewalt, ☐ Joy, ☐ Choriki, ☐ Purinton, ☐ Ronning, ☐ Boyett, ☐ Brown

MINUTES:

- April 26, 2021
- May 10, 2021

COURTESIES:

PROCLAMATIONS:

COUNCIL REPORTS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 4 and 5 ONLY. Speaker identification required. (Comments are limited to three (3) minutes or as set by the Mayor. 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. Public comments during the meeting may be made in-person or remotely by registering as an attendee through Zoom as outlined in the Agenda coversheet.)

1. **CONSENT AGENDA** -- Separations:

A. **Mayor Cole recommends that Council confirm the following appointments:**

1.

	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications	Billings Parking Board*	05/24/21	12/31/22

*1 Unexpired term of Kevin Heaney

B. **Bid Awards:**

1. **W.O. 20-24: Phase 1A, Grand Peaks Lift Stations.** (Opened 05/11/21) Recommend Western Municipal Construction, Inc.; $160,037.07.

2. **W.O. 21-01: 2021 Water Replacement Project.** (Opened 05/11/21) Recommend Wilson Bros. Construction of Montana, Inc.; $3,191,697.

3. **SID 1417 Elysian Road.** (Opened 05/11/21) Recommend Knife River - Billings; $2,477,123.90.

4. **Level IIIA Ballistic Shields.** (Opened 04/27/21) Recommend Ambitec, Inc.; $60,522.

5. **Optimist Park Shelter.** (Opened 05/11/21) Recommend Hanna Construction Inc.; $255,840.

C. **Agreement** with Guardian Security, Inc. for guard services at the Billings Public Library; $73,164 per guard, with an option to extend for five (5) additional one-year terms.

D. **Grant Application Request** to submit 2021 Transportation Alternatives (TA) grant program for the Pioneer Park Trail Repaving Project and if successful, accept award;$163,399.72.

E. **CDBG Funding Allocation** to NeighborWorks Montana to complete resident owned C & C Community infrastructure improvements; $155,000.

F. **Downtown Revolving Loan** to The Burger Dive; $250,000.

G. **Donations** to the Billings Public Library from the Library Foundation and a private donor; $8,493.

H. **Preliminary Major Plat** of Yellowstone Landing Commercial Park Subdivision, generally located north side of Highway 3 and east of A J Way; Aviation Properties, LLC, owner; Performance Engineering, agent; conditional approval and adoption of the findings of fact.

I. **Preliminary Major Plat** of Lake Hills Subdivision, 39th Filing, generally located along both sides of Gleneagles Boulevard north of Black Diamond Road; Ron Hill, owner; WWC Engineering, agent; conditional approval and adoption of the findings of fact.

J. **Preliminary Major Plat** of Bitterroot Heights Subdivision, 3rd Filing, generally located on the west side of Bitterroot Drive and north of Mary Street; BCJM Properties, LLC, owner; PEC Engineering, agent; conditional approval and adoption of the findings of fact.

K. **Final Plat** of Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision.

L. **Bond Resolution** for the sale of sidewalk bonds for WO 19-02 and WO 19-35.

M. **Resolution of Intent to Create** SID 1418 and setting a public hearing date for June 14, 2021.

N. **Resolution of Intent to Create** SID 1411 and setting a public hearing for June 14, 2021.

O. **Second/Final Reading Ordinance** expanding Ward I (Annexation 20-05B): a property located North of Highway 3 and West of AJ Way.

P. **Bills for the Weeks of:**

1. April 19, 2021

2. April 26, 2021

REGULAR AGENDA:

2. **PUBLIC HEARING AND RESOLUTION** approving and adopting the water and wastewater rate and fee schedule effective July 1, 2021. Staff recommended approval. (Action: approval or disapproval of staff recommendation.)

- *Presented by: Jennifer Duray, Deputy Public Works Director*

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Resolution approving and adopting the water and wastewater rate and fee schedule, as recommended by staff.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 991:** a zone change to amend parts of the Lenhardt Square Planned Development Agreement, generally located at King Avenue West and 44th Street West. Lenhardt Square Master Association - Allan R. Lenhardt, owner; Sanderson Stewart - Rick Leuthold, P.E., agent. Zoning Commission recommends approval and adoption of the 10 criteria. (Action: approval or disapproval of the Zoning Commission recommendation.) * Quasi-Judicial

- *Presented by: Nicole Cromwell, Zoning Coordinator*

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve Zone Change 991 and adopt the findings of the 10 criteria, as recommended by the Zoning Commission.

* Quasi-Judicial – Caution must be exercised concerning any potential ex parte communications with interested parties. This policy-making body may exercise approval or other adjudication authority which is "judicial" because it directly affects the legal rights of a person.

4. **RESOLUTION** repealing and replacing Property Purchasing Resolution 93-16740. (Staff recommends approval.) (Action: approval or disapproval of staff recommendation.)

- *Presented by: Jessica Iverson, Building Official and Facilities Manager*

Recommended Motion: I move to approve the Resolution repealing and replacing the Property Purchasing Resolution 93-16740, as recommended by staff.

5. **TAX INCREMENT FINANCING ASSISTANCE** from South Billings Boulevard Urban Renewal District (SBBURD) to Billings Public School District No. 2 on behalf of the Newman Elementary School PTA for reimbursement of expenses related to improvements to the student pick-up/drop-off area of Newman Elementary School, located at 605 South Billings Boulevard; up to $61,200. SBURA Board recommends approval. (Action: approval or disapproval of SBURA Board recommendation.)

   - *Presented by: Wyeth Friday, Planning Director and Jim Tevlin, SBBURD Consultant*

   Recommended Motion: I move to approve the Tax Increment Financing Assistance from SBBURD to Billings Public School District No. 2 on behalf of the Newman Elementary School PTA for reimbursement of expenses related to improvements to the student pick-up/drop-off area at Newman Elementary School, as recommended by the SBURA Board.

PUBLIC COMMENT on "NON-AGENDA ITEMS". Speaker Identification required. (Restricted to ONLY items not on this printed agenda. Comments are limited to 3 minutes or as set by the Mayor. Public comments during the meeting may be made in-person or remotely by registering as an attendee through Zoom as outlined in the Agenda coversheet.)

COUNCIL INITIATIVES:

ADJOURN:

Billings Public Library is readily accessible to individuals with physical disabilities.

For more information or to make requests for special arrangements, please contact the City Clerk's Office at 657-8210 or e-mail bohlmand@billingsmt.gov*, 72 hours prior to the meeting date.*

City Council Regular

Date: 05/24/2021
Title: Board & Commission Appointment
Presented by: Chris Kukulski, City Administrator
Department: City Hall Administration
Presentation: No

RECOMMENDATION

Mayor Cole recommends that the City Council confirm the appointment to the following board and commission.

	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications	Billings Parking Board*	05/24/21	12/31/22

*1 Unexpired term of Kevin Heaney

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Mayor is requesting that the City Council confirm the appointment for the Board and Commission position that is vacant due to a resignation.

ALTERNATIVES

Council may:

- Confirm the proposed appointment; or
- Not confirm the appointment.

FISCAL EFFECTS

The proposed action has no financial impact.

City Council Regular

Date:	05/24/2021
Title:	Bid Award: W.O. 20-24: Phase 1A, Grand Peaks Lift Stations
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No

RECOMMENDATION

Staff recommends the City Council award a contract for W.O. 20-24, Phase 1A; Grand Peaks Lift Stations to Western Municipal Construction, Inc. in the amount of $160,037.07.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

W.O. 20-24, Phase 1A is a stormwater improvement project within Grand Peaks Subdivision. Currently, the subdivision has a number of stormwater ponds that were initially contemplated to naturally infiltrate to remove stormwater. Over time, the infiltration capacities of the ponds have diminished to the point where another solution is needed. This project will install stormwater pumping systems that will discharge stormwater out of the subdivision to an irrigation ditch. The project was advertised on April 30 and May 7, 2021 in the *Yellowstone County News* and on the City's website. Bids were opened on May 11, 2021. Three bids were received and Western Municipal Construction, Inc. submitted the lowest responsible bid.

ALTERNATIVES

City Council may:

- Award W.O. 20-24, Phase 1A Grand Peaks Lift Stations, to Western Municipal Construction, Inc. in the amount of $160,037.07; or,
- Do not award a contract and reject all bids. If the contract is not awarded, stormwater improvements within Grand Peaks Subdivision will not be completed.

FISCAL EFFECTS

Three bids were received for this project. Western Municipal Construction, Inc. ($160,037.07), Castlerock Excavating, Inc. ($183,320.00) and COP Construction, LLC ($304,203.00). The project was budgeted in FY21 using storm funds and adequate funding is available for this project.

City Council Regular

Date:	05/24/2021
Title:	W.O. 21-01: 2021 Water Replacement Project
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No

RECOMMENDATION

Staff recommends the City Council award a contract for WO 21-01, 2021 Water Replacement Project to Wilson Bros. Construction of Montana, Inc. in the amount of $3,191,697.00.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

W.O. 21-01, 2021 Water Replacement Project, is intended to replace approximately 8,850 feet of water main. The City replaces and upgrades its water utility as part of an annual program. The existing water mains are undersized, prone to water main breaks, and are approximately 100 years old. In addition, approximately 104 lead water services will be replaced with this project. This project will replace water mains in three distinct project areas. Area 1 will replace approximately 5,100 feet of water main in Avenues B through E from 3rd Street West to North 32nd Street and in 1st Street West from Grand Avenue to Avenue C. Area 2 will replace approximately 1,900 feet of water main in 2nd Street West from Grand Avenue to Burlington Avenue, and Burlington Avenue from 2nd Street West to Division Street. Area 3 will replace approximately 1,850 feet of water main in 12th Avenue North from North 26th Street to North 22nd Street.

The project was advertised on April 23, April 30, and May 7, 2021, in the Yellowstone County News and on the City's website. Bids were opened on May 11, 2021 and 3 bids were received. Wilson Bros. Construction of Montana, Inc. submitted the lowest responsible bid.

ALTERNATIVES

City Council may:

- Award WO 21-01 2021 Water Replacement Project to Wilson Bros. Construction of Montana, Inc. in the amount of $3,191,697.00; or,
- Do not award a contract and reject all bids. If the contract is not awarded, the City's water distribution system in these areas will continue to experience ongoing maintenance problems and expenses.

FISCAL EFFECTS

The following bids were received:

CONTRACTOR	Total Bid
Wilson Bros. Construction of Montana, Inc.	$3,191,697.00
Cop Construction LLC	$3,419,719.00

Western Municipal Construction, Inc.	$3,564,599.00

The project was budgeted in FY21 using water funds. The water main replacement budget remaining is approximately $2.2 million. However, staff believes that the prices bid on this project are very reasonable and recommends awarding all of this project. The funds can be available by utilizing the FY22 water main replacement project and presenting a budget amendment to council for approval.

City Council Regular

Date:	05/24/2021
Title:	SID 1417 Elysian Road, Bid Award
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No

RECOMMENDATION

Staff recommends the City Council approve the bid and award the contract to Knife River - Billings, in the amount of $2,477,123.90.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The improvements to be constructed by SID 1417, include construction of streetlights within Annafeld Subdivision 3rd Filing and Annafeld North Subdivision 1st Filing, as well as the construction of Elysian Road.

SID 1417, Elysian Road, was created at the May 10, 2021, city council meeting.

The project was advertised on April 23, April 30, and May 7, 2021, in the Yellowstone County News and on the City's website. Bids were opened on May 11, 2021, and four bids were received. Knife River - Billings submitted the lowest, responsible bid. The bid was higher than the engineer's estimate by approximately $500,000. McCall Development requested the city award the contract, realizing this will result in higher assessments in the SID. They are the only property owners being assessed in the SID. SID 1417 met the City's SID Raw Land District requirement with McCall Development monetarily securing or constructing at least 51% of the improvements. Since the bid was higher than expected, McCall Development will be submitting an additional monetary security in order to satisfy the City's Raw Land District requirements. In addition, the Engineering Division will be working with Knife River with some value engineering in order to save a portion of the cost.

ALTERNATIVES

City Council may:

- Approve the contract award to Knife River - Billings in the amount of $2,477,123.90; or,
- Not approve the contract award. If not awarded, the developer will be required to construct the improvements in the future.

FISCAL EFFECTS

The following bids were received:

Contractor	Bid Amount
Knife River - Billings	$2,477,123.90
Askin Construction	$2,558,532.30
Riverside Contracting	$2,763,267.00

Western Municipal	$2,939,749.73

The improvements which will be paid for from SID bonds and assessed to the properties within the SID 1417 boundary. A future budget amendment will need to be approved by Council for this project.

City Council Regular

Date:	05/24/2021
Title:	Purchase of Seventy-Seven (77) Level IIIA Ballistic Shields
Presented by:	Rich St. John, Police Chief
Department:	Police
Presentation:	No

RECOMMENDATION

Staff recommends that City Council approve and award a contract to Ambitec, Inc. in the amount of $60,522 for the purchase of seventy-seven (77) level IIIA ballistic shields for patrol use.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On December 7, 2020, the City Council approved the Billings Police Department to purchase 77 portable, light weight ballistic shields for patrol cars. An Invitation for Bids was advertised on April 9th and April 16th with bids opened on April 27th. Thirteen proposals were received and reviewed. The committee met on April 27th and made the unanimous decision to recommend award to Ambitec, Inc. in the amount of $60,522.00.

ALTERNATIVES

City Council may:

- Approve the Bid award to Ambitec, Inc. in the amount of $60,522; or,
- Not Approve the contract award to Ambitec, Inc. in the amount of $60,522 and provide further direction to staff.

FISCAL EFFECTS

The budget amendment for the purchase of the Ballistic Shields was approved by City Council on January 25, 2021.

City Council Regular

Date:	05/24/2021
Title:	Optimist Park Shelter - Bid Award
Presented by:	Mike Whitaker, Parks, Recreation & Public Lands Director
Department:	Parks/Rec/Public Lands
Presentation:	No

RECOMMENDATION

Staff recommends the City Council award the contract to Hanna Construction Inc., in the amount of $255,840.00 for the construction of the new Optimist Park Shelter.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Optimist Park Shelter project was identified in the park master plan adopted by Council in 2017. The South Billings Urban Renewal Association (SBURA) recommended funding for the shelter in the FY 2021 CIP. Plans and specifications for this project were developed by Land Design Inc. of Billings and were advertised for bid on April 23rd. Bids were opened on May 11, 2021, there was only one bidder which was Hanna Construction of Billings, Montana with a base bid of $255,840.00. This bid came in under the consultants estimate which was $257,968.00. If this contract is awarded, construction will begin immediately with an anticipated fall completion, but completion will depend on availability of materials and be weather dependent.

STAKEHOLDERS

South Billings Urban Renewal Association.

ALTERNATIVES

City Council may:

- Approve the bid and award the contract to Hanna Construction Inc., of Billings to construct the shelter at Optimist Park; or,
- Not Approve the bid and provide staff with additional direction.

FISCAL EFFECTS

Funding for this project will come from the South Billings Urban Renewal Association (SBURA) tax increment funds as approved in the FY 2021 CIP.

Consent 1. C.

Regular City Council Meeting

Meeting Date: 05/24/2021

TITLE: Library Security Contract Agreement with Guardian Security Inc.

PRESENTED BY: Gavin Woltjer

Department: Library

Presentation: No

PROBLEM/ISSUE STATEMENT

The Library began contracting with a private guard service in 1999 to maintain safety for patrons, staff, and facility. Staff regularly opens the guard service contract for Request for Proposals and now seeks approval of a new agreement for Library guard service with Guardian Security Inc. beginning July 1, 2021. The current agreement expires June 30, 2021.

ALTERNATIVES ANALYZED

City Council may:

- Approve the Guardian Security agreement, the firm chosen by the selection committee, for guard service for the Library (recommended), The presence of a uniformed security guard serves as a deterrent to violation of the Library's patron conduct policy and criminal activity. Many instances require the guard on duty to respond immediately, ranging from criminal activity to assisting or helping staff deal with patrons whose conduct violates Library policy. Private security guards limit the demand made by the Library on the time of sworn officers in the Billings Police Department to situations involving criminal acts.
- Approve part-time guard service. Many of the same issues apply with part-time guard services that apply to having no guard service. It would not provide the level of protection needed to safeguard the patrons, staff, and building and grounds adequately.
- Or,
- Disapprove the agreement and provide no guard service.

FISCAL EFFECTS

The estimated cost for the first year is $73,164 per guard. The Library has sufficient funds in the proposed FY22 budget to pay for the services.

RECOMMENDATION

Staff recommends the Council approve the Library guard service agreement with Guardian Security for one year, with an option to extend for five (5) additional one-year terms.

Attachments

Guardian Agreement

SERVICES AGREEMENT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA,** a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **GUARDIAN SECURITY & INVESTIGATIONS, INC.,** of 1902 1st Avenue North, Billings, MT 59101, hereinafter referred to as "**CONTRACTOR**."

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

1. **PURPOSE: CITY** agrees to hire **CONTRACTOR** as an independent contractor to perform the services of Billings Public Library Security Guard services described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. **EFFECTIVE DATE:** This Agreement is effective upon the date of its execution and will terminate on June 30, 2022. The parties may extend this **AGREEMENT**, by mutual concurrence, for five (5) one-year terms, in writing prior to termination of each term.

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

4. **PAYMENT: CITY** agrees to pay **CONTRACTOR** the fees listed in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

   Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all services rendered pursuant to this Agreement. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

   Two officers will be assigned to the facility unless the parties mutually agree in writing to decrease or increase the number of officers.

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

6. **INDEMNITY:**

The **CONTRACTOR** SHALL:

A. Indemnify, defend and save **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.

B. Not indemnify, defend, save and hold the **CITY** 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 the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

C. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify, defend, save, and hold the **CITY** 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 **AGREEMENT**.

The **CITY** SHALL:

D. Indemnify, defend and save **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability occasioned by, growing out of, or in any way arising or resulting from any intentional or negligent act on the part of **CITY** or its agents or employees.

E. Not indemnify, defend, save and hold the **CONTRACTOR** 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 the **CONTRACTOR**

occurring during the course of or as a result of the performance of the **AGREEMENT**.

F. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify, defend, save, and hold the **CONTRACTOR** 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 **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

7. **INSURANCE:** the **CONTRACTOR** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONTRACTOR** shall furnish the **CITY** with proof of insurance in accordance with this Section.

The **CONTRACTOR** shall provide the following insurance:

- Workers' compensation and employer's liability coverage as required by Montana law.
- Commercial general liability, including contractual and personal injury coverage's -- $750,000 per claim and $1,500,000 per occurrence.
- Automobile liability -- $1,500,000 per accident.

Each policy of insurance required by this Section shall provide for no less than 30 days' advance written notice to the **CITY** prior to cancellation.

The **CITY** shall be listed as an additional insured on all policies except Worker's Compensation Policies.

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

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

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

9. **COMPLIANCE WITH LAWS: CONTRACTOR** agrees to comply with all federal, state, and local laws, ordinances, rules and regulations. **CONTRACTOR** agrees to purchase a **CITY** business license.

10. **NONDISCRIMINATION:**

A. **CONTRACTOR** shall, in performance of work under this Agreement, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. **CONTRACTOR** is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by **CONTRACTOR** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONTRACTOR** agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Agreement.

B. The **CONTRACTOR** shall state, in all solicitations or advertisements for employees to work on 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.

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.

The **CONTRACTOR** and any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants

may not be discharged or in any other manner discriminated against because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. However, employees who have access to the compensation information of other employees or applicants as a part of their essential job functions cannot disclose the pay of other employees or applicants to individuals who do not otherwise have access to compensation information, unless the disclosure is (a) in response to a formal complaint or charge, (b) in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or (c) consistent with the **CONTRACTOR'S** legal duty to furnish information.

C. The **CONTRACTOR** shall comply with any and all reporting requirements that may apply to it that the **CITY** may establish by regulation.

D. The **CONTRACTOR** shall comply with all applicable federal, state, and city laws concerning the prohibition of discrimination.

E. The **CONTRACTOR** shall include the provisions of Subsections A through D of this Section in every subcontract or purchase order under this **AGREEMENT**, so as to be binding upon every such subcontractor or vendor of the **CONTRACTOR** under this **AGREEMENT**.

F. 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.

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

12. **LIAISON: CITY's** designated liaison for this **AGREEMENT** is Jamie Bratlie and **CONTRACTOR's** designated liaison for this **AGREEMENT** is Pete Torgerson.

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

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

15. **SUCCESSORS AND ASSIGNS:** Neither the **CITY** nor the **CONTRACTOR** shall assign, transfer or encumber any rights, duties or interests accruing from this Agreement without the written consent of the other.

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

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

CITY OF BILLINGS, MONTANA

_____
BUSINESS NAME (CONTRACTOR)

_____
WILLIAM A. COLE, MAYOR

_____
SIGNATURE

APPROVED AS TO FORM:

_____
PRINT NAME

By_____
CITY ATTORNEY'S OFFICE

_____
PRINT TITLE

ATTEST:

_____
DENISE BOHLMAN, CITY CLERK

EXHIBIT A

Scope of Work

CONTRACTOR will assign two (2) security guards for the hours listed in the table below at the Billings Public Library, 510 North Broadway. **CITY** agrees to pay **CONTRACTOR** $22.75 per hour per guard. The services would normally be provided during the following hours:

	First Guard	Second Guard
Monday – Thursday	8:45 am – 8:30 pm	3:00 pm – 8:30 pm
Friday	8:45 am – 6:30 pm	3:00 pm – 6:30 pm
Friday (Memorial Day to Labor Day)	8:45 am – 8:30 pm	3:00 pm – 8:30 pm
Saturday	8:45 am – 5:30 pm	8:45 am – 5:30 pm

CONTRACTOR and **CITY** may adjust the schedule by mutual written agreement. Additional hours may be required for special events outside normal library hours.

The Library is closed on City legal holidays and on Sundays. Security coverage will not be required on these days.

Security coverage will include, but not be limited to, patrol of the grounds and parking lots, the perimeter of the Library facility, and all publicly accessible areas of the facility while open, and other security duties as required by the Library Director.

Patrol duties will include, but not be limited to, observing and intervening to address criminal activities and violations of the Library's policies and guidelines for conduct, checking all doors and elevators for appropriate lock status; and other activities to enhance the safety and security of Library facility. Security will be required to escort Staff to the parking lot at close and remain on the lot until all staff have left the premises.

In addition, the firm will make provisions in a manner approved by the Library for radio or cellular telephone contact with Library staff. Security agents will be required to respond immediately upon contact by staff through this or other means.

Security agents will maintain regular communication with Library managers and/or designated staff, including submission of detailed daily reports.

Although no regular comprehensive coverage of facility is desired beyond the hours noted above, proposals should include random checks of the exterior and grounds of the facility from three (3) to six (6) times per evening including days when the Library is closed.

An employee of the Firm may not use his official position, including information learned by virtue of his position, for his personal benefit during the time spent performing services for the Library.

Date:	05/24/2021
Title:	Transportation Alternatives Grant Program Application - Pioneer Park
Presented by:	Elyse Monat
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

Staff recommends the City Council approve the submittal of the 2021 Transportation Alternatives (TA) grant program for the Pioneer Park Trail Repaving Project and authorize the Planning Division to submit the grant application due June 4, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Transportation Alternatives (TA) grant program is provided for by federal funds that flow through the Montana Department of Transportation (MDT). MDT is required to award these funds through a competitive process. These funds can be allocated to pedestrian and bicycle-related projects. Project sponsors are required to provide a match equal to 13.42% of the total project cost. The application for this grant is due June 4, 2021.

After consideration of upcoming projects, current plans, and available sources of matching funds, staff will submit an application, with Council's approval, for rehabilitation of the asphalt trail running through Pioneer Park from the Zimmerman Center to 3rd St. W. A map of this trail is attached. The path is currently in poor condition. In a survey of seniors and people with disabilities, the Healthy By Design coalition discovered that the poor condition of this trail is a barrier to these groups that prevents them from fully enjoying Pioneer Park. In addition, this path will be part of the bicycle boulevard that Public Works is constructing during the 2021 construction season. The current state of the trail is not conducive for bike riding for people of all ages and abilities, which the bicycle boulevard hopes to attract. The bicycle boulevard is listed as a priority project in the Billings Area Bikeway and Trails Master Plan.

The application requests that the top layer of the asphalt be removed and replaced with concrete. Concrete is a much longer-lasting material than asphalt and is expected to last 20 years or more as opposed to an 8-10 year lifespan for asphalt. The project is estimated at $188,727. This cost estimate includes Preliminary Engineering ($41,284.00), Construction Engineering ($29,488.57), construction ($77,057.00), contingency ($23,117.10), inflation ($6,100.60), and MDT's indirect cost rate ($11,679.59) for managing the project. The Engineering Division calculated the construction cost estimate and the rest of the factors were calculated based on grant requirements and guidelines. The Billings Parks and Recreation Department has agreed to commit the required 13.42% match for the project. The match totals $25,327.15.

ALTERNATIVES

City Council may:

- Approve submittal of the grant application; or,
- Not Approve submittal of the grant application.

There is no disadvantage to submitting the grant application. If the grant is not awarded, the matching funds will go back into the Parks and Recreation Department budget and staff will look for other ways to complete this trail improvement project in Pioneer Park. This grant opportunity illustrates the need discussed by City Council at its April 19 Work Session for a local fund for trail development in the City. In this case, the relative small scope of this project could be funded locally in its entirety, if a funding source existed, or the small local match needed could also be covered through a local dedicated trail funding source.

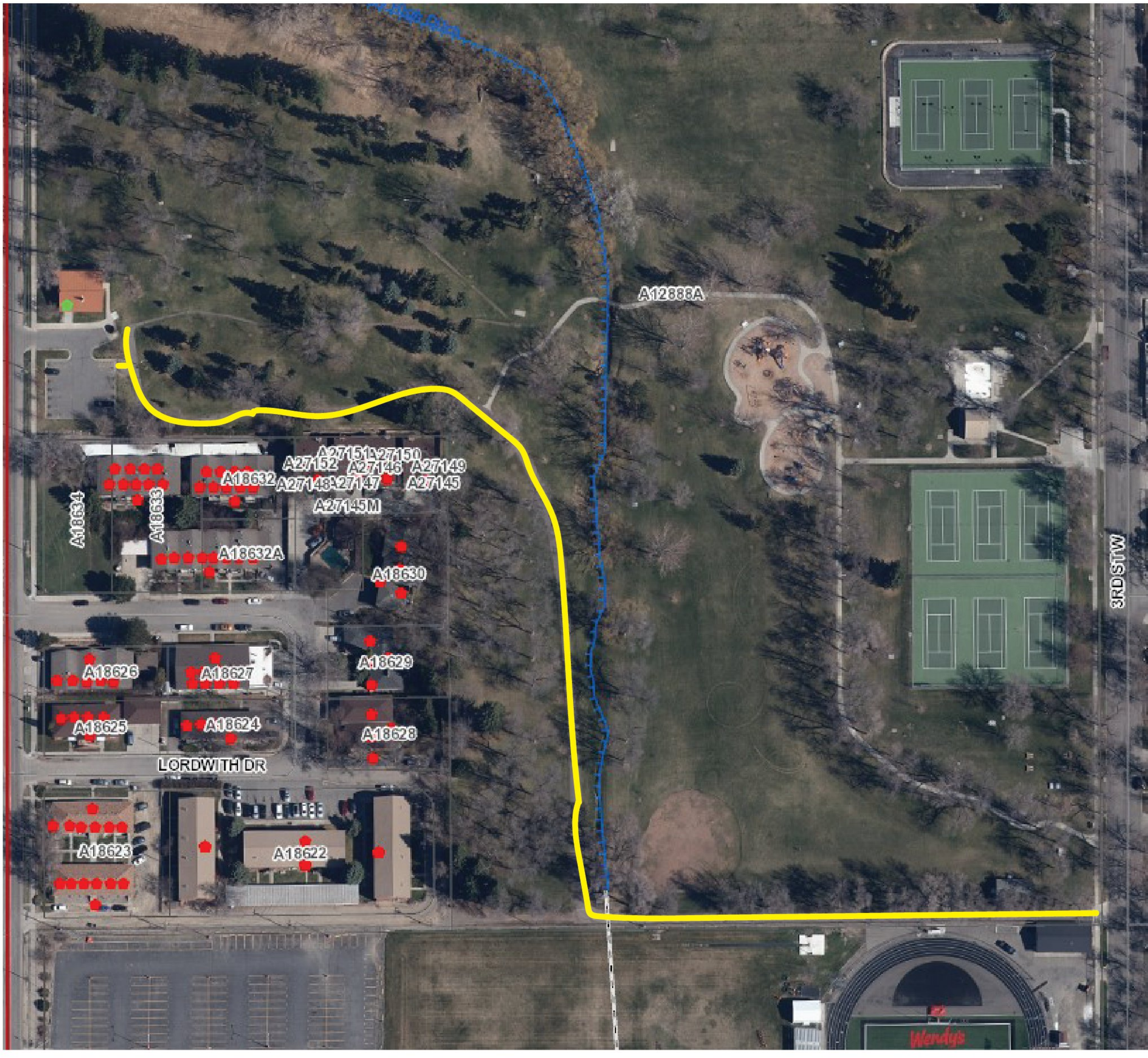
FISCAL EFFECTS

There is no cost to submit the grant application aside from the staff time to prepare the application. Should the grant be awarded, the Billings Parks and Recreation Department will provide the required match of $25,327.15. The TA grant would provide $163,399.72 towards the project. This grant would enable the City to replace the degraded trail through Pioneer Park at a very reasonable cost to the City.

Attachments

Map of Pioneer Park Trail Rehab Project

Pioneer Park Trail Rehab Project
Transportation Alternatives Grant Program Application



Approximate route of trail through Pioneer Park to be repaved

City Council Regular

Date:	05/24/2021
Title:	Increased CDBG Allocation: C & C Resident-Owned Community Infrastructure Project
Presented by:	Brenda Beckett
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

Staff and the Community Development Board recommend the City Council approve an additional $155,000 in CDBG funding allocation to NeighborWorks Montana to complete infrastructure improvements within the C & C manufactured home community on South Billings Boulevard. The City Council approved allocating about $385,000 to this project in May 2020 as part of the City's FY2021 CDBG Budget (See attached City Council Agenda and Memo from the May 11, 2020 Meeting).

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Issue: NeighborWorks Montana has requested additional funding to carry out infrastructure improvements for the C & C Community project. The cost of building materials is at a historic high as the coronavirus pandemic has caused building material availability limitations, disruptions in distribution, and increased demand. The project's Request for Bids process resulted in one submission and the bid exceeded engineering estimates by nearly $140,000 without contingency considerations. If additional funding is not awarded, important safety improvements (fire hydrant, drainage, and asphalt improvements) would be eliminated from the project scope.

NeighborWorks Montana has invested over $2.4 million in the project. Last fiscal year, the City of Billings allocated $385,000 in Community Development Block Grant (CDBG) funding for the infrastructure improvements. An additional allocation of $155,000 would bring the total CDBG award to $540,000; eighteen percent of the total project costs to date.

Location: The property is located at 307 South Billings Boulevard and is within the Billings city limits in the Southwest Corridor area. It is served by municipal water and sanitary sewer systems, has minimal on-site storm drainage system, private utilities, and irrigation water from the adjacent Suburban Ditch along the west side of the property.

Improvements Needed: A complete Property Condition Assessment and Report was completed by Sanderson Stewart. Due to the 70+ years of use, degradation of the property has occurred to the infrastructure features. The project will consist of replacement of all asphalt paving, storm drainage improvements, and installation of two fire hydrants. There are signs indicative of subsurface pavement failures, which would require additional excavation of gravel/subgrade below the pavement surface.

Organizational Strengths: NeighborWorks Montana staff has significant experience in affordable housing development, specifically in Resident Owned Communities, to bring forth

successful projects. NeighborWorks Montana has assisted eleven resident owned communities form in Montana with 425 homes, attracting over $12.3 million in acquisition financing and $7 million in infrastructure investment. Staff has extensive knowledge, experience, and formal education to ensure the long-term viability of the project.

Consistency with Adopted Plans: The project is consistent with the City's five-year Consolidated Plan. Housing cost burden, affordable housing availability, and homeownership opportunities for minorities are the three most significant issues identified through the City's Housing Needs Assessment, Housing Market Analysis, and the Analysis of Impediments to Fair Housing Choice www.BillingsMT.gov/CDreports

STAKEHOLDERS

- C & C Community provides very affordable housing for 60 low-income families.
- Surrounding property owners would benefit from a neighboring community that is safer with enhanced curb appeal.

ALTERNATIVES

City Council may:

- Approve funding for the proposed project, with or without conditions. An increased funding allocation to support this infrastructure project would assist the City in meeting affordable housing needs while ensuring compliance for timeliness deadlines through FY 20-21.
- Not approve funding for the project. NeighborWorks Montana would need to limit the scope of this project, impacting quality and safety for sixty resident families. The project addresses areas including storm water management, fire hydrants, street pavement conditions and other basic infrastructure that is in very poor condition in this residential development.

FISCAL EFFECTS

An adverse financial outcome to the City is not anticipated and the commitment of these funds will help the City to meet CDBG federal timeliness requirements. The City has sufficient funding to carry out ongoing home repair, home buyer, poverty-impact, and foreclosure programs through the program year-end in June 2021.

SUMMARY

Staff and the Community Development Board recommend the City Council approve an additional $155,000 CDBG funding allocation to NeighborWorks Montana to complete resident owned C & C Community infrastructure improvements.

Attachments

C & C Community - Photos & Data

NeighborWorks Montana - Request Letter

Sanderson Stewart Letter

C & C Bid Spreadsheets

Backup Documentation for NWMT Expenditures

6 - Amendment and Development Agreement
City Council 2020 C & C Allocation Approval

Housing Development: C & C Community

2,820 manufactured homes in Billings citywide

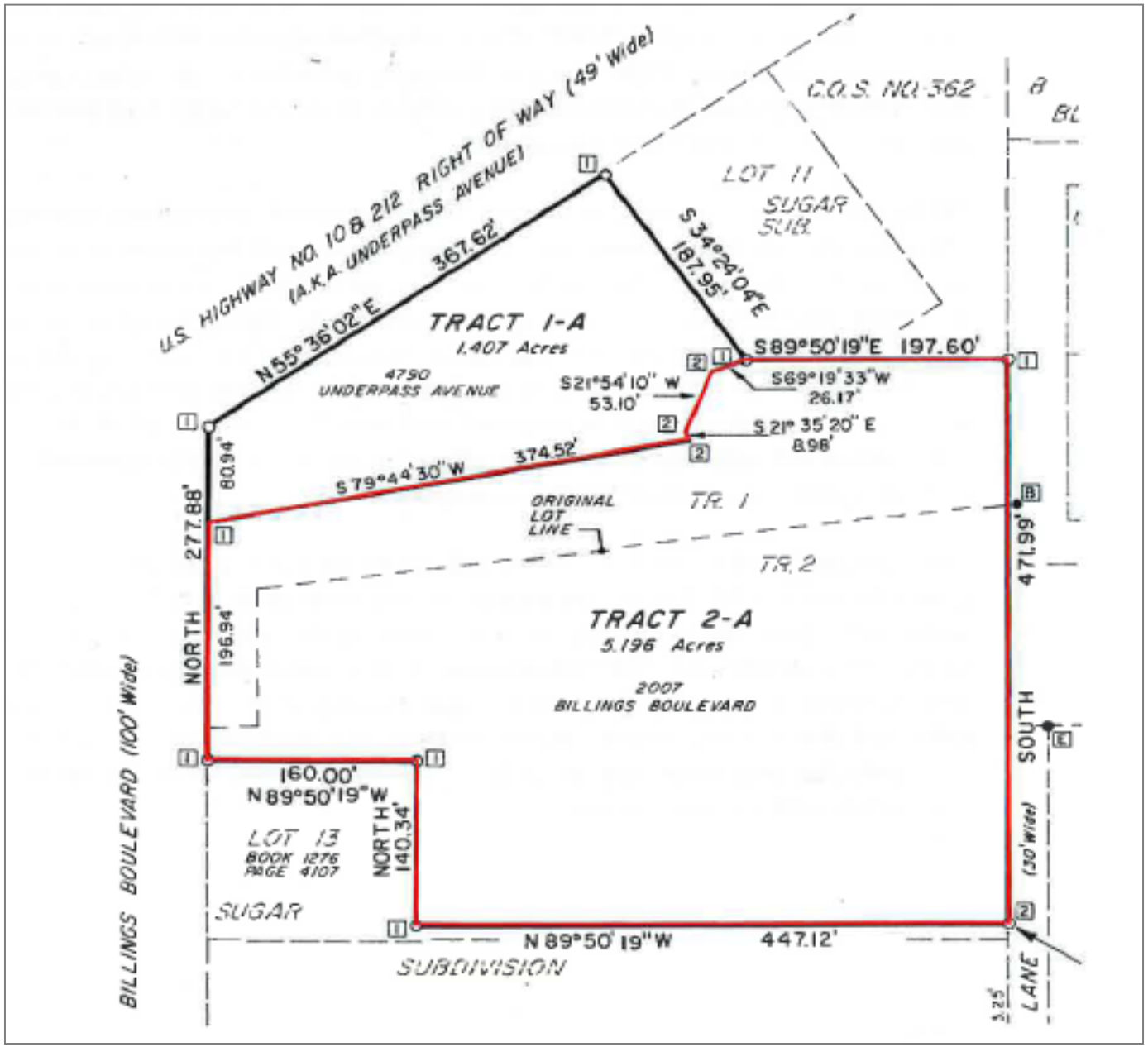
- Homes and properties deteriorating
- Require infrastructure & housing development

C & C Community - 60 Homes

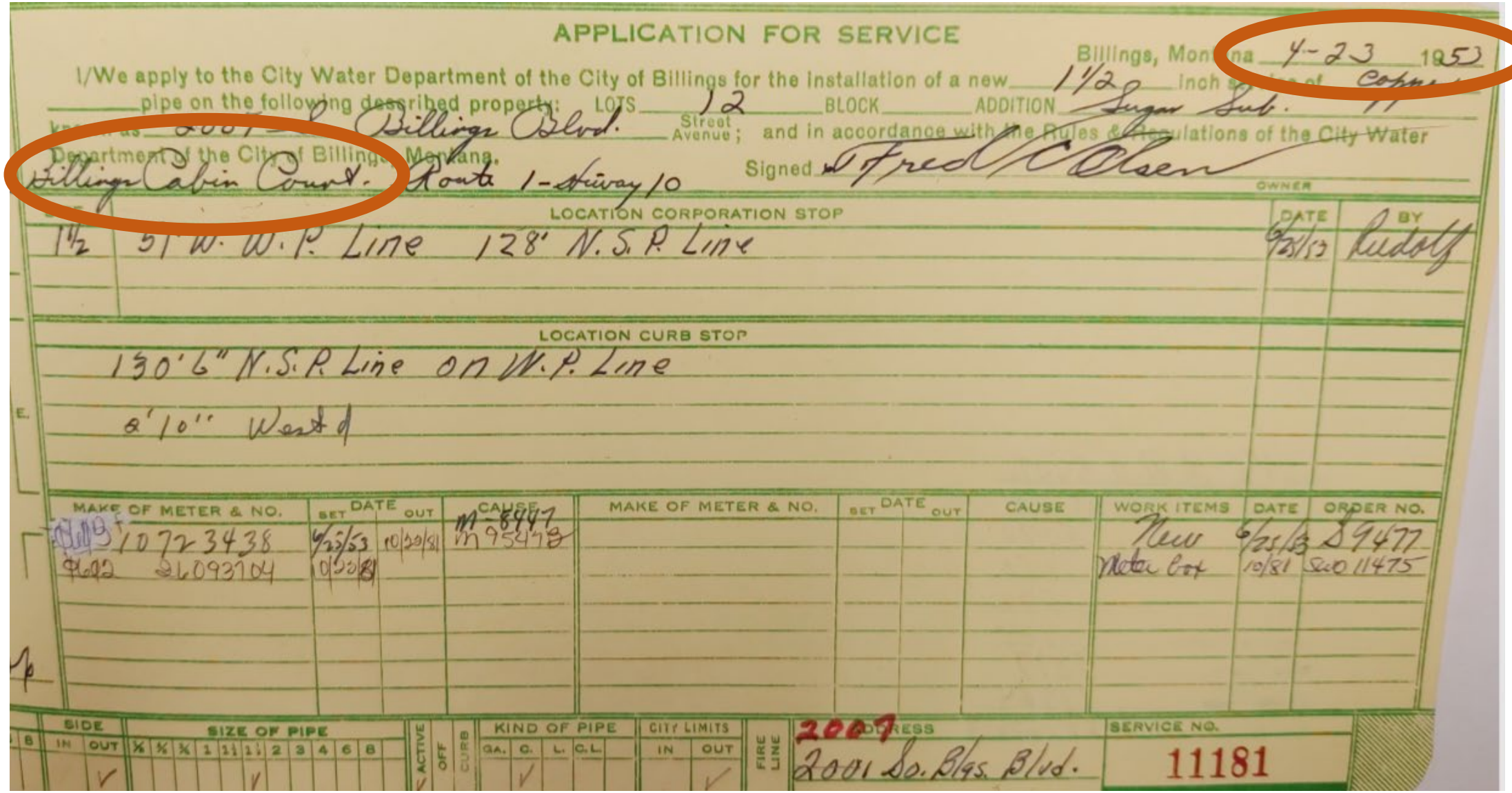
- **Established in 1953** as *Billings Cabin Court*
- Resident Owned Community
- Equal owners of the land & they manage community

Financed $2.3 million for purchase

Housing Development: C & C Community



Housing Development: C & C Community



APPLICATION FOR SERVICE

Billings, Montana 4-23 1953

I/We apply to the City Water Department of the City of Billings for the installation of a new 1½ inch service of copper pipe on the following described property: LOTS 12 BLOCK ADDITION Sugar Sub. 11 known as 2007 S. Billings Blvd. Street Avenue; and in accordance with the Rules & Regulations of the City Water Department of the City of Billings, Montana.

Billings Cabin Court. Route 1-Hiway 10

Signed Fred C Olsen OWNER

LOCATION CORPORATION STOP	DATE	BY
1½ 51' W. W.P. Line 128' N.S.P. Line	6/25/53	Rudolf

LOCATION CURB STOP

130'6" N.S.P. Line on W.P. Line

2'10" West of

MAKE OF METER & NO.	DATE SET	DATE OUT	CAUSE
10723438	6/25/53	10/20/81	M-8447 M95478
9692 2L093704	10/20/81		

MAKE OF METER & NO.	DATE SET	DATE OUT	CAUSE

WORK ITEMS	DATE	ORDER NO.
New	6/25/53	S9477
Meter Box	10/81	SWO 11475

SIDE IN	SIDE OUT	SIZE OF PIPE	ACTIVE	OFF	CURB	KIND OF PIPE	CITY LIMITS IN	CITY LIMITS OUT	FIRE LINE	ADDRESS	SERVICE NO.
	✓	1½ ✓				GA. C. ✓ L. C.L.		✓		2007 2001 So. Blgs. Blvd.	11181

Housing Development: C & C Community



NeighborWorks®
MONTANA
nwmt.org

ROC usa®
Resident Owned Communities
BETTER TOGETHER
www.rocusa.org



"IT'S NOW THE RESIDENTS' - THE FACT THAT IT IS STAYING A MOBILE HOME PARK WAS MY BIGGEST PRIORITY."

CHUCK BARRETT, PREVIOUS OWNER

Housing Development: C & C Community

307 South Billings Boulevard



Housing Development: C & C Community

307 South Billings Boulevard



Housing Development: C & C Community

307 South Billings Boulevard



Housing Development: C & C Community

307 South Billings Boulevard



Housing Development: C & C Community

307 South Billings Boulevard



Housing Development: C & C Community

307 South Billings Boulevard









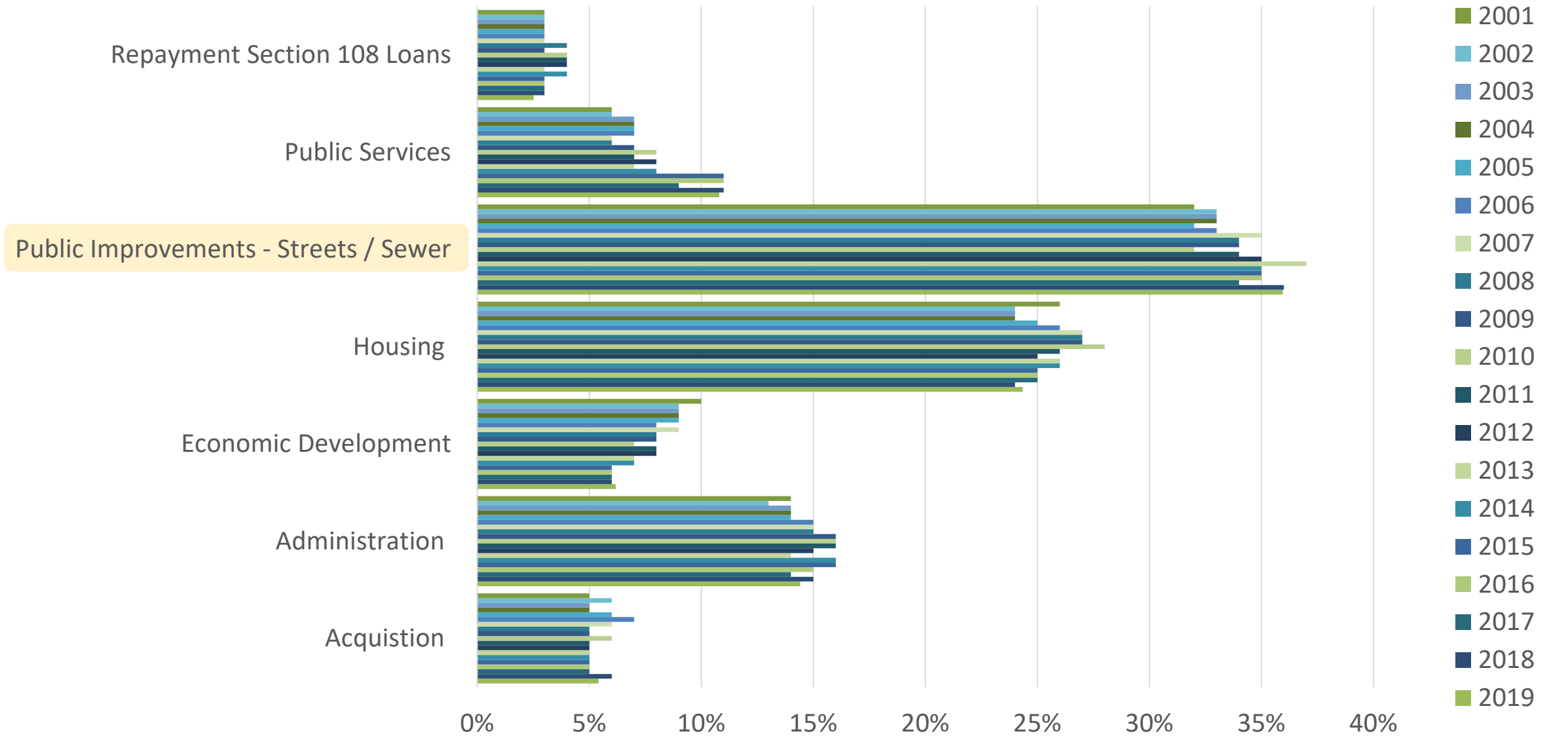
Previous Housing Development Projects

Project	# Units	City $
Pheasant Home	16	$554,191
C & C Community?	60	$543,000
Southern Lights	20	$500,000
Sioux Lane – Infrastructure	32	$262,000
Old Town Square	8	$242,000
Spring Gardens	16	$240,000
Westchester Square	3	$200,000
YWCA Gateway House	10	$182,400
Sage Towers	20	$175,000
Acme Hotel	19	$143,400

Street Improvements – Whitetail Run



National CDBG Expenditures



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NeighborWorks® MONTANA

Brenda Beckett, Manager
Community Development Division
2825 3rd Avenue North
Billings, MT 59101

May 3, 2021

Dear Brenda:

Subject: NeighborWorks Montana - Request for Additional CDBG Funding
Reference CDBG Development Agreement August 6, 2020
C & C Community Infrastructure Improvements

Our recent Request for Proposals for the above-subject project resulted in the receipt of one bid with a cost exceeding our engineer's estimate. Sanderson Stewart, engineers, have reviewed the bid proposal and have provided options; however, the options reduce the original scope of work. We are concerned about safety for the residents and the importance of keeping the fire hydrant, drainage, and asphalt improvements as proposed.

The pandemic has caused building materials to increase due to increased demand and disruptions in supply. We believe time is of the essence and the timeframe to solicit a re-bid process we fear would result in even higher prices and costs. Limited access to the interior of the community was one factor of concerns for inquiring contractors.

As a result, NeighborWorks Montana hereby requests additional CDBG funding in the amount of $155,000.00 to cover the costs as noted in the bid received from FirstMark Construction, Inc. The bid estimate results are $138,800.00 over budget and does not provide for any contingency. The amount requested will adequately fund this project with contingency as confirmed by Sanderson Stewart engineers.

C & C Community, Inc. is a Resident-Owned Community (ROC) operated by a 5-member Board of Directors. Manufactured housing in Montana represents the largest source of unsubsidized housing that is affordable to low-income people. NeighborWorks Montana has helped 14 resident owned communities form in Montana preserving 577 homes. Our mission is to strengthen communities by providing education and financing that gives every Montanan the opportunity to live in a home where they can thrive. NeighborWorks Montana provides on-going technical assistance to C & C Community, Inc.

NeighborWorks Montana, in partnership with ROC USA, provided the financing for the purchase and acquisition of C & C Community, Inc. The following provides the investment of

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time and money in C & C Community, Inc. relative to the purchase, acquisition, and on-going technical assistance. Additional other resources received since the purchase took place are also included.

Purchase/Acquisition Financing	
ROC USA Capital	$1,895,000.00
NeighborWorks MT	$ 296,840.00
NeighborWorks MT	$ 148,369.99
Engineering Fees:	
Property Conditions Report	$ 25,120.00
Infrastructure Project to Date	$ 26,305.40
State of Montana COVID Funds	
No. 1	$ 10,000.00
No. 2	$ 3,764.00
ROC USA - Better Together Grant	$ 2,000.00
NeighborWorks MT Award	$ 500.00
Staff Time	
Pre-Purchase, Post-Purchase and On-going	$ 29,638.90
Total	$2,438,538.20

Please see attached supporting documentation.

Thank you for your consideration. If you need additional information or have any questions, please let us know.

Sincerely,

DocuSigned by:
Kaia Peterson
DDF9273DF0CE4BD...

Kaia Peterson
Executive Director

P.O. Box 1025 • Great Falls, MT 59403
Website: www.nwmt.org
(406) 604-4540 • Fax (406) 403-0273

NEIGHBORWORKS™ GREEN ORGANIZATION
A comprehensive commitment to sustainable operations

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Attachments: Sanderson Stewart Engineers Letter
Bid Tabulation
Engineering Fees Paid
Stewart Title Company - Acquisition Closing Statement
Documentation of ROC, State of Montana, & NWMT Funds
NWMT Staff Time Contribution

P.O. Box 1025 • Great Falls, MT 59403
Website: www.nwmt.org
(406) 604-4540 • Fax (406) 403-0273

NEIGHBORWORKS™ GREEN ORGANIZATION
A comprehensive commitment to sustainable operations

SANDERSON STEWART

April 30, 2021

Ms. Mary Lou Affleck
NeighborWorks Montana
509 1st Avenue South
Great Falls, Montana 59401

Reference: C&C Manufactured Home Park Infrastructure Improvements Project
Project No. 18106.01

Dear Ms. Affleck,

On April 9, 2021 competitive bids for the above-referenced project were received and opened in accordance with the Advertisement for Bids. The project received only one bid for both schedules with FirstMark Construction, Inc. as the prime contractor and Earth Movers Excavation subcontracted to complete the Schedule I – Utilities work.

After bid examination no errors or omissions were found. The following is a list of the submitted bids and the Engineer's Opinion of Probable Cost:

Bidder	**Total Base Bid**
FirstMark Construction, Inc.	$421,747.00
Engineer's Opinion of Probable Cost	$282,947.39

A copy of the Bid Tabulations has been attached.

As you will note, the bid is over the Engineer's Opinion of Probable Cost by $138,799.61. In our review of the markets, pricing, and discussions with other contractors in the industry, we have found that this bid, like many others occurring right now, has been negatively impacted by pandemic influenced events. Some of these include supply chain issues, oil price surges, labor shortages, and general uncertainty in many markets. These are obviously circumstances that could not have been anticipated in the months and years that this project has been in the analysis, funding, and design process.

Sanderson Stewart has evaluated several methods to try and reduce the scope and bring the project in under budget. Although these reduced project scopes could be considered, all of these options significantly impact the longevity of the project, cost to operate and maintain, and overall safety to the residents of the C&C Manufactured Home Park.

Sanderson Stewart has also been made aware that there may be additional funds that could be allocated to this project. With that in mind and based on the bid submitted, Sanderson Stewart would recommend FirstMark Construction, Inc. be awarded the C&C Manufactured Home Park Infrastructure Improvements project for a total contract amount of $421,747.00 with the understanding that sufficient additional funds are made available to cover the overall bid.

Please feel free to call if you have any questions or need any additional information.

Sincerely,

Erica Gilrein

Erica Gilrein, PE
Project Manager

c: Wendy Herman, C&C Board President
EJG/rl

BID TABULATION
4/9/2021

SANDERSON STEWART

PROJECT: C&C Manufactured Homes Infrastructure Improvements
S.S. PROJECT NO.: 18106.01

BID DATE: April 9, 2021
BID TIME: 3:00 PM, MDT

BID DATE: April 9, 2021
BID TIME: 3:00 PM, MDT

BY: Sanderson Stewart
FOR: NeighborWorks Montana

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	Engineer's Opinion of Probable Cost UNIT PRICE $	Engineer's Opinion of Probable Cost TOTAL PRICE $	FirstMark Construction, Inc. UNIT PRICE $	FirstMark Construction, Inc. TOTAL PRICE $
SCHEDULE I - Utility Improvements							
101	1	LS	Mobilization and Insurance	$4,034.00 / LS =	4,034.00	$2,375.00 / LS =	2,375.00
102	1	LS	Payment and Performance Bonds	$3,529.75 / LS =	3,529.75	$2,550.00 / LS =	2,550.00
103	1	LS	Traffic Control During Construction	$2,500.00 / LS =	2,500.00	$4,155.00 / LS =	4,155.00
104	3	EA	Remove and Dispose Existing Catch Basins	$1,200.00 / EA =	3,600.00	$925.00 / EA =	2,775.00
105	2	EA	Drywells with Neenah R-1879-B7G Catch Basin Top Casting	$2,500.00 / EA =	5,000.00	$3,130.00 / EA =	6,260.00
106	7	VF	Extra Depth Manhole	$125.00 / VF =	812.50	$347.00 / VF =	2,255.50
107	650	CY	Gravel Storage for Drywell	$35.00 / CY =	22,750.00	$41.00 / CY =	26,650.00
108	245	SY	Drywell Filter Fabric	$1.50 / SY =	367.50	$12.00 / SY =	2,940.00
109	2	EA	Flexstorm Filters for Catch Basin	$400.00 / EA =	800.00	$640.00 / EA =	1,280.00
110	1	EA	Connect to Existing Water Main (Includes Tap, Asphalt/ Concrete Surface Repair)	$2,200.00 / EA =	2,200.00	$7,060.00 / EA =	7,060.00
111	1	EA	Fire Hydrant Assembly (Includes Valves)	$4,500.00 / EA =	4,500.00	$5,525.00 / EA =	5,525.00
112	1	EA	6-Inch Gate Valve	$550.00 / EA =	550.00	$1,955.00 / EA =	1,955.00
113	285	LF	6-Inch PVC Water Main	$28.00 / LF =	7,980.00	$49.00 / LF =	13,965.00
114	20	LF	Water Main Insulation	$10.00 / LF =	200.00	$66.50 / LF =	1,330.00
115	1	LS	Abandon Ex. Drain Pipe in Place (If Required)	$1,500.00 / LS =	1,500.00	$4,260.00 / LS =	4,260.00
116	1	LS	Water Line Lowering (Includes Bends, Etc.) - If Required	$6,000.00 / LS =	6,000.00	$6,905.00 / LS =	6,905.00
			TOTAL FOR SCHEDULE I - Utility Improvements		**$66,323.75**		**$92,240.50**
SCHEDULE II - Surface Improvements							
201	1	LS	Mobilization and Insurance	$13,887.14 / LS =	13,887.14	$16,520.00 / LS =	16,520.00
202	1	LS	Payment and Performance Bonds	$12,151.25 / LS =	12,151.25	$3,485.00 / LS =	3,485.00
203	1	LS	Traffic Control During Construction	$3,500.00 / LS =	3,500.00	$3,360.00 / LS =	3,360.00
204	1	LS	Stormwater Management and Erosion Control	$1,500.00 / LS =	1,500.00	$3,035.00 / LS =	3,035.00
205	345	CY	Remove and Dispose Ex. Asphalt Surface (3-Inch Thick)	$10.00 / CY =	3,450.00	$37.00 / CY =	12,765.00
206	1	LS	Saw Cut at Ex. Asphalt Surface	$5,750.00 / LS =	5,750.00	$3,925.00 / LS =	3,925.00
207	483	SY	Remove and Dispose Ex. Gravel Surface	$2.00 / SY =	966.00	$5.25 / SY =	2,535.75
208	1,755	CY	Unclassified Excavation	$11.00 / CY =	19,305.00	$13.75 / CY =	24,131.25
209	1,275	CY	Remove & Dispose Excess Fill Material	$8.00 / CY =	10,200.00	$17.25 / CY =	21,993.75
210	4,330	SY	Asphalt Surface Course (3-Inch Thick) with Type 2 Slurry Seal	$13.50 / SY =	58,455.00	$16.70 / SY =	72,311.00
211	965	CY	1 1/2-Inch Crushed Base Course (8-Inch Thick)	$19.00 / CY =	18,335.00	$46.00 / CY =	44,390.00
212	4,330	SY	Mirafi RS380i Separation Fabric	$2.50 / SY =	10,825.00	$5.00 / SY =	21,650.00
213	1	LS	Speed Humps (Includes Striping)	$2,500.00 / LS =	2,500.00	$12,840.00 / LS =	12,840.00
214	3,425	SY	Crack Sealing and Type 2 Slurry Seal	$3.25 / SY =	11,131.25	$2.25 / SY =	7,706.25
215	92	LF	Standard Curb and Gutter (Includes Base Course)	$22.00 / LF =	2,024.00	$36.50 / LF =	3,358.00
216	2,815	SF	3' Wide Concrete Valley Gutter (6-Inch Thick - Includes 6-Inch Thick Base Course)	$8.00 / SF =	22,520.00	$9.00 / SF =	25,335.00
217	316	SF	Concrete Apron (Includes Base Course)	$8.00 / SF =	2,528.00	$11.00 / SF =	3,476.00
218	3	EA	Bollards	$200.00 / EA =	600.00	$985.00 / EA =	2,955.00
219	1	LS	Reseed Disturbed Areas (If Required)	$200.00 / LS =	200.00	$400.00 / LS =	400.00
220	800	SY	Subgrade Stabilization with Mirafi RS580i (Only used at discretion of Engineer)	$4.50 / SY =	3,600.00	$8.25 / SY =	6,600.00
221	800	SY	Subgrade Stabilization with 12-inch additional dig out, Tensar TX-140 Geogrid and 12-inches of additional 1.5" crushed gravel (Only used at discretion of Engineer)	$10.00 / SY =	8,000.00	$20.75 / SY =	16,600.00
222	433	SY	Additional Asphalt Repair in Damaged Areas	$12.00 / SY =	5,196.00	$46.50 / SY =	20,134.50
			TOTAL FOR SCHEDULE II - Surface Improvements		**$216,623.64**		**$329,506.50**
			TOTAL FOR SCHEDULES I AND II		**$282,947.39**		**$421,747.00**

c: Engineer, Owner, Bid Tabs Book

BID TABULATION
5/3/2021

SANDERSON STEWART

PROJECT: **C&C Manufactured Homes Infrastructure Improvements**
S.S. PROJECT NO.: **18106.01**

BID DATE: **April 9, 2021**
BID TIME: **3:00 PM**

BY: Sanderson Stewart
FOR: NeighborWorks Montana

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	FirstMark Construction, Inc. UNIT PRICE $			FirstMark Construction, Inc. TOTAL PRICE $
SCHEDULE I - Utility Improvements							
101	1	LS	Mobilization and Insurance	$2,375.00	/ LS	=	$2,375.00
102	1	LS	Payment and Performance Bonds	$2,550.00	/ LS	=	$2,550.00
103	1	LS	Traffic Control During Construction	$4,155.00	/ LS	=	$4,155.00
104	3	EA	Remove and Dispose Existing Catch Basins	$925.00	/ EA	=	$2,775.00
105	2	EA	Drywells with Neenah R-1879-B7G Catch Basin Top Casting	$3,130.00	/ EA	=	$6,260.00
106	7	VF	Extra Depth Manhole	$347.00	/ VF	=	$2,255.50
107	650	CY	Gravel Storage for Drywell	$41.00	/ CY	=	$26,650.00
108	245	SY	Drywell Filter Fabric	$12.00	/ SY	=	$2,940.00
109	2	EA	Flexstorm Filters for Catch Basin	$640.00	/ EA	=	$1,280.00
110	1	EA	Connect to Existing Water Main (Includes Tap, Asphalt/ Concrete Surface Repair)	$7,060.00	/ EA	=	$7,060.00
111	1	EA	Fire Hydrant Assembly (Includes Valves)	$5,525.00	/ EA	=	$5,525.00
112	1	EA	6-Inch Gate Valve	$1,955.00	/ EA	=	$1,955.00
113	285	LF	6-Inch PVC Water Main	$49.00	/ LF	=	$13,965.00
114	20	LF	Water Main Insulation	$66.50	/ LF	=	$1,330.00
115	1	LS	Abandon Ex. Drain Pipe in Place (If Required)	$4,260.00	/ LS	=	$4,260.00
116	1	LS	Water Line Lowering (Includes Bends, Etc.) - If Required	$6,905.00	/ LS	=	$6,905.00
TOTAL FOR SCHEDULE I - Utility Improvements							**$92,240.50**
SCHEDULE II - Surface Improvements							
201	1	LS	Mobilization and Insurance	$16,520.00	/ LS	=	$16,520.00
202	1	LS	Payment and Performance Bonds	$3,485.00	/ LS	=	$3,485.00
203	1	LS	Traffic Control During Construction	$3,360.00	/ LS	=	$3,360.00
204	1	LS	Stormwater Management and Erosion Control	$3,035.00	/ LS	=	$3,035.00
205	345	CY	Remove and Dispose Ex. Asphalt Surface (3-Inch Thick)	$37.00	/ CY	=	$12,765.00
206	1	LS	Saw Cut at Ex. Asphalt Surface	$3,925.00	/ LS	=	$3,925.00
207	483	SY	Remove and Dispose Ex. Gravel Surface	$5.25	/ SY	=	$2,535.75
208	1,755	CY	Unclassified Excavation	$13.75	/ CY	=	$24,131.25
209	1,275	CY	Remove & Dispose Excess Fill Material	$17.25	/ CY	=	$21,993.75
210	4,330	SY	Asphalt Surface Course (3-Inch Thick) with Type 2 Slurry Seal	$16.70	/ SY	=	$72,311.00
211	965	CY	1 1/2-Inch Crushed Base Course (8-Inch Thick)	$46.00	/ CY	=	$44,390.00
212	4,330	SY	Mirafi RS380i Separation Fabric	$5.00	/ SY	=	$21,650.00
213	1	LS	Speed Humps (Includes Striping)	$12,840.00	/ LS	=	$12,840.00
214	3,425	SY	Crack Sealing and Type 2 Slurry Seal	$2.25	/ SY	=	$7,706.25
215	92	LF	Standard Curb and Gutter (Includes Base Course)	$36.50	/ LF	=	$3,358.00

BID TABULATION
5/3/2021

SANDERSON STEWART

PROJECT: **C&C Manufactured Homes Infrastructure Improvements**
S.S. PROJECT NO.: **18106.01**

BID DATE: **April 9, 2021**
BID TIME: **3:00 PM**

BY: Sanderson Stewart
FOR: NeighborWorks Montana

ITEM NO.	EST. QTY.	UNIT	DESCRIPTION	FirstMark Construction, Inc. UNIT PRICE $	FirstMark Construction, Inc. TOTAL PRICE $
216	2,815	SF	3' Wide Concrete Valley Gutter (6-Inch Thick - Includes 6-Inch Thick Base Course)	$9.00 / SF =	$25,335.00
217	316	SF	Concrete Apron (Includes Base Course)	$11.00 / SF =	$3,476.00
218	3	EA	Bollards	$985.00 / EA =	$2,955.00
219	1	LS	Reseed Disturbed Areas (If Required)	$400.00 / LS =	$400.00
220	800	SY	Subgrade Stabilization with Mirafi RS580i (Only used at discretion of Engineer)	$8.25 / SY =	$6,600.00
221	800	SY	Subgrade Stabilization with 12-inch additional dig out, Tensar TX-140 Geogrid and 12-inches of additional 1.5" crushed gravel (Only used at discretion of Engineer)	$20.75 / SY =	$16,600.00
222	433	SY	Additional Asphalt Repair in Damaged Areas	$46.50 / SY =	$20,134.50
			TOTAL FOR SCHEDULE II - Surface Improvements		**$329,506.50**
			TOTAL FOR SCHEDULES I AND II		**$421,747.00**

Alternative	Main Items In Bid
NO DRAINAGE	Fire hydrant, demolition and repaving, speed bumps, concrete pad and curb
NO HYDRANT	Drainage, demolition, regrading, repaving, speed bumps
NO REPAVING	Drainage, fire hydrant, demolition for regrading, repaving only in asphalt repair areas, curb, valley gutter, concrete pad; asphalt repair (crack/slurry seal)
REDUCE DRAINAGE	1/4 Stormwater storage, fire hydrant, demolition for regrading, repaving , concrete pad; asphalt repair (crack/slurry seal)
DRAINAGE W/GUTTER	Full drainage, fire hydrant, demo for regrading, repaving, concrete pad, asphalt repair (reduced)

Items Removed	Cost	Notes (Budget: $308,440)
All drywell items, valley gutter, grading and earth work	$262,310.22	We can add back in some of these items
Fire hydrant, curb, valley gutter, concrete pad	$303,209.36	If Required' items have been reduced; this could limit flexibility
Repaving except for asphalt replacement needed for regrading and hydrant installation;	$299,762.67	Assume asphalt quantities generally cut in half; 'If Required' items have been reduced; this could limit flexibility
Valley gutter, some 'if required' items, gravel surface removal	$299,810.94	Drainage volume reduced to 25% original capacity; can add volume if we remove some items such as curb. Pending City approval
If required items, gravel surface removal, paving at north driveway area of site	$319,736.98	Little flexibility here and still need to reduce some items to fit budget

SANDERSON STEWART

JAN 14 2019

NeighborWorks MT
509 1st Avenue South
Great Falls, MT 59401

January 11, 2019
Invoice No: 45613

Project 18106 C&C Mobile Home Park PCA/PCR

Generally the work included on this invoice supported:
- Property Condition Assessment field work
- Interview process, sewer video, environmental work
- Final Property Condition Report preparation
- Project coordination and management

Professional Services through December 28, 2018

Fee

Total Fee	25,120.00			
Percent Complete	90.00	Total Earned	22,608.00	
		Previous Fee Billing	0.00	
		Current Fee Billing	22,608.00	
		Total Fee		**22,608.00**
			Total this Invoice	**$22,608.00**

TERMS: Payment is due on receipt of invoice. All accounts not paid in 30 days will be assessed a finance charge of 1.5% per month (18% per annum). All work on past due projects will be suspended until payment is received.

Approved for Payment:
02-20-2019

C & C Community, Inc.

Richard Schaver

Wendy

Please remit to:
1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967

www.sandersonstewart.com

SANDERSON STEWART

NeighborWorks MT
509 1st Avenue South
Great Falls, MT 59401

February 15, 2019
Invoice No: 45776

Project 18106 C&C Mobile Home Park PCA/PCR

Generally the work included on this invoice supported:
- Client coordination on the final report; addressing questions and providing supporting information

Professional Services through February 1, 2019

Fee

Total Fee	25,120.00			
Percent Complete	100.00	Total Earned	25,120.00	
		Previous Fee Billing	22,608.00	
		Current Fee Billing	2,512.00	
		Total Fee		**2,512.00**
			Total this Invoice	**$2,512.00**

Outstanding Invoices

Number	Date	Balance
45613	1/11/2019	22,608.00
Total		**22,608.00**

TERMS: Payment is due on receipt of invoice. All accounts not paid in 30 days will be assessed a finance charge of 1.5% per month (18% per annum). All work on past due projects will be suspended until payment is received.

Approved for Payment:
02-20-2019

C & C Community, Inc.

Richard Schaefer

Wendy

Please remit to:
1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255
Fax 406.656.0967

www.sandersonstewart.com

SANDERSON STEWART

Please remit to:
1300 North Transtech Way
Billings, Montana 59102
Phone 406.656.5255

April 9, 2021
Invoice No: 49784

Mary Lou Affleck
NeighborWorks MT
509 1st Avenue South
Great Falls, MT 59401

Project 18106.01 C&C Manufactured Home Community Infrastructure Project

Email invoices to maffleck@nwmt.org

Generally the work included on this invoice supported:
- Created, discussed, reviewed, edited, and updated project specifications for bidding
- Finalized project specifications for bidding
- Created plan set document for bidding
- Sent project out to bid
- Responded to bidder questions including an addendum
- Prepared permit items and sent project out for permitting
- Misc administrative work

Professional Services through March 26, 2021

Fee

Billing Phase	Fee	Percent Complete	Earned	Previous Fee Billing	Current Fee Billing
Boundary/Topo Survey	3,500.00	100.00	3,500.00	3,500.00	0.00
Site Design/Permitting	30,500.00	66.50	20,282.50	18,910.00	1,372.50
Bid Assistance	5,100.00	35.50	1,810.50	448.80	1,361.70
Limited Construction Assist	11,500.00	0.00	0.00	0.00	0.00
Project Administration	5,480.00	13.00	712.40	630.20	82.20
Total Fee	56,080.00		26,305.40	23,489.00	2,816.40
		Total Fee			**2,816.40**
				Total this Invoice	**$2,816.40**

TERMS: Payment is due on receipt of invoice. All accounts not paid in 30 days will be assessed a finance charge of 1.5% per month (18% per annum). All work on past due projects will be suspended until payment is received.

American Land Title Association

ALTA Settlement Statement - Borrower
Adopted 05-01-2015

File No./Escrow No.: 304141
Officer/Escrow Officer: Cynthia H. Stowell

Stewart Title Company
2044 Broadwater Ave
Ste A
Billings, MT 59102
(406) 656-7200

Property Address: 307 S BILLINGS BLVD
BILLINGS, MT 59101 (YELLOWSTONE)
(D01558)

Borrower: C & C COMMUNITY, INC

Settlement Date: 3/28/2019

Description	Borrower	
	Debit	Credit
Deposits, Credits, Debits		
2nd mortgage proceeds		$296,840.00
3rd mortgage proceeds		$148,369.00
April Rents (22) (54) (33) (51)		$1,200.00
Sale Price of Property	$2,100,000.00	
Deposit		$5,000.00
Prorations		
March Lot Rents 3/29/2019 to 4/1/2019 @ $17,350.00/Month		$1,679.03
County Taxes 1/1/2019 to 3/29/2019 @ $27,227.30/Year		$6,489.79
New Loans		
Loan Amount		$1,895,000.00
Our origination charge $14,212.50	$14,212.50	
Appraisal Fee to Colliers International Valuation & Advisory Services	$3,500.00	
Debt Service Reserve to Resident Ownership Capital, LLC	$13,485.00	
Capitalize Reserve for Replacements/Improvements to Resident Ownership Capital, LLC	$37,000.00	
NeighborWorks Montna (CTAP Closing Fee) to NeighborWorks Montana	$63,000.00	
Property Tax Escrow to Resident Ownership Capital, LLC	$54,454.00	
Capital Pre-Dev. Loan #1825 Repayment (Prin. & Int) to Resident Ownership Capital, LLC	$30,185.20	
Borrower for Working Capital Acct to Resident Ownership Capital, LLC	$9,060.00	
Property Tax Pro ration to Resident Ownership Capital, LLC	-$6,489.79	
Prepaid Interest (326.3600 per day from 3/28/2019 to 4/14/2019)	$5,548.14	
Homeowner's Insurance Premium (12 mo.) to (NA) Haylor, Freyer & Coon, Inc.	$3,288.00	
Title Charges		
Title - Lender's Title Insurance to Stewart Title Company	$1,247.00	
Title - ALTA 18-06 Single Tax Parcel 6-17-06 Endorsement(s) to Stewart Title Company	$50.00	
Title - ALTA 22-06 Location 6-17-06 Endorsement(s) to Stewart Title Company	$20.00	
Title - ALTA 8.2-06 Commercial Environmental Protections Lien 10-16-08 Endorsement(s) to Stewart Title Company	$50.00	
Title - ALTA 9-06 Restrictions, Encroachments, Minerals-Loan Policy 4-2-12 Endorsement(s) to Stewart Title Company	$202.00	
Title - ALTA 3.1-06 Zoning-Completed Structure 10-22-09 Endorsement(s) to Stewart Title Company	$805.00	
Title - Settlement or closing fee to Stewart Title Company	$600.00	
Title - Attorney's fees to (NA) Christensen Fulton & Filz PLLC	$2,491.00	
Title - Attorney's fees to (NA) Sheehan, Phinney, Bass and Green	$5,507.00	
Government Recording and Transfer Charges		
Recording fees: Deed to Stewart Title Company $14.00	$14.00	
Recording Fees: Mortgage to Stewart Title Company $175.00	$175.00	
Additional Settlement Charges		
to Terracon Consultants, Inc.	$7,065.00	
	Debit	**Credit**
Subtotals	$2,345,469.05	$2,354,577.82
Due To Borrower	$9,108.77	
Totals	$2,354,577.82	$2,354,577.82

SUBSTITUTE FORM 1099 SELLER STATEMENT: The information contained herein is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.
SELLER INSTRUCTIONS: If this real estate was your principal residence, file form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of form 4797, Form 6252 and/or Schedule D (Form 1040). This transaction does not need to be report on Form 1099-S if you sign a certification containing assurances that any capital gain from this transaction will be exempt from tax under new IRS Code Section 121. You are required by law to provide the Settlement Agent with your correct taxpayer identification number. If you do not provide the Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Stewart Title Company to cause the funds to be disbursed in accordance with this statement.

BORROWER(S)

C & C Community, Inc

_____
Wendy Herman, President

_____
Richard Schave, Secretary

SETTLEMENT COORDINATOR

_____
Cynthia H. Stowell

File # 304141
Printed on 3/28/2019 at 11:02 AM

0008991354
DPHHS-BFSD FISCAL OPER BUREAU
111 N SANDERS
P O BOX 4210
HELENA MT 59620-4210

RETURN SERVICE REQUESTED

C & C COMMUNITY INC
C & C COMMUNITY INC
307 S BILLINGS BLVD TRLR 58
BILLINGS MT 59101-4720

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
NOTICE OF DIRECT DEPOSIT

DATE	REFERENCE NUMBER
2020-08-31	0008991354

C & C COMMUNITY INC
C & C COMMUNITY INC
307 S BILLINGS BLVD TRLR 58
BILLINGS MT 59101-4720

AGENCY	AGENCY NAME			
6901F	DPHHS-BFSD FISCAL OPER BUREAU			
BANK ID	**BANK ACCOUNT**	**VENDOR ID**	**SETTLEMENT DATE**	**TOTAL PAID AMOUNT**
292970854	*******4854	0001362979	2020-09-01	$10,000.00

INVOICE NUMBER	INVOICE DATE	VOUCHER ID	VOUCHER PAID AMOUNT
16862705	2020-08-27	00307413	$10,000.00

ALL PURPOSE
406/444-3130

COVID-19 relief. Emergency grants funded through the federal CARES Act.

0009088567
DPHHS-BFSD FISCAL OPER BUREAU
111 N SANDERS
P O BOX 4210
HELENA MT 59620-4210

RETURN SERVICE REQUESTED

C & C COMMUNITY INC
C & C COMMUNITY INC
307 S BILLINGS BLVD TRLR 58
BILLINGS MT 59101-4720

STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
NOTICE OF DIRECT DEPOSIT

DATE	REFERENCE NUMBER
2020-10-27	0009088567

C & C COMMUNITY INC
C & C COMMUNITY INC
307 S BILLINGS BLVD TRLR 58
BILLINGS MT 59101-4720

AGENCY	AGENCY NAME			
6901F	DPHHS-BFSD FISCAL OPER BUREAU			
BANK ID	**BANK ACCOUNT**	**VENDOR ID**	**SETTLEMENT DATE**	**TOTAL PAID AMOUNT**
292970854	*******4854	0001362979	2020-10-28	$3,764.00

INVOICE NUMBER	INVOICE DATE	VOUCHER ID	VOUCHER PAID AMOUNT
16862705Z	2020-10-21	00310059	$3,764.00

ALL PURPOSE
406/444-3130

COVID-19 relief. Emergency grants funded through the federal CARES Act.

C&C COMMUNITY, INC.
STATEMENT OF ACTIVITIES

YEAR ENDED JUNE 30, 2020

	Without Donor Restrictions	With Donor Restrictions	Total
INCOME			
Rental income	$ 245,495	$ -	$ 245,495
Grant revenue (Roc USA)	2,000	500	(NWMT) 2,500
Interest income	537	-	537
Other income	1,899	-	1,899
TOTAL REVENUE	249,931	500	250,431
EXPENSES			
Bad debt	1,505	-	1,505
Interest expense	145,268	-	145,268
Insurance	3,014	-	3,014
Maintenance	17,720	-	17,720
Office expenses	633	-	633
Other expenses	1,142	-	1,142
Professional fees	10,915	-	10,915
Property taxes	22,568	-	22,568
Utilities	30,740	-	30,740
TOTAL EXPENSES	233,505	-	233,505
CHANGE IN NET ASSETS	16,426	500	16,926
NET ASSETS, BEGINNING OF YEAR	25,092	-	25,092
NET ASSETS, END OF YEAR	$ 41,518	$ 500	$ 42,018

NeighborWorks Montana

Summary of Staff Time and Cost Investment in C & C Community to Date:

Estimate by Position:

	Per Hour Rate	# Hours	Total
Executive Director	$57.69	20	$ 1,153.80
Chief Financial Officer	$51.66	30	$ 1,549.80
Compliance and Credit Analyst	$28.01	30	$ 840.30
ROC Program Manager	$33.98	100	$ 3.398.00
ROC Program Specialist	$23.00	200	$ 4,600.00
Coordinator for Project Development	$29.19	620	$18,097,80
Total:			**$29,638.90**

Note: Includes both Pre-Purchase and Post-Purchase activities and on-going Technical Assistance since September 2018.

Community Development Block Grant (CDBG) Program

DEVELOPMENT AGREEMENT - AMENDMENT

Between:

City of Billings
A Montana Municipal Corporation
whose address is
P.O. Box 1178, Billings, Montana 59103
(the "City")

And

NeighborWorks Montana ("Subrecipient")

For:

C & C Manufactured Home Community Infrastructure Project

The City of Billings hereby amending the Development Agreement (the "Agreement"), enacted on the 11th day of May, 2020, by and between, **NeighborWorks Montana**, as subrecipient (the "Subrecipient") of Community Development Block Grant ("CDBG") funds, and the **City of Billings**, as the grantee (the "Grantee") and provider of such funds pursuant to a CDBG award, for the project entitled **C & C Manufactured Home Community Infrastructure Project**, (the "Project"), made by the City of Billings' Community Development Division under provisions of Title I of the Housing and Urban Development Act of 1974, as amended (the "Act").

The original agreement requirements remain intact with the exception of the following language changes:

1. PURPOSE

The purpose of this written Agreement is to provide CDBG funding to the Subrecipient for their use in carrying out project activities described in the application and approved under the City's Community Development Block Grant (CDBG) Program. Funding allocations are as follows: $150,000 CDBG repayment revenue from FY2019-2020; $235,000 in new CDBG entitlement allocations for FY2020-2021; and $155,000 in repayment revenue from FY2020-2021. The total funding allocation for the amended agreement is $540,000.

5. PROJECT SCHEDULE / LEVELS OF PERFORMANCE

Each level of performance below includes time periods for performance. Unless amended by mutual written agreement by the Subrecipient and the City, the Subrecipient will perform the described tasks as outlined below:

Activity	Estimated Timeline
Design, or contract for the design of, infrastructure improvements for the entire manufactured home community, C & C Community, Inc. To include asphalt paving, improved drainage, and fire hydrants as recommended by the engineer's Property Condition Report.	**Complete**
Provide proof of design contract(s); insurance certificates; bonding; etc.	**Complete**
Prepare, or contract for the preparation of, infrastructure improvement plans and specifications recommended by the engineer's Property Condition Report. Prepare bidding documents, advertise for bids, prepare bid review documents, recommend bid award, and facilitate construction contract execution.	**Complete**
Provide proof of final plans and specifications / construction contract(s); insurance certificates; bonding; etc.	**Construction contracts in place June 2021**
Construct, or contract for the construction of, infrastructure improvements designed as noted above and provide construction administration services throughout the project	**Construction Start July 2021**
Provide proof of construction contract(s); permits; inspections; final inspection; as-built drawings; etc.	**Completion and Closeout by December 2021**
Infrastructure will be completed in accordance with federal, state and local laws, ordinances, and regulations and must demonstrate sound engineering processes.	

8. EFFECTIVE DATE AND TIME OF PERFORMANCE

Services of the Subrecipient shall commence on June 12, 2020, and are expected to be completed by December 2021. The terms of this Agreement and the provisions herein shall be extended to cover any additional time during which the Subrecipient remains responsible for carrying out the approved activities and any assets or program income. Changes to the timeline due to unforeseen, pandemic-related circumstances do not require agreement amendments. Timeline changes can be submitted via email. Projects including FY2019-2020 funding allocations must be expended by June 30, 2023.

9. BUDGET / PROGRAM INCOME

a. The total amount of CDBG funds committed to this Project under this Agreement will not exceed $**540,000**.

b. A copy of the updated project budget is located in the "Funding Uses" section of Attachment A, the Subrecipient's application for CDBG assistance and by this reference made a part of this Agreement and binding upon the Subrecipient.

40. NOTICES / LIAISONS

City:	Subrecipient:
Tam Rodier Community Development Coordinator City of Billings PO Box 1178 Billings, MT 59103 Phone: (406) 657-8284 FAX: (406) 294-7595 Email: rodiert@billingsmt.gov **Dina Harmon** Community Development Coordinator City of Billings PO Box 1178 Billings, MT 59103 Phone: (406) 657-3045 Email: harmond@billingsmt.gov	**Mary Lou Affleck** Project Development Coordinator NeighborWorks Montana PO Box 1025 Great Falls, MT 59403 (406) 670-9100 FAX (406) 604-4540 Email: maffleck@nwmt.org

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Agreement - Amendment.

CITY

_____
City Administrator, City of Billings

_____
Printed Name

_____
Date

SUBRECIPIENT

By: _____
Authorized Official - Signature

_____
Printed Name

_____
Date

_____
Mailing Address

_____
Phone and Fax Number

_____
E-mail address

Community Development Block Grant (CDBG) Program

DEVELOPMENT AGREEMENT

Between:

City of Billings
A Montana Municipal Corporation
whose address is
P.O. Box 1178, Billings, Montana 59103
(the "City")

And

NeighborWorks Montana ("Subrecipient")

For:

C & C Manufactured Home Community Infrastructure Project

This Development Agreement (the "Agreement"), entered this 11th day of May, 2020, by and between, **NeighborWorks Montana**, as subrecipient (the "Subrecipient") of Community Development Block Grant ("CDBG") funds, and the **City of Billings**, as the grantee (the "Grantee") and provider of such funds pursuant to a CDBG award, for the project entitled **C & C Manufactured Home Community Infrastructure Project**, (the "Project"), made by the City of Billings' Community Development Division under provisions of Title I of the Housing and Urban Development Act of 1974, as amended (the "Act"). It is mutually agreed that no funds will be disbursed prior to the date of the execution of this Development Agreement (the "Agreement"). This Agreement will remain in effect as long as the Subrecipient has control over CDBG funds, including program income, or assets including real property acquired with funds dispersed under the Grant.

Any provisions contained herein which are found to be inconsistent with the Act, federal, state or local laws, and implementing regulations, will be deleted or appropriately modified as directed by Community Development staff and in no case shall any such inconsistency, whether remedied or not, impair the remainder.

1. PURPOSE

The purpose of this written Agreement is to provide CDBG funding to the Subrecipient for their use in carrying out project activities described in the application and approved under the City's Community Development Block Grant (CDBG) Program. Funding allocations are as follows: $150,000 CDBG repayment revenue; $235,000 in new CDBG entitlement allocations for FY2020-2021. The FY2020-2021 U.S. Department of Housing and Urban Development (HUD) allocation is dependent on federal Consolidated / Annual Action Plan approval. Other City revenues may be utilized in place of this allocation.

Under this Agreement, the Grantee is still responsible for the overall administration and monitoring of the use of CDBG funds in accordance with program requirements.

2. APPLICATION INCORPORATED BY REFERENCE

The Subrecipient's application for CDBG assistance (copy attached) is incorporated into this Agreement by this reference and the representations made in the application are binding upon the Subrecipient.

3. NATIONAL OBJECTIVE COMPLIANCE / ELIGIBILITY

The Subrecipient certifies that the activities carried out with CDBG funds provided under this Agreement will meet one or more of the CDBG program's National Objectives as defined in 24 CFR Part 570.208. The City and Subrecipient agree this Public infrastructure – Low-Income Housing Benefit project is eligible under CDBG Matrix Code 03K, Street Improvements.

CDBG assistance shall be utilized for design, plans and specifications development, and construction of infrastructure required to support the development of affordable housing. The Subrecipient must ensure adherence to the CDBG 51% low-income benefit restrictions for the area serviced by the new

infrastructure. The Subrecipient will provide necessary documentation to the City of the Subrecipient's compliance with this requirement.

The Subrecipient agrees all Contracts entered into by it for the completion of the activities described in Section 4 – SCOPE OF WORK of this Agreement will contain special provisions requiring Contractors to comply with all applicable federal, state and local requirements.

The Subrecipient expressly agrees to repay to the City any funds provided to the Subrecipient under this Agreement for which the Subrecipient, its subcontractors or subrecipient entities, or any public or private agent or agency to which it delegated authority to carry out portions of this Agreement in violation of the terms of this Agreement or the federal and state statutes and regulations governing the CDBG Program.

4. SCOPE OF WORK

The Subrecipient will be responsible for administering the following activities in a manner satisfactory to the Grantee consistent with any standards and CDBG requirements as a condition of providing these funds. The Subrecipient will engage in the activities set forth in the Subrecipient's application for CDBG assistance.

Property Location / Description:

Tax ID: D01558
Geocode: 03092709201090000
Property owner: C & C Community Inc.
Certificate of Survey: 1456
Tract: 2A
Legal description: S09, T01 S, R26 E, C.O.S. 1456, PARCEL 2A, LESS CS 3711 AREA A (20)
Address: 307 SOUTH BILLINGS BLVD

The major components of the project include:

Design, prepare plans and specifications, and construct infrastructure improvements for the entire manufactured home community, C & C Community, Inc., which is a resident-owned community located within the city limits of Billings, Montana. The Project includes asphalt paving, improved drainage, and installation and connection of fire hydrants as recommended by the engineer's Property Condition Report. The scope of work is to be clearly defined within any and all contracts between the Subrecipient and contractors and subcontractors.

5. PROJECT SCHEDULE / LEVELS OF PERFORMANCE

Each level of performance below includes time periods for performance. Unless amended by mutual written agreement by the Subrecipient and the City, the Subrecipient will perform the described tasks as outlined below:

Activity	Estimated Timeline
Design, or contract for the design of, infrastructure improvements for the entire manufactured home community, C & C Community, Inc. To include asphalt paving, improved drainage, and fire hydrants as recommended by the engineer's Property Condition Report. Provide proof of design contract(s); insurance certificates; bonding; etc.	**June 11, 2020**
Prepare, or contract for the preparation of, infrastructure improvement plans and specifications recommended by the engineer's Property Condition Report. Prepare bidding documents, advertise for bids, prepare bid review documents, recommend bid award, and facilitate construction contract execution. Provide proof of final plans and specifications / construction contract(s); insurance certificates; bonding; etc.	**January, 2021**
Construct, or contract for the construction of, infrastructure improvements designed as noted above and provide construction administration services throughout the project. Provide proof of construction contract(s); permits; inspections; final inspection; as-built drawings; etc.	**Construction Start Spring, 2021** **Completion July 2021**
Infrastructure will be completed in accordance with federal, state and local laws, ordinances, and regulations and must demonstrate sound engineering processes.	

6. PERFORMANCE MONITORING

The City will monitor the performance of the Subrecipient against goals and performance standards as stated in this Agreement, including data reporting on a quarterly and annual basis. Substandard performance as determined by the City will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the City, Agreement suspension or termination procedures will be initiated.

7. PERSONNEL ASSIGNED TO SCOPE OF WORK

The Subrecipient shall assign the following staff as Key Personnel to this project:

Staff Member / Title	General Project Duties	Time Allocation
Kaia Peterson, Executive Director	Compliance	5%
Kevin Lee, Chief Financial Officer	Compliance / Accounting	10%
Danielle Maiden, ROC Program Manager	Project Oversight	5%
Mary Lou Affleck, Project Dev. Coordinator	Project Coordinator	20%

8. EFFECTIVE DATE AND TIME OF PERFORMANCE

This Agreement becomes effective upon execution of this Agreement by all parties and will terminate upon completion of the final project closeout by the City.

Services of the Subrecipient shall commence on June 12, 2020, and are expected to be completed on July 31, 2021. The terms of this Agreement and the provisions herein shall be extended to cover any additional time during which the Subrecipient remains responsible for carrying out the approved activities and any assets or program income.

9. BUDGET / PROGRAM INCOME

a. The total amount of CDBG funds committed to this Project under this Agreement will not exceed $**385,000**.

b. A copy of the preliminary project budget is located in the "Funding Uses" section of Attachment A, the Subrecipient's application for CDBG assistance and by this reference made a part of this Agreement and binding upon the Subrecipient.

c. Budget adjustments must be approved by the City in writing and in advance of expenditures.

d. The Subrecipient will expend any program income it receives before requesting additional CDBG funds. The City will deduct the amount of program income on hand, shown on the drawdown form, from the amount requested by the Subrecipient. This program income will be treated as additional CDBG funds and will be subject to all applicable requirements governing the use of CDBG funds. The Subrecipient will record receipt and expenditure of program income as part of the financial transactions of the grant program. If the Subrecipient anticipates program income after project closeout, a program income plan must be developed and submitted for review and written approval by the City at the time of closeout. At the time of closeout, the City will specify the conditions and requirements that will apply to program income received by the Subrecipient after project closeout.

10. COMPENSATION AND METHOD OF PAYMENT / DRAWDOWN REQUESTS (24 CFR 85.21 or 570.502(b)(3)(i))

a. The City will authorize the Subrecipient to request the total assistance amount against the funding reserved for it by the City on a reimbursement basis.

b. The City will **reimburse** all eligible expenses incurred in furtherance of this Agreement and upon approval by the City of the Subrecipient's request for payment. The City agrees to reimburse the Subrecipient for successfully completing the activities set forth in Section 4 - SCOPE OF WORK, as the Subrecipient incurs project costs.

c. The City will reimburse the Subrecipient for approved, eligible and necessary expenses according to the documentation submitted by the Subrecipient to support the expenditures. The City will not reimburse the Subrecipient for any expenses not included in the approved

budget or not clearly and accurately supported by the Subrecipient's records. Any authorized funds not expended under this assistance will revert to the City and will be used to finance other CDBG projects.

d. The reimbursement of eligible costs incurred is contingent upon Section 28 - SPECIAL PROJECT START UP CONDITIONS. **In the event the Subrecipient is unable to comply with the terms and the conditions of this Agreement, any costs incurred will be the Subrecipient's sole responsibility.**

e. If the actual total cost of completing the Project is less than has been projected by the Subrecipient in its budget (Attachment A), the City may, at its discretion, reduce the amount to be provided under this Agreement in proportion to the overall savings.

f. If the City determines the Subrecipient has failed to satisfactorily carry out its responsibilities under this Agreement, the City may revoke the Subrecipient's authority to request CDBG funds approved under this Agreement until the City and the Subrecipient agree on a plan to remedy the deficiency.

g. Funding allocated for any City of Billings CDBG project must be expended within three (3) years after the project was approved for funding. Funding not expended within three years shall be considered un-programmed funds and made available for allocation to new projects. **Projects funded for FY 2019-2020 must be expended by June 30, 2023.**

11. RECORDKEEPING / RETENTION PERIOD / ACCESS TO RECORDS

The general CDBG standard for record keeping is that records must be accurate, complete, and orderly.

a. The Subrecipient will comply with record keeping regulations in 24 CFR Part 570 and CFR Parts 84 and 85, as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable State and Federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

b. The Subrecipient shall furnish and cause each of its contractors and subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the City, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

c. In general, records shall be retained for four (4) years from the date of submission of the City's Comprehensive Annual Performance Evaluation Report (CAPER) in which the specific activity is reported for the last time, unless there is litigation, claims, audit, negotiation, or other actions involving the records, which has started before expiration of the 4-year period. In such cases, the records must be retained until completion of the action and resolution of all issues that arise from it or the end of the regular 4-year period, whichever is longer.

d. Representatives of the City, HUD, the Comptroller General of the United States, or of other authorized governmental agencies have the right of access to any pertinent records of the subrecipient to make audits, examinations, excerpts, and transcripts. (24 CFR 85.10 (e) and 84.53 (e)).

12. PUBLIC ACCESS TO PROGRAM RECORDS

Subrecipient shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

The Subrecipient will maintain adequate and reasonable records of its performance under this Agreement and will allow access to these records at any time during normal business hours by citizens, the City, HUD, the Comptroller General and, when required by law, the Montana Legislative Auditor. These records will be kept in the Subrecipient's offices located at **17 5th Street South, Great Falls, MT 59401.**

The City or its agents may monitor and inspect all phases and aspects of the Subrecipient's performance to determine compliance with the Scope of Work, and other technical and administrative requirements, including the adequacy of the Subrecipient's records and accounts. The City will advise the Subrecipient of any specific areas of concern and provide the Subrecipient opportunity to propose corrective actions acceptable to the City.

13. REPORTING REQUIREMENTS

a. During the term of this Agreement, the Subrecipient will submit progress reports to the City **with each request for payment.** This report will describe the status of the project with respect to each implementation objective including, at a minimum, the percentage of the project that has been completed, costs incurred, funds remaining and anticipated completion date. The report must also describe any significant problems encountered and any necessary modification of the project scope or implementation schedule being requested. **A project narrative for each payment is a mandatory requirement.**

b. The City will not honor claims for payment until the Subrecipient submits to the City the required progress report and the City has approved it.

14. CDBG PROGRAM REQUIREMENTS

The Subrecipient will comply with all applicable parts of Title I of the Housing and Community Development Act of 1974, as amended; the applicable HUD regulations in 24 CFR Part 84.21-28 as amended by 570.502, as now in effect or as they may be amended during the term of this Agreement; all requirements established by the City; applicable state and federal laws, regulations, administrative directives and procedures; and local ordinances and resolutions.

15. UNIFORM ADMINISTRATIVE AND PROGRAM MANAGEMENT STANDARDS

Subrecipient will ensure compliance with 2 CFR Part 200 and 24 CFR Part 84.21-28 as amended by 570.502, for non-profit subrecipients.

The Subrecipient's internal controls will consist of a combination of procedures:

a. An organizational chart,

b. Written definition of duties and key job responsibilities,

c. Qualified personnel,

d. Formal system of authorization and supervision,

e. Separation of duties so no one individual has authority over an entire financial transaction,

f. Control over access to assets, blank forms, and confidential documents,

g. Periodic comparisons of financial records to actual assets and liabilities (reconciliation),

h. Records that together create accountability in the Subrecipient's financial system and safeguard its cash, property, and other assets.

The Subrecipient is required to have accounting records that adequately identify the source and application of CDBG funds provided to them (24 CFR 85.20(b)(2) and 84.21). To meet this requirement, the Subrecipient's accounting system should include at least the following elements:

e. ***Chart of accounts.*** This is a list of names and the numbering system for the individual accounts that contains the basic information about particular classifications of financial transactions for the organization.

f. ***Cash receipts journal*** that documents chronologically when funds were received, in what amounts, and from what sources.

g. ***Cash disbursements journal*** that documents chronologically the expenditures of the organization (e.g., when the expense was incurred, how much was spent, to whom funds were paid, and for what purpose).

h. ***Payroll journal*** that documents the organization's expenses on salaries and benefits and distinguishes different categories for regulatory purposes.

i. ***General ledger.*** After a transaction is entered in a journal, that information also should be transferred to the proper accounts contained in the general ledger. The general ledger summarizes chronologically the activity and financial status of all the accounts of an organization.

The Subrecipient's accounting records must contain reliable and up-to-date information about the sources and uses of funds, including:

a. Federal grant awards (or subgrant allocations) received by the organization

b. Current authorizations and obligations of CDBG funds

c. Unobligated balances (funds remaining available for distribution)

d. Assets and liabilities

e. Program income

f. Actual outlays or expenditures

g. "Eligible activity" classifications specified in 24 CFR 570.201-570.206.

16. ALLOWABLE COSTS (24 CFR 85.22 and 84.27)

The Subrecipient is required to ensure all expenditures are necessary, reasonable, and directly related to Project activities detailed within this Agreement AND not prohibited under federal, state or local laws or regulations. The standards for determining allowable costs reasonableness, allowability, and allocability of costs incurred as part of CDBG-financed activities are found in Omnibus Circular – 2 CFR Part 200.

17. PROCUREMENT STANDARDS AND METHODS

The Subrecipient is required to ensure compliance with 24 CFR 85.36 for governmental subrecipients and 24 CFR 84.40-48 for non-profit subrecipient organizations. At a minimum, this shall include documenting the following:

a. Follow a free and open competitive process in securing products and services from the date this Agreement is executed until project completion (i.e., construction).

b. Properly document purchasing activities and decisions.

c. Observe the special rules for particular kinds of purchases (small purchases, competitive sealed bids, competitive proposals, and sole source procurements).

d. Properly bond and insure work involving large construction contracts and/or subcontracts.

e. Use local businesses and contract with small, minority and/or women-owned businesses to the maximum extent feasible.

18. AVOIDANCE OF CONFLICT OF INTEREST

The Subrecipient must comply with the conflict of interest requirements in the Omnibus Circular (or 24 CFR parts 84 and 85, as applicable).

19. COMPLIANCE WITH LAWS / REGULATIONS

The Subrecipient is responsible for compliance with all applicable federal or state laws, Executive Orders, and regulations of the CDBG program.

20. OTHER PROGRAM REQUIREMENTS

The Subrecipient will carry out its activities in compliance with the requirements of Subpart K of 24 CFR 570, except, however, that the Subrecipient does not assume the grantee's environmental responsibilities or the responsibility for initiating the environmental review process under 24 CFR Part 52.

21. REVERSION OF ASSETS

Upon expiration, termination, or closeout of this Agreement, the Subrecipient shall transfer to the City any CDBG funds on hand and any accounts receivable attributable to the use of CDBG funds under this Agreement.

22. USE OF REAL PROPERTY

Any real property acquired or improved in whole or in part with CDBG funds must continue to be used for the purpose for which it was acquired or improved. Any changes in its use within five years of closeout of the project activities detailed within this Agreement must be approved by the City in writing.

23. AMENDMENTS

The Subrecipient may request that this Agreement be amended. However, the City will allow an amendment only if the Subrecipient clearly demonstrates that the modification is justified and will enhance the overall impact of the original project. Any changes in the scope of the project, as outlined in this Agreement, including cost increases, must be submitted in writing by the Subrecipient to the City as a request for an award adjustment. Any adjustment granted by the City shall be appended to this Agreement as an amendment.

24. INDEMNIFICATION

The Subrecipient waives any and all claims and recourse against the City, including the right of contribution, for loss or damage to persons or property arising from, growing out of, or in a any way connected with, or incidental to, the Subrecipient's or any contractor's or subcontractor's performance under this Agreement.

Further, the Subrecipient will indemnify, hold harmless, and defend the City and the State of Montana against any and all claims, demands, damages, costs, expenses, or liability arising out of the Subrecipient's or any contractor's or subcontractor's performance of this Agreement. In the event the City is named as a co-defendant in any action relating to activities to be performed by the Subrecipient or a contractor or subcontractor under this Agreement, the Subrecipient will notify the City of the action and will represent the City in the action unless the City undertakes to represent itself as a co-defendant, in which case the City will bear its own litigation costs, expenses, and attorneys' fees.

25. SUSPENSION AND TERMINATION

In accordance with 2 CFR Part 200, suspension or termination of payment to the Subrecipient under this Agreement may occur if the Subrecipient materially fails to comply with any terms of this Agreement, and the Agreement may be terminated for convenience in accordance with 2 CFR Part 200.

a. **Termination and Modification Due to Loss of Funding.** If, for any reason, federal financial resources required by the City to fund the Subrecipient's Project is withdrawn from the City, the City may unilaterally terminate or modify the terms of this Agreement to reflect the loss of funding. If a termination or modification is required, the City will, to the extent permitted by available CDBG funds, compensate the Subrecipient for eligible expenses incurred by the Subrecipient as of the revised termination date. The City will give the Subrecipient written notice of the effective date of the modification or termination of this Agreement and, if a reduction in funding is required, the Subrecipient will provide the City with a modified project budget.

b. **Termination Due to Noncompliance with Development Agreement Terms.** If the City determines that the Subrecipient has failed to comply with the general terms and conditions of this Agreement, the project schedule, or any special conditions, and if upon notification of the defect the Subrecipient does not remedy the deficiency within a reasonable period to be specified in the notice, the City may terminate this Agreement in whole or in part at any time before the date of completion. The City will promptly notify the Subrecipient in writing of the decision to terminate, the reasons for the termination, and the effective date of the termination.

c. **Termination Due to Adverse Environmental Impact.** This Agreement will terminate at the conclusion of the environmental review process if the City or Subrecipient determines that the project would have a significant adverse impact on the quality of the human environment and that this impact cannot be avoided or sufficiently mitigated by reasonable, cost-effective means.

d. **Effect of Termination.** In the event of termination due to the Subrecipient's failure to comply with the terms of this Agreement or the project's adverse environmental impact, any cost incurred will be the responsibility of the Subrecipient. However, at its discretion, the City may approve a request by the Subrecipient for reimbursement of expenses incurred. The City's decision to authorize payment of these costs or to recover expended CDBG funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subrecipient to comply with the terms of this Agreement and on whether any failure to comply with the terms of this Agreement was the result of circumstances beyond the Subrecipient's control.

26. GRANT CLOSEOUT PROCEDURES (24 CFR § 570.509)

During the term of this Agreement, the City or its agents will review Project activity records to ensure:

a. The Subrecipient followed a free and open competitive process in securing products and services for this project and all purchasing activities and decisions are properly documented.

b. The Subrecipient, the Subrecipient's contractor(s) and subcontractor(s) applied for, and obtained, all necessary permits and inspections.

c. Appropriate local, city, state, and/or federal inspectors approved and/or signed off on all required inspections.

d. The Subrecipient addressed all findings or concerns raised during Project activities and documented the process and response.

e. All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit) or contingent liability costs.

f. The work to be financed with CDBG funding has been completed, including activities financed through escrow accounts, loan guarantees, or similar mechanisms.

g. The other responsibilities of the Subrecipient under its agreement with the City have been met, or the City believes there is no further benefit in keeping the Agreement open for the purpose of securing performance.

27. ETHICS, ACCOUNTABILITY AND CAMPAIGN REFORM ACT OF 1991

All provisions of this Act have been and will be complied with by the parties to this Agreement in regard to actions and expenditures of funds related to the CDBG project giving rise to this Agreement.

28. SPECIAL PROJECT START UP CONDITIONS

The Subrecipient will not obligate or utilize funds for any activities provided for by this Agreement until:

a. The City completes an Environmental Review Record (ERR).

b. The Subrecipient submits to the City evidence of the firm commitment of the other resources necessary for the completion of the project, if any, as defined in Section 9: Budget / Program Income and Attachment A of this Agreement.

c. The Subrecipient must receive permission from the City to enter into Construction Contract(s). This provision is to assure that the Subrecipient has complied with applicable procurement requirements and Labor Standards.

d. Subrecipient provides documentation that demonstrates that fifty-one (51) percent of the persons or households assisted are low- and moderate-income.

The City will not release any CDBG funds to the Subrecipient until the Subrecipient has obtained firm commitments for all non-CDBG resources to be involved in the project. The Subrecipient may not expend or obligate any CDBG funds, until the City determines that this condition has been satisfied.

29. NONDISCRIMINATION

The Subrecipient will not discriminate against any employee or applicant for employment due to race, color, creed, religion, ancestry, national origin, sex, disability, gender identity, sexual orientation, or other handicap, age, marital / familial status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure all employment practices are free from such discrimination. The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279.

The Subrecipient will provide equal access in accordance with the individual's gender identity and in a manner that affords equal access to the individual's family (24 CFR part 570).

The Subrecipient shall not discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property (Montana Code Annotated 2015 49-2-305).

30. FAIR HOUSING ACT, TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 (PUBLIC LAW 90-234)

The Fair Housing Act prohibits discrimination in housing practices on the basis of race, color, religion, sex, gender identity, sexual orientation, and national origin.

31. EXECUTIVE ORDER 11063, AS AMENDED BY EXECUTIVE ORDER 12259 (IMPLEMENTED IN 24 CFR PART 107)

This order and its implementing regulations require HUD to take all actions necessary to prevent discrimination because of race, color, religion, sex, gender identity, sexual orientation, or national origin in the use, occupancy, sale, leasing, rental, or other disposition of residential property assisted with Federal loans, advances, grants, or contributions.

32. AFFIRMATIVE ACTION: WOMEN AND MINORITY-OWNED BUSINESSES

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in Section 3(a) of the Small Business Act, as amended (15 USC 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

33. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION STATEMENT

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

34. EQUAL EMPLOYMENT OPPORTUNITY

Any hiring of employees by the Subrecipient under this Agreement will be on the basis of merit and qualification, and the Subrecipient will not discriminate against any person on the basis of race, color, religion, creed, political ideas, sex, gender identity, sexual orientation, age, marital status, physical or mental disability or national origin. As used herein, "qualifications" means qualification as are generally related to competent performance of the particular occupational task.

35. AUDITS (OMNIBUS CIRCULAR – 2 CFR Part 200).

Subrecipient shall comply with the requirements and standards within Omnibus Circular – 2 CFR Part 200. The threshold for when an entity is required to have an audit is $750,000. This Project is not subject to audit requirements.

Unless prohibited by law, the cost of audits made in accordance with the provisions of this part are allowable charges to federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with the provisions of applicable OMB cost principles circulars, the Federal Acquisition Regulation (FAR) (48 CFR parts 30 and 31), or other applicable cost principles or regulations.

36. CIVIL RIGHTS COMPLIANCE

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

37. SECTION 504

The Subrecipient agrees to comply with all federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The City shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

38. PROHIBITED ACTIVITY

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

39. ENVIRONMENTAL REQUIREMENTS (24 CFR 570.604)

In their use of CDBG funds, grantees are required to assume responsibility for environmental review, decision making, and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law. The CDBG regulations explicitly prohibit subrecipients from assuming the grantee's environmental responsibilities (see 24 CFR 570.503(b)(5)(i)).

However, under the applicable regulations for any project receiving CDBG assistance, no party involved with the project, including subrecipients, may commit funds to the project, including incurring project costs, until the grantee completes the appropriate environmental review and public notification process, and HUD approves a certification of compliance with environmental laws and request for release of funds from environmental conditions. Activities not subject to this restriction are those the regulations define as exempt from environmental review. However, before any party involved with the project can incur costs, even for activities that are exempt, the grantee must first make a formal determination that the activity(ies) is exempt. (The list of activities that are exempt from environmental review are found in 24 CFR part 58.34 and 58.35(b).)

40. NOTICES / LIAISONS

Notices required by this Agreement shall be in writing and delivered via mail (postage paid), commercial courier, or personal delivery or sent by electronic mail, facsimile or other electronic means. Any notice delivered or sent as previously mentioned shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

City:	Subrecipient:
Tam Rodier Community Development Coordinator City of Billings PO Box 1178 Billings, MT 59103 Phone: (406) 657-8284 FAX: (406) 294-7595 Email: rodiert@billingsmt.gov	**Mary Lou Affleck** Project Development Coordinator NeighborWorks Montana PO Box 1025 Great Falls, MT 59403 (406) 670-9100 FAX (406) 604-4540 Email: maffleck@nwmt.org

41. OWNERSHIP AND PUBLICATION OF MATERIALS

All reports, information, data, and other materials prepared by any Contractor or subcontractor pursuant to this Agreement are to be the property of the City and the Subrecipient which have exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information relating thereto. No material produced in whole or part under this Agreement may be copyrighted or patented in the United States or in any other country without the City's prior written approval.

42. SUBCONTRACT PROVISIONS

The Subrecipient will include the provisions Civil Rights Affirmative Action in every contract or subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Subrecipients, contractors, and/or subcontractors.

43. MODIFICATION AND ASSIGNABILITY OF DEVELOPMENT AGREEMENT

This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party, or agents of either party, which are not contained in or authorized by this written Agreement, are valid or binding. This Agreement may not be enlarged, modified, or altered except upon written agreement, and does not imply any continuing commitment by the City beyond the termination date noted in the Agreement. The Subrecipient accepts responsibility for the adherence to the terms of this Agreement by subcontractor of Subrecipient entities and by public or private agents or agencies to which it delegates authority to carry out portions of this Agreement.

44. CONSTRUCTION AND VENUE

Montana's prevailing wage law, often referred to as Montana's Little Davis-Bacon Law, applies to public works contracts entered into for construction services (heavy, highway and building) or nonconstruction services by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is $25,000 or more. It requires that bidders on contracts pay a set rate of compensation, including employee benefits, and that at least 50% of the employees of each contractor working on the jobs be bona fide Montana residents.

Davis-Bacon wage rates are required for CDBG projects where construction costs exceed $2,000 or where nine (9) or more housing units are created. Consultation **is required** with the Community Development Manager for the City prior to undertaking CDBG financed construction work to assist with compliance with: Federal Labor Standards; Davis-Bacon wage rates; lead-based paint; environmental review; historic preservation; and procurement practices to ensure work is competitively bid when required.

The State of Montana charges a 1% tax on the gross receipts from all public contracts over $5,000. Subrecipient shall ensure payment of gross receipts as required. Details may be found on the Montana Department of Revenue website at:
https://mtrevenue.gov/taxes/miscellaneous-taxes-and-fees/contractors-gross-receipts/#quickinfo

This Agreement shall be construed and enforced in accordance with the laws of the State of Montana. In the event of litigation concerning it, Venue for any suit between the parties arising out of this Agreement shall be the State of Montana Thirteenth Judicial District Court, Yellowstone County.

45. CITY RECOGNITION

The Subrecipient shall ensure recognition of the role of the City in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

46. INSURANCE AND BONDING

Insurance: The Subrecipient shall maintain in good standing the insurance described in this Section. The Subrecipient shall furnish the City with proof of insurance in accordance with this Section before rendering any services under this Agreement.

The Subrecipient shall secure and maintain such insurance policies, including those set forth below, as will protect itself, its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this agreement; whether the acts were made by the City or Subrecipient or by any contractor or subcontractor or anyone employed by the Subrecipient directly or indirectly. The following insurance policies are required:

a. Workers' compensation and employer's liability coverage as required by Montana law;

b. Commercial General Liability, including contractual and personal injury coverages of $750,000 per claim and $1,500,000 per occurrence for injuries, including accidental death to any one

person;

c. Professional liability in the amount of $1,500,000 per claim;

d. Automobile liability of $1,500,000 per accident;

e. Builder's Risk Insurance in an amount not less than the completed value of the infrastructure project;

f. The City shall be listed as an additional insured on all insurance policies during construction; and

g. All insurance policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against the CITY.

Insurance certificates shall be filed with the City giving satisfactory evidence of insurance as stipulated above **at the time** the Agreement is signed. The Public Liability Insurance certificate shall be maintained during the life of the Agreement. The Builders Risk Insurance shall be secured prior to initiating construction.

a. **Insurance Certificates:** The Subrecipient, contractors and subcontractors shall name the City as an insured party and the policy shall contain the following language, *"The Company agrees that it will give the City of Billings, Montana no less than 30 days advance written notice of its intent to cancel or materially change the described policy."* This language, however, if accompanied by a disclaimer or any other language, which negates company responsibility for failing to provide said notice, will not be acceptable.

b. **Approval of Contractor / Subcontractor and Insurer:** The insurer must be satisfactory to the City Attorney for the City of Billings. Further, the Subrecipient will assure all subcontractors performing work on the project maintain public liability, property, and casualty insurance and stationary workers compensation insurance coverage in compliance with state Law.

c. **Construction Contracts:** The Subrecipient agrees to deny participation in construction contracts by ineligible, debarred or suspended persons or entities at 24 CFR Part 24. The Subrecipient will provide the City with the names of contractor(s) and subcontractor(s) prior to entering into contracts.

Bonding: The Subrecipient will provide proof that contractor(s) and subcontractor(s) selected for the project possess performance and completion bonds equal to the completed value of the infrastructure project.

47. OTHER ADMINISTRATIVE AND PROGRAM REQUIREMENTS

Following are 14 CDBG administrative and program requirements specified in Subparts J and K of 24 CFR Part 570 that apply to Subrecipients as well as Grantees:

a. Program Income (24 CFR 570.503 and 570.504).

b. Programmatic and Budget Changes.

c. Civil Rights and Fair Housing; Employment and Contracting Opportunities (24 CFR 570.601, 570.607 and 570.614).

d. Labor Standards (24 CFR 570.603).

e. Environmental Requirements (with respect to the use of funds, 24 CFR 570.604).

f. Historic Preservation.

g. National Flood Insurance Program (24 CFR 570.605).

h. Floodplain Management (24 CFR Part 55).

i. Relocation, Real Property Acquisition, and One-for-One Housing Replacement

j. (24 CFR 570.606).

k. Lead-based Paint (24 CFR 570.608).

l. Political Activity (24 CFR 570.207(a)(3)).

m. Conflict of Interest (24 CFR 570.611).

n. Program Monitoring (24 CFR 570.501(b), 24 CFR 85.40(a) and (e), and 24 CFR 84.51(a)).

o. Suspension and Termination (24 CFR 570.503 (b) (6), 24 CFR 85.43 and 44, and 24 CFR 84.62).

IN WITNESS OF THE TERMS SET OUT ABOVE, the parties have executed this Agreement.

CITY

Chris A. Kukulski
City Administrator, City of Billings

Chris A. Kukulski
Printed Name

8.6.2020
Date

SUBRECIPIENT

By: Kaia Peterson
Authorized Official - Signature

Kaia Peterson
Printed Name

7/1/20
Date

PO Box 1025, Great Falls, MT 59403
Mailing Address

406-604-4540
Phone and Fax Number

kpeterson@nwmt.org
E-mail address

ATTACHMENT A - UPDATED PROJECT BUDGET

CITY OF BILLINGS

FUNDING SOURCES STATEMENT - INFRASTRUCTURE

- Please list sources of funding for the project. List both the funding source and the agency which administers the program.
- Include financing, grants, donations, and equity. Attach letter(s) of commitment.
- Identify each source as to TYPE by noting after name (L) for Loan, (G) for Grant, or (E) for Equity.
- Identify each source by DESCRIPTION CODE using the codes from the list below.
- Indicate in the STATUS column whether (P) Proposed, (R) Requested, or (A) Approved.

LIST ALL SOURCES OF PROJECT FUNDING											
SOURCE	LIEN POSITION	AMOUNT	TYPE	DESCRIPTION CODE	STATUS	RATE %	LOAN TERM (YEARS)	AMORTIZATION PERIOD (YEARS)	ANNUAL DEBT SERVICE	DATE REQUESTED	ACTUAL OR EXPECTED COMMITMENT DATE
City of Billings		$385,000.00	G	14	A						8/6/2020
City of Billings		$155,000.00	G	14	R					5/3/2021	
C & C Community, Inc.		$10,000.00	E	4	A						7/1/2020
TOTAL SOURCES		$550,000.00							0		

DESCRIPTION CODES		
1. AHP Subsidized Financing	*6. Housing Agency Bond*	*11. Rental Rehabilitation*
2. Other Loans (Conventional)	*7. State & Local Grants*	*12. Other HUD*
3. Low-Income Housing Tax Credit	*8. Foundations*	*13. Other Loans (subsidized)*
4. Equity	*9. Other Grants*	*14. CDBG*
5. Other Subsidies	*10. HOME*	

NOTE: TOTAL SOURCES OF FUNDS MUST EQUAL TOTAL USES OF FUNDS

CITY OF BILLINGS

FUNDING USES - INFRASTRUCTURE

	SOURCE **C & C**	SOURCE **CDBG**	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
ADMINISTRATION							-
Personnel Services							$0
Supplies							$0
Communications							$0
Printing/Duplication/Postage							$0
Advertising							$0
Accounting/Auditing							$0
Travel							$0
Training							$0
Other Administration							$0
TOTAL ADMINISTRATION COSTS	$0	$0	$0	$0	$0	$0	$0
LAND/BLDG/ACQUISITION							-
Land							$0
Existing Structure							$0
Demolition							$0
Homebuyer's Assistance							$0
TOTAL LAND & BUILDING COSTS	$0	$0	$0	$0	$0	$0	$0
SITE WORK							-
Site Work Paving	$10,000	$319,507					$329,507
Off-Site Improvement							$0
Environmental Storm Drainage & Hydrant		$92,240					$92,240
Other							$0
TOTAL SITE WORK COSTS	$10,000	$411,747	$0	$0	$0	$0	$421,747
CONSTRUCTION AND REHAB							-
New Building							$0
Rehabilitation							$0
Accessory Structures		$1,300					$1,300
General Requirements							$0
Contractor Overhead							$0
Contractor Profit							$0
Construction Contingency		$41,833					$41,833
Community Revitalization							$0
Other							$0
TOTAL REHAB & CONSTRUCTION COSTS	$0	$43,133	$0	$0	$0	$0	$43,133
SUBTOTAL Page One	$10,000	$454,880	$0	$0	$0	$0	$464,880

FUNDING USES - Page Two

	SOURCE **C & C**	SOURCE **CDBG**	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
PROFESSIONAL WORK & FEES							-
Architect Design							$0
Architect Supervision							$0
Attorney, Real Estate							$0
Consultant/Agent							$0
Engineer/Surveyor		$56,080					$56,080
Other City of Billings Permit Fee		$1,000					$1,000
Other							$0
TOTAL PROFESSIONAL WORK & FEES	$0	$57,080	$0	$0	$0	$0	$57,080
CONSTRUCTION/ INTERIM FEES							-
Hazard & Liability Insurance							$0
Credit Report							$0
Construction Interest							$0
Origination Points							$0
Discount Points							$0
Inspection Fees							$0
Title & Recording							$0
Legal Fees							$0
Taxes							$0
Other							$0
Other							$0
TOTAL CONSTRUCTION INTERIM FEES	$0	$0	$0	$0	$0	$0	$0
PERMANENT FINANCING FEES							-
Credit Report							$0
Discount Points							$0
Origination Fees							$0
Title and Recording							$0
Legal Fees							$0
Prepaid MIP							$0
Other							$0
Other							$0
TOTAL FINANCING FEES	$0	$0	$0	$0	$0	$0	$0
SUBTOTAL Page Two	$0	$57,080	$0	$0	$0	$0	$57,080

FUNDING USES - Page Three

	SOURCE **C & C**	SOURCE **CDBG**	SOURCE	SOURCE	SOURCE	SOURCE	TOTAL PROJECT BUDGET
SOFT COSTS							-
Feasibility Appraisal							$0
Market Study							$0
Environmental Study							$0
Tax Credit Fees							$0
Cost Certification							$0
TBRA							$0
Other							$0
TOTAL SOFT COSTS	$0	$0	$0	$0	$0	$0	$0
SYNDICATION COSTS							-
Organizational (Partnership)							$0
Bridge Loan Fees & Expenses							$0
Tax Opinion							$0
Other							$0
TOTAL SYNDICATION COSTS	$0	$0	$0	$0	$0	$0	$0
DEVELOPER'S FEES							-
Developer's Overhead		$28,040					$28,040
Developer's Fees							$0
Consultant Fee							$0
Other							$0
TOTAL DEVELOPER'S FEES	$0	$28,040	$0	$0	$0	$0	$28,040
PROJECT RESERVES							-
Rent-Up Reserve							$0
Operating Reserve							$0
Replacement Reserve							$0
Escrow							$0
Other							$0
TOTAL PROJECT RESERVES	$0	$0	$0	$0	$0	$0	$0
SUBTOTAL Page 3	$0	$28,040	$0	$0	$0	$0	$28,040
SUBTOTAL Page 1	$10,000	$454,880	$0	$0	$0	$0	$464,880
SUBTOTAL Page 2	$0	$57,080	$0	$0	$0	$0	$57,080
GRAND TOTAL PROJECT COSTS	$10,000	$540,000	$0	$0	$0	$0	$550,000

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 5/5/2021

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

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

PRODUCER
PayneWest Insurance, Inc.
405 3rd Street NW, Third Floor
Great Falls MT 59404

CONTACT NAME: Cynthia A. Byers, CISR, CRIS, MLIS
PHONE (A/C, No, Ext): 406-268-2002 **FAX (A/C, No):** 406-452-1172
E-MAIL ADDRESS: cbyers@paynewest.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Philadelphia Indemnity Insurance Company	18058
INSURER B : Montana State Fund	15819
INSURER C :	
INSURER D :	
INSURER E :	
INSURER F :	

INSURED MONTHOM-07
Montana Homeownership Network, Inc. dba NeighborWorks Montana
PO Box 1025
Great Falls MT 59403

COVERAGES **CERTIFICATE NUMBER:** 1814732274 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X **COMMERCIAL GENERAL LIABILITY** [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	Y	Y	PHPK2168200	10/1/2020	10/1/2021	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
A	**AUTOMOBILE LIABILITY** [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			PHPK2168200	10/1/2020	10/1/2021	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
A	X **UMBRELLA LIAB** [X] OCCUR **EXCESS LIAB** [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			PHUB734450	10/1/2020	10/1/2021	EACH OCCURRENCE AGGREGATE $	$ 2,000,000 $ 2,000,000 $
B	**WORKERS COMPENSATION AND EMPLOYERS' LIABILITY** Y / N ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] **(Mandatory in NH)** If yes, describe under DESCRIPTION OF OPERATIONS below	N / A		033561721	1/1/2021	1/1/2022	X PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 1,000,000 $ 1,000,000 $ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: C&C Manufactured Home Community Infrastructure Project

CERTIFICATE HOLDER

City of Billings
PO Box 1178
Billings MT 59103

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY DELUXE ENDORSEMENT: HUMAN SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE

It is understood and agreed that the following extensions only apply in the event that no other specific coverage for the indicated loss exposure is provided under this policy. If such specific coverage applies, the terms, conditions and limits of that coverage are the sole and exclusive coverage applicable under this policy, unless otherwise noted on this endorsement. The following is a summary of the Limits of Insurance and additional coverages provided by this endorsement. For complete details on specific coverages, consult the policy contract wording.

Coverage Applicable	Limit of Insurance	Page #
Extended Property Damage	Included	2
Limited Rental Lease Agreement Contractual Liability	$50,000 limit	2
Non-Owned Watercraft	Less than 58 feet	2
Damage to Property You Own, Rent, or Occupy	$30,000 limit	2
Damage to Premises Rented to You	$1,000,000	3
HIPAA	Clarification	4
Medical Payments	$20,000	5
Medical Payments – Extended Reporting Period	3 years	5
Athletic Activities	Amended	5
Supplementary Payments – Bail Bonds	$5,000	5
Supplementary Payment – Loss of Earnings	$1,000 per day	5
Employee Indemnification Defense Coverage	$25,000	5
Key and Lock Replacement – Janitorial Services Client Coverage	$10,000 limit	6
Additional Insured – Newly Acquired Time Period	Amended	6
Additional Insured – Medical Directors and Administrators	Included	7
Additional Insured – Managers and Supervisors (with Fellow Employee Coverage)	Included	7
Additional Insured – Broadened Named Insured	Included	7
Additional Insured – Funding Source	Included	7
Additional Insured – Home Care Providers	Included	7
Additional Insured – Managers, Landlords, or Lessors of Premises	Included	7
Additional Insured – Lessor of Leased Equipment	Included	7
Additional Insured – Grantor of Permits	Included	8
Additional Insured – Vendor	Included	8
Additional Insured – Franchisor	Included	9
Additional Insured – When Required by Contract	Included	9
Additional Insured – Owners, Lessees, or Contractors	Included	9
Additional Insured – State or Political Subdivisions	Included	10

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Duties in the Event of Occurrence, Claim or Suit	Included	10
Unintentional Failure to Disclose Hazards	Included	10
Transfer of Rights of Recovery Against Others To Us	Clarification	10
Liberalization	Included	11
Bodily Injury – includes Mental Anguish	Included	11
Personal and Advertising Injury – includes Abuse of Process, Discrimination	Included	11

A. Extended Property Damage

SECTION I – COVERAGES, **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**, Paragraph **a.** is deleted in its entirety and replaced by the following:

a. Expected or Intended Injury

"Bodily injury" or property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

B. Limited Rental Lease Agreement Contractual Liability

SECTION I – COVERAGES, **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**, Paragraph **b. Contractual Liability** is amended to include the following:

(3) Based on the named insured's request at the time of claim, we agree to indemnify the named insured for their liability assumed in a contract or agreement regarding the rental or lease of a premises on behalf of their client, up to $50,000. This coverage extension only applies to rental lease agreements. This coverage is excess over any renter's liability insurance of the client.

C. Non-Owned Watercraft

SECTION I – COVERAGES, **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions,** Paragraph **g. (2)** is deleted in its entirety and replaced by the following:

(2) A watercraft you do not own that is:

(a) Less than 58 feet long; and

(b) Not being used to carry persons or property for a charge;

This provision applies to any person, who with your consent, either uses or is responsible for the use of a watercraft. This insurance is excess over any other valid and collectible insurance available to the insured whether primary, excess or contingent.

D. Damage to Property You Own, Rent or Occupy

SECTION I – COVERAGES, **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE**

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LIABILITY, Subsection **2. Exclusions**, Paragraph **j. Damage to Property**, Item **(1)** is deleted in its entirety and replaced with the following:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property, unless the damage to property is caused by your client, up to a $30,000 limit. A client is defined as a person under your direct care and supervision.

E. Damage to Premises Rented to You

1. If damage by fire to premises rented to you is not otherwise excluded from this Coverage Part, the word "fire" is changed to "fire, lightning, explosion, smoke, or leakage from automatic fire protective systems" where it appears in:

a. The last paragraph of **SECTION I – COVERAGES**, **COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, Subsection **2. Exclusions**; is deleted in its entirety and replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III – LIMITS OF INSURANCE**.

b. SECTION III – LIMITS OF INSURANCE, Paragraph 6. is deleted in its entirety and replaced by the following:

Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems while rented to you or temporarily occupied by you with permission of the owner.

c. SECTION V – DEFINITIONS, Paragraph 9.a., is deleted in its entirety and replaced by the following:

A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protective systems to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

2. SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Subsection **4. Other Insurance**, Paragraph **b. Excess Insurance**, **(1) (a) (ii)** is deleted in its entirety and replaced by the following:

That is insurance for fire, lightning, explosion, smoke, or leakage from automatic fire protective systems for premises rented to you or temporarily occupied by you with permission of the owner;

3. The Damage To Premises Rented To You Limit section of the Declarations is amended to the greater of:

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a. $1,000,000; or

b. The amount shown in the Declarations as the Damage to Premises Rented to You Limit.

This is the most we will pay for all damage proximately caused by the same event, whether such damage results from fire, lightning, explosion, smoke, or leaks from automatic fire protective systems or any combination thereof.

F. HIPAA

SECTION I – COVERAGES, **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**, is amended as follows:

1. Paragraph **1. Insuring Agreement** is amended to include the following:

We will pay those sums that the insured becomes legally obligated to pay as damages because of a "violation(s)" of the Health Insurance Portability and Accountability Act (HIPAA). We have the right and the duty to defend the insured against any "suit," "investigation," or "civil proceeding" seeking these damages. However, we will have no duty to defend the insured against any "suit" seeking damages, "investigation," or "civil proceeding" to which this insurance does not apply.

2. Paragraph **2. Exclusions** is amended to include the following additional exclusions:

This insurance does not apply to:

a. Intentional, Willful, or Deliberate Violations

Any willful, intentional, or deliberate "violation(s)" by any insured.

b. Criminal Acts

Any "violation" which results in any criminal penalties under the HIPAA.

c. Other Remedies

Any remedy other than monetary damages for penalties assessed.

d. Compliance Reviews or Audits

Any compliance reviews by the Department of Health and Human Services.

3. SECTION V – **DEFINITIONS** is amended to include the following additional definitions:

a. "Civil proceeding" means an action by the Department of Health and Human Services (HHS) arising out of "violations."

b. "Investigation" means an examination of an actual or alleged "violation(s)" by HHS. However, "investigation" does not include a Compliance Review.

c. "Violation" means the actual or alleged failure to comply with the regulations included in the HIPAA.

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G. Medical Payments – Limit Increased to $20,000, Extended Reporting Period

If **COVERAGE C MEDICAL PAYMENTS** is not otherwise excluded from this Coverage Part:

1. The Medical Expense Limit is changed subject to all of the terms of **SECTION III - LIMITS OF INSURANCE** to the greater of:

a. $20,000; or
b. The Medical Expense Limit shown in the Declarations of this Coverage Part.

2. SECTION I – COVERAGE, **COVERAGE C MEDICAL PAYMENTS**, Subsection **1. Insuring Agreement**, a. (3) (b) is deleted in its entirety and replaced by the following:

(b) The expenses are incurred and reported to us within three years of the date of the accident.

H. Athletic Activities

SECTION I – COVERAGES, **COVERAGE C MEDICAL PAYMENTS**, Subsection **2. Exclusions**, Paragraph **e. Athletic Activities** is deleted in its entirety and replaced with the following:

e. Athletic Activities

To a person injured while taking part in athletics.

I. Supplementary Payments

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGE A AND B are amended as follows:

1. b. is deleted in its entirety and replaced by the following:

1. b. Up to $5000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these.

1.d. is deleted in its entirety and replaced by the following:

1. d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to $1,000 a day because of time off from work.

J. Employee Indemnification Defense Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B the following is added:

We will pay, on your behalf, defense costs incurred by an “employee” in a criminal proceeding occurring in the course of employment.

The most we will pay for any “employee” who is alleged to be directly involved in a criminal proceeding is $25,000 regardless of the numbers of “employees,” claims or “suits” brought or persons or organizations making claims or bringing “suits.

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K. Key and Lock Replacement – Janitorial Services Client Coverage

SECTION I – COVERAGES, SUPPLEMENTARY PAYMENTS – COVERAGES A AND B is amended to include the following:

We will pay for the cost to replace keys and locks at the “clients” premises due to theft or other loss to keys entrusted to you by your “client,” up to a $10,000 limit per occurrence and $10,000 policy aggregate.

We will not pay for loss or damage resulting from theft or any other dishonest or criminal act that you or any of your partners, members, officers, “employees”, “managers”, directors, trustees, authorized representatives or any one to whom you entrust the keys of a “client” for any purpose commit, whether acting alone or in collusion with other persons.

The following, when used on this coverage, are defined as follows:

a. "Client" means an individual, company or organization with whom you have a written contract or work order for your services for a described premises and have billed for your services.

b. "Employee" means:

(1) Any natural person:

(a) While in your service or for 30 days after termination of service;

(b) Who you compensate directly by salary, wages or commissions; and

(c) Who you have the right to direct and control while performing services for you; or

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" as defined in Paragraph **(1)** above, who is on leave; or

(b) To meet seasonal or short-term workload conditions;

while that person is subject to your direction and control and performing services for you.

(3) "Employee" does not mean:

(a) Any agent, broker, person leased to you by a labor leasing firm, factor, commission merchant, consignee, independent contractor or representative of the same general character; or

(b) Any "manager," director or trustee except while performing acts coming within the scope of the usual duties of an "employee."

c. "Manager" means a person serving in a directorial capacity for a limited liability company.

L. Additional Insureds

SECTION II – WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

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Coverage Part, Paragraph **3.a.** is deleted in its entirely and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period.

2. Each of the following is also an insured:

a. Medical Directors and Administrators – Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. Managers and Supervisors – Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your "employees" are also insureds for "bodily injury" to a co-"employee" while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. Broadened Named Insured – Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. Funding Source – Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

e. Home Care Providers – At the first Named Insured's option, any person or organization under your direct supervision and control while providing for you private home respite or foster home care for the developmentally disabled.

f. Managers, Landlords, or Lessors of Premises – Any person or organization with respect to their liability arising out of the ownership, maintenance or use of that part of the premises leased or rented to you subject to the following additional exclusions:

This insurance does not apply to:

(1) Any "occurrence" which takes place after you cease to be a tenant in that premises; or

(2) Structural alterations, new construction or demolition operations performed by or on behalf of that person or organization.

g. Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You – Any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization is to be added as an additional insured on your policy. Such person or

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organization is an insured only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

A person’s or organization’s status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

With respect to the insurance afforded to these additional insureds, this insurance does not apply to any “occurrence” which takes place after the equipment lease expires.

h. Grantors of Permits – Any state or political subdivision granting you a permit in connection with your premises subject to the following additional provision:

(1) This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with the premises you own, rent or control and to which this insurance applies:

(a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures;

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

i. Vendors – Only with respect to “bodily injury” or “property damage” arising out of “your products” which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

(1) The insurance afforded the vendor does not apply to:

(a) "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

(b) Any express warranty unauthorized by you;

(c) Any physical or chemical change in the product made intentionally by the vendor;

(d) Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

(e) Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;

(f) Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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(g) Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

(h) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(i) The exceptions contained in Sub-paragraphs **(d)** or (**f**); or

(ii) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(2) This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing.

j. Franchisor – Any person or organization with respect to their liability as the grantor of a franchise to you.

k. As Required by Contract – Any person or organization where required by a written contract executed prior to the occurrence of a loss. Such person or organization is an additional insured for "bodily injury," "property damage" or "personal and advertising injury" but only for liability arising out of the negligence of the named insured. The limits of insurance applicable to these additional insureds are the lesser of the policy limits or those limits specified in a contract or agreement. These limits are included within and not in addition to the limits of insurance shown in the Declarations

l. Owners, Lessees or Contractors – Any person or organization, but only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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m. State or Political Subdivisions – Any state or political subdivision as required, subject to the following provisions:

(1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.

(2) This insurance does not apply to:

(a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or

(b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

M. Duties in the Event of Occurrence, Claim or Suit

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, Paragraph **2.** is amended as follows:

a. is amended to include:

This condition applies only when the “occurrence” or offense is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

b. is amended to include:

This condition will not be considered breached unless the breach occurs after such claim or “suit” is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership; or

(3) An executive officer or insurance manager, if you are a corporation.

N. Unintentional Failure To Disclose Hazards

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 6. Representations is amended to include the following:

It is agreed that, based on our reliance on your representations as to existing hazards, if you should unintentionally fail to disclose all such hazards prior to the beginning of the policy period of this Coverage Part, we shall not deny coverage under this Coverage Part because of such failure.

O. Transfer of Rights of Recovery Against Others To Us

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 8. Transfer of Rights of

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Recovery Against Others To Us is deleted in its entirety and replaced by the following:

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

Therefore, the insured can waive the insurer's rights of recovery prior to the occurrence of a loss, provided the waiver is made in a written contract.

P. Liberalization

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, is amended to include the following:

If we revise this endorsement to provide more coverage without additional premium charge, we will automatically provide the additional coverage to all endorsement holders as of the day the revision is effective in your state.

Q. Bodily Injury – Mental Anguish

SECTION V – DEFINITIONS, Paragraph **3.** Is deleted in its entirety and replaced by the following:

"Bodily injury" means:

a. Bodily injury, sickness or disease sustained by a person, and includes mental anguish resulting from any of these; and

b. Except for mental anguish, includes death resulting from the foregoing (Item **a.** above) at any time.

R. Personal and Advertising Injury – Abuse of Process, Discrimination

If **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY COVERAGE** is not otherwise excluded from this Coverage Part, the definition of "personal and advertising injury" is amended as follows:

1. SECTION V – DEFINITIONS, Paragraph 14.b. is deleted in its entirety and replaced by the following:

b. Malicious prosecution or abuse of process;

2. SECTION V – DEFINITIONS, Paragraph 14. is amended by adding the following:

Discrimination based on race, color, religion, sex, age or national origin, except when:

a. Done intentionally by or at the direction of, or with the knowledge or consent of:

(1) Any insured; or

(2) Any executive officer, director, stockholder, partner or member of the insured;

b. Directly or indirectly related to the employment, former or prospective employment, termination of employment, or application for employment of any person or persons by an insured;

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c. Directly or indirectly related to the sale, rental, lease or sublease or prospective sales, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any insured; or

d. Insurance for such discrimination is prohibited by or held in violation of law, public policy, legislation, court decision or administrative ruling.

The above does not apply to fines or penalties imposed because of discrimination.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
City of Billings
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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CITY OF BILLINGS

CITY OF BILLINGS VISION STATEMENT:

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

AGENDA

Council Chambers are Closed.
The meeting will be held remotely via virtual meeting room. Please see coversheet for details and instructions for viewing and participation.

May 11, 2020 **5:30 P.M.**

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Ronning

ROLL CALL: Councilmembers present on roll call were: ☑ Shaw, ☑ Yakawich, ☑ Neese, ☑ Ewalt, ☑ Joy, ☑ Choriki, ☑ Purinton, ☑ Ronning, ☑ Boyett, ☑ Brown

COVID-19 Update by Unified Incident Command (UIC)

MINUTES: April 27, 2020 **APPROVED**

COURTESIES:

- None

PROCLAMATIONS:

- May 16, 2020 - Kids to Parks Day
- May 17-23, 2020 - Public Works Week
- May - Mental Health Awareness Month

COUNCIL REPORTS:

- None

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

- Reminded Council that there would be a Budget Work Session meeting on Tuesday, May 12.
- There were no Ex-parte communications received after 3:00 pm.
- Informed Council there would be some staff memo formatting changes in order to give Council and the public more information.
- Stated all City vacancies were being reviewed before being filled.

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 3 and 7 ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the 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: 1B, 1C, 1E, 1F, 1I AND 1M1

A. **Bid Awards:**

1. **W.O. 19-35: Metal Streets Improvements.** (Opened 4/28/20) Recommend FirstMark Construction, LLC; $593,995. **APPROVED**

2. **W.O. 20-04: 2020 ADA Ramp Replacement Project.** (Opened 4/28/20) Recommend J&J Concrete, Inc.; $202,130. **APPROVED**

3. **W.O. 20-20: Walter Pump Station Pump Addition.** (Opened 4/28/20) Recommend Ace Electric, Inc.; $563,883. **APPROVED**

4. **W.O. 20-27: WRF Fill Material Removal Project.** (Opened 2/11/20) Recommend rejecting all bids. **APPROVED**

B. **Professional Services Contract** for W.O. 20-14: Wastewater Master Plan Update; Morrison Maierle; $308,091. **APPROVED 10-0, BROWN ABSTAINED**

C. **Professional Services Contract** for W.O. 20-37: Stormwater Utility Development; FCS Group; $159,619. **APPROVED 9-2, NEESE AND EWALT OPPOSED**

D. **Agreement** with Ecolane for MET Transit Paratransit Demand Response Scheduling and Dispatching Software System; $125,758.85 for a five-year period. **APPROVED**

E. **Amendment No. 2, W.O. 19-12: West End Reservoir Project,** Professional Services Contract, HDR Engineering; $698,400. **APPROVED**

F. **Amendment** to the 2018 Long Range Transportation Plan and recommend approval to the Policy Coordinating Committee. **APPROVED**

G. **Grant Application Request** to submit application for AmeriCorps VISTA and authorize City staff to negotiate and finalize the project if awarded. **APPROVED**

H. **Grant Application Request** to submit to the CARES Act funds for MET Transit and authorize the Mayor to execute the grant agreement with the U.S. Department of Transportation, Federal Transit Administration upon receipt of the grant offer. **APPROVED**

I. **Donation** from Fagg Properties for analysis of expanding Downtown Urban Renewal District or formation of a new Urban Renewal District; $1,500; and authorize the use of up to $4,000 from both Downtown Urban Renewal District Tax Increment Finance and General Funds to complete the analysis. **APPROVED**

J. **Preliminary Subsequent Minor Plat** of Willowbrook Subdivision, Amended Lot 4A, Block 1, generally located at 4432 South Frontage Road; Griffin Automotive Enterprises, Inc., owner; IMEG Engineering, agent. **APPROVED**

K. **Second/Final Reading Ordinance 20-5735** expanding Ward IV (Annexation 18-06) for an approximate 1.769 gross acres and .958 net acres located east of 58th Street West and south of Rimrock Road. Doolen Property Trust, owners. **APPROVED**

L. **Resolution 20-10870** relating to $1,516,000 pooled Special Improvement District bonds, Series 2020 (SID 1408, 1410, and 1413); fixing the form and details and providing for the execution, delivery and security. **APPROVED**

M. **Bills for the Weeks of:**

1. April 6, 2020 **APPROVED 10-0, BROWN ABSTAINED**

2. April 13, 2020 **APPROVED**

REGULAR AGENDA:

2. ***PUBLIC HEARING** approving Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) for Airport Revenue Bonds. See, Special procedures required on cover page. No action necessary.

3. **RESOLUTION 20-10871** authorizing the issuance of Airport revenue bonds through a negotiated sale and setting the parameters. **APPROVED 10-0, PURINTON ABSTAINED**

4. **PUBLIC HEARING** and approval of the FY20-24 Consolidated Plan and the FY20-21 Annual Action Plan and the allocation of Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) program funding. The Community Development Board recommends approval. (Action: approval or disapproval of Community Development Board recommendation.) **APPROVED**

5. **PUBLIC HEARING** authorizing filing of the Annual Federal Transit Administration Section 5307 Grant Application. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) **APPROVED**

6. **PUBLIC HEARING AND RESOLUTION 20-10872** approving and adopting budget amendments for FY2020. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) **APPROVED**

7. **RECONSIDERATION** of Resolution approving 2020 Missing Sidewalk Program. Staff recommends approval. (Action: approval of disapproval of staff recommendation.) **APPROVED 9-2, CHORIKI AND RONNING OPPOSED**

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 or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium.)*

COUNCIL INITIATIVES:

- None

ADJOURN: 9:24 pm

Meeting Date: 05/11/2020

Title: Public Hearing & Action on Consolidated and Annual Action Plans and CDBG & HOME Budget Allocations

PRESENTED BY: Brenda Beckett

Department: Planning & Community Services

Presentation: Yes

PROBLEM/ISSUE STATEMENT

The City Council is scheduled to hold a public hearing on the five-year Consolidated Plan and the FY2020-2021 Annual Action Plan and the allocation of Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) program funding. The public hearing is a mandatory condition to receive U.S. Department of Housing and Urban Development (HUD) entitlement funding. City Council action is needed to approve the five-year Consolidated Plan and the Annual Action Plan and budget recommendations in preparation for HUD submission (see Attachment A).

The City of Billings was informed on April 9 it is receiving an additional $386,973 in Community Development Block Grant funding for grants to prevent, prepare for and respond to the COVID-19 outbreak in our community. This funding is coming through the CARES Act passed by Congress in April. The City will still need to follow all federal requirements, but there are some waivers on the timing and public noticing for action on the funding process. City Community Development staff met with RiverStone Health staff several times in April to discuss both short term and long term efforts to mitigate COVID-19 in the community that the funding might be applied to. Specific projects or programs are still being evaluated, but staff plans to bring recommendations for consideration at this meeting to ensure the process moves as quickly as possible and the funds may provide the greatest impact for our community. RiverStone staff, City staff and the Community Development Board have worked to be creative and forward thinking in this situation where there may be some long lasting support needed in our community response to COVID-19.

ALTERNATIVES ANALYZED

City Council may:

- Hold a public hearing and approve the five-year Consolidated Plan, the Annual Action Plan, and the allocation of CDBG and HOME funding as recommended by Staff and the Community Development Board.
- Hold a public hearing and approve the five-year Consolidated Plan, the Annual Action Plan, and the allocation of CDBG and HOME funding based on alternative funding strategies as determined by the City Council (please refer to the Funding Allocation Requirements section of this Council memo).
- Not hold a public hearing and do not approve five-year Consolidated Plan, the Annual Action Plan, and the allocation of CDBG and HOME funding and return funding to HUD.

FINANCIAL IMPACT

Staff anticipates an allocation of $657,820 in new CDBG and $349,144 in HOME funding to the City of Billings for use in affordable housing and other projects benefiting low income residents for FY2020-2021. Additional CDBG and HOME funding is anticipated through loan repayments in programs such as First Time Home Buyer and Housing Rehabilitation. Additional CDBG funding of $386,973 from the CARES Act to respond to COVID-19 is also available. The Corporation for National and Community Service also has awarded the City of Billings $797,248 in federal funds to support the Billings Metro VISTA Project contingent on the City's CDBG allocation supporting the program.

Estimated federal revenues for CDBG and HOME programs and Staff / Community Development Board recommendations are attached (Attachment B). Recommendations comply with funding limitation requirements. Any program income received will be allocated on a close- and shovel-ready basis in previously approved programs, such as First Time Home Buyer, Housing Rehabilitation, Foreclosure Acquisition / Rehabilitation, Affordable Housing Development, and the Billings Metro VISTA Project.

BACKGROUND

Introduction

The five-year Consolidated Plan is required for participation by the City of Billings in HUD programs; CDBG and HOME. The purpose of the Consolidated Plan is to identify the housing and community development needs of low-income households in Billings and develop strategies for

addressing those needs in a comprehensive, coordinated manner utilizing available federal and non-federal resources. The Plan addresses current housing needs and the priorities identified in the Plan's Housing Needs Assessment, Market Analysis and the Analysis of Impediments to Fair Housing Choice as required by HUD. Assessment and analysis documents can be viewed online at www.CityofBillings.net/CDreports.
The Consolidated Plan and Annual Action Plan can be viewed online at: https://ci.billings.mt.us/2006/Consolidated-Plan-Annual-Action-Plan

The City is also required to prepare and submit Annual Action Plans in alignment with priority needs identified in the five-year Consolidated Plan. The Community Development Board has completed the public input process and funding allocation recommendations for the Consolidated and Annual Action Plans.

Procedural History
The City of Billings has been a recipient of CDBG funds since the mid-1970s and HOME funds since the early 1990s (approximately $46 million). These funds have been provided and monitored by the federal government and must be primarily targeted to address community affordable housing for low income citizens and poverty-impact needs in Billings.

To allocate CDBG and HOME resources, the Community Development Division and Board facilitated an extensive process to gather public input on the use of federal funds. Applications were available at the beginning of December and due at the end of January. Applications were then forwarded to the Community Development Board and recommendations were prepared for City Council consideration. The Board had originally planned to make its recommendations at its April meeting, but the COVID-19 outbreak required delays in some meetings while staff found ways to conduct virtual meetings and accommodate public participation. The Community Development Board rescheduled its meeting and prepared recommendations for the use of CDBG and HOME funds on May 5 during the Board's routine monthly meeting.

The City Council public hearing is required by HUD and is part of a 30-day minimum public comment period beginning March 28 and extending through May 11. The City Council is also scheduled to act on the CDBG and HOME programs during the May 11 meeting. The Annual Action Plan will then be submitted to HUD for review and, pending HUD approval, the program year will begin July 1.

Funding Allocation Requirements
Allocation recommendations conform to pre-determined spending requirements on several categories including: CDBG and HOME administration caps (maximum of 20% and 10% of new funding respectively); public service caps (up to 15% of new CDBG funding); and Community Housing Development Organizations (at least 15% of new HOME funding). Changes made out of compliance with federal spending requirements would place the City's entitlement status for federal funds at risk.

The allocation of funding is restricted by eligibility requirements for CDBG and HOME and must meet pressing citywide community needs as identified in the Consolidated Plan: affordable housing, housing choice, and poverty-impact. HUD policy prohibits the use of federal funds to supplant local government funds on projects communities typically underwrite, regardless of whether federal grant dollars are available.

FY2020-2021 Budget Recommendations
CDBG budget recommendations include the following:

- Administration set at the maximum cap; $131,564.
- Housing Rehabilitation program support totaling $50,000.
- Foreclosure Acquisition / Rehabilitation support totaling $100,000.
- VISTA program support set at $75,000, which will leverage nearly $800,000 in grant funds from the Corporation for National and Community Service.
- $235,000 in new FY2020-2021 funding and an additional $150,000 in current FY2019-2020 CDBG revenue to support infrastructure development at the C & C Community, Inc. manufactured home park, facilitated by NeighborWorks Montana. The organization has committed over $1.2 million to acquire the property to support 60 units of affordable housing and the home owners in the park are committing $10,000 towards this phase of infrastructure development.
- Remaining CDBG funds will be allocated to the First Time Home Buyer program; $66,256.

- Recommendations of allocation of the additional CDBG funds to respond to COVID-19 will be provided to the Council in advance of the May 11 meeting, but were not drafted at the time this memo was prepared.

HOME budget recommendations include the following:

- Administration set at the maximum cap; $34,914.
- 15% of new HOME program funding set aside for Community Housing Development Organizations - as per federal regulation; $52,372.
- Remaining HOME funds will be allocated to the First Time Homebuyer Loan Program; $261,858.

Staff will be required to adjust the funding amounts allocated to each program if and when HUD notifies the City of grant awards. New CDBG and HOME funding and incoming revenues will be ultimately allocated on a close- and shovel-ready basis in order to ensure timely use of federal funds.

Program Income: Additional program income and revenues received from loan repayments will be allocated on a close / shovel-ready basis in previously approved programs. Program income must be allocated, committed and expended prior to drawing CDBG and HOME entitlement funds as per federal requirement.

Public Comment: Comments of the speakers at the public hearings may relate to funding amounts awarded, activities prioritized for funding with lower federal revenue allocations, and general comments regarding the Annual Action Plan for FY2020-2021.

Proposed Program Elimination: Over the past several years, federal budgets have included the proposed elimination of CDBG, HOME and AmeriCorps VISTA. If federal funding programs are reduced or eliminated, the City's federal Community Development programs would also be reduced or eliminated. However, while some budgets proposed by the current Administration have proposed severe cuts or elimination of CDBG, HOME and AmeriCorps VISTA, Congress has continued to ultimately fund the programs at varying levels in each of the past annual Federal budgets. Staff continues to annually monitor the budget process in Washington, DC.

STAKEHOLDERS

Stakeholders for CDBG and HOME programs include:

1. Program Recipients - The City serves low income households through a variety of affordable housing programs such as home repair, home buyer, etc. Full descriptions of available programs can be found online at www.CityofBillings.net/comdev.

2. The Community Development Board - As an advisory body to the City Council, the Board provides detailed oversight to both the CDBG and HOME programs throughout the year. The Board also facilitates a public input process to prepare recommendations for the City Council consideration. Six of nine total Community Development Board members are representatives of low-income neighborhoods either by residence or task force delegation, ensuring low-income citizen involvement of planning and allocation processes.

3. Neighborhood Task Forces - Task forces have historically been consulted regarding housing and neighborhood programs relative to community need. Funding recommendations are in alignment with task force priorities including emphasis on housing programs.

4. Non-Profit Organizations - Community organizations serving those experiencing poverty are supported by the Billings Metro VISTA Project. AmeriCorps VISTA members assist in the provision of needed services to those in need.

CONSISTENCY WITH ADOPTED POLICIES OR PLANS

Consolidated Plan: Projects proposed are consistent with the goals and priorities of the five-year Consolidated Plan for the use of CDBG and HOME resources in Billings. The following strategies are proposed for approval by the City Council in the Consolidated Plan to address Billings' housing and community development needs:

- Create, preserve, and expand affordable housing options.
- Neighborhood Revitalization: Foreclosures.

- Impact Poverty.

Additional information regarding each strategy is located in the drafted five-year Consolidated Plan and the Annual Action Plan; Attachment A. The Consolidated Plan, including the Housing Needs Assessment and Market Analysis, Analysis of Impediments to Fair Housing Choice, and the drafted plans can be found online: www.CityofBillings.net/conplan.

SUMMARY

City staff and the Community Development Board have made recommendations for CDBG and HOME budgets and the five-year Consolidated Plan and Annual Action Plan is ready for Council adoption. The City Council is asked to consider public input received and make a final decision on the Consolidated and Annual Action Plans and accompanying CDBG and HOME budget.

Attachments

B - FY2020-2021 Revenues and Recommendations
C - CD Board Recommendation Memo - C&C Community
D - C&C Development Agreement
E - Allocation and Funding History
F - Drafted Analysis of Impediments

City Council Regular

Date:	05/24/2021
Title:	Downtown Revolving Loan for The Burger Dive
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No

RECOMMENDATION

Staff recommends Council approve a loan for $250,000 for The Burger Dive from the Downtown Revolving Loan fund.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Burger Dive is seeking to expand their current business downtown through the purchase and remodel of a building located on N.28th and Minnesota Ave. The owners are planning to grow the business with a larger space to hold more customers, better parking, longer hours and added offerings of the cabaret license for local beer and wine. The owners are currently seeking a commercial bank loan and an SBA loan for the purchase of the building, as well as TIF grants and Historic Tax Credits. They will also be putting in personal equity as stipulated by the rules of the Downtown Revolving loan committee. The City would be taking a 3rd position on the building and a 2nd position on the equipment, and requiring the owners to sign a personal guarantee.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve the loan

FISCAL EFFECTS

The Downtown Revolving Loan fund currently has a balance of cash of over $850,000. A couple of previous loans have paid off in full leaving the fund with more cash than anticipated. The term of the loan is 10 years, with a variable rate adjusted annually in October. The current interest rate is 2.25%. If approved, this loan will assist in over $2.0M of investment on Minnesota Avenue.

Attachments

Checklist for loan

Burger Dive Loan Application

Business Plan

REVOLVING LOAN COMMITTEE LOAN APPROVAL ITEMS
The Burger Dive
4/19/2021

1	Loan amount	$ 250,000
2	Ratio of loan to project costs	
3	Percent of owner equity required	20%
4	Interest rate-Prime rate at 9/30/20 was 3.25%. Therefore loan rate is 2.25% f	2.25%
5	Interest rate is annually adjusted to Wall Street Journal Prime less 200 basis points as of the last business day in September.	
6	Term of loan in years	10
7	Balloon payment at term	yes $140,221.01
8	Monthly payment based on:	
	Payment calculated	$1295 per month
	Calculation term	20 year amortization
	Minimum interest rate if actual loan rate is less than 5%	2.25%
9	Collateralized by a deed of trust	yes
10	What will the deed of trust be subordinate to?	3rd position
	1st position - Western Security Bank	
	2nd position - SBA	
11	Personal guarantees	
	Brad Halsten	yes
	Andrea Halsten	yes
12	UCC security interest required on fixtures, furniture, and equipment?	Yes as 2nd

Downtown Billings Starts here.

DOWNTOWN URBAN RENEWAL ASSISTANCE

APPLICATION FORM FOR GRANTS AND REVOLVING LOAN FUND LOANS

BUSINESS CONTACT INFORMATION

Contact Name	Andrea Halsten	Date business commenced:	9/2010
Title	member LLC	Number of Employees:	31
Company name	The Burger Dive	☐ Sole proprietorship	
Phone/#	406 281-8292 cell 690-9749	☑ Partnership	
E-mail	burgerdive11@gmail.com	☐ Corporation	
Company mailing address City, State ZIP Code		☐ Other EIN or Soc. S # 80-0592381	

CHECK THE MAP ON THE LINKS PAGE (4) BEFORE CONTINUING

Check all that apply: ☐ I am a property owner inside the District ☑ I own and operate a business within the District
☑ I plan to purchase property in District ☐ I plan to move a business into the District

If your proposed project has a different physical address than the mailing address, please fill in the street address, below:

Street Address: _____, 59101

Check all that apply: ☑ I am interested in a **low rate loan** ☑ I am interested in a **reimbursement grant (RG)**

What is the total cost of the project, including property acquisition, if applicable? 3,598,493.00 1

How much are you wanting to borrow from the Loan Fund **(RLF)**? 250,000 2
A Minimum of 20% Equity investment is required and all loans are capped at 20% or less of the total cost (box 1) up to $250,000

How much do you need to make the project "pencil out" **(RG and/or RLF)?** 250,000 3

Briefly describe your proposed project:

See attached Business plan

DOWNTOWN BILLINGS REVOLVING LOAN FUND

November 1,

Purpose:
To provide financial assistance in the form of loans to projects within the boundaries of the Downtown Urban Renewal Area (URA) last amended in 2004 (Exhibit A) that will:

(1) Assist in the economic revitalization and stabilization of the URA;
(2) Attract and retain a stable clientele population within the URA;
(3) Stimulate private investment within the URA;
(4) Generate additional property tax revenues within the URA; and
(5) Encourage and facilitate in the remodeling and restoration of historically significant structures within the URA.

Fund Guidelines:

- Borrowers are creditworthy.
- Projects are economically viable.
- Projects are consistent with the above stated purpose.
- Funds requested are leveraged with other sources, i.e. borrower's equity, other senior debt, etc. *(RLF requires at least 20% equity investment per project)*
- **Requests are accepted up to 20% of project cost capped at $250,000.**
- Loan terms address each project's needs with payments based on amortization of up to twenty (20) years. Early maturities of up to ten (10) years may be recommended for fund liquidity purposes. The interest rate is annually adjusted and based upon 1% over prime rate minus 200 basis points. **(Rate to borrower, as of November 1, 2019 = 4%)** The rate is established on September 30th each year. Additionally, loan payment calculations may be based upon a loan rate amount that is higher than the actual loan rate.
- Loan repayment is guaranteed by relevant beneficiaries and/or collateralized.
- Loans may be made for acquisition or construction of buildings, renovation and rehabilitation, interior and exterior tenant improvements, equipment and related improvements.
- Project location is within the boundaries of the original Urban Renewal Area approved and last amended in 2004. (Exhibit A)
- Priority will be given to projects meeting above criteria, which have not been able to secure traditional financing (so as to not compete with conventional loans).

Application Requirements:

Contact: Mr. Mehmet Casey, Development Director
Downtown Billings Partnership, Inc.
116 North 29th Street, Suite A, Billings,
MT 59101
Phone: (406) 294-5060
Fax: (406) 294-5061

- Requests can be considered on a "Pro Forma" basis subject to final submittal, where appropriate.

- **Basic application requirements:**
  - **Borrower's financial history (2-3 years)**
  - **Business plan and/or project description**
  - **Project economics (costs, revenues, etc.)**
  - **Project drawings and or architectural plans**
  - **Project owner and guarantor's information**
    - **Names and relevant background**
    - **Financial condition (balance sheet and tax returns for two years).**
  - **Other information supporting the "purpose"**
  - **Completed W9 (see form included)**
  - **Applicant will pay for appraisals; credit reports and other related (out of pocket) underwriting costs.**

Approval Process:

- A minimum of four weeks should be allowed for underwriting once the DBP representative has confirmed that all documentation has been received.

- Following a positive recommendation for the loan, four to six weeks should be allowed for City Council scheduling and approval.

- Once Council approval has been obtained, loan funding arrangements are set up between the Borrower and the City of Billings, directly. The actual loan agreement does not include the Downtown Billings Partnership.

CITY OF BILLINGS
REQUIREMENTS FOR REVOLVING LOAN PROCEED DISBURSEMENTS

1. The City of Billings requires the following information to promptly prepare loan documents and disburse loan proceeds:

   a. The legal name and address of the borrower(s).
   b. The borrower entity type, (individual, corporation, partnership, LLC).
   c. A copy of the articles of organization filed with the secretary of state for each legally created entity.
   d. The name and address of each entity member, shareholder, or partner. If the member, shareholder, or partner is a legal entity, then the same information for that entity until all individuals are identified for personal guarantee purposes.
   e. The legal description of r5eal property according to the official plat on file in the office of the County Clerk and Recorder, including the document number.

2. Additionally, the City wants each borrower to understand the standard loan will have:

   a. Loan terms address each project's needs with payments based on amortization of up to twenty (20) years. Early maturities of up to ten (10) years may be recommended for fund liquidity purposes. The interest rate is annually adjusted and based upon 1% over prime rate minus 200 basis points. **(Rate to borrower, as of November 1, 2019 = 4%)** The rate is established on September 30th each year. A monthly payment calculation, which is based on a 4% interest rate for a twenty year period.
   b. A balloon payment at maturity, which is ten years from date of issue.
   c. **A personal guarantee from each individual borrower and individual member, shareholder, or partner of an entity**

3. The City will require the following, if applicable:

   a. A lien, which will be filed on such real property of the borrower which is acquired or remodeled with loan proceeds.
   b. A Form UCC1, filed with State of Montana, for inventory, furnishing and equipment owned by the borrower.
   c. Other forms of acceptable loan guarantee

Letter Requesting Authorization
To Release Credit Information

Date: 11-9-20

Thank you for your recent interest in our Revolving Loan Fund. Please sign the authorization to release credit information below so that we may obtain copies of your credit history. We will contact your credit and bank references and then contact you regarding the status of your application.

The undersigned has recently applied for credit with the Downtown Revolving Loan Fund (RLF). I/we have been requested to provide information, concerning my/our credit history. Therefore, I/we authorize the investigation of my/our credit information.

The release by you of information is authorized whether such information is of record or not. I/we do hereby release you and all persons, agencies, agents, employees, forms, companies or parties affiliated with you from any damages resulting from providing such information.

This authorization is valid for thirty (30) days from the date of my/our signature(s) below. Please keep a copy of my/our release request for your files.

Thank you for your cooperation.

Name: Bradley L Halsten

SSN: 568-89-5810

Signature: [signature]

Date: 11/9/2020

Name: Andrea Halsten

SSN: 516 84 7129

Signature: [signature]

Date: 11-9-20

EXHIBIT A (Boundaries of URA)



EXHIBIT B

A SYNOPSIS OF THE DOWNTOWN BILLINGS URBAN RENEWAL PLANS

The Framework - 1997

The Framework, adopted as part of the overall urban renewal plan, is a comprehensive logical vision plan for making wise decisions about the future of Downtown, and a planning base within which Downtown can thrive in all its complexities.

- Billings' citizens value the opportunity to experience the outdoors in Downtown: sidewalk cafés, events, bicycling, pedestrian environment, etc.
- Ease of access is critical to Downtown's livelihood.
- Downtown draws from its historic past as its leaders shape its future character.
- Downtown Billings believes strongly in its economic future.
- Downtown is entrepreneurial and nurtures specialty retail and home-grown businesses offering personalized services.

Assets: The important elements of Downtown that should be preserved and enhanced.

- Unique collection of buildings
- Cultural facilities
- Montana & Minnesota Avenues (Historic District)
- Specialty retail
- Medical corridor
- Educational campuses
- MetraPark
- 27th St. connection from Downtown to the airport and I-90
- Financial office market
- Government presence
- Nature of people: sense of community, open, friendly
- Friendly, helpful local service providers
- Multiple generations
- Numerous churches of many faiths

Issues: Concerns to be addressed.

- Reduce gaps and the lack of connection between the core of Downtown and the surrounding neighborhoods caused by the discontinuity of land uses.
- Increase the downtown residential population to enhance a 24/7 vitality and urban neighborhood.
- The public places – parks, streets, sidewalks – should provide beauty, comfort, safety, & attraction.
- Address existing regulations and requirements which discourage the very type of development that is desirable
- Focus on pedestrian as well as vehicular movement throughout Downtown.
- Address the psychological factors that make walking a few blocks seem inconvenient and unpleasant.
- Provide orientation and landmarks to prevent people from becoming disoriented Downtown..
- Develop programs to "level the playing field" and make the economics of Downtown more similar to undeveloped lots away from city center.
- Encourage business hours and activities beyond the eight-to-five office hours
- Develop in Downtown a sense of irresistible magnetism that could draw thousands of people to enjoy this unique asset.
- Encourage greater efforts toward historic preservation and renovation to create a sense of historic permanence.

Ordinance No. 05-5333 (July 11, 2005) created the North 27th Street Urban Renewal

Area and authorized utilization of Tax Increment Financing and adopted programs and projects within an Urban Renewal Plan.

- Blight elimination
- Addition, modification, relocation of Utilities
- Parking Structures
- Commercial/Residential development
- Authorized a public/private mixed use development

Ordinance No. 065394 expanded the boundaries of the N. 27th Street Urban Renewal Area, thus creating the Extended North 27th St. Urban Renewal Area.

- The plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the District by private enterprise

Ordinance No. 08-5483 expanded the boundaries of the Extended N. 27th Street Urban Renewal District, thus creating the current Expanded North 27th Street Urban Renewal Area.

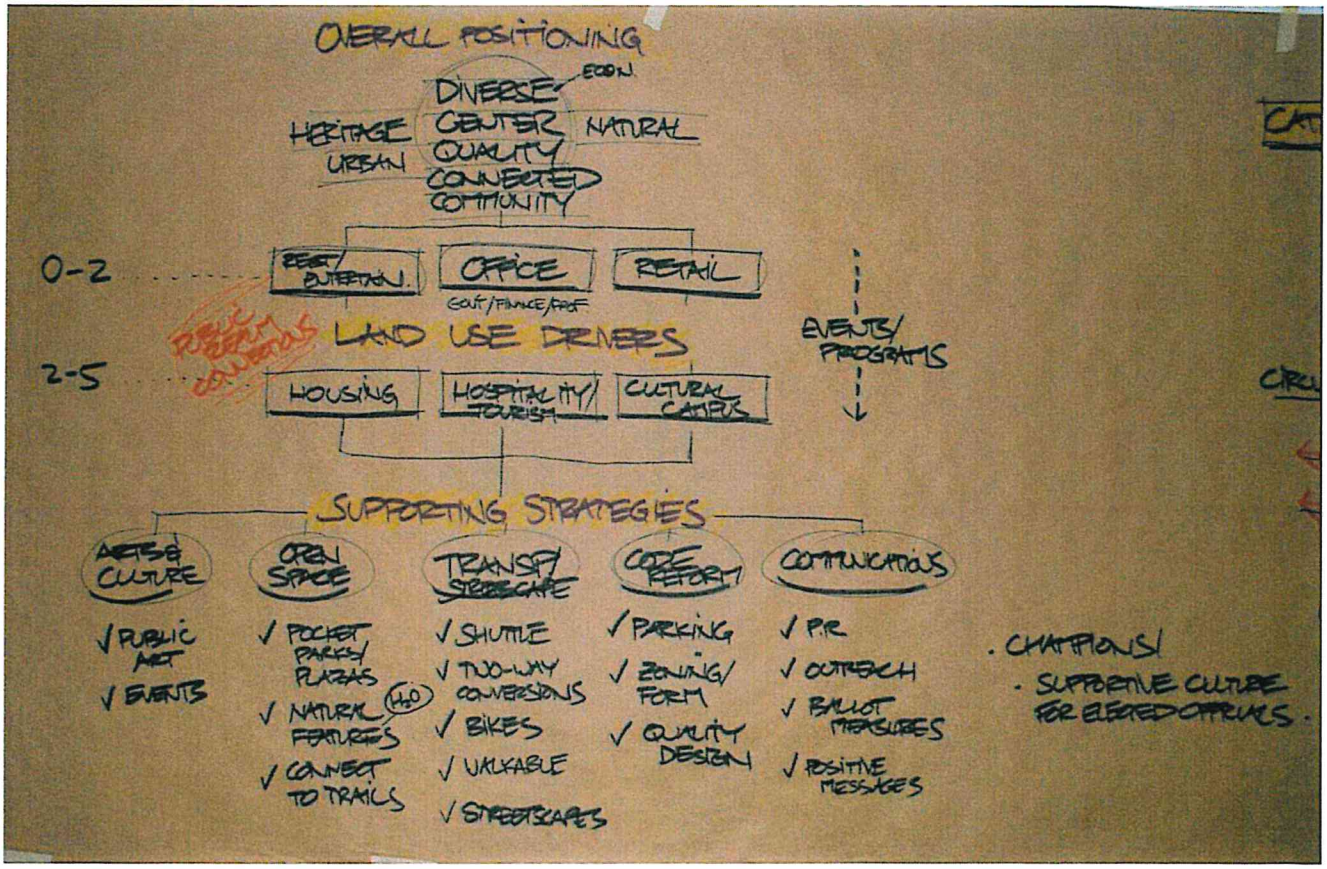
- Demolition of blighted structures
- New construction
- Target Areas
    - Billings Hardware Building (aka Westwood Building)
    - Lincoln Hotel Building
    - Public Library
    - Assistance to existing street level businesses
    - Business Improvement District Support
    - Studies and assessments regarding
        - Business Clustering
        - Pedestrian counts
        - Housing and Lodging
- Increase Public Transportation
- Parking structures for future needs
- Crime prevention and safety/security programs/projects
- Conference Corridor Concept
- Streetlights
- Stabilization of vaults/sidewalks
- Workforce Housing
- Loft and Condominium development
- Lodging development
- Conference Facilities
- Entertainment venues
- Parks and Greenspaces
- Future uses of the Lincoln Center
- Housing is a "top priority"
- Traffic Control devices
- Conversion of One-way Streets to Two-way Streets
- Development of the "5th Avenue Corridor"
- Sustain and encourage employers

Ordinance No. 12-5590 recognized retail retention and recruitment as an approved Urban Renewal Project, authorized a Business Plan competition as a Program of the Project.

- "Retail" is defined as a business that sells goods and/or services directly to the general public.
-

Downtown Billings Visioning (June 2012) – Challenges and Opportunities

- There is a lack of historic acknowledgement
- 4th, 6th, Avenues N. and N. 27th Street along with the Railroad tracks are major pedestrian barriers
- Improve connections to recreational resources
- Improve connections to Medical District and MSUB
- The perception of "lack of parking" needs to be addressed and parking needs to develop into a customer friendly operation
- More Public Art
- Improve promotions to inform the public
- Improve the lack of focal points and destinations for tourists
- Develop walking tours
- Improve bike lanes
- Create greenspaces and pocket parks
- Improve public transit
- Substantial Housing construction is vital
- Grow the lodging to accommodate more tourists and conferences



THE BURGER DIVE



Brad and Andrea Halsten

Billings, Montana 59101

Burgerdive11@gmail.com

406-281-8292

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1.0 **EXECUTIVE SUMMARY**

The Burger Dive is an award-winning gourmet burger restaurant focusing on fresh, premium ingredients with innovative and creative flavor combinations. Located in the heart of downtown Billings, Montana. The Burger Dive, established in 2010 by Brad and Andrea Halsten, has become the premier downtown lunch destination, serving locals and travelers from around the United States and Internationally. The Burger Dive, in its current location and current hours of operation, has been profitable in each of its ten years of existence.

The Burger Dive is excited to announce the expansion of our location to a larger building with increased seating capacity, increased hours to include a dinner service, the addition of beer and wine sales, house made cakes and pastries, espresso bar, retail merchandise sales, retail bottling and sales of sauces and other food items with the intention to grow into wholesale distribution, onsite catering location, outdoor venue for dining, drinking, and live music/art performances.

1.1 Mission

It is The Burger Dive's mission to offer the best tasting hamburgers and cheeseburgers in Montana coupled with the finest customer experience creating brand loyalty and repeat business.

1.2 Keys to Success

- Employ strict financial controls. This is extremely important in a retail food establishment.
- Offer the highest-quality lunch and dinner time fare.
- Ensure sufficient visibility. A strong marketing campaign is required as well as continued use of both national and local media and national food events to continue to draw notoriety and grow popularity of the business.

1.3 Objectives

- To maintain our status as the premier burger restaurant in downtown Billings, MT.
- To expand our hours into a nightly dinner service
- To add beer and wine to our beverage options.
- To continue to increase our profit margins during the day shift
- To become profitable within the first year of our nighttime dinner service.

1.4 Financing

The team behind Burger Dive is contributing a total of $1,246,572 which includes a DBA TIF Grant of $466,373, Historic Tax Credits of $680,199, and $150,000 in personal equity to the projects anticipated down payment. The company is seeking funding through the several sources which include the Downtown Business Association RLF Loan of $250,000, an SBA loan of $942,000, and a commercial bank loan of $1,180,000. Total loans of $2,372,000 and project cost total $3,668,572 to fully finance the purchase and expansion of the restaurant. Based on conservative growth estimates, Burger Dive is projected to have an

average ROI of 18% the first year, 36% the second year, and ROI of roughly 55% the third year.

2.0 **THE CONCEPT**

2.1 Overview

The Burger Dive is a lunch and dinner restaurant that will provide customers in Billings, MT, with an enjoyable experience and feature a menu based on comfort foods the people love.

2.2 Unique Selling Proposition

Locally sourced produces

- Our beef burgers are never frozen Certified Black Angus ground beef partially sourced from IX Ranch out of Big Sandy, MT, and Green Mountain Ranch of Montana
- Hand crafted buns created for The Burger Dive by Grains of Montana
- Locally sourced microbrew beer for the onion ring batter from Angry Hank's,
- Premium ice cream for milkshakes made in Billings by Wilcoxson's Ice Cream
- Billings based City Brew coffee
- Beer sourced from locally sourced breweries.

2.3 Meal Periods/Opening Hours

The Burger Dive is open for lunch and dinner from 10:30 – 8:00 pm, 6 days a week, 52 weeks a year. The restaurant will be closed on Sunday. Based on personal experience from the past 10 years, these hours of operation are best suited for the downtown traffic flow.

2.4 Menu and Signature Items

The Burger Dive will continue to offer the community an exciting menu of burgers, hot dogs, fresh cut fries, house made onion rings, a variety of homemade sides, soup, chili, milkshakes, desserts, and coffee beverages. Additionally, beer and wine will be available for purchase.

2.5 Pricing

The intended food and beverage cost percentage across the entire menu will be 33%.

- Basic burgers range from $7.75 to $12.00
    - With fries added a plate is additionally $2.00 - $3.00 more
- Plain fries, garlic, Cajun, or chili cheese fries and onion rings as a side for $2.50
    - Basket for $7.00 - $9.50
- Chili and soup for $6.50 a bowl
- Wedge salad for $4.00
- Desserts are $6.00 each
- Milkshakes are $6.00
- We will sell local brews for $5.00
- Wine for $6.00 - $12.00 per glass

2.6 Keys to Success

The Burger Dive has identified three keys that will be instrumental in its success.

- The first has been a commitment to the customer and employee experience.
- The second key has been high quality food receiving national and international food accolades that have placed The Burger Dive on foodie pilgrimage lists.
- The third is that The Burger Dive has developed an effective, targeted marketing campaign, further expansion into retail products, and additional revenue generating square footage which will supplement and support the opening of the new location to ensure a smooth and profitable transition.

3.0 **COMPANY SUMMARY**

3.1 Company Ownership

The Burger Dive was opened in 2010 by Brad and Andi Halsten. The company is wholly owned by Brad and Andi. The business is based in downtown Billings and will serve lunch and dinner.

The Burger Dive has been formed as a limited liability company in Montana with owners Brad and Andrea Halsten managing the business. The L.L.C. business formation has been chosen as a way of protecting the owner from personal liability while avoiding double taxation associated with a traditional corporation.

3.2 Services

The Burger Dive is a downtown based burger restaurant serving lunch since September 2010. Gourmet burgers and sides, using a high level of creativity and a continued focus on fresh foods will continue to be our focus. Each customer has their choice of different toppings for the burgers and there is a menu of multiple predetermined burger combinations as well as sides including locally beer battered onion rings and fresh cut fries.

3.3 Menu

Our menu is unique in that it has multiple items that have achieved national and higher recognition through the Food Network Burger Bash, our winning the World Burger Championship, and having appeared on the Travel Channel show Man V Food. In addition to the burgers, there will be different sides available, including our fresh cut fries/garlic fries and locally beer battered onion rings which have all achieved recognition on best fries or best onion rings in the nation lists.

Our menu won't be changing, we will continue to serve award winning burgers, hot dogs, fries, milkshakes, and desserts. See the complete menu at http://theburgerdive.com/

3.4 Hours of Operation

We have begun a trial dinner service on Friday nights until 8PM which will turn into a nightly dinner service in the current location and continue to our new location on Minnesota Avenue. We will add a beer and wine license and intend to serve beer and wine in the new location. Our plan is to be open from 10:30 AM until 8:00 PM Monday through Friday and 11:00 AM until 8:00 PM on Saturday.

4.0 **THE MARKET**

4.1 Target Customers

The Burger Dive will be serving the Billings, MT lunch time and dinner crowd. Two distinct market segments will be targeted: locals from Billings and surrounding areas are the main core of our business and will continue to be so when we move to the new building.

The Burger Dive draws a wide range of local customers and appeals to a very eclectic demographic. Out of town customers will continue to be a target as well. The exposure the restaurant has already achieved on a national level will continue to feed this and we will continue to strive for more of the same types of national recognition as opportunities present themselves. Both market segments will appreciate our expanded hours and the increase in time to have an opportunity to come to the restaurant.

The Burger Dive will face competition from similar restaurants during the day who provide lunch time fare and some similar menu items. The Burger Dive has faced these challenges for 10 years and has continued to make a profit in each of its 10 years while gaining national notoriety.

A new challenge will be at the dinner shift. We have opened for a trial of dinner every Friday since March and have been able to profit during the extra four hours at night. This is without currently having any alcohol. We will add a beer and wine license at the latest by the time of the opening of the new location which will help to draw a further dinner crowd of people who prefer to have alcohol with dinner.

4.2 Target Market Segment Strategy

The Burger Dive has segmented the market into two distinct segments:

- The two different market segments that Burger Dive will be going after are distinct enough that there will be two different marketing campaigns, one for each group. This is necessary because the two groups respond to different forms of communication.
- The national and international traveler see the travel channel, national magazines, and other championships that we've won and come to taste our delicious burgers.
- The towners can be reached through different sources of communication. These are people who work downtown and tend to patronize the other downtown businesses. These people are more in tune with the different business organizations that exist downtown. Burger Dive will attempt to communicate with this group via the local newspaper.

4.3 Service Business Analysis

The Burger Dive exists within the general restaurant industry. There are many different categories within the restaurant industry. The Burger Dive fits within the casual dining segment of the restaurant industry. Customers are waited on and served at the table or at counter seating. The food is more expensive than a fast-food burger restaurant as our emphasis is on fresh and creative menu offerings prepared to order for the customer.

For the restaurant industry, it is normal for a venture to reach profitability by year two. If they reach it any earlier, it is likely that they are cutting corners and that profit is unlikely to be sustainable. The Burger Dive has been able to sustain profitability in each of its 10 years of existence, even profiting during the current time of pandemic. We can expect this to continue in a move to a larger location with expanded hours and the addition of some alcoholic beverages.

4.4 Competition and Buying Patterns

The Burger Dive's competition exists in many forms:

- Fast food: This takes the form of the traditional restaurants such as McDonald's, Burger King, and Wendy's, as well as healthier alternatives such as Subway.
- Breweries: Billings is home to several exceptional breweries and two of the downtown breweries have food that would be direct competition during both lunch and dinner timed. The Burger Dive has been able to compete favorably with these places by solely offering the highest quality dining experience and the addition of alcohol should allow us to favorably compete at dinner as well.
- Steakhouses: At dinner, The Burger Dive will be in competition with steakhouses in downtown Billings including Jakes and Ten.
- Diners: The Burger Dive is at its core a burger focused diner and receives direct competition from Bernie's diner right down the street for the diner customer looking for a great lunch spot.

4.5 Competitive Strengths and Weaknesses

STRENGTHS	**WEAKNESSES**
Team works well together	Small team
Local grown products	Limited parking
Familiar menu - burgers	Smaller, limited menu
Pricing is very competitive	Not in everyone's price market
Notoriety	
Food Consistency	

5.0 **THE STRATEGY**

5.1 Marketing Strategy

The sales effort will be based on obtaining 100% satisfaction. The Burger Dive will work hard to ensure that every customer has a wonderful experience at our restaurant. Almost anything will be done to ensure any problems that arise are corrected.

5.2 Competitive Edge

The Burger Dive has two competitive edges that will help it succeed in its business. The first edge is its creative fresh menu. The Burger Dive takes pride in the fact that everything on the menu is created fresh. Everything on our menu is truly unique to our menu.

The other competitive edge that The Burger Dive has is our high level of awards ranging over the last 6 years. 3 of our burgers have won either the Food Network Burger Bash or the World Burger Championship. Customers can be sure that they will receive a creative and flavorful lunch backed up by recognition from very high levels in the food world.

5.3 Marketing Tactics

The Burger Dive will continue to utilize primarily free forms of marketing. Social media has been our main marketing tool and this, coupled with word of mouth from customers on these sites have provided the needed exposure for the restaurant to succeed. Also, we will continue to seek and accept opportunities to be involved in high level food events which have provided a level of prestige and appeal to our restaurant through our successes in these events.

Television and radio advertising will be used at the beginning of our move to nights and at the time of the move to the new location in order to inform and excite customers both old and new about our new location.

5.4 Sales Strategy

As previously mentioned, The Burger Dive will emphasize 100% customer satisfaction to win over and maintain customers. This effort is based on the philosophy that every customer is important and should have an enjoyable experience.

This sales philosophy is a way of treating customers. While the service offered customers is quite important, there is a need to have a quality product, otherwise the service aspect is in vain in the long term because the customers are treated well but do not perceive value in the food that they are buying. That being said, The Burger Dive must offer fresh, quality food in order to fully support its customer-centered service. The menu has been devised in order to offer a wide selection with menu items that are innovative and high quality, fresh, and are cost effective to serve. Having both a quality product and excellent service will ensure realization of the sales forecast.

5.5 Historical data

Below is the last 3 years of sales for Burger Dive

	2017		2018		2019	
Income:						
Sales	$908,603	99.66%	$902,359	100.00%	$914,505	99.84%
Returns and allowances		0.00%		0.00%		0.00%
Sales UPS		0.00%		0.00%		0.00%
Bad Debt Collection		0.00%		0.00%		0.00%
Other Income	$3,117	0.34%		0.00%	$1,437	0.16%
		0.00%		0.00%		0.00%
		0.00%		0.00%		0.00%
		0.00%		0.00%		0.00%
				0.00%		0.00%
Total Income	$911,720	100.00%	$902,359	100.00%	$915,942	100.00%
Cost of Goods Sold						
Purchases	$307,985	100.00%	$296,989	100.00%	$308,326	100.00%
Freight		0.00%		0.00%		0.00%
Purchases UPS		0.00%		0.00%		0.00%
		0.00%		0.00%		0.00%
		0.00%		0.00%		0.00%
				0.00%		0.00%
Total COGS	$307,985	100.00%	$296,989	100.00%	$308,326	100.00%
Gross Profit	$603,735	66.22%	$605,370	67.09%	$607,616	66.34%
Advertising	$3,935	0.87%	$3,545	0.74%	$3,550	0.70%
Bank Fees *CC services*	$19,816	4.37%	$22,485	4.70%	$22,604	4.48%
Dues & Subscriptions	$1,998	0.44%	$1,464	0.31%	$2,020	0.40%
Amortization	$212	0.05%	$212	0.04%	$213	0.04%
Depreciation	$2,038	0.45%	$1,571	0.33%	$6,467	1.28%
Insurance	$1,760	0.39%	$1,760	0.37%	$1,807	0.36%
Professional Services	$12,852	2.84%	$14,621	3.05%	$18,865	3.74%
Officer Compensation	$76,985	16.99%	$81,840	17.09%	$99,036	19.63%
Salaries & *Payroll*	$220,148	146.18%	$233,107	48.68%	$230,029	45.59%
Payroll Ex 24%		0.00%		0.00%		0.00%
Training		0.00%		0.00%	$1,710	0.34%
Office Expenses	$195	0.13%	$1,992	0.42%	$333	0.07%
Outside Services	$3,208	0.71%	$5,373	1.12%	$3,722	0.74%
Phone	$2,601	0.57%	$2,641	0.55%	$2,649	0.53%
Postage & delivery	$289	0.06%	$465	0.10%		0.00%
Rents	$26,283	5.80%	$27,606	5.77%	$29,195	5.79%
Repairs & Maintenance	$9,666	2.13%	$5,657	1.18%	$11,238	2.23%
Service Charges		0.00%		0.00%		0.00%
Supplies	$16,807	3.71%	$11,976	2.50%	$14,266	2.83%
Tax and License	$27,403	6.05%	$28,758	6.01%	$29,757	5.90%
License & Permits	$414	0.09%	$184	0.04%	$447	0.09%
Linen Services	$2,247	0.50%	$2,457	0.51%	$2,140	0.42%
Mileage reimbursement	$869	0.19%	$621	0.13%	$1,878	0.37%
Misc	$88	0.02%	$492	0.10%	$218	0.04%
Travel	$1,026	0.23%	$7,152	1.49%	$641	0.13%
Utilities	$14,999	3.31%	$16,426	3.43%	$14,809	2.94%
Workers Comp	$5,804	1.28%	$5,066	3.43%	$5,836	1.16%
Interest	$34	0.01%		0.00%		0.00%
Meals (50%)	$1,458	0.32%	$1,384	0.29%	$1,084	0.21%
Total Expenses	$453,135	197.68%	$478,855	102.37%	$504,514	100.00%
Net Profit or Loss	$150,600	16.52%	$126,515	14.02%	$103,102	11.26%
Cash Flow: (available to debt service)	$178,955		$155,692		$138,764	

5.6 Sales Forecast

The Burger Dive has decided to take a conservative viewpoint toward its sales forecast in order to increase the likelihood of achieving the stated goals. The Burger Dive has reason to believe that the first three months of business in the evenings will be slow in comparison to lunch as people get used to and find out that we are now open for dinner.

Burger Dive is projecting current historical sales of lunch 39% of sales, beverages 8% of sales, and milkshakes/desserts at 5% of sales; new sales of dinner are projected conservatively at 23% of sales, and beer/wine at 25% of sales.

A strong marketing plan centered on both social media and some paid ads will be utilized in order to get nights to [profitability as soon as possible. As people have requested the restaurant to do dinners since very early in its 10-year history, it is likely that dinners will be quite popular and profitable when the word is out that we're open in the evening. It is forecasted that business will steadily increase over the first two years.

															TOTAL SALES GOAL	$ 2,618,801	Please note:
Percent of Sales Per Month		7.580%	7.790%	7.550%	6.750%	8.650%	8.550%	8.600%	8.540%	10.570%	10.570%	7.550%	7.700%	100.00%			
		Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	TOTAL			Only enter data into the blue fields. The remaining portion of the data will populate as a result of these inputs.
Lunch																	
Percent of Total Sales	39%																
Total Sales		77,417	79,562	77,111	68,940	88,345	85,281	89,877	87,222	105,912	105,912	77,111	78,643	1,021,332			
Less: Cost of Goods Sold	33%	25,548	26,255	25,446	22,750	29,154	28,143	29,659	28,783	34,951	34,951	25,446	25,952	337,040			
GROSS PROFIT		51,869	53,306	51,664	46,190	59,191	57,138	60,218	58,439	70,961	70,961	51,664	52,691	684,293			
Price Per Unit		$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12				
# Units Sold		6,451	6,630	6,426	5,745	7,362	7,107	7,490	7,268	8,826	8,826	6,426	6,554	85,111			
Dinner																	
Percent of Total Sales	23%														1021332	**Lunch**	
Total Sales		45,656	46,821	45,475	40,657	52,101	50,294	53,005	51,438	62,461	62,461	45,475	46,379	602,324	209504	**Beverage**	
Less: Cost of Goods Sold	33%	15,067	15,484	15,007	13,417	17,193	16,597	17,491	16,975	20,612	20,612	15,007	15,305	198,767	130940	**Milkshake**	
GROSS PROFIT		30,590	31,437	30,469	27,240	34,908	33,697	35,513	34,464	41,849	41,849	30,469	31,074	403,557	$1,361,777	TOTAL	
Price Per Unit		$12.00	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12	$ 12				
# Units Sold		3,805	3,910	3,790	3,388	4,342	4,191	4,417	4,287	5,205	5,205	3,790	3,865	50,194			
Beverages															602324	**Dinner**	
Percent of Total Sales	8%														654700	**Beerfwine**	
Total Sales		15,880	16,320	15,818	14,142	18,122	17,494	18,436	17,892	21,726	21,726	15,818	16,132	209,504	$1,257,024	TOTAL NEW SALES	
Less: Cost of Goods Sold	33%	5,241	5,386	5,220	4,667	5,980	5,773	6,084	5,904	7,169	7,169	5,220	5,323	69,136			
GROSS PROFIT		10,640	10,935	10,598	9,475	12,142	11,721	12,352	11,987	14,556	14,556	10,598	10,808	140,368	$2,618,801	**PROJECTED INCOME**	
Price Per Unit		$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3				
# Units Sold		5,293	5,440	5,273	4,714	6,041	5,831	6,145	5,964	7,242	7,242	5,273	5,377	69,835			
Beer/Wine																	
Percent of Total Sales	25%																
Total Sales		49,626	51,001	49,430	44,192	56,632	54,667	57,614	55,911	67,892	67,892	49,430	50,412	654,700			
Less: Cost of Goods Sold	33%	16,377	16,830	16,312	14,583	18,688	18,040	19,012	18,451	22,404	22,404	16,312	16,636	216,051			
GROSS PROFIT		33,250	34,171	33,118	29,609	37,943	36,627	38,601	37,461	45,488	45,488	33,118	33,776	438,649			
Price Per Unit		$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6				
# Units Sold		8,271	8,500	8,238	7,365	9,439	9,111	9,602	9,319	11,315	11,315	8,238	8,402	109,117			
Milkshakes/Desserts																	
Percent of Total Sales	5%																
Total Sales		9,925	10,200	9,886	8,838	11,326	10,933	11,523	11,182	13,578	13,578	9,886	10,082	130,940			
Less: Cost of Goods Sold	33%	3,275	3,366	3,262	2,917	3,738	3,608	3,802	3,690	4,481	4,481	3,262	3,327	43,210			
GROSS PROFIT		6,650	6,834	6,624	5,922	7,589	7,325	7,720	7,492	9,098	9,098	6,624	6,755	87,730			
Price Per Unit		$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6	$ 6				
# Units Sold		1,654	1,700	1,648	1,473	1,888	1,822	1,920	1,864	2,263	2,263	1,648	1,680	21,823			

5.7 Purchasing/Supply Chain

- Our beef burgers are never frozen Certified Black Angus ground beef partially sourced from IX Ranch out of Big Sandy, MT, and Green Mountain Ranch of Montana
- Hand crafted buns created for The Burger Dive by Grains of Montana
- Locally sourced microbrew beer for the onion ring batter from Angry Hank's,
- Premium ice cream for milkshakes made in Billings by Wilcoxson's Ice Cream
- Billings based City Brew coffee
- Beer sourced from locally sourced breweries.

5.8 Number of Seats

Sales projections for the first year are $2,618,460. Below is a chart with the number of chairs filled each day for lunch and dinner. With seating for 100 there would be an average of 3-5 table turns at lunch and an average of 2-4 table turns at dinner the first year.

The Burger Dive
Weekly Sales Projection

Number of Se 100

		Counter		Drive-Thru				% of
		# of Customer	Sales	Number of Carr	# of Customer	Sales	Total Sales	Week Sales
Monday	Breakfast	0	0	0	0	0	0	
	Lunch	350	4,200	0	0	0	4,200	
	Dinner	150	2,250	0	0	0	2,250	
	Day Totals	500	$6,450		0	$0	$6,450	12.3
Tuesday	Breakfast	0	0	0	0	0	0	
	Lunch	350	4,200	0	0	0	4,200	
	Dinner	150	2,250	0	0	0	2,250	
	Day Totals	500	$6,450		0	$0	$6,450	12.3
Wednesday	Breakfast	0	0	0	0	0	0	
	Lunch	350	4,200	0	0	0	4,200	
	Dinner	167	2,505	0	0	0	2,505	
	Day Totals	517	$6,705		0	$0	$6,705	13.3
Thursday	Breakfast	0	0	0	0	0	0	
	Lunch	450	5,400	0	0	0	5,400	
	Dinner	150	2,250	0	0	0	2,250	
	Day Totals	600	$7,650		0	$0	$7,650	15.2
Friday	Breakfast	0	0	0	0	0	0	
	Lunch	450	5,400	0	0	0	5,400	
	Dinner	300	4,500	0	0	0	4,500	
	Day Totals	750	$9,900		0	$0	$9,900	19.7
Saturday	Breakfast	0	0	0	0	0	0	
	Lunch	600	7,200	0	0	0	7,200	
	Dinner	400	6,000	0	0	0	6,000	
	Day Totals	1,000	$13,200		0	$0	$13,200	26.2
Sunday	Breakfast	0	0	0	0	0	0	
	Lunch	0	0	0	0	0	0	
	Dinner	0	0	0	0	0	0	
	Day Totals	0	$0		0	$0	$0	0.0
WEEK TOTALS	Week Totals	3,367	$50,355		0	$0	$50,355	
	Sales Mix %		100.0%			0.0%	100.0%	
Catering / Parties/ Outside	Ave. # of events / Week			0.0				
	Average Count			0				
	Per Person Average $							
	Ave. Catering Sales Per Week						$0	0.0
WEEK TOTALS - All Sales	Totals in $						50,355	100.0

RECAP: Key Sales Numbers:	
Annual Sales	$2,618,460
Average Monthly Sales	$218,205
Annual Sales Per Square Foo	$179
Annual Sales Per Seat	$26,185

5.9 Hourly Labor

Labor has been around $19,000 per month at full capacity for the past few years totaling $288,000 per year. We are projecting the labor cost to go up by two thirds at full capacity. With COVID restrictions still in place we are projecting our labor cost to 1.5 the first year to $332,000. We are projecting a 3% for the next two years with labor projected accordingly at $343,620 for year two and $355,647 in year three.

The chart below would be at full capacity $9033 per week x 52 week = $468,000 per year. We can see this in year 4 and 5.

The Burger Dive

Hourly Labor Projection Worksheet

- EARLY -																
(breakfast & lunch) 7:00AM - 3:00P		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Sunday		WEEK
Covers		350		350		350		450		450		600		0		2,550
Total Restaurant Sales		$4,200		$4,200		$4,200		$5,400		$5,400		$7,200		$0		$30,600
Position	Rate	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Labor $
Prep Cooks	$11.00	8.0	1	8.0	1	8.0	1	8.0	1	8.0	1	7.0	1	0.0	0	$517
Fry Cooks	$12.50	8.0	3	8.0	4	8.0	4	8.0	4	8.0	4	8.0	4	0.0	0	$2,300
Grill Cooks	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Counter	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Counter Cashier	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Drive-Thru Cashier	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Dishroom	$9.50	4.0	1	4.0	1	4.0	1	5.0	1	6.0	1	6.0	1	0.0	0	$276
Server	$8.65	6.0	4	6.0	4	6.0	4	6.0	4	6.0	4	6.0	4	0.0	0	$1,246
Busser	$8.65	8.5	2	8.7	2	8.7	2	8.7	2	8.7	2	9.0	2	0.0	0	$905
Labor Cost Per Shift - $		$781		$884		$884		$894		$903		$897		$0		$5,243
Labor Cost Per Shift - %		18.6%		21.1%		21.1%		16.5%		16.7%		12.5%		#DIV/0!		17.1%

- PM SHIFT -																
(dinner only) 3:00PM - 10:00PM		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Sunday		WEEK
# of Customers		150		150		167		150		300		400		0		1,317
Total Restaurant Sales		$2,250		$2,250		$2,505		$2,250		$4,500		$6,000		$0		$19,755
Position	Rate	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Hours	#	Labor $
Prep Cooks	$11.00	8.0	1	8.0	1	8.0	1	8.0	1	8.0	1	7.0	1	0.0	0	$517
Fry Cooks	$12.50	8.0	3	8.0	3	8.0	3	8.0	3	8.0	3	8.0	3	0.0	0	$1,800
Grill Cooks	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Counter	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Counter Cashier	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Drive-Thru Cashier	$0.00	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	$0
Dishroom	$9.50	4.0	1	4.0	1	4.0	1	4.0	1	4.0	1	4.0	1	0.0	0	$228
Server	$8.65	4.0	4	4.0	4	4.0	4	4.0	4	4.0	4	4.0	4	0.0	0	$830
Busser	$8.65	4.0	2	4.0	2	4.0	2	4.0	2	4.0	2	4.0	2	0.0	0	$415
Labor Cost Per Shift - $		$634		$634		$634		$634		$634		$623		$0		$3,791
Labor Cost Per Shift - %		28.2%		28.2%		25.3%		28.2%		14.1%		10.4%		#DIV/0!		19.2%

- DAY / WEEK TOTALS - HOURLY LABOR - (without Catering/Special Event Labor)							
Hourly Labor - $	$1,414	$1,518	$1,518	$1,527	$1,537	$1,520	$0	$9,033
Hourly Labor Cost - %	21.9%	23.5%	22.6%	20.0%	15.5%	11.5%	#DIV/0!	17.9%

- CATERING / SPECIAL EVENT LABOR -				
Average Event Guest Count	0			
Per Person Average $	$0			
Average Sales Per Event	$0			
Position	Rate	Hours	#	Labor Cost $

WEEKLY HOURLY LABOR with CATERING LABOR		
Ave. Number of Events Per Week	0.0	
Ave. Labor Cost Per Event	$0	
Total Catering Labor Per Week		$0
Total Hourly Labor Per Week with Catering Labor		$9,033

5.10 Staffing

We will be adding 6-9 employees to the staff. We currently have 4 managers, 8 cooks, 6 servers, and will be increasing by 1 manager, 2 cooks, 4 servers.

We will be applying for a Big Sky Trust Fund grant to leverage more funding; $5,000 per each new job that we create over the next two years.

6.0 **MANANGEMENT SUMMARY**

6.1 Management

The Burger Dive team has a total of over 80 years of experience in the restaurant industry.

Brad and Andi Halsten are the driving force behind The Burger Dive. Brad has lived in Billings, MT for the last 28 years. After earning his bachelor's degree from Rocky Mountain College, he worked with emotionally disturbed children from 1996 until 2010. Brad has been in the restaurant industry since opening The Burger Dive in 2010. Though The Burger Dive was his first restaurant job, Brad began to pursue and attract high level media exposure which has benefitted the restaurant sales through major national, local and statewide media coverage including wins at the 2014 Food Network Burger Bash, 2016 World Burger Championship, an appearance on The Travel Channel show Man V Food, and multiple national level publications such as Star, People and Travel and Leisure Magazine as well as the New York Times.

Andi has been a vital force behind the operation of The Burger Dive since day one. She has a degree in Psychology from the University of Montana. She has had several years of restaurant experience in various jobs in the San Diego Ca area. Upon returning to Montana in the early 2000s she became a manager of group homes for emotionally disturbed youth in the Butte area. She continued this work upon moving to Billings MT in 2010 working as a transition case manager for Yellowstone Boys and Girls Ranch. In 2010 she opened The Burger Dive and has helped to turn the startup into a thriving business for 10 years.

6.2 Personnel Plan

The Burger Dive currently has a very solid group of employees at all positions throughout the restaurant day shift. Interviews and hiring are being conducted with the intent to begin evening dinner service at the current location with a target date of September 15, 2020. Brad and Andi will maintain their roles of chef/kitchen manager and General Manager. Brady Halsten will assume the role of nighttime manager.

6.3 Management Team

- Brad Halsten leads the Burger Dive, a ten-year veteran of the restaurant industry and self-taught National and International Award-Winning Executive Chef. Brad has won the Food Network Burger Bash, the 2016 World Burger Championship and been featured on TV shows such as Man V Food on Travel Channel.

- Andrea Halsten handles General Management, 17-year veteran of the restaurant industry specializing in food service and sales. She has 14 years in management/supervision of staff.

- Brendan Halsten, Front End Manager/Assistant Manager, 15-year industry veteran with 10 years' experience on The Burger Dive management team. He assisted in development of Standard Operating Procedures for startup of The Burger Dive and was a key component to the efficiency and quality of the food output as he and Brad designed all kitchen prep and cooking procedures and training of kitchen staff and he brings an invaluable range of abilities. He can execute all positions on the cook line, prep kitchen, front of house, and manages all operating systems in the absence of the GM. He is an Award-Winning member of the 2016 World Burger Championship

team as grill master and 2017 team having again finished in the Top 5 in the World Burger Competition. In addition to competing in Wood Food Championships 2016 to 2019, he represented The Burger Dive and the state of Montana while cooking and serving iconic dishes that represent Montana at the Flavored Nation Festival in Columbus, Ohio in 2018 and 2019.He excels in food sales, customer/employee relationships, and as Maintenance Supervisor.

- Brady Halsten, Manager, worked at The Burger Dive and at a local pizzeria for a combined 3 years before moving on to Denver, CO for college. He worked 4 years as a shift supervisor/manager in training at one of the nation's leading coffee chains in Denver, CO and San Jose, CA while in college. He has 3 years towards a degree in Business Administration with an emphasis in Marketing. Through a combination of extensive business experience, valuable academic coursework. He has been hired to expand the current hours to include a dinner service which will bring in an additional $125,000 in annual gross sales for 2020 and $500,000 additional gross sales 2021.

- Gary Halsten, Beverage Manager/Business Consultant/former Burger Dive Sous Chef is a 17 year veteran of the industry and also member of the Award Winning 2014 Burger Bash winning team at the Food Network South Beach Food and Wine Festival and 2016 World Burger Champion team as well as competing in the World Burger Competition 2016 to 2018. Gary brings a unique business perspective as he owned and operated a General Contracting Firm in Lake County, California from 1978 to 1990. In 1985 Gary and Chef Jaime Carleto established a startup French California Fusion Bistro in Calistoga, CA. As innovators of farm to table in the pre-farm to table era, they successfully operated in the highly competitive environment in the Napa Valley. Gary was in charge of front of house including developing and maintaining a comprehensive wine list, beer selection and handling all front of house functions emphasizing high quality items while maintaining cost control and maximizing profits. He was the Tuscan Club Wine and Food Manager at Viansa Winery, Sonoma Valley, California 1995 to 1998. He was in charge of food and wine selection, packaging, shipping of the 5000 member Tuscan Club while overseeing 40 employees.

7.0 **THE LOCATION**

7.1 The Site

The Burger Dive's new location will be on 27th Street and Minnesota Ave, Billings, MT. This location is 6 blocks South of our current location and is within walking distance to the downtown area and close to the downtown hotels. The space has historical value and is close to the very poplar historic Montana Ave. We are confident that the building and location are a good fit for our business and the additional space will allow us to expand our business and hours of operation as well as attract new customers.
Square footage now# 2,400 with new space having # 6,000 square feet

7.2 The Neighborhood
The area around 27th Street South is largely commercial. In the past few years, this area has become somewhat of a hotspot for downtowners walking the Brewery tour.

Burger Dive has been in this neighborhood for the past 10 years and has been very successful. Our ability to grow our business just a few blocks south of our present location has launched us forward to expand our business facility size as well as our offerings. We bring a sense of community and family to this neighborhood.

7.3 Proposed Layout

Old location had seating capacity of 50 chairs; new space will have 100 chairs. Currently we have had to turn away customers because the waiting line became too long, and customers only had an hour lunch hour. We will now have the capacity to hold and serve 100 -150 customers which includes patio seating in the summer months. The larger kitchen will allow us to produce more burgers as our customer base grows.

7.4 Key Features

- The move and expansion to a larger building will increase the seating capacity and add a Patio Area for outdoor dining and bar area to include a dinner service and the addition of beer and wine sales and live music/art performances.
- We will be promoting house made cakes and pastries to compliment the espresso bar.
- We plan on increasing our retail merchandise sales and sales of sauces and other food items with the intention to grow into wholesale distribution by bottling our own sauce for retail sales.
- Our plan is to have onsite catering location

7.5 Equipment Purchases (Wish List)

The Burger Dive will require estimated $266,188 worth of new equipment to accomplish the move to the new building. The following is a somewhat complete list of the needed equipment:

7.5a Computer and POS System
- Computer system, including printer, Internet connection
- POS System
- Computer
- Printer
- Surge protectors x6

7.5b Large Kitchen Equipment

- Convection oven
- Walk in Refrigeration Unit
- Espresso machine and coffeemaker
- 4 fryers
- 72-inch flat top grill
- Iced Tea maker and coffee station
- Ice water spicket and station
- Hand wash sink in bar area
- Reach in cooler for pint glasses
- 3 compartment sinks in bar
- Under counter glass washer
- Under counter refrigerator
- Large 42-inch worktop freezer
- 1 door refrigerator for potatoes on the line
- 48-inch countertop freezer
- 1 door standup fridge
- 1 door standup meat refrigerator
- Ice cream freezer
- Microwave oven
- 2 stainless steel tables for pastry spice prep corner
- Scullery station
- 3 compartment sinks with sprayer
- Hand wash sink
- Countertop dishwasher
- Stainless steel worktable
- Stainless steel table with backing
- Tables, chairs, table accessories
- Shelving units
- Lighting units

7.5c Small Equipment

- Assorted knives and cutting boards
- Serving dishes, silverware, food containers
- Fountain and soda gun
- Ice well
- Blender/food processor
- Shelf rack
- Induction burners and convection oven
- 24-inch griddle for tasting buns
- 24-inch char broil grill
- Rack for grilling equipment
- Equipment stands for char and flat top grills
- 2 hanging bottle holder racks
- 2 six-foot sandwich prep tables.
- 2 stainless steel prep tables
- Long leg shelf x2 for serving food
- High stainless-steel shelf over soup station x2
- 2 soup warmers
- 2 milkshake mixers and ice cream dipper well
- Handwash sink
- Vitamix
- Under counter fridge for milkshakes

- 6 stainless steel shelving in shake area
- Potato cutter
- Deep veg prep sink
- Onion ring cutter
- Scale
- Patty press
- Veg prep table
- Wall mounts for cans
- Countertop cake mixer
- 3 stainless steel racks
- Spice rack
- Rack for dirty dishes
- 6 slim Jim garbage cans
- 1large oval garbage can with magnetized lid
- Grease trap
- 2 stainless steel prep tables
- Hanging pots and pan rack
- Lon security lighting
- Lockable racks for fridges and dry for alcohol storage
- Casters for all racks and tables and equipment
- Counter pastry display case
- Employee lockers x30
- Coat rack
- Waitress stationx3

7.5d Restrooms

- Men's and women's bathroom and 1 unisex/family bathroom
- Microwave for family bathroom
- Nursing chair
- Changing table
- Storage rack
- Urinal
- 4 toilets
- 3 mirrors
- 5-bathroom sinks
- 3 hand dryers
- 5 soap dispensers/bathroom

7.5e Cleaning Equipment

- Mop sink
- 2 mop buckets
- 4 wet floor signs
- 2 mop handles
- 2 deck scrub
- 1 vacuum
- Floor polisher
- Snow shovel
- Rack for chemicals x3
- 2 hoses
- Water can

7.5f Retail

- T shirt display racksx6

- Shelf for mugs for sale

7.5g Office Equipment
- Desk
- Computer
- Monitors for security system
- File cabinet
- Large safe
- Small safe
- Floor lamp
- Couch

7.5h Security Equipment
- Lighting exterior and interior
- Security lighting
- Security cameras
- Sound system back kitchen and front/back, basement, retail store
- Exterior sign
- Interior signs

7.5i Bar Equipment
- Wine glasses and pint glasses for beer
- Bar 3 compartment sink
- Bottled beer trough
- New bar and to go counter tops with drink rail
- Benches for to go area and outside smoking area
- Chairs and tables for patio seating, dining room, basement
- 6 to 10 tap glycol draught beer system
- Refrigeration for bottled beers and refrigeration for white wines and roses.
- 10 by 10 walk in cooler with locked area devoted to alcohol
- 9 TV Sets
- Bar stools basement and dining room
- Stand for record player and records
- Wall decor
- Gooseneck faucet
- Immersion blender
- Large ice machine 1500 pound
- Shelving for red wines.
- 8 dry storage racks
- Pots pans, dishes, and small wares
- 2 cigarette butt receptacles
- 2 beer taps
- Beer refrigerator
- Wine refrigerator
- Under counter glass front storage for red
- Beer trough
- Bar 3 compartment sink
- Ice well
- Handwash sink
- Undercounter dishwasher
- Red wine racks
- Water spicket
- 5 stainless steel tables

- Glass bottles
- Label maker
- Under counter refrigerator
- 2 dumbwaiter wheel carts
- 3 dirty dish racks
- 2 large garbage cans
- Hostess station
- Glass urn for water

8.0 **FINANCIAL PLAN**

To expand the operation, we propose a total projected budget of $3,650,784. The following outlines how this budget will be allocated.

8.1 Table: Sources and Uses of Funds

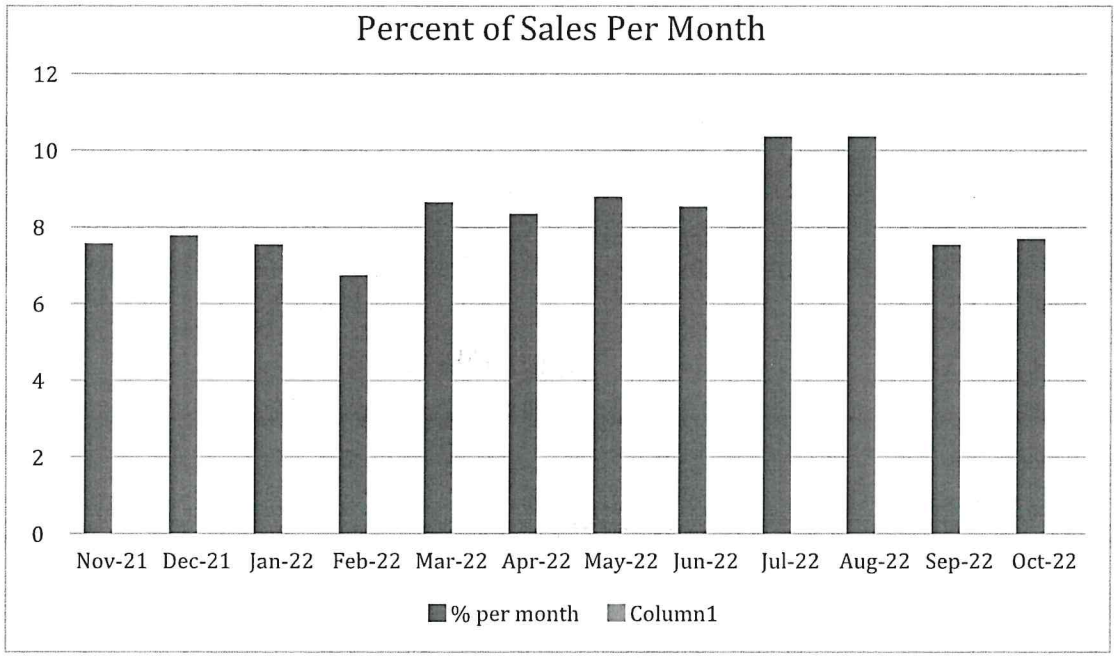
SOURCES & USES OF FUNDS

SOURCES OF FUNDS				
Investment of Cash by Owner (equity)	$ 150,000		$1,228,784	Equity and grants
Equity				
Investment of Non-cash Assets by Owner (lower of market value or cost)	$ 66,000		Equipment you already have	
DBA TIF Grant Renewable Tax Credit	$ 466,373		TIF Grant is cash	
Historic Tax Credits	$ 680,199		Converts to cash when sold	
RLF Loan from DBA (4% 20 yrs)	$ 250,000			
Loan to Business - 504 SBA Lo (2.21% 20 yr)	$ 942,000	44.4%	$2,372,000	Loan amount
Commerical Bank Loan (4.25% 220 yr)	$ 1,180,000	55.6%		
TOTAL SOURCES OF FUNDS	$3,739,572		Sources and Uses must equal each other	
USES OF FUNDS				
Construction	$ 2,302,005			
			$3,126,289	
Building	$ 290,000		Architecture hard & soft cost	
Equipment	$ 266,128			
Soft Costs	$ 534,284			
Marketing - sign/website	$ 43,800			
POS System	$ 22,276			
Furniture & Fixtures	$ 130,000			
Beer/Wine Licence (Cabaret)	$ 40,000			
Non-cash Assets Contibuted by Owner (equipment)	$ 66,000		This is a wash with the # in your sources	
Working Capital	$ 52,291			
TOTAL USES OF FUNDS	3,650,784			

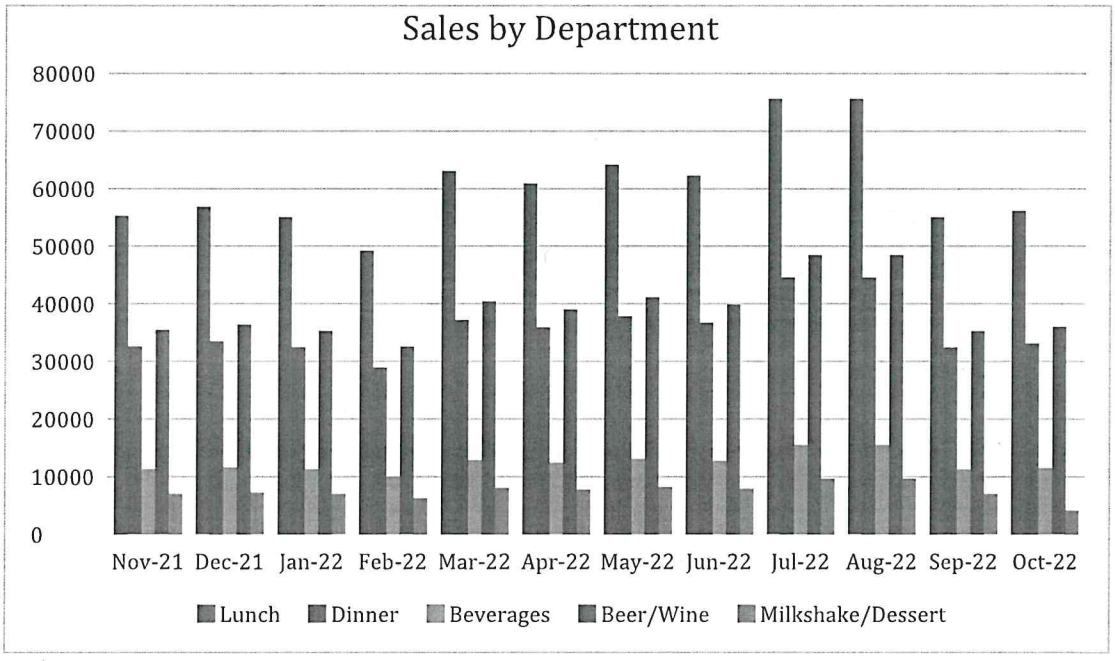
8.2 Table: Sales Forecast for 3-year Cashflow

Burger Dive		**2021/2022**	**2022/2023**	**2023/2024**
	Pre-Project			
Month\Year		TOTAL	TOTAL	TOTAL
Revenue:	Estimate	Estimate	Estimate	Estimate
Beginning Cash	$1,228,784	$52,291	$859,800	$1,691,519
Cash Sales SBA Lo	$942,000	$2,618,801	$2,697,365	$2,778,286
RLF Loan	$250,000			
Bank Loan	$1,180,000			
Total Cash Receipts	$2,372,000	$2,618,801	$2,697,365	$2,778,286
Total Cash Available	$3,600,784	$2,671,092	$3,557,165	$4,469,805
Operating Expenses				
Purchases\Inventory		$864,204	$890,130	$916,834
Gross Wages		$332,000	$343,620	$355,647
Payroll Expense		$49,800	$51,543	$53,347
Professional Fees		$15,600	$16,146	$16,711
Office Supplies/ Dues & Subs.		$3,000	$3,105	$3,214
Equipment,Repairs,Maintenance		$8,844	$9,154	$9,474
Marketing		$24,000	$24,840	$25,709
Travel/mileage Reimbursment		$4,200	$4,347	$4,499
Supplies & Linen Services		$16,800	$17,388	$17,997
Taxes, License, Permits		$29,004	$29,004	$29,004
Meals (50%)		$2,400	$2,484	$2,571
Utilities NW/MDU/Water		$15,600	$16,146	$16,711
Insurance		$8,248	$8,537	$8,835
Credit Card Service		$78,564	$81,314	$84,160
Property Tax		$14,004	$14,494	$15,001
Soft Costs /Rent payment	$534,284	$80,400	$83,214	$86,126
Website/monthly SEO cost	$22,276	$1,800	$1,863	$1,928
Telephone/internet		$2,640	$2,732	$2,828
Officer Compensation		$96,000	$99,360	$102,838
Subtotal	$556,560	$1,647,108	$1,699,421	$1,753,435
Bank$1,179,396 4.25% 20yr REMODEL	$2,302,005	$87,684	$87,684	$87,684
SBA $941,820 2.21% 20 yr BUILDING	$290,000	$58,320	$60,361	$62,474
RLF $250,000 4% 20 yr SIGNAGE	$43,800	$18,180	$18,180	$18,180
CABARET LICEI	$40,000			
EQUIPMENT & FURNITURE/FIXTURES	$316,128			
Total Cash Paid	$3,548,493	$1,811,292	$1,865,646	$1,921,772
Cash Position	$52,291	$859,800	$1,691,519	$2,548,033

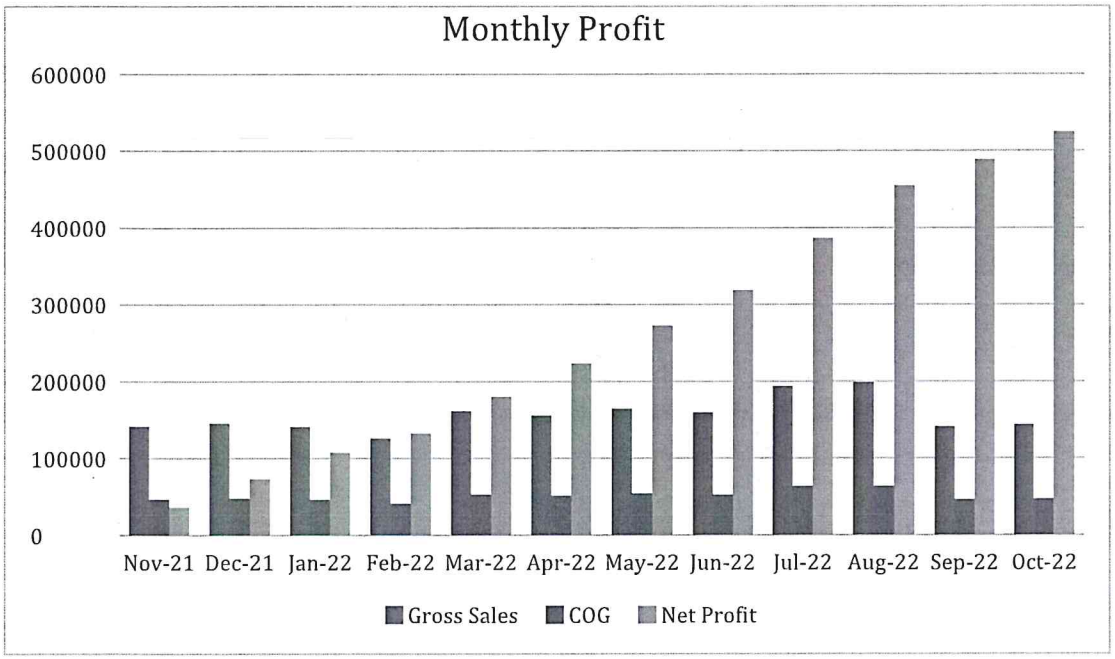
8.3 Chart: Percent of Sales Per Month



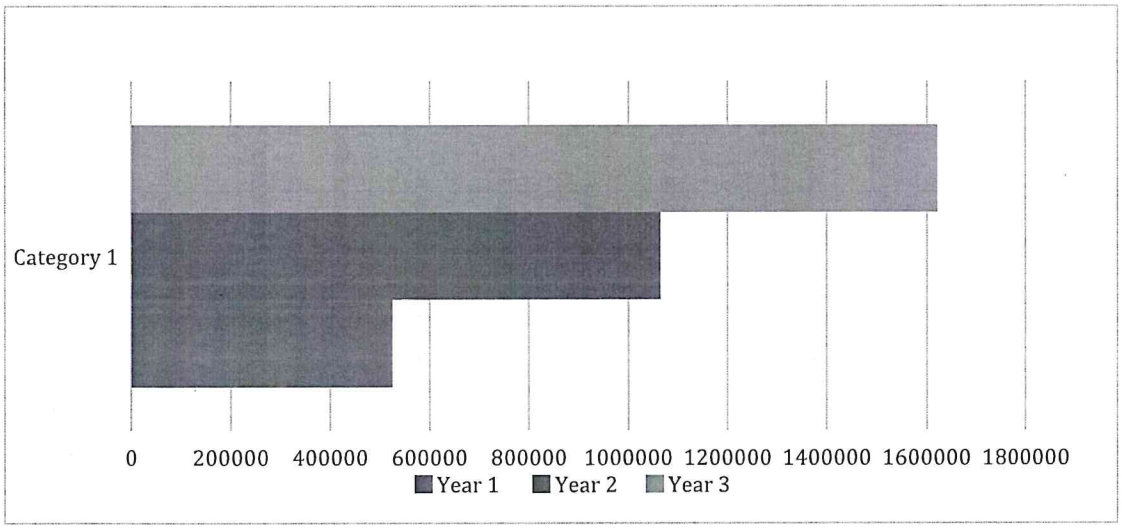
8.4 Chart: Monthly Projected Sales by Department



8.5 Chart: Monthly Profit 2021/2022



8.6 Chart: Profit by Year



8.7 Table: Projected Cash Flow 2021/2022

Burger Dive				Brad and Andy Halslen				Address Billings, MT 59101					Date	2021/2022
Month\Year	Pre-Project	1 Nov	2 Dec	3 Jan	4 Feb	5 Mar	6 Apr	7 May	8 Jun	9 Jul	10 Aug	11 Sep	12 Oct	TOTAL
Revenue:	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate	Estimate
Beginning Cash	$1,228,784	$52,291	$104,274	$159,777	$217,008	$260,830	$336,497	$404,836	$477,267	$545,340	$644,084	$742,829	$800,057	$52,291
Cash Sales SBA Loan	$942,000	$198,505	$204,005	$197,719	$176,769	$226,526	$218,670	$230,454	$223,646	$271,570	$271,570	$197,719	$201,648	$2,618,801
RLF Loan	$250,000													
Bank Loan	$1,180,000													
Total Cash Receipts	$2,372,000	$198,505	$204,005	$197,719	$176,769	$226,526	$218,670	$230,454	$223,646	$271,570	$271,570	$197,719	$201,648	$2,618,801
Total Cash Available	$3,600,784	$250,796	$308,279	$357,497	$393,777	$487,356	$555,167	$635,290	$700,912	$816,909	$915,654	$940,548	$1,001,705	$2,671,092
Operating Expenses														
Purchases\Inventory		$65,507	$67,322	$65,247	$58,334	$74,754	$72,161	$76,050	$73,803	$89,618	$89,618	$65,247	$66,544	$864,204
Gross Wages		$30,000	$30,000	$25,000	$25,000	$25,000	$27,000	$30,000	$30,000	$30,000	$30,000	$25,000	$25,000	$332,000
Payroll Expense		$4,500	$4,500	$3,750	$3,750	$3,750	$4,050	$4,500	$4,500	$4,500	$4,500	$3,750	$3,750	$49,800
Professional Fees		$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$15,600
Office Supplies/ Dues & Subs.		$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$250	$3,000
Equipment,Repairs,Maintenance		$737	$737	$737	$737	$737	$737	$737	$737	$737	$737	$737	$737	$8,844
Marketing		$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$2,000	$24,000
Travel/mileage Reimbursment		$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$350	$4,200
Supplies & Linen Services		$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$1,400	$16,800
Taxes, License, Permits		$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$2,417	$29,004
Meals (50%)		$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$200	$2,400
Utilities NW/MDU/Water		$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$1,300	$15,600
Insurance		$687	$687	$687	$687	$687	$687	$687	$687	$687	$687	$689	$689	$8,248
Credit Card Service		$5,955	$6,120	$5,932	$5,303	$6,796	$6,560	$6,914	$6,709	$8,147	$8,147	$5,932	$6,049	$78,564
Property Tax		$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$1,167	$14,004
Soft Costs /Rent payment	$534,284	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$6,700	$80,400
Website/monthly SEO cost	$22,276	$150	$150	$150	$150	$150	$150	$150	$150	$150	$150	$150	$150	$1,800
Telephone/internet		$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$220	$2,640
Officer Compensation		$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$8,000	$96,000
Sublotal	$556,560	$132,840	$134,820	$126,807	$119,265	$137,177	$136,649	$144,342	$141,890	$159,143	$159,143	$126,809	$128,223	$1,647,108
Bank$1,179,396 4.25% 20yr REMODEL	$2,302,005	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$7,307	$87,684
SBA $941,820 2.21% 20 yr BUILDING	$290,000	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$4,860	$58,320
RLF $250,000 4% 20 yr SIGNAGE	$43,800	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$1,515	$18,180
CABARET LICENCE	$40,000													
EQUIPMENT & FURNITURE/FIXTURES	$316,128													
Total Cash Paid	$3,548,493	$146,522	$148,502	$140,489	$132,947	$150,859	$150,331	$156,024	$155,572	$172,825	$172,825	$140,491	$141,905	$1,811,292
Cash Position	$52,291	$104,274	$159,777	$217,008	$260,830	$336,497	$404,836	$477,267	$545,340	$644,084	$742,829	$800,057	$859,800	$859,800

8.8 Table: Projected Income Statement

Projected 3 Year Income Statement

Name Burger Dive **Date**

Address Billings, MT 59101

YEAR	2021/2022		2022/2023		2023/2024	
INCOME						
Gross Receipts	$2,618,801		$2,697,365		$2,778,286	
Cost of Goods Sold (COGS)	864,204	33%	890,130	33%	916,834	33%
Gross Profit	$1,754,597	67%	$1,807,235	67%	$1,861,452	67%
EXPENSES						
Gross Wages / Payroll Exp.	381,800		395,163		408,994	
Professional Fees	$15,600		$16,146		$16,711	
Office Supplies/ Dues & Subs.	3,000		3,105		3,214	
Equipment,Repairs,Maintenance	8,844		9,154		9,474	
Marketing	24,000		24,840		25,709	
Travel/mileage Reimbursment	4,200		4,347		4,499	
Supplies & Linen Services	16,800		17,388		17,997	
Taxes, License, Permits	29,004		29,004		29,004	
Meals (50%)	2,400		2,484		2,571	
Utilities NW/MDU/Water	15,600		16,146		16,711	
Insurance	8,248		8,537		8,835	
Credit Card Service	78,564		81,314		84,160	
Property Tax	14,004		14,494		15,001	
Soft Costs /Rent payment	614,684		83,214		86,126	
Website/monthly SEO cost	24,076		1,863		1,928	
Telephone/internet	2,640		2,732		2,828	
Officer Compensation	96,000		99,360		102,838	
Interest on 250,000 + 942,820	30,280		29,096		27,878	
Interest on 1,179,396	49,410		47,751		46,021	
Other	2,640		2,732		2,828	
Total Expenses	$1,421,794	54%	$888,870	33%	$913,328	33%
Net Profit Before Tax	$332,802	13%	$918,364	34%	$948,124	34%
Taxes (consult your CPA)						
Net Profit after Tax (PAT)	**$332,802**	13%	**$918,364**	34%	**$948,124**	34%

8.9 Table: Projected Balance Sheet

The following table indicates the Projected Balance Sheet

Pro-Forma Balance Sheet

Name Burger Dive **Date**

Address Billings, Montana 59101

Assets			**Liabilities**		
Current Assets:			**Current Liabilities:**		
Cash	$52,291		Accounts Payable	$0	
Accounts Receivable	-		Current Portion of		
Product Inventory	10,000		Bank Loan	38,254	
Supplies	5,000		RLF Loan	18,179	
PrePaid Expenses	-		SBA Loan	37,473	
POS System	22,276				
Total Current Assets		89,567	*Total Current Liabilities*		93,906
			Long-term Liabilities		
Fixed Assets:				-	
Land & Building	290,000		Bank Loan Payable	1,141,142	
Leasehold			RLF Loan	231,821	
Improvements	2,302,005		SBA Loan	903,947	
Cabaret License	40,000				
New Equipment	226,128		*Total long-term Liabilities*		2,276,910
Equipment on hand	66,000				
Sign	43,600		**Total Liabilities**		2,370,816
Furniture & Fixtures	50,000				
Total Fixed Assets		3,017,733	**Net Worth: Owners Equity**		$736,484
Total Assets		$3,107,300	Total Liabilities & Net Worth		$3,107,300

8.10 Table: Debt Coverage Ratio

Soft Cost are calculated in the first year with 2.51 DCR, year 2, 5.99% and year 3, 6.07%

Cash Flow:			
(available to service debt)	$412,493	$995,212	$1,022,023
Debt Service	$164,184	$166,225	$168,337
Total	$248,309	$828,987	$853,686
Debt Coverage Ratio	2.51	5.99	6.07

We have an additional line of Credit at the Western Security bank to use for working capital. We also have a savings account with xxx in case of unknown expenses that might arise.

- Michael Morrison, Big Sky CPA is our accountant
- Randy Hafer, High Plains Architects is working with us on the design plan and historical tax credits
- Duncan Peete is our attorney who will be handling all legal issues.

8.11 Financial Projection Assumptions

These operating statements assume a sales growth rate of 3% each year for the next 3 years of operation, then we assume we will have a higher growth moving forward. We project our busiest days and meal periods to be Friday & Saturday Lunch with 5 – 6 turns on average and Friday & Saturday Dinner with 6 turns on average. Our quietest periods are to be Monday – Thursday Dinner with only 2 turns on average and Tuesday – Thursday Lunch with only 5 turns on average.

We project an average check of $15 at Dinner, $12 at Lunch. These average check estimates include beverages.

Food and beverage cost are estimated to be **33%** of sales. Throughout, we assume these costs of goods sold percentages will remain relatively stable as they have for the past 10 years of business. We will accommodate changes in individual item costs due to our potential Cabaret License with Catering Endorsement requires it to be that way.

Other operating costs are based on industry averages and area norms.

For the capital budget, we have based our estimates renovation costs. This assumes that all existing base building systems are in acceptable conditions. Working capital is estimated low on the cash flow spreadsheet as we have a line of credit and saving to cover that incase of unforeseen additional expenses during the renovation.

Given all these conservative estimates, the Burger Dive projects profit of $452,402 the first year of its expansion. Year 2 and 3 we have estimated a 3% increase in sales with estimated profits of $1,042,150 the 2nd year and $1,076,243 the 3rd year.

9.0 **THE OFFERING**

9.1 Fund Required

Burger Dive requires a total investment of approximately $3,668,572 to purchase the building, remodel and begin operations, of which $1,296,572 will be obtained with a TIF Grant of $466,373, Historic Tax Credits of $680,199, and $150,000 of owners' equity. The remaining $2,372,000 will come from a RLF loan through the Downtown Business Association of $250,000, a commercial bank loan of $1,180,000 and an SBA 504 loan of $942,000.

9.2 Projected Returns and Payback

Based on the capital budget and operating projections presented in the previous sections, Burger Dive is anticipated to generate a return on investment of 14% in the first year of expansion, and ROI of 30% in year two, an ROI of roughly 46% on year three. The payback period for the loans are 20 years.

9.3 Growth Strategy and Opportunities

The owners of Burger Dive are planning to grow the business with a larger space to hold more customers, better parking, longer hours, and added offerings of the Cabaret License local beer and wine.

Appendix

Consent 1. G.

Regular City Council Meeting
Meeting Date: 05/24/2021
Title: Billings Library Donations
Presented by: Gavin Woltjer
Department: Library

RECOMMENDATION

Staff recommends that the City Council accept the attached donations to the Billings Public Library.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The Library Foundation and a private donor have gifted the Billings Public Library with a total of $8,493 as itemized in the attached document. Administrative Order 117 requires that all donations with value exceeding $500 be accepted by the Council prior to expending the funds.

ALTERNATIVES

City Council may:

- Approve the donations, or;
- Disapprove the donations.

FISCAL EFFECTS

There is no budgetary impact.

Attachments

Library Donations

Donations to the Billings Public Library

Foundation Donations	**Amount**	**Program/Purpose**
NICU	1,193	
Children's Summer Reading	2,450	To enhance the Children's Summer Reading Program
Chromebooks	1,900	
Memorials	1,950	In the name of donors, to be used for book purchases
Other Donation		
Myers	1,000	Books and movies
Total:	$8,493	

Submitted for acceptance by Council on May 24, 2021

City Council Regular

Date:	05/24/2021
Title:	Yellowstone Landing Commercial Park Subdivision - Preliminary Major Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

The Planning Board is forwarding a recommendation of conditional approval of the preliminary plat of Yellowstone Landing Commercial Park Subdivision to the City Council and adoption of the Findings of Fact as presented in the staff report.

PROPOSED CONDITIONS OF APPROVAL

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

1. To protect public health and safety in relation to traffic movement, prior to final plat approval, the applicant will provide the City Engineering Department and the Montana Department of Transportation with a TIS. Any required improvement identified in the TIS will be installed by the applicant as well as striping AJ Way as outlined in the Findings of Fact.

2. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the subdivision.

3. To protect public health and safety and to ensure proper documentation for the proposed phasing of the subdivision, prior to final plat approval the applicant will include the Exhibit and Declaration of Restriction on Transfer documents for future phases.

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

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

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2021, Performance Engineering, agent for Aviation Properties, LLC, applied for preliminary major plat approval for Yellowstone Landing Commercial Park. The proposed subdivision creates 10 lots for commercial development. The subject property is generally located on the north side of Highway 3 and east of A J Way. The property is currently zoned Heavy Commercial (CX). The proposed lots will be developed in compliance with the zoning as the property is developed.

VARIANCE REQUESTED

The applicant is not requesting a variance from the subdivision regulations.

PROCEDURAL HISTORY

- Pre-application meeting January 28, 2021
- Preliminary plat application submitted to Planning Division on March 1, 2021
- Departmental review meeting March 18, 2021
- Preliminary plat resubmittal March 25, 2021
- Planning Board plat review April 13, 2021
- Planning Board public hearing April 27, 2021
- Preliminary plat to City Council May 24, 2021
- 60 working-day preliminary plat review period ends May 25, 2021

PLAT INFORMATION

General location:	North side of Highway 3 and east of A J Way
Legal Description:	COS 2037, Tract 14A
Owner/Subdivider:	Aviation Properties, LLC
Engineer and Surveyor:	Performance Engineering
Existing Zoning:	CX
Existing land use:	Farm Land
Proposed land use:	Commercial
Gross and Net area:	25.96 acres / 21.62 acres
Proposed number of lots:	10
Lot size:	Max: 4.13 acres Min: 0.86 acres
Parkland requirements:	Parkland dedication is not required with commercial subdivisions

STAKEHOLDERS

Staff gave a brief presentation at the public hearing held April 27, 2021, with the Planning Board. President Woods called for questions and discussion from the Board, there were none.

President Woods opened the public hearing and asked if there was anyone wishing to speak in favor or against Yellowstone Landing Commercial Park Subdivision. There was none. One letter from a member of the public was received during the review process regarding this subdivision and concerns about land use, and it is attached to this memo for reference. President Woods closed the public hearing and called for a motion.

A motion was made and seconded to recommend conditional approval of the preliminary plat of Yellowstone Landing Commercial Park Subdivision to the City Council and adopt the Findings of Fact as presented in the staff report. The motion carried with a unanimous voice vote.

ALTERNATIVES

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends on May 25, 2021. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the City Council is required to:

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

FISCAL EFFECTS

This subdivision will have np fiscal effects on the Planning Division.

SUMMARY

One of the purposes of the City's subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider's responsibility to mitigate. Various City departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be a few impacts from this proposed subdivision.

Attachments

Findings of Fact

Preliminary Plat

SIA

Mayor's Letter

Letter from surrounding property owner

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Yellowstone Landing Commercial Park Subdivision. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property is currently used as dry land farm ground, it has been rezoned and is annexed into the City. This proposed development will remove about 21.9 acres of dry land farming out of production. Being dryland farming there are no ditches or water rights to be transferred to new owners. All drains shall remain in place and not be altered by the subdivider or subsequent owners. The subdivision should not affect agricultural water users' facilities.

2. Effect on local services

a. **Utilities** – Public water services to the subject property will be provided by the City of Billings. This subdivision will connect to an existing 12-inch water line in Highway 3. Twelve-inch water lines will be installed in all internal roads with stubs to each lot. All water line construction shall be installed, by the subdivider, in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Division.

Fire hydrants will also be installed, by the subdivider, as required by the City of Billings Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

Sanitary sewer service will be provided by the City of Billings. The sanitary sewer system for the Subdivision will be installed by the subdivider and will consist of an 8-inch low-pressure sanitary sewer force main and gravity sewer main. A gravity sewer main will be constructed along AJ Way from a new connection to the existing manhole in Stoney Ridge Road to the northern extents of the Subdivision. A low-pressure sanitary sewer force main will be constructed along Supercub Way to the extent necessary to serve Lot 6 of Block 1.

Each lot will be provided with individual sewer service connections. All sewer line construction shall be installed, by the subdivider, in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Department.

Private utility providers shall use the provided easement outside the public right of way, these easements are shown on the face of the plat.

b. **Storm water** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping. Each lot will be required to have a detention facility on the lot. In the event of a 50-year storm event they will be allowed to do a controlled discharge into the main detention facility to the east. Stormwater is required to dissipate by means of infiltration that meets the requirements of City of Billings stormwater management manual. It has been proposed that in the event of a 50-year storm and overburden of water, the system will be designed to discharge, by pumping, into a coulee north of the subdivision located on City of Billings property through an easement. This easement would require permission granted by the City of Billings/Logan International Airport. Other methods of storm water management shall also be reviewed. All proposed drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual.*

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – Access to the lots in this proposed subdivision will be from Highway 3. Each individual lot will be accessed from inside the subdivision from either AJ Way, Supercub Way or Huey Way. AJ Way is an existing street and has a 74-foot wide right-of-way. The two new internal streets, Supercub Way and Huey Way will have 70-foot-wide rights-of-way and be built, by the subdivider, to a City of Billings standard 45-foot top back of curb to top back of curb width. A TIS has been submitted to the City of Billings Engineering division and to the Montana Department of Transportation for impacts to Highway 3. City Engineering Department has requested that AJ Way shall be striped to have a left turn and right turn lane onto Highway 3. The subdivider will construct any needed improvements identified in the TIS. **(Condition #1)** This information is outlined in the SIA under the heading III Transportation A. Streets.

Sidewalks will be installed at time of lot construction with 5-foot wide boulevard sidewalks. Road construction will include installation of accessible ramps at the intersections. Sidewalks will not be installed on Highway 3 at the time of lot construction. Highway 3 is a State road and will not be modified with sidewalks at this time. In the future sidewalks along Highway 3 may be installed, this subdivision will participate in that cost. This information is outlined in the SIA under the heading III Transportation B. Sidewalks. All proposed streets construction inside the subdivision will be reviewed and approved by City Engineering before installation. Any construction work on Highway 3 will be reviewed and approved by Montana Department of Transportation.

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 2308 8th Avenue North (Station #1).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** – This subdivision is a commercial subdivision and will have no impacts on the school system.

g. **Parks and Recreation** – This subdivision is a commercial subdivision and is not required to provide parkland dedication.

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #2)**

i. **Historic features** – No known historic or cultural assets exist on the site.

j. **Phasing of Development -** The applicant is proposing to develop this subdivision in phases. Specifics of the proposed phasing and what improvements will be installed with each phase is identified in the SIA under the heading X. Phasing of Improvements.

Montana subdivision regulations require developers proposing to do phasing in the subdivision to set a date when they plan to proceed with each phase. This developer has provided proposed dates for phase 2 to begin, January 2025. Phase 3 is to begin by January 2029.

At or before this date the applicant is required to go through a public hearing to open the phases. At that public hearing, there is the possibility of additional conditions of approval being added to the original conditions of approval. Should the applicant not meet these dates they must propose new dates, at a public hearing, for the phases to begin.

Each phase will need to have a Certificate and Release for the phases to be submitted with the final plat, these documents need to be included at final plat. **(Condition #3)**

3. Effect on the natural environment

The subject property is relatively level land adjacent to dryland farming uses to the west and north. Across Highway 3 there is residential and to the east is future commercial development and the Billings Airport. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading II. Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

> **Prosperity (promoting equal opportunity and economic advancement):** A diversity of available jobs can ensure a strong Billings' economy (p.9)
>
> **Prosperity (promoting equal opportunity and economic advancement):** Successful businesses that provide local jobs benefit the community. (p.9)

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP shows a future bike lane along Highway 3. There are no identified trails within the proposed subdivision.

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

The proposed subdivision satisfies the requirements of the Montana Subdivision and Platting Act and to the design standards specified in the local subdivision regulations.

The subdivider and the local government have complied with the subdivision review and approval procedures set forth in the local and state subdivision regulations.

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

The subject property is located within the Heavy Commercial (CX) zoning district. All building development on the lots shall comply with current zoning when applying for a building permit.

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

The subdivider has provided private utility easements as requested by private utility providers on the face of the plat.

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

Legal and physical access is provided to the proposed lots from Highway 3. All existing and new proposed streets are dedicated to the public as shown on the plat.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Yellowstone Landing Commercial Park Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

The Planning Board is forwarding a recommendation of conditional approval of the preliminary plat of Yellowstone Landing Commercial Park Subdivision to the City Council and adoption of the Findings of Fact as presented in the staff report.

PRELIMINARY PLAT OF

YELLOWSTONE LANDING COMMERCIAL PARK SUBDIVISION

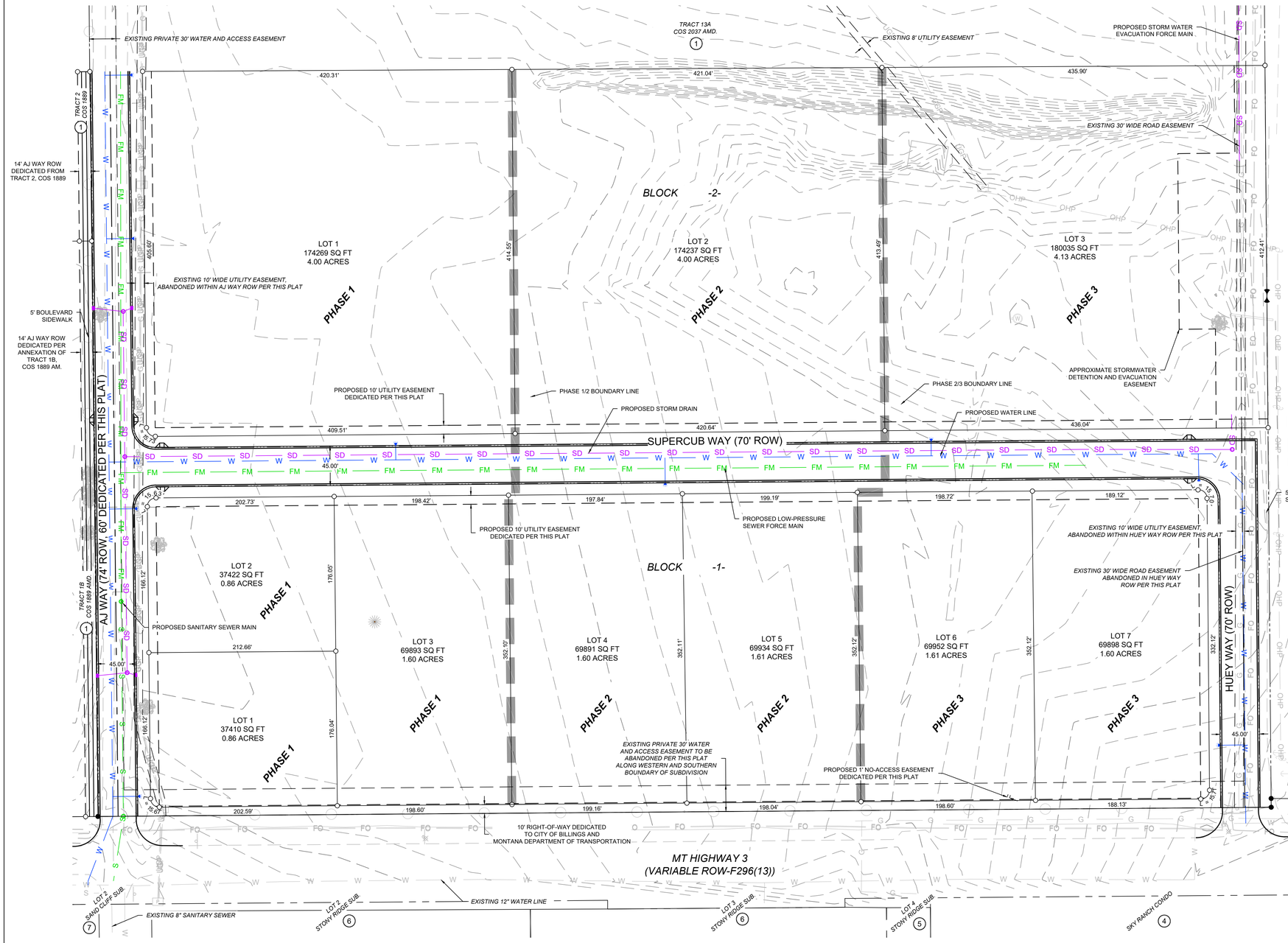
BEING TRACT 14A OF AMENDED PLAT OF TRACTS 13 AND 14 OF CERTIFICATE OF SURVEY 2037
(DOCUMENT NO. _____)
LOCATED IN A PORTION OF THE EAST ½ OF SECTION 26, T. 1 N., R. 25 E., P.M.M
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : AVIATION PROPERTIES, LLC

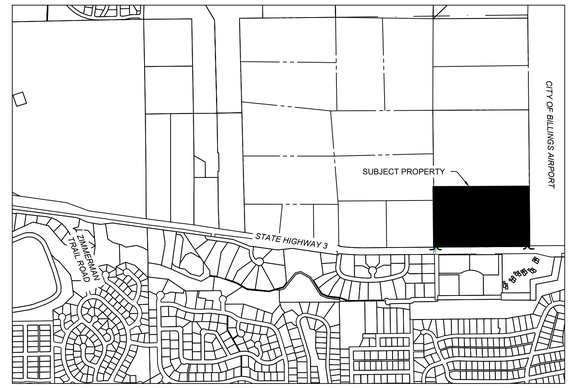
PREPARED BY : PERFORMANCE ENGINEERING, LLC

DATE : MARCH 2021

0 60 120
IN FEET



VICINITY MAP
NOT TO SCALE



SITE DATA	
# OF LOTS	10
MAXIMUM LOT AREA	± 4.00 ACRES
MINIMUM LOT AREA	± 0.80 ACRES
PARKLAND AREA	N/A
LINEAL FEET OF STREETS	± 2,510
NET ACREAGE	21.620
GROSS ACREAGE	25.956

PROPERTY OWNERS		
NUMBER	NAME	MAILING ADDRESS
1	AVIATION PROPERTIES, LLC	6309 JELLISON ROAD BILLINGS, MT 59101
2	CITY OF BILLINGS	210 N 27TH ST. BILLINGS, MT 59101
3	CITY OF BILLINGS (AIRPORT)	PO BOX 1178 BILLINGS, MT 59103
4	SKY RANCH CONDOMINIUM	101 SKY RANCH DRIVE BILLINGS, MT 59106
5	STONY RIDGE DEVELOPMENT	PO BOX 7113 BILLINGS, MT 59103
6	SKYLINE PARTNERSHIP	PO BOX 7113 BILLINGS, MT 59103
7	JAMES AND BECKIE BELEY	3382 STONEY RIDGE RD. BILLINGS, MT 59106

EXISTING LAND USE : AGRICULTURE/VACANT

EXISTING ZONING : HEAVY COMMERCIAL-LIGHT INDUSTRIAL

PROPOSED LAND USE : COMMERCIAL

PROPOSED ZONING : HEAVY COMMERCIAL-LIGHT INDUSTRIAL

SHEET 1 OF 1

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SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FURTURE SPECIAL IMPROVEMENT DISTRICTS

YELLOWSTONE LANDING COMMERCIAL PARK SUBDIVISION

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(City of Billings)

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

YELLOWSTONE LANDING COMMERCIAL PARK SUBDIVISION

This agreement is made and entered this _____ day of _____, 20___, by and between *Aviation Properties, LLC,* whose address for the purpose of this agreement is **6309 Jellison Road, Billings, Montana, 59101**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the Board of Planning recommended conditional approval of a preliminary plat of *Yellowstone Landing Commercial Park Subdivision*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the City Council conditionally approved a preliminary plat of *Yellowstone Landing Commercial Park Subdivision*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Yellowstone Landing Commercial Park Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. Variances

Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1101, BMCC):

1. *No variances are requested as part of this Subdivision.*

II. Property Conditions and Information for Lot Purchasers

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years from the date of each subdivision phase opening, the City has the right to construct the sidewalk and assess the property owners.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that lot owners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. Additional geotechnical studies may be required by the City of Billings Building Department and Engineering Division at the time of individual lot development to acquire a Building Permit.

D. No water rights have been transferred to the lot owners.

E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

F. The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

G. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best

Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

H. Lot owners should be aware of Agreement between Subdivider and Neighboring Property Owners entered into September 2016, of which a copy shall be provided by the Subdivider prior to property closing and an abstract is recorded under Document No. 3790799 at the Yellowstone County Clerk and Recorder's Office. Terms and duration of the Agreement are binding to Lot Owners and include requirements pertaining to building color, lighting, noise, and landscaping. Any requirements not explicitly addressed in said agreement shall comply with the current City of Billings Zoning Code.

I. Lot owners shall be aware of and comply with Federal Aviation Administration requirements pertaining to building requirements as agreed to in the Perpetual Air Rights Easement for the Property.

III. Transportation

A. Streets

- Subdivider will execute a private contract to construct public streets, curb and gutter, and some sidewalks within the public Right-of-Way (ROW) dedicated in conjunction with the Subdivision. The improvements will consist of constructing a collector roadway (45' TBC-TBC) from State Highway 3 to the Subdivision extents along AJ Way, and a local commercial roadway (45' TBC-TBC) along the interior of the Subdivision. Dedicated ROW widths will be per the City of Billings Subdivision Regulations.
- Standard curb and gutter will be installed along roadways within the Subdivision. Extent of curb and gutter within Montana Department of Transportation (MDT) Right-of-Way will be determined based on findings from the Traffic Impact Study and MDT approval.
- All streets will be provided with asphalt concrete driving surface.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks along their lot frontages at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb. Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
- An 8 to 10-foot sidewalk or trail along the north side of State Highway 3 will be constructed in the future. Subdivider and/or individual lot owners waive the right to protest being included in a Special Improvement District (SID) for the proportionate share of said cost. All of the lots within *Yellowstone Landing Commercial Park Subdivision* can be assessed for installation of the sidewalk/trail along the State Highway 3 frontage of the

subdivision. The Subdivider shall be responsible for the maintenance of the sidewalk/trail after construction.

C. Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- Subdivider will install necessary traffic control devices within or adjacent to the Subdivision in conformance with the City of Billings and Montana Department of Transportation standards.
- Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed by the subdivider in accordance with the specifications of the City of Billings standards.
- Subdivider shall provide a Traffic Impact Study (TIS) to MDT and City Engineering for review and approval identifying any off-site contributions. Subdivider is responsible for the cost of the TIS and any off-site contributions identified in the TIS.

E. Access

- The Subdivision will be accessed via two approaches off State Highway 3. The approaches will be located at, or in the immediate vicinity of, the existing paved approaches accessing the Subdivision. A 1-foot no-access easement is proposed along the south property line of those lots adjacent to State Highway 3.
- Approaches will be designed to comply with MDT rules and regulations and shall be approved by MDT prior to construction.
- Improvements to State Highway 3 and approach sizing will be determined based on a TIS prepared for the Subdivision by the Subdivider and submitted to the City of Billings and MDT.

F. Billings Area Bikeway and Trail Master Plan

- The Billings Area Bikeway and Trails Master Plan does not identify any pathways or trails internal or connecting to the Subdivision.

G. Public Transit

- Met Transit provides service to the City of Billings, with the closest route including a pick-up and drop-off area located in the Airport, approximately 1.85 miles from the Subdivision. No improvements are required to ensure public transit service.

IV. Emergency Service

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses,

etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.
- Should a terminated roadway during Subdivision phasing exceed 150' in length and there be no other approved means for apparatus turnaround on individual lots, a fire apparatus turnaround shall be installed at the termination point of roadways between each Subdivision phase.
- No fire apparatus turnaround is required along AJ Way as the roadway extends as a private road north of the Subdivision and fire apparatus' are able to turnaround outside Subdivision extents.

V. Storm Drainage

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

- Stormwater runoff from improvements made within dedicated ROW will be conveyed via curb and gutter, inlets, and piping installed by the Subdivider to the eastern portion of the Subdivision where it will be detained in accordance with the Stormwater Management Manual requirements. Said improvements are referred to as the Subdivision Collection and Storage System subsequently.
- Individual lots are required to provide on-site stormwater detention in accordance with the Stormwater Management Manual requirements (Individual Lot Storm Infrastructure), and are allowed to discharge to the Subdivision Collection and Storage System at rates necessary to evacuate the stormwater volume corresponding to the 50-year, 24-hour storm event.
- Stormwater volumes collected in the Subdivision Collection and Storage System are to be evacuated from the Subdivision within the timeframe called for in the Stormwater Management Manual.
- The stormwater detention area and outfall shall be maintained by a Homeowner's Association (HOA). Subdivider shall provide an HOA

Storm Water Facility Maintenance Agreement for review and approval by the City of Billings Engineering Division. This agreement shall outline the maintenance responsibilities of the storm water facilities.

VI. Utilities

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development in effect at the time building permits are issued.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

- 12-inch water mains to serve the Subdivision shall be installed by the Subdivider along AJ Way, Supercub Way, and Huey Way, and connect to the existing 12-inch water main located in State Highway 3.

B. Sanitary Sewer

- The sanitary sewer system for the Subdivision will be installed by the Subdivider and will consist of a low-pressure sanitary sewer force main (size to be determined by Subdivider and approved by the Public Works Engineering Division) and 8-inch gravity sewer main. The 8-inch gravity sewer main will be constructed along AJ Way from a new connection to the existing manhole in Stoney Ridge Road to the point where depth of cover of the pipeline becomes infeasible. From this point, low-pressure sanitary sewer force main will be constructed along AJ Way to the northern extent of the subdivision and Supercub Way to the extent necessary to serve Lot 7 of Block 1.
- Should the City extend a sanitary sewer main along the subdivision frontage on State Highway 3 east of AJ Way, the Subdivider waives the right to protest inclusion in a Special Improvement District to assess the proportionate cost of those improvements.

C. Power, Telephone, Gas, and Cable Television

- Existing power, natural gas, and communication utilities exist within the Subdivision boundary. Mainlines for each utility will be installed by the private utility companies within the dedicated 10' utility easements on the front of each lot.

VII. Parks/Open Space

There is no parkland requirement for proposed Yellowstone Landing Commercial Park Subdivision, as this is a commercial subdivision [MCA 76-3-621(3)(b)].

VIII. Irrigation

No irrigation rights, infrastructure, or amenities are affected by the Subdivision.

IX. Soils/Geotechnical Study

At the time of individual lot development, the City of Billings may require a geotechnical investigation or study per Building Permit requirements.

X. Phasing of Improvements

Phasing of the Subdivision is proposed. The improvements made during each phase, and the anticipated schedule of each phase, are as follows:

Phase I - Lots 1, 2, and 3 of Block 1, and Lot 1, Block 2 (2021)

- Roadway, curb and gutter, water main, fire hydrants, gravity sanitary sewer, and low-pressure force main shall be constructed to the northern extents of the Subdivision and to the eastern boundary of Lot 1, Block 2.
- The Subdivision Collection and Storage System, minus inlets within portions of Subdivision roadway not being constructed, shall be constructed during Phase 1.

Phase II – Lots 3 & 4 of Block 1, and Lot 2 of Block 2 (2025)

- Roadway, curb and gutter, water main, fire hydrants, and low-pressure force main shall be constructed to the eastern boundary of Lot 2, Block 2.

Phase III – Lots 5 & 6 of Block 1, and Lot 3 of Block 2 (2029)

- Roadway, curb and gutter, water main, and fire hydrants, shall be constructed along Supercub Way and Huey Way to its access point and approach onto State Highway 3.
- Low-pressure force main shall be constructed to the extents necessary to provide service to Lot 7 of Block 1.

XI. Financial Guarantees

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. Legal Provisions Applying to Subdivider

A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER" *Aviation Properties, LLC*

By: _____

Title: _____

STATE OF MONTANA)
: ss
County of)

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 *Aviation Properties, 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

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 _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names 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: _____

Waiver of Right to Protest
FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Yellowstone Landing Commercial Park Subdivision

Signed and dated this _____ day of _____, 20___.

Aviation Properties, LLC

By:_____

Title:_____

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 *Aviation Properties, LLC*, the person who executed the forgoing 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: _____

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

May 24, 2021

Erin Heringer/Aviation Properties, LLC
3655 AJ Way
Billings, MT 59106

Dear Applicant:

On May 24, 2021, the Billings City Council conditionally approved the preliminary plat of Yellowstone Landing Commercial Park Subdivision, subject to the following conditions of approval:

1. To protect public health and safety in relation to traffic movement, prior to final plat approval, the applicant will provide City Engineering Department and the Montana Department of Transportation with a TIS. Any required improvement identified in the TIS will be installed by the applicant as well as striping AJ Way as outlined in the Findings of Fact.

2. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the subdivision.

3. To protect public health and safety and to ensure proper documentation for the proposed phasing of the subdivision, prior to final plat approval the applicant will include the Exhibit and Declaration of Restriction on Transfer documents for future phases.

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

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

Should you have any questions please contact Dave Green at (406) 247-8666 or by email at greend@billingsmt.gov

Sincerely,

_____
William A. Cole, Mayor

pc: Performance Engineering / Taylor Kasperick

Good afternoon,

I feel any approval of any Usage Change must NOT include Heavy Commercial Use.

As noted by many of the residential property owners in the immediate area, and certainly in my thoughts because I own property and live in Rehberg Ranch, this huge usage change will definitely have a negative impact on those of us that moved to this area north of the Rims because of it's solitude and feelings of living far away from any commercial activity, and living with the beauty that comes from a primarily agricultural environment.

I can only imagine the negative impact this Usage Change to Heavy Commercial will have on traffic along Hwy 3 and traffic utilizing Zimmerman Trail and 27th Street, along with the noise and potential traffic accidents due to the fact that Hwy 3 in only one lane in either directions, East or West.

Couple these negative factors with the upcoming potential construction of an access road from the Heights to Hwy 3 at Zimmerman Trail, and the huge additional influx of traffic that construction will bring, and the additional noise and potential for increasing traffic accidents as well as additional crime in this entire area, primarily for residential home owners. Being able to safely enter and exit Gun Club Road and all of the other residential streets that access Hwy 3 for residents will become much more dangerous than it is currently with this change in Usage and the addition of the completion of the access road from the Heights. Usage change to Heavy Commercial will also have a very negative effect on local Wildlife that uses the areas north of Hwy 3 as a refuge; the toll will be significant in lost lives of these wild animals in their normal and usual habitat for living and raising families.

For these reasons, I certainly feel this Usage Change to Heavy Commercial should be Defeated by those individuals on the Board that desire to protect the beauty and sanctity of the area North of the Rims, protect the property values of those residents living along Hwy 3, and protect everyone, including all wildlife from escalating traffic problems and traffic caused deaths all along the Hwy 3 Corridor, including Zimmerman Trail and 27th Street, and beyond.

Sincerely,

Richard Waide
4029 Rifle Creek Trail
Billings, MT 59106
406-652-2961
rhdublu@msn.com

City Council Regular

Date:	05/24/2021
Title:	Lake Hills Subdivision, 39th Filing - Preliminary Major Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of Lake Hills Subdivision, 39th Filing to the City Council, and adoption of the Findings of Fact as presented in the staff report.

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

1. To minimize the effects on local service, prior to final plat approval, the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.

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

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

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2021, WWC Engineering, agent for Ron Hill and John Bruckner, applied for preliminary major plat approval for Lake Hills Subdivision, 39th Filing. The proposed subdivision creates 20 lots from the existing 16 lots for residential development. The subject property is generally located along both sides of Gleneagles Boulevard north of Black Diamond Road. The property is zoned Neighborhood 3 (N3). The proposed lots will be developed in compliance with the zoning as the property is developed.

PROCEDURAL HISTORY

- Pre-application meeting January 21, 2021
- Preliminary plat application submitted to Planning Division on March 1, 2021
- Departmental review meeting March 18, 2021
- Preliminary plat resubmittal March 25, 2021
- Planning Board plat review April 13, 2021
- Planning Board public hearing April 27, 2021
- Preliminary plat to City Council May 24, 2021
- 60 working-day preliminary plat review period ends May 25, 2021

PLAT INFORMATION

General location:	Located along both sides of Gleneagles Boulevard north of Black Diamond Road
Legal Description:	Portions of Lake Hills Subdivision, 16th and 17th Filings
Owner/Subdivider:	Ron Hill
Engineer and Surveyor:	WWC Engineering
Existing Zoning:	N3
Existing land use:	Vacant Subdivision
Proposed land use:	Residential
Gross and Net area:	4.87 acres / 4.87 acres
Proposed number of lots:	20
Lot size: Max:	14,800 square feet Min: 9,600 square feet
Parkland requirements:	Parkland dedication was met with previous filings

STAKEHOLDERS

Staff gave a brief presentation at a public hearing to the Planning Board. President Woods called for questions and discussion. Board member Thompson, referencing concerns raised by area residents, asked if there are stormwater inlets at Glen Eagles Boulevard and Sierra Grand to address the problem with water during major storm events. Greg Reid, with WWC Engineering, stated there are no inlets at the location at this time, but they will be installed with the construction of the roads with this subdivision. Mr Reid also stated the city is aware of the flooding issues in the area and have up-sized the requirements for storm drainage pipes and have installed larger pipes in other parts of the neighborhood to address the issue.

Board member Thompson noted there is only one small park located on Burning Tree Drive and asked how the parkland was satisfied initially with Lake Hills Subdivision. Dave Green said he has researched this but hasn't found this information. He said it may have been an agreement that the golf course may have been accepted as parkland. (Since the Planning Board Public Hearing on this plat, staff has confirmed the golf course does meet the parkland requirement - See Attachment 9 to this memo). Board member Thompson voiced concern as there are no parks within walking distance of these properties. Board member Stephenson commented that providing a park in the area may address some water retention issues as well. Staff stated the Parks Department does not encourage storm detention in a park since it brings up the issue of who is to maintain the storm detention area, it also limits the usable parkland area. Board member Thompson said in the past the stormwater detention and parkland were combined which limited recreational use and in some cases the entire parkland area was a detention pond with no usable parkland area. Board member Stephenson said it seems reasonable to combine them. Board member Thompson said they typically do not function well together. There was no further questions or discussion from the board.

President Woods opened the public hearing and asked if there is anyone wishing to speak in favor or against Lake Hills Subdivision, 39th Filing. There was none. President Woods closed the public hearing and called for a motion.

While no members of the public testified at the public hearing, several property owners in the area provided written comment on this subdivision. Attached to this staff report are the written comments received.

A motion was made and seconded to recommend conditional approval of the preliminary plat of Lake Hills Subdivision 39th Filing to the City Council and adopt the Findings of Fact as presented in the staff report. The motion carried with one board member voting against the motion.

ALTERNATIVES

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends on May 25, 2021. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the City Council is required to:

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

FISCAL EFFECTS

This plat will have no fiscal impacts on the City/County Planning Division.

SUMMARY

One of the purposes of the City’s subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider’s responsibility to mitigate. Various City departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, impacts of storm water and traffic are identified in the SIA and how they will be handled by the developer in conjunction with City of Billings Engineering Department. Other impacts were found to be minimal from this proposed subdivision.

Attachments

Findings of Fact

Proposed Plat

SIA

Mayors Letter

Letter from surrounding property owner

Letter from surrounding property owner

Letter from surrounding property owner

Letter from surrounding property owner

Original Parkland Agreement for Lake Hills Subdivision - 1957

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Lake Hills Subdivision, 39th Filing. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property was originally platted in 1958 as a county subdivision and these lots have been within the Lake Hills Golf course for many years. There are no agricultural water user facilities within this proposed subdivision. It will not have a negative effect on the agricultural industry.

This subdivision does not contain any ditches or water shares, and therefore will not affect agricultural water user facilities.

2. Effect on local services

a. **Utilities** – Public water services to the subject property will be provided by the County Water District of Billings Heights. There is an existing 12-inch water line in Gleneagles Boulevard. This work will be funded by SID 1416. Each lot will be provided with individual water service connections. All water line construction shall be installed in conformance with the design standards, specification, rules and regulations of the County Water District of Billings Heights.

Fire hydrants will also be installed as required by the City of Billings Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

Sanitary sewer service will be provided by the City of Billings by connecting to the existing 15-inch sewer main located in Gleneagles Boulevard and Sierra Granda Boulevard. A new sewer main from the existing main will run in the roadways within the subdivision, it will be funded by SID 1416. Each lot will be provided with individual sewer service connections. All sewer line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Department.

Private utility providers shall use the provided easement outside the public right of way, these easements are shown on the face of the plat.

b. **Storm water** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping. A stormwater master plan is in place for this subdivision. All proposed

stormwater management will be reviewed and approved by City of Billings Engineering Department to ensure it meets the master planned stormwater plan for Lake Hills Subdivision. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual*.

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – Access to the lots in this proposed subdivision is from Gleneagles Boulevard. Sierra Granda Boulevard and Black Diamond Road connect to Gleneagles Boulevard within this subdivision. Gleneagles Boulevard is within an existing 80-foot right of way. Gleneagles Boulevard will be constructed to a 49-foot wide, back of curb to back of curb road with 5-foot wide boulevard sidewalks. Sierra Granda Boulevard is within a 60-foot-wide right of way and will be built to a 49 foot back of curb to back or curb. Black Diamond Road is within a 50-foot-wide right of way and will be constructed to 34-foot wide, back of curb to back of curb road with boulevard sidewalks. Sidewalks will be installed at the time of individual lot development. Road construction will include installation of accessible ramps at the intersections.

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 1601 St. Andrews Drive (Station #6).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** – School District #2 provides service to students within this subdivision from elementary to high school (Sandstone Elementary School, Castle Rock Middle School, and Skyview High School). School District #2 did not respond to request for comments at the time of the writing of this report.

g. **Parks and Recreation** – The parkland dedication requirement for this subdivision have been met with previous filings of Lake Hills Subdivision.

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. They have requested the installation of centralized mailbox unit (CBUs). The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #1)**

3. Effect on the natural environment

The subject property is relatively level land adjacent to urban development mostly on the east and south sides, there is less on the west and north. A geotechnical study was performed for the subdivision a summary of the information from that study is included in the SIA under the heading IX. Soils/Geotechnical Study. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading II. Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

> **Essential Investments:** Infill development and development near existing City infrastructure may be the most cost effective. (p.6)
>
> **Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):** Neighborhoods that are safe and attractive and provide essential services are much desired. (p.8)
>
> **Home Base (healthy, safe and diverse housing options)** Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings. (p.9)

2. Billings Heights Neighborhood Plan

The Billings Heights Neighborhood Plan, adopted in 2006, identifies this area for low-density residential development. The subdivision meets the following goals of the Heights Neighborhood Plan:

Issue: Urban Sprawl

Goal: Encourage infill housing.

Objectives: To preserve and conserve resources and curb urban sprawl.

This subdivision will be building houses in an already established neighborhood and subdivision, reducing sprawl to new land.

Issue: Residential Development

Goal: To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Maintain similar housing in established neighborhoods.

Objectives: To encourage infill development and housing development that meets residents' desire to have similar housing within their neighborhood.

This subdivision provides low-density residential single-family development in a neighborhood with existing low-density single-family development.

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP does not show any trails within the proposed subdivision. Gleneagles Boulevard is identified as having a future bike lane on it.

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

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

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

The subject property is located within the Neighborhood 3 (N3) zoning district. All building development on the lot shall comply with current zoning when applying for a building permit.

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

The subdivider has provided private utility easements as required by private utility providers on the face of the plat.

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

Legal and physical access is provided to the proposed lots from Gleneagles Boulevard that will be constructed with this project. All streets are dedicated to the public as shown on the plat.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Lake Hills Subdivision, 39th Filing does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

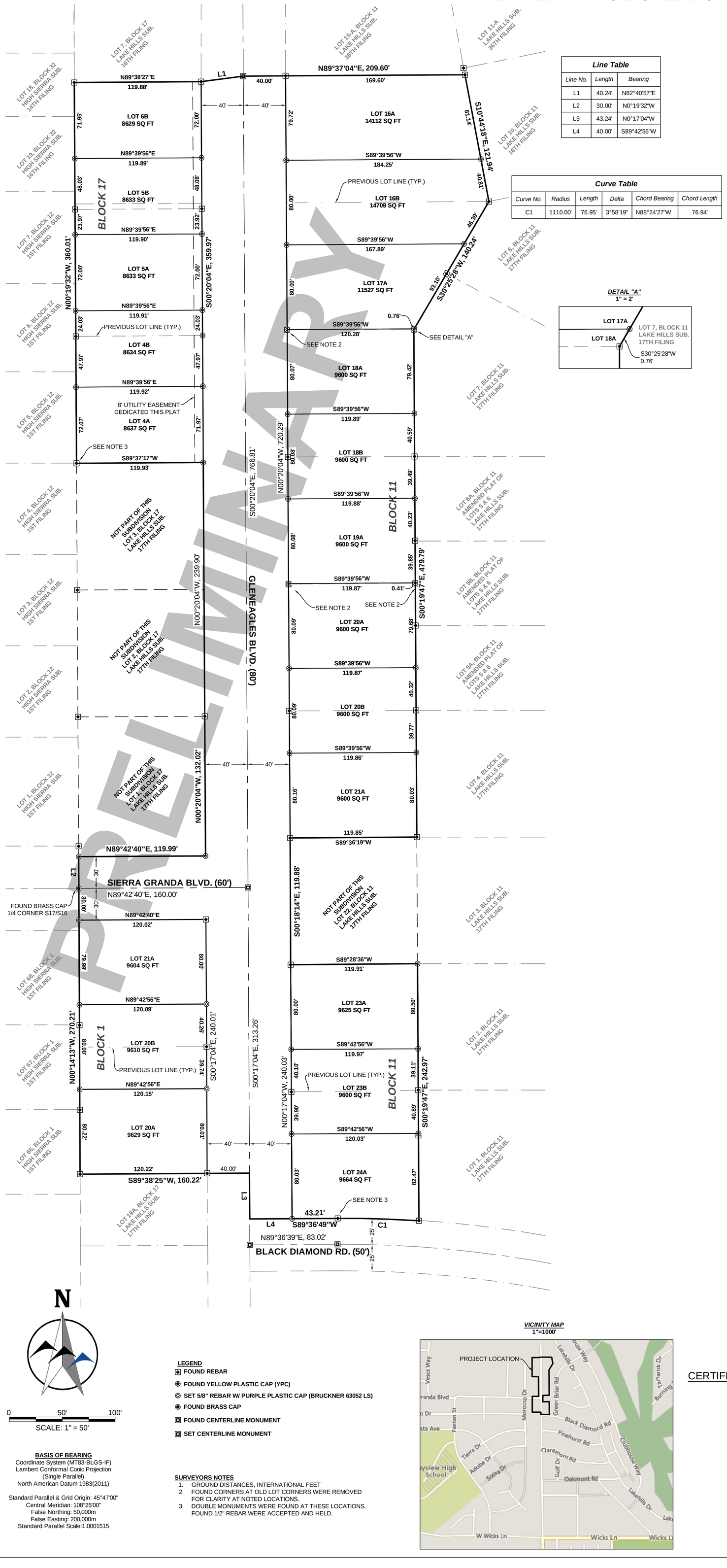
RECOMMENDATION

The Planning Board is forwarding a recommendation of conditional approval of the preliminary plat of Lake Hills Subdivision, 39th Filing, to the City Council, and adopt the Findings of Fact as presented in the staff report.

PLAT OF LAKE HILLS SUBDIVISION, 39TH FILING

BEING LOT 6A, BLOCK 17, LOTS 15-16, BLOCK 11 OF LAKE HILLS SUBDIVISION, 16TH FILING, DOCUMENT NO. 612466, LOTS 4-6, BLOCK 17, LOTS 20-21, BLOCK 1, LOTS 17-21, LOTS 23-24, BLOCK 11, OF LAKE HILLS SUBDIVISION, 17TH FILING, DOCUMENT NO. 612467, WITHIN NW1/4 AND SW1/4 OF SECTION 16, T01N, R26E, P.M.M. CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: RON S. HILL
DATE SURVEYED: JANUARY 2021
PREPARED BY: WWC ENGINEERING



Line Table		
Line No.	Length	Bearing
L1	40.24'	N82°40'57"E
L2	30.00'	N0°19'32"W
L3	43.24'	N0°17'04"W
L4	40.00'	S89°42'56"W

Curve Table					
Curve No.	Radius	Length	Delta	Chord Bearing	Chord Length
C1	1110.00'	76.95'	3°58'19"	N88°24'27"W	76.94'

LEGEND
- FOUND REBAR
- FOUND YELLOW PLASTIC CAP (YPC)
- SET 5/8" REBAR W/ PURPLE PLASTIC CAP (BRUCKNER 63052 LS)
- FOUND BRASS CAP
- FOUND CENTERLINE MONUMENT
- SET CENTERLINE MONUMENT

BASIS OF BEARING
Coordinate System (MT83-BLGS-IF)
Lambert Conformal Conic Projection
(Single Parallel)
North American Datum 1983(2011)

Standard Parallel & Grid Origin: 45°47'00"
Central Meridian: 108°25'00"
False Northing: 50,000m
False Easting: 200,000m
Standard Parallel Scale:1.0001515

SURVEYORS NOTES
1. GROUND DISTANCES, INTERNATIONAL FEET
2. FOUND CORNERS AT OLD LOT CORNERS WERE REMOVED FOR CLARITY AT NOTED LOCATIONS.
3. DOUBLE MONUMENTS WERE FOUND AT THESE LOCATIONS. FOUND 1/2" REBAR WERE ACCEPTED AND HELD.

VICINITY MAP
1"=1000'

LEGAL DESCRIPTION AND PROPERTY OWNER CERTIFICATE OF DEDICATION

State of Montana)
:SS
County of Yellowstone)

KNOW ALL BY THESE PRESENTS: That we, the undersigned owners, do hereby certify that we, have caused to be surveyed, subdivided, and platted into lots blocks roads and alleys and other divisions and dedications, as shown by this plat hereunto included, the following described tract of land, to wit:

The parcel situated in the NW1/4 and SW1/4 of Section 16, T01N, R26E, P.M.M., City of Billings, Yellowstone County, Montana, and more particularly described as Lot 6A of Block 17 and Lots 15 and 16 of Block 11, Lake Hills Subdivision, 16th Filing, Document No. 612466, Lots 4-6, Block 17, Lots 20-21, Block 1, Lots 17-21 and Lots 23-24, Block 11 of Lake Hills Subdivision, 21st Filing, Document No. 612467; said tract being 4.56 acres in area, more or less, exclusive of the previously dedicated Sierra Granda Boulevard and Gleneagles Boulevard rights-of-way.

The above described tract of land is to be known and designated as LAKE HILLS SUBDIVISION, 39TH FILING, Yellowstone County, Montana. The undersigned do hereby grant unto all utility companies, as such are defined and established by Montana Law, and cable television companies, an easement for the location, maintenance, repair, removal of lines over, under and across the areas designated on the plat as Utility Easement to have and hold forever.

DATED THIS _____ DAY OF _____, 2021.

Ron S. Hill, Living Trust

_____
Trustee, Ron S. Hill

ACKNOWLEDGMENTS

State of Montana)
:SS
County of Yellowstone)

on this _____ day of _____ , 2021, before me, the undersigned a notary public for the State of _____, personally appeared Ron S. Hill, Trustee of Ron S. Hill Living Trust, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

_____
Notary Public for the State of _____

CERTIFICATE OF CITY ATTORNEY

This Subdivision Plat has been reviewed by the City Attorney's Office and is acceptable to form.

Dated this _____ day of _____ , 2021

_____
Reviewed by

ERRORS AND OMISSIONS REVIEW

Reviewed for errors and omissions in calculations and drafting this _____ day of _____ , 2021, pursuant to section 76-3-611(2)(a), M.C.A.

_____
Examining Land Surveyor

Reg. No. _____

CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that all real property taxes and special assessments assessed and levied on the land described on this Subdivision Plat and encompassed by the proposed division have been paid.

Dated this _____ day of _____ , 2021

_____
TREASURER
YELLOWSTONE COUNTY, MONTANA

CERTIFICATE OF SURVEYOR

The undersigned, a Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of January 2021, a survey was performed under his supervision of a tract of land to be known as LAKE HILLS SUBDIVISION, 39TH FILING, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act; said subdivision being in accordance with the Landowner's Certificate and as shown on the plat; that the monuments found and set are of the character and occupy the positions hereon.

MONTANA JOHN BRUCKNER No. 63052 LS LICENSED PROF. LAND SURVEYOR

Dated the _____ day of _____, 2021

_____
John Bruckner
Registration Number 63052 LS

SUBDIVISION IMPROVEMENTS AGREEMENT

Doucument No. _____

CERTIFICATE OF CITY ENGINEER'S OFFICE

I hereby certify that I have examined the annexed plat and find that it conforms with Section 76-4-125(1)(d) MCA, removing sanitary restrictions since the plat is inside a master planning area and is provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

Dated this _____ day of _____ , 2021

_____
CITY ENGINEER'S OFFICE

NOTICE OF APPROVAL

STATE OF MONTANA)
: ss
County of Yellowstone)

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

Date _____ _____
President

_____
Executive Secretary

CERTIFICATE OF CITY COUNCIL APPROVAL

The City Council of the City of Billings, Yellowstone County, Montana does hereby certify that the accompanying plat for LAKE HILLS SUBDIVISION, 39TH FILING has been duly examined and have found the same to confrom to the law and hereby approve it.

Dated this _____ day of _____ , 2021

_____
CITY OF BILLINGS, MONTANA

BY: _____
Mayor

ATTEST: _____
City Clerk

CERTIFICATE OF FILING BY CLERK AND RECORDER

QRTR.	SEC.	TWP.	RGE.
	16	1N	26E

LAKE HILLS SUBDIVISION, 39TH FILING

JOB#: 2020-388

REVISIONS	
Date	By

WWC ENGINEERING
550 S. 24TH ST. W., SUITE 201
BILLINGS, MT 59102
(406) 894-2210

Drawn By: JPB | Checked By: AMR | Date: JAN 2021 | Scale: 1" = 50'

PLOT STYLE: WWC COLOR.stb
04/15/2020 FILE PATH: K:\Billings\RON HILL\2020388 Lake Hills 38th Filing - Glen Eagles Rd\05CAD\Design\20388-PLAT-Lake Hills 38th Filing.dwg

PRELIMINARY

SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENTS DISTRICTS

Lake Hills Subdivision, 39th Filing

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SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Lake Hills Subdivision, 39th Filing

This agreement is made and entered into this_____day of_, 2021, by and between Ron S. Hill Living Trust, whose address for the purpose of this agreement is **P.O. Box 50636; Billings, Montana 59105**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on_day of_, 2021, the Board of Planning recommended conditional approval of a preliminary plat of Lake Hills Subdivision, 39th Filing; and

WHEREAS, at a regular meeting conducted on_day of_, 2021, the City Council conditionally approved a preliminary plat of Lake Hills Subdivision, 39th Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to Lake Hills Subdivision, 39th Filing upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

A. No variances are being requested for this subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.

B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey and Geotechnical Engineering Report for Residential Lots Gleneagles-Lake Hills Drive, prepared by Rimrock Engineering (October 16, 2015) indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction. Refer to Section IX for discussion of the geotechnical study completed for some of the lots within the subdivision. All permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

C. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is possible that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. Temporary and permanent fencing may alleviate these concerns. Continued development in the area will also further alleviate these interactions. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

D. There is attached hereto a Waiver waiving the right to protest the creation of the special improvements district which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filled with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner, or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

E. The Subdivider and subsequent contractors/builders acknowledge that a Stormwater Pollution and Prevention Plan (SWPPP) may be required to be filed with the City and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Association with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

F. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

Streets

- Rights-of-way widths of 60 feet for Sierra Granda Boulevard, 80 feet for Gleneagles Boulevard and 50 feet for Black Diamond Road have already been dedicated in previous filings.
- The Owner shall construct public streets, and curb & gutter within the Subdivision through SID 1416. Gleneagles Boulevard and Sierra Grande Boulevard shall be constructed as 49 feet back of curb to back of curb. Black Diamond Road will be constructed as 34 feet back of curb to back of curb. These access roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance, and city subdivision regulations.
- The construction costs have been funded and no additional monetary security is required.

Sidewalks

- The corner intersection handicap ramps will be installed through SID 1416.
- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 3-foot to 10-foot boulevard planting strip between the sidewalk and the curb. Sidewalk will tie into existing previously constructed sidewalks.

Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

Traffic Control Devices

- Traffic control devices are not required for this subdivision but are included in the waiver of right to protest.
- SID 1416 will furnish and install street name signs for streets within the subdivision or located immediately adjacent thereto in accordance with the specifications of the City of Billings Public Works and Fire Departments.

Access

- Access to the lots will be from drive approaches installed at the time of lot development from streets built with this Subdivision. Access permits shall be obtained from City Engineering.

Billings Area Bikeway and Trails Master Plan (BABTMP)

- This subdivision is located within the jurisdiction of the BABTMP, but no trail corridors are identified within this subdivision area.

Public Transit

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Wicks Lane and Gleneagles Boulevard.

IV. EMERGENCY SERVICE

The Billings Fire Department currently provides fire protection for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e., lumber plywood, wood trusses, etc.), fire apparatus access roads, and water supply requirements shall be provided in accordance with the International Fire Code as adopted be the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A master plan is in place for Lake Hills Subdivision and all future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. The new storm drainage improvements shall be constructed as part of SID 1416. The construction costs have been funded through the establishment of SID 1416 and no additional monetary security is required.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the County

Water District of Billings Heights and Public Works Department – Distribution and Collection Division, respectively. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater construction fees in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the County Water District of Billings Heights, City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

Water

The County Water District of Billings Heights serves the property. SID 1416 will extend water main along the length of Gleneagles Boulevard, Black Diamond Road, and Sierra Granda Boulevard through the subdivision. New water main will connect to 12" water main at the north and south end of the project, on Glen Eagles Boulevard. New water services will be installed for all lots in the subdivision.

Sanitary Sewer

Sanitary sewer mains and services will be extended from those that are existing in the subdivision. An existing 15" sanitary main passes through a portion of the Subdivision on Gleneagles Boulevard and Sierra Granda Boulevard. SID 1416 will extend sanitary mains across the front of lots within SID 1416 for sewer services to be installed. Sanitary sewer already extends into 9 existing lots within the subdivision. These services on the west side of Gleneagles will be extended 10 feet to accommodate dry utilities. New sewer services will be installed for all lots without sanitary sewer service in the subdivision as part of SID 1416.

Power, Telephone, Gas, and Cable Television

Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this subdivision as the parkland requirement has been previously met.

VIII. IRRIGATION

No irrigation ditch, field laterals, or irrigation easements exist in this subdivision.

IX. SOILS/GEOTECHNICAL STUDY

According to the Geotechnical Engineering Report for Residential Lots Gleneagles-Lake Hills Drive, prepared by Rimrock Engineering (October 16, 2015), some soils found in this area consist of potentially compressible clay soils and silty sands which are expected to be compressible and potentially collapsible with increased moisture. Shale and sandstone shale bedrock at or near foundation and concrete slab elevations may be encountered.

Subsurface conditions vary from one location to another and the structural characteristics may vary from one structure to another. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

X. PHASING OF IMPROVEMENTS

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements through Special Improvements District No. 1416. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district and the improvements shall be installed as approved by the City Engineer and the City of Billings Public Works and County Water District of Billings Heights.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER" Ron S. Hill Living Trust

By:_____

Its:_____

STATE OF MONTANA)
: ss
County of Yellowstone)

On this___day of_____, 2021, before me, a Notary Public in and for the State of Montana, personally appeared_____, known to me to be the _____, 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_____, 2021.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this____day of_____, 2021, before me, a Notary Public in and for the State of Montana, personally appeared_____and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names 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: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:
Lake Hill Subdivision, 39th Filing

Signed and dated this_____day of_____, 2021.

Ron S. Hill Living Trust
By:_____
Title: _____

STATE OF MONTANA)
: ss
County of Yellowstone)

On this___ day of_____, 2021, before me, a Notary Public in and for the State of Montana, personally appeared_____, known to me to be the person who executed the forgoing instrument as the_____of Ron S. Hill Living Trust known to me to be the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEROF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

_____
Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires:_____

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

May 24, 2021

Ron Hill c/o WWC Engineering
550 S. 24th St. W. Ste. 201
Billings, MT 59102

Dear Applicant:

On May 24, 2021, the Billings City Council conditionally approved the preliminary plat of Lake Hills Subdivision, 39th Filing, subject to the following conditions of approval:

1. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.

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

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

Should you have any questions please contact Dave Green at (406) 247-8666 or by email at greend@billingsmt.gov

Sincerely,

_____
William A. Cole, Mayor

pc: WWC Engineering / Greg Reid

Good morning,
We are sending this email in response to the Lake Hills Project # PZX-21-00007.

From Edwin Hellier & Crystal Hellier.
Residents at 2000 Greenbriar road Billings MT. 59105.
We have growing concern about the Lake Hills subdivision 39th filing project # PZX-21-00007 as to how it will affect Fire department services in the area in battling home fires with the change in proximity with closer structures. Cluster houses built today employ modern construction techniques, including lightweight wood trusses, engineered wood siding and other construction features that ensure a hot fire. Walls are generally not fire-rated. There will be gypsum board on the inside of the exterior wall, but combustible material on the outside of the wall will facilitate spread from the fire building. Windows are likely to be present on the facing walls, and, due to the commonality of designs, there's a very good chance the windows will face each other, which can further exacerbate the potential for fire spread from dwelling to dwelling.
Living in this neighborhood for the past three years we have noticed strong prevailing winds from the North and West. The proposed lot changes we expect the new homes to be no more than 6 to 10 feet apart with, at best, 80 feet of street frontage with small back yards. Our concern is that with high wind possibilities and close building proximity this would create a great danger for fire and hindered ability to fight those fires when they arise.
We request that you reconsider the lot size as laid out in this proposed new subdivision and revise it to make the lot sizes larger to lower this risk.

Thank you
Edwin & Crystal Hellier
2000 Greenbriar Road
Billings MT 59105

From Ed & Marcie Zink, residents at 2020 Greenbriar Road, Billings, 59105

Thank you for the opportunity to express our concerns with the proposed zoning changes.

We, along with every neighbor we have discussed this with, are in strong opposition to altering the lot sizes for the proposed application. Our neighborhood is well-designed and mature, with similarly sized lots, similar larger home sizes and a pleasing aesthetic. We relied on the zoning rules in place when we decided to move into this neighborhood in 2017. We looked at this zoning very carefully, We would not have moved into this neighborhood if we had any notion of the proposed changes. It is unreasonable to change the zoning now by reducing the lot sizes so dramatically along our property lines. The originally planned and approved lot sizes in the realm of 14,000 to 15,000 square feet are in line with existing lots and homes (and their boundaries) and would reasonably extend the existing neighborhood in a way that makes sense.

The proposed changes would dramatically increase the population in a smaller area, with two houses backed up to each single home that now exists. This would have a negative impact on the availability of public safety services to the area, including police, fire and medical. From a public health standpoint, the increase in noise and disruption to our neighborhood is disturbing and unwelcome. Again, this will place multiple homes backed up against each of our single residences as opposed to the original plan of similarly sized lots and homes. The increase of homes beyond the original planning is likely to tax water delivery/sewer systems as well and this would negatively affect the entire area. In sum, the proposed lot changes would dramatically change both the existing and developing neighborhood in ways that are contrary to the original well-conceived plans. Given the negative impact to sightlines to the west from existing homes and combining that with an absence of parkland, this would represent a dramatic change to the character of the existing neighborhood and area.

We do not oppose the inevitable development of this area, but respectfully ask that it be done as legally planned, documented and with respect to the lengthy process that already played out. Many of us have designed aspects of our properties with the expectation that the new lots would proceed as originally designed and lawfully documented. There is no viable need to approve this application for zoning change. But, there are ample reasons to reject it and to simply proceed with the lot sizes as the subdivision was conceived.

Thank you. We will be watching and appreciate your consideration of our concerns.

April 26, 2021

REQUEST TO MAKE A PUBLIC COMMENT DURING FORMAL SESSION OF THE YELLOWSTONE COUNTY PLANNING BOARD

RE: Public Hearing - Lake Hills Subdivision, 39th Filing

TO: Distinguished members of the Yellowstone County Planning Board;

I, Robert "Bob" Engebretson, along with my wife Kristen, are the homeowners of 2010 GREENBRIAR RD. This property is directly adjacent to the proposed lots within the 39th Filing of Lake Hills Subdivision.

We wish to bring forth concerns about the Developer's proposal to increase the density of dwellings in our immediate vicinity. As it is now, there has been serious watershed management problems in the area impacted by the proposed filing. Any moderate rainfall or snowmelt causes this area to flood currently. One such occurrence came just last summer on June 17, when a car parked at the intersection of Morocco Drive and Sierra Granda Blvd was submerged in water up to the door handles. This was after 0.72 inch rainfall in the area over a short time. This flooded area extended into Lot 22, and proposed Lots 23A, 23B, and 24A of this filing, flooding the intersection of Gleneagles Blvd and Black Diamond Rd as well.

As has been customary over the last two decades of planned development, a Carrying Capacity Study or similar analysis should indicate the ability of the natural system in this area to absorb the additional growth. I would ask the Board if they are aware of any such study(ies), and their willingness to share their findings. I would infer that when looking for areas to expand development, that these sites are not the most suitable for increased hardscapes and dwellings that thereby constrain the carrying capacity of the surface water systems in this area.

I would urge the Board to conduct their due diligence in not just looking at these 20 lots, but at future development that may occur to the west of this immediate area; specifically in the area of Sierra Granda Blvd. Any future development in that area again increases the eastbound drainage that flows down from there, ultimately pooling in the intersection of the proposed filing and creating increased flooding in the lots proposed in this filing. If the Board does recognize and share our concerns of watershed management, I do not see anything in the filing documents that lay out any sort of planned infrastructure to mitigate such issues.

A secondary concern we have with the proposed filing is the apparent disregard to a common open space in this subdivision. The Board was brief in the document they sent out to homeowners, simply stating about the Parkland requirement that a dedication was met with the original filing. But I question (a) the location of this parkland, and (b) whether it is still adequate given the Developers in the area seeking increased density and clustering of homes. Common open spaces are healthy for vibrant, connected neighborhoods and necessary for proper water and resource management. Increasing the density of dwellings in an area obviously decreases open spaces, which inherently has an increase in vehicle and foot-traffic and reducing visibility to our

children being able to play and enjoy their neighborhoods.

Along those lines, we do see there are 4 lots within the filing area that indicate "NOT PART OF THIS SUBDIVISION" (Lots 1-3, Block 17, Lot 22, Block 11 of 17th Filing). Would the Board kindly explain what the plans/purpose is for those lots at this time, and/or why the Developer has chosen to exclude them from this filing?

We appreciate the opportunity to voice our concerns and present our questions, and thank you for your time and consideration.

Regards,

Bob and Kristen Engebretson

Greetings.

This letter is in reference to the Notice of Public Hearing regarding Lake Hills Subdivision, 39th Filing. Hearing to be held Tuesday, April 13, 2021 at 6pm.

I wish to offer my support to this project.

Further, I would like to compliment the many contractors and subcontractors working in and around the Lake Hills Subdivision on their professionalism, care for the area and their contribution to a visually appealing neighborhood. The contractors that have been working nearby have kept their worksites (and thereby the neighborhood) clean and well maintained. The large trucks that frequent the area have taken great care to observe safe speeds, which is appreciated as there are many young children in the neighborhood. I have no doubt that the professionalism these men and women display will continue onto this project.

Sincerely,

Mike Craighill
2118 Lake Hills Dr, Billings, MT 59105

Filed April 22, 1961

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AGREEMENT

AGREEMENT dated May 20, 1957, between LAKE HILLS GOLF CLUB, a Montana corporation with principal office at Billings, Montana, herein called the Club, RUSSELL B. HART, GEORGE M. WRIGHT and PAUL C. COVERT, individually, herein called Owners, and YELLOWSTONE COUNTY, MONTANA,

WITNESSETH:

1. By agreement dated October 15, 1956, Owners agreed to transfer to the Club real property in Yellowstone County, Montana, described as: All of Section 16 in Township 1 North, Range 26 East, containing 640 acres more or less.

2. Pursuant to said agreement the Club will locate and develop on said land an 18-hole golf course, which will occupy 200 acres more or less, while the remaining acreage, together with 35 acres more or less owned by Paul C. Covert described as that portion of SE¼ south and east of B.B.W.A. right-of-way in Section 9, said township and range, will be subdivided into lots and blocks.

3. The Club has progressed with the development to the point where it is now ready to file four separate plats, each containing less than 20 acres of land, subdivided into lots and blocks, and it will subsequently offer for filing additional plats of the remaining area to be subdivided into lots and blocks, each of which will contain less than 20 acres.

4. The Club has represented to the City-County Planning Committee and to Yellowstone County, Montana, that the golf course, now under construction, will when completed, although privately owned, be operated as a public golf course and held open to the public generally without discrimination

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as to race, creed or color. The Club has therefore requested the County Commissioners of Yellowstone County, Montana, to waive the statutory requirement (Sec. 11-602 (9) R.C.M. 1947) for dedication of public parks in the platted areas.

5. The request has been submitted to the City-County Planning Committee for consideration and recommendation, and that Committee, having been satisfied that the public interest will be better served by the establishment and maintenance of a public golf course in the area than by the dedication of a public park, has recommended to the County Commissioners that they waive, at this time, the requirement for dedication of public park, subject however to the conditions hereinafter set forth.

6. The County Commissioners have likewise considered the matter and, having likewise concluded that the public interest will be better served by the establishment and maintenance of a public golf course in the area than by dedication of a park, have therefore agreed to waive, at this time, the dedication of the public park, subject however to the conditions hereinafter set forth.

7. The Club agrees that it will proceed with all reasonable diligence to complete the construction of said 18-hole golf course prior to December 31, 1950, in accordance with its contract with Owners, but subject to such extensions of time for completion as may be granted by Owners by reason of delays arising from governmental rules and regulations or restrictions limiting the use of needed materials, labor disputes, war or act of the public enemy or of God.

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8. After the completion of said golf course, the Club agrees that it will maintain and operate said course and hold it open for use by the public generally without discrimination on account of race, creed or color. In this connection however the Club shall be free to establish such rules and regulations for the use of the course as it deems appropriate, so long as such rules and regulations apply to all users and without discrimination on account of race, creed or color. In this connection too the Club shall be free to establish such charges and rates for the use of the golf course as it deems proper, so long as such rates do not discriminate on account of race, creed or color.

9. Should the Club fail to complete the golf course as aforesaid, or if after completion of the course should the Club subsequently permanently discontinue the operation of said course as an 18-hole golf course, or should it fail to hold said course open for use by the public generally without discrimination on account of race, creed or color, then the Board of County Commissioners may by order duly made, after notice and opportunity for hearing, require that the Club satisfy the park requirement with respect to the aforesaid platted land in said Sections 9 and 16, unless the course is completed, or the course held open for use by the public generally without discrimination on account of race, creed or color, within such period of time as the Board deems reasonable under the circumstances. In this connection, at least 60 days prior written notice of the time and place for hearing shall be given the Club.

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10. In construing the preceding paragraph, it shall be presumed (but not conclusively) that the Club has permanently discontinued the golf course as an 18-hole course if the course is not held open for play as an 18-hole course during two successive playing seasons, if during each of said seasons the course is not maintained at least on a stand-by basis, unless the failure to hold the course open is the result of some cause beyond the Club's control, such as war, act of God or public enemy, governmental rules or regulations or economic depression. It shall likewise be so presumed (but again not conclusively) that the course has been permanently discontinued as an 18-hole course if permanent structures or improvements, inconsistent with the use of the land as a golf course, are placed on land presently laid out for tees, fairways or greens.

11. If after hearing as aforesaid, an order is entered by the Board requiring satisfaction of the park requirement, the Club shall have the privilege to satisfy that requirement either

(a) by formal dedication of a portion of the golf course area equal to one-twelfth of the aforesaid net platted area in said Sections 9 and 16; or

(b) by conveyance to the County of other land but acceptable to the County, for use for park purposes, equivalent in area to the area specified in the preceding sub-paragraph; or

(c) by payment in cash of an amount equal to the value of area specified in the preceding

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sub-paragraph (a) at $1500.00 per acre if said order is entered after January 1, 1963, otherwise at the value as determined by the then prevailing schedule of values established for satisfaction of park requirements; or

(d) by any other method acceptable to the Board of County Commissioners.

12. Should an order be made as aforesaid by the County Commissioners requiring satisfaction of the park requirement, and should the Club fail to satisfy the requirement in one of the ways specified in the preceding paragraph within 90 days after the time specified in such order for satisfaction of the park requirement, or within such further time as said Board may allow, then the Board may proceed by an action for specific performance or other appropriate action to compel the conveyance to the County of a portion of the golf course area equivalent to the area specified in sub-paragraph (a) of paragraph 11, and the description of which shall be determined and established by the court in its decree.

13. Nothing herein shall be construed as imposing any obligation or liability upon the Club to complete, maintain and/or operate said golf course as a public golf course once the Club has satisfied the park requirement in one of the specified ways; and in any event the only obligation of the Club, should it fail to complete said course or operate it as agreed, shall be its obligation to satisfy said park requirement.

14. Nothing herein shall be construed to limit, abridge, or restrict the Club's authority as owner

(a) to deny the use of and access to the golf course to loiterers, vagrants, persons of ill-repute, persons guilty of offensive, disorderly or unseemly conduct, and persons who fail to comply with the Club's rules

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rules and regulations; or

(b) to permit only such persons as it deems appropriate to use the restaurant, bar, locker rooms and other facilities in its clubhouse and recreational facilities (for example swimming pool, tennis courts, etc.) other than the golf course which it may subsequently install.

15. The undersigned Owners have joined in execution of this agreement to evidence their consent thereto, it being understood however that the only obligation of the Owners in the event title to said Section 16 shall revert to them for failure of the Club to fulfill the conditions of its aforesaid agreement of October 15, 1956, shall be limited to the obligation to satisfy the park requirement as aforesaid with respect to the aforesaid area in said Sections 9 and 16 actually platted at the time of such reversion.

IN WITNESS WHEREOF the parties have caused this agreement to be executed.

YELLOWSTONE COUNTY, MONTANA,

By _____
Ben Nagerman, Chairman, Board of County Commissioners

ATTEST:

_____
Chris Kubich, County Clerk
(SEAL)

LAKE HILLS GOLF CLUB,

By _____
George Schmelter, President

ATTEST:

_____
Vau Savage, Secretary
(CORPORATE SEAL)

_____
RUSSELL E. HART

_____
PAUL C. COVERT

_____
GEORGE M. WRIGHT

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The undersigned wives of the aforesaid individuals join herein for the purpose of subjecting their dower or any other interest in said lands to this agreement.

Wife of Russell B. Hart

Wife of Paul C. Covert,

By _____
Paul C. Covert, her attorney-in-fact

Wife of George H. Wright

By _____
George H. Wright, her attorney-in-fact.

STATE OF MONTANA,)
: ss.
County of Yellowstone.)

On this _____ day of _____, 1957, before me, _____, a Notary Public for the State of Montana, personally appeared DEN HAGERMAN, known to me to be the Chairman of the Board of County Commissioners of Yellowstone County, Montana, a body politic, and acknowledged to me that such corporate body executed the within instrument.

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

(NOTARIAL SEAL)

_____
Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires _____.

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STATE OF MONTANA,)
County of Yellowstone.) ss.

On this 2nd day of July, 1957, before me, JAMES H. KILBOURNE, a Notary Public for the State of Montana, personally appeared GEORGE M. SCHNEITER, known to me to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

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

Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires 6-8-57.

(NOTARIAL SEAL)

STATE OF MONTANA,)
County of Yellowstone.) ss.

On this 11th day of June, 1957, before me, JAMES H. KILBOURNE, a Notary Public in and for the State of Montana, personally appeared RUSSELL B. HART and SENIA C. HART, his wife, PAUL C. COVERT and GEORGE M. WRIGHT, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

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

Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires December 8, 1959.

(NOTARIAL SEAL)

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STATE OF MONTANA,)
: ss.
County of Yellowstone.)

On this 3rd day of July, 1957, before me, JAMES R. KILBOURNE, a Notary Public for the State of Montana, personally appeared PAUL S. COVERT, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of CECIL MAY COVERT, and acknowledged to me that he subscribed the name of CECIL MAY COVERT thereto as principal, and his own name as attorney-in-fact.

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

(NOTARIAL SEAL)

Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires December 8, 1959.

STATE OF MONTANA,)
: ss.
County of Yellowstone.)

On this 3rd day of July, 1957, before me, JAMES R. KILBOURNE, a Notary Public for the State of Montana, personally appeared GEORGE M. WRIGHT, known to me to be the person whose name is subscribed to the within instrument as the attorney-in-fact of DELL M. WRIGHT, and acknowledged to me that he subscribed the name of DELL M. WRIGHT thereto as principal, and his own name as attorney-in-fact.

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

(NOTARIAL SEAL)

Notary Public for the State of Montana.
Residing at Billings, Montana.
My commission expires December 8, 1959.

City Council Regular

Date:	05/24/2021
Title:	Bitterroot Heights Subdivision, 3rd Filing - Preliminary Major Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

The Planning Board is forwarding a recommendation of conditional approval of the preliminary plat of Bitterroot Heights Subdivision, 3rd Filing to the City Council, and adoption of the Findings of Fact as presented in the staff report.

PROPOSED CONDITIONS OF APPROVAL

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

1. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On March 1, 2021, PEC Engineering, agent for BCJM Properties, LLC, applied for preliminary major plat approval for Bitterroot Heights Subdivision, 3rd Filing. The proposed subdivision creates 71 lots for residential development. The subject property is generally located on the west side of Bitterroot Drive and north of Mary Street. The property is zoned Neighborhood 3 (N3). The proposed lots will be developed in compliance with the zoning as the property is developed.

VARIANCE REQUESTED

The applicant is not requesting a variance from the subdivision regulations.

PROCEDURAL HISTORY

- Pre-application meeting January 28, 2021
- Preliminary plat application submitted to Planning Division on March 1, 2021
- Departmental review meeting March 18, 2021
- Preliminary plat resubmittal March 25, 2021
- Planning Board plat review April 13, 2021
- Planning Board public hearing April 27, 2021
- Preliminary plat to City Council May 24, 2021
- 60 working-day preliminary plat review period ends May 25, 2021

PLAT INFORMATION

General Location:	West side of Bitterroot Drive and north of Mary Street
Legal Description:	COS 3217, Tract 2A-1, and a portion of Lot 1, Block 7, Bitterroot Heights Subdivision, 2nd Filing
Owner/Subdivider:	BCJM Properties, LLC
Engineer and Surveyor:	PEC Engineering
Existing Zoning:	N3
Existing land use:	Vacant Lane
Proposed land use:	Residential

Gross and Net area:	23.82 acres / 17.89 acres
Proposed number of lots:	71
Lot size:	Max: 19,442 square feet Min.: 8,743 square feet
Parkland requirements:	Parkland dedication was met with the 1st and 2nd filings.

STAKEHOLDERS

Staff gave a brief presentation to the planning board at the public hearing. Staff pointed out that they had received a letter from a surrounding property owner concerned with zoning and traffic (See attached letter). Zoning is not part of subdivision, but it was pointed out that the zoning for the new filing is the same as the existing first and second filing zoning of this subdivision. Also, with this filing the subdivider will be providing a second way out so the additional traffic will have a second way out and reduce the traffic through the existing subdivision. &nbsPresident Woods called for questions and discussion. President Woods commented on the issue of on street parking denoted in the citizen letter. He stated that on street parking is allowed usually causing traffic in residential neighborhoods to slow down to safer speeds. There were no other comments or questions from the board.

President Woods opened the public hearing and asked if there is anyone wishing to speak in favor or against Bitterroot Heights Subdivision, 3rd Filing. There were no calls received from the public. President Woods closed the public hearing.

a President Woods asked for a motion, a motion was made and seconded to recommend conditional approval of the preliminary plat to the City Council and adopt the Findings of Fact as presented in the staff report.

The motion carried with a unanimous voice vote.

ALTERNATIVES

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends on May 25, 2021. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 60 working day review period, the City Council is required to:
1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plat

FISCAL EFFECTS

This subdivision will have no fiscal impact on the City-County Planning Division.

SUMMARY

One of the purposes of the City’s subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider’s responsibility to mitigate. Various City departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be minimal impacts from this proposed subdivision.

Attachments

Findings of Fact

Proposed Plat

SIA

Mayors Letter

Letter from surrounding property owner

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Bitterroot Heights Subdivision, 3rd Filing. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property is currently dry land grass and shrubs. There are no water rights being transferred to subdivision property owners. Ditches existing near this development are for the benefit of other properties. All ditches and drains shall remain in place and not be altered by the subdivider or subsequent owners. The subdivision should not affect agricultural water users' facilities.

2. Effect on local services

a. **Utilities** – Public water services to the subject property will be provided by the County Water District of Billings Heights. There is an 8-inch water line the existing subdivision 1st and 2nd filings. That pipe size will be continued through the 3rd filing. There will be a stub out to each lot for the individual lots to have access to water. All water line construction shall be installed in conformance with the design standards, specification, rules and regulations of the County Water District of Billings Heights.

Fire hydrants will also be installed as required by the City of Billings Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

Sanitary sewer service will be provided by the City of Billings by connecting to the existing 8-inch sewer main located in the existing 1st and 2nd filings of this subdivision. All sanitary sewer mains will be 8 inches with services stubbed to each lot. All sewer line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Department.

All telephone, gas, electrical power, and cable television lines that are placed within the public right-of-way shall be installed prior to surface improvements. An 8-foot utility easements is provided along the front lot lines of selected lots for utility services as shown on the plat of Bitterroot Heights Subdivision, 3rd Filing.

b. **Storm water** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping. A stormwater master plan is in place for this subdivision. In accordance

with the Stormwater Management Plan developed for Bitterroot Heights Subdivision 1st, Filing, a stormwater detention facility for Bitterroot Heights Subdivision has been constructed in the north-central portion of the property to serve ultimate build-out of all of Bitterroot Heights Subdivision. The detention facility is located on lands dedicated as parks and will be maintained by a Park Maintenance District.

All proposed stormwater management will be reviewed and approved by City of Billings Engineering Department to ensure it meets the master planned stormwater plan for Bitterroot Heights Subdivision. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual.*

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – Access to the lots in this proposed subdivision is from Strapper Lane and a connection to Hawthorne Lane. All new streets will be in a 56-foot-wide right of way and will be constructed to 34-foot wide, back of curb to back of curb road with 5-foot wide boulevard sidewalks. Sidewalks will be installed at the time of individual lot development. Road construction will include installation of accessible ramps at the intersections. Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 1601 St. Andrews Drive (Station #6).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** – School District #2 provides service to students within this subdivision from elementary to high school (Beartooth Elementary School, Medicine Crow Middle School, and Skyview High School). School District #2 did not respond to request for comments at the time of the writing of this report.

g. **Parks and Recreation** – The parkland dedication requirement for this subdivision have been met with previous filings of Bitterroot Heights Subdivision.

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. They have requested the installation of centralized mailbox unit

(CBUs). The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #1)**

3. Effect on the natural environment

The subject property is relatively level land adjacent to urban development on the east. A geotechnical study was performed for the subdivision a summary of the information from that study is included in the SIA under the heading IX. Soils/Geotechnical Study. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading II. Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

Essential Investments: Infill development and development near existing City infrastructure may be the most cost effective. (p.6)

Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods): Neighborhoods that are safe and attractive and provide essential services are much desired. (p.8)

Home Base (healthy, safe and diverse housing options) Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings. (p.9)

2. Billings Heights Neighborhood Plan

The Billings Heights Neighborhood Plan, adopted in 2006, identifies this area for low-density residential development. The subdivision meets the following goals of the Heights Neighborhood Plan:

Issue: Urban Sprawl

Goal: Encourage infill housing.

Objectives: To preserve and conserve resources and curb urban sprawl.

This subdivision will be building houses in an already established neighborhood and subdivision, reducing sprawl to new land.

Issue: Residential Development

Goal: To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Maintain similar housing in established neighborhoods.

Objectives: To encourage infill development and housing development that meets residents' desire to have similar housing within their neighborhood.

This subdivision provides low-density residential single-family development in a neighborhood with existing low-density single-family development.

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP does not show any trails within the proposed subdivision. Bitterroot Drive is identified as having a future bike lane on it when the road rebuilt and/or widened.

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

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

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

The subject property is located within the Neighborhood 3 (N3) zoning district. All building development on the lot shall comply with current zoning when applying for a building permit.

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

The subdivider will provided private utility easements as required by private utility providers on the face of the plat.

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

Legal and physical access is provided to the proposed lots from Strapper Lane and new internal streets will provide access to individual lots. All streets are dedicated to the public as shown on the plat.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Bitterroot Heights Subdivision, 3rd Filing does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

Staff recommends the Planning Board forward a recommendation of conditional approval of the preliminary plat of Bitterroot Heights Subdivision, 3rd Filing, to the City Council, and adopt the Findings of Fact as presented in the staff report.

PRELIMINARY PLAT OF

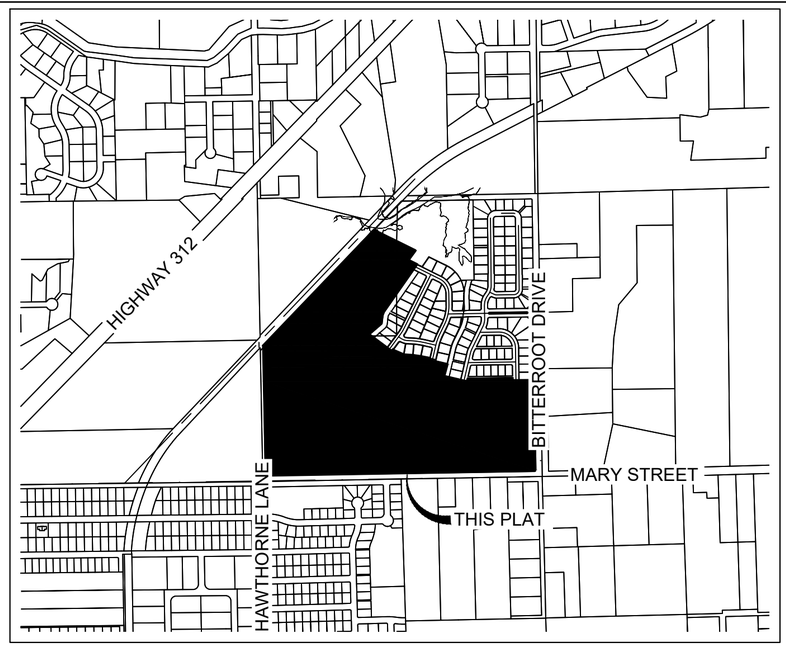
BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING

BEING TRACT 2A-1 OF COS 3217, 2ND AMENDED AND A PORTION OF LOT 1 OF BLOCK 7 OF BITTERROOT HEIGHTS SUBDIVISION 2ND FILING

LOCATED IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 01 N, RANGE 26 E, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : BCJM PROPERTIES, LLC

PREPARED BY : PERFORMANCE ENGINEERING, LLC



VICINITY MAP

SITE DATA

EXISTING LAND USE:	VACANT URBAN
EXISTING ZONING:	N3
PROPOSED LAND USE:	RESIDENTIAL
PROPOSED ZONING:	N3
TOTAL LOTS IN SUBDIVISION:	80
GROSS AREA:	79.064 AC
RIGHT-OF-WAY:	6.510 AC
LINEAL FEET OF STREETS:	5,191 LF
NET AREA OF LOTS:	72.554 AC
PARKLAND TO DATE	
REQUIRED:	9.201 AC
DEDICATED:	12.441 AC
PARKLAND THIS PLAT	
REQUIRED:	2.035 AC
DEDICATED:	0.204 AC
EXCESS PARKLAND DEDICATED:	1.409 AC

ADJOINING LANDOWNER INFORMATION

1. JOEY KIERNAN & LINDA R LOFF, 1346 EUBANKS AVENUE, ATLANTA, GA 30344
2. GENEVIEVE WINK, 2620 BOWLES WAY, BILLINGS, MT 59105
3. LINDSAY M MILLER, 2614 BOWLES WAY, BILLINGS, MT 59105
4. BRANDON E COOK, 2610 BOWLES WAY, BILLINGS, MT 59105
5. MARC E & LISA D NEIHAUS, 2606 BOWLES WAY, BILLINGS, MT 59105
6. ROBERT M, TAMARA M, & CODY J HOOPER, 2602 BOWLES WAY, BILLINGS, MT 59105
7. KENNETH C & SHELEAH THOMSON, 2526 BOWLES WAY, BILLINGS, MT 59105
8. TROY E & VICTORIA H RUFF, 2522 BOWLES WAY, BILLINGS, MT 59105
9. MARTY W & CARLA L EDWARDS, 2518 BOWLES WAY, BILLINGS, MT 59105
10. DENNIS & SUSAN DIRKS, 2514 BOWLES WAY, BILLINGS, MT 59105
11. TROY R & CAMMIE GUPTILL, 1428 BULLETS TRAIL, BILLINGS, MT 59105

DENNIS & RENEE BUCKLEY, P.O. BOX 50940, BILLINGS, MT 59105

FLOODWAY

FLOODPLAIN BOUNDARY

PARKLAND, 10.44 ACRES

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

~ TIFFANY ACREAGE TRACTS ~

HAPPY COWS LLC, 2500 AIREWAY DRIVE, BILLINGS, MT 59106

FRED R & DANIELLE K SCHMIDT, P.O. BOX 494, BILLINGS, MT 59103

306 LLC, 211 N 30TH ST, BILLINGS, MT 59101

~ CS 903 ~

16' ROW DEDICATED THIS PLAT

40' EX. HAWTHORNE LANE ROW

EXISTING ROW LINE

~ UNPLATTED ~

HAWTHORNE LANE

2nd FILING BOUNDARY

20' ROW DEDICATED THIS PLAT

BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING BOUNDARY

~ BITTERROOT HEIGHTS SUBDIVISON, 2ND FILING ~

Block 1 (Lots 1–6)
Block 2 (Lots 1–13)
Block 3 (Lots 1–18)
Block 4 (Lots 1–6)
Block 5 (Lots 1–6)
Block 6 (Lots 1–6)
Block 7 (Lots 1–18)
Block 8 (Lots 1–2)
Block 9 (Lots 1–3)
Block 10 (Lots 1–11)
Block 11 (Lot 1)

Lot : 1, 2354644 SQ FT, 54.055 ACRES

ROAD A

STRAPPER LANE

EUGENE AVENUE

ELLA LANE

BOWLES WAY

BULLETS TRAIL

MEADOW

CITY OF BILLINGS

Line Table

Line #	Length
L1	87.85
L2	74.75
L2	12.69
L3	85.41
L4	108.67
L5	86.30
L6	25.12
L6	56.00
L7	51.29
L8	19.68
L9	1.63
L9	56.64
L10	89.70
L11	16.00
L12	26.03
L13	20.09
L14	12.10
L15	9.14
L16	18.42
L17	50.10

Curve Table

Curve #	Length	Radius	Delta
C1	15.80	9.73	93.06
C2	15.67	10.00	89.78
C3	3.73	5.00	42.74
C4	36.10	73.00	28.34
C5	83.62	178.00	26.92
C6	82.96	178.00	26.70
C7	59.41	178.00	19.12
C8	4.36	178.00	1.40
C9	66.46	178.00	21.39
C10	67.74	178.00	21.80
C11	23.56	15.00	90.00
C12	53.38	128.00	23.89
C13	65.00	128.00	29.10
C14	10.21	128.00	4.57
C15	40.42	191.00	12.12
C16	23.56	15.00	90.01
C17	21.70	15.00	82.87
C18	36.49	432.00	4.84
C19	41.21	488.00	4.84
C20	22.70	15.00	86.70
C21	55.46	418.00	7.60
C22	66.10	418.00	9.06
C23	93.53	362.00	14.80
C24	24.64	15.00	94.12
C25	25.43	15.00	97.13
C26	23.56	15.00	90.00

Curve Table

Curve #	Length	Radius	Delta
C27	40.33	178.00	12.98
C28	64.44	178.00	20.74
C29	15.75	178.00	5.07
C30	66.66	302.00	12.65
C31	86.47	302.00	16.41
C32	51.48	302.00	9.77
C33	19.04	15.00	72.75
C34	16.73	73.00	13.13
C35	19.37	73.00	15.21
C36	28.08	15.00	107.25
C37	154.90	122.00	72.75
C38	23.57	15.00	90.02
C39	23.56	15.00	90.00
C40	82.60	122.00	38.79
C41	84.64	358.00	13.55
C42	77.40	358.00	12.39
C43	80.52	358.00	12.89
C44	23.56	15.00	89.99
C45	23.55	15.00	89.98
C46	23.56	15.00	90.00
C47	39.58	472.00	4.80
C48	60.59	472.00	7.36
C49	23.56	15.00	90.00
C50	52.28	247.00	12.13
C51	23.56	15.00	90.00
C52	54.80	528.00	5.95

Curve Table

Curve #	Length	Radius	Delta
C53	57.26	528.00	6.21
C54	23.56	15.00	90.00
C55	94.97	122.00	44.60
C56	23.56	15.00	90.00
C57	76.94	76.59	57.56
C58	4.83	5.00	55.36
C59	30.41	320.00	5.44
C60	32.47	320.00	5.81
C61	62.88	320.00	11.26
C62	18.66	130.00	8.22
C63	42.93	130.00	18.92
C64	66.40	130.00	29.27
C65	42.14	130.00	18.57
C66	3.59	130.00	1.58
C67	13.41	70.00	10.97
C68	68.75	180.00	21.88

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PRELIMINARY PLAT OF

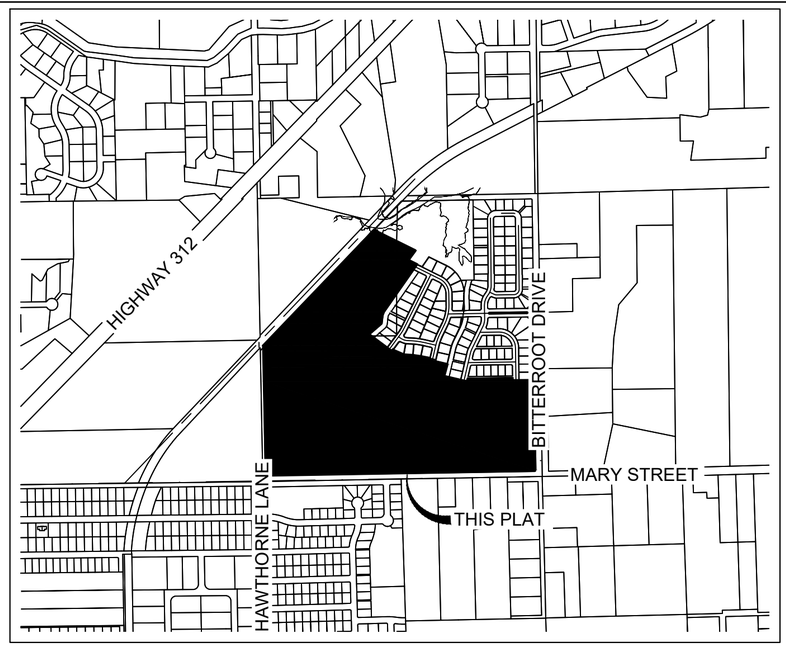
BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING

BEING TRACT 2A-1 OF COS 3217, 2ND AMENDED AND A PORTION OF LOT 1 OF BLOCK 7 OF BITTERROOT HEIGHTS SUBDIVISION 2ND FILING

LOCATED IN THE SE $\frac{1}{4}$ OF SECTION 11, TOWNSHIP 01 N, RANGE 26 E, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : BCJM PROPERTIES, LLC

PREPARED BY : PERFORMANCE ENGINEERING, LLC



VICINITY MAP

SITE DATA

EXISTING LAND USE:	VACANT URBAN
EXISTING ZONING:	N3
PROPOSED LAND USE:	RESIDENTIAL
PROPOSED ZONING:	N3
TOTAL LOTS IN SUBDIVISION:	80
GROSS AREA:	79.064 AC
RIGHT-OF-WAY:	6.510 AC
LINEAL FEET OF STREETS:	5,191 LF
NET AREA OF LOTS:	72.554 AC
PARKLAND TO DATE	
REQUIRED:	9.201 AC
DEDICATED:	12.441 AC
PARKLAND THIS PLAT	
REQUIRED:	2.035 AC
DEDICATED:	0.204 AC
EXCESS PARKLAND DEDICATED:	1.409 AC

Line Table	
Line #	Length
L1	87.85
L2	74.75
L3	85.41
L4	108.67
L5	86.30
L6	56.00
L7	51.29
L8	19.68
L9	56.64
L10	89.70

Curve Table			
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C4	36.10	73.00	28.34
C18	36.49	432.00	4.84
C58	4.83	5.00	55.36
C61	62.88	320.00	11.26
C63	42.93	130.00	18.92



ADJOINING LANDOWNER INFORMATION

1. BRET & SHELLEY R BARNES, 1432 BULLETS TRAIL, BILLINGS, MT 59105
2. JAMES & SHAWNA FRIEDE, 1436 BULLETS TRAIL, BILLINGS, MT 59105
3. COREY S. JOHNSON, 1440 BULLETS TRAIL, BILLINGS, MT 59105
4. DANIEL B & DEANNA L HANSARD, 2513 STRAPPER LANE, BILLINGS, MT 59105
5. TRAVIS J & HILLARY B TRYAN, 2506 MEADOW CREEK DRIVE, BILLINGS, MT 59105
6. TERILL J & VIRGINIA M NORVILLE, 1508 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
7. MARK STEVEN & ALESIA E FOWLER, 1512 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
8. CURTIS A & ANGELA R SCHMIDT, 1516 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
9. ELIZABETH LOCKWOOD, 1520 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
10. JOSH S ROBERSON, 1524 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
11. KALEN J YOUNG, 1528 MUSTANG VALLEY DRIVE, BILLINGS, MT 59105
12. AMANDA M & KAI S SLATES, 2505 SPRING GULCH WAY, BILLINGS, MT 59105
13. RICHARD & JONI PENTLAND, 2495 BITTERROOT DRIVE, BILLINGS, MT 59105
14. MDT, PO BOX 201001, HELENA MT, 59620
15. ROBERT C & BETTE M WOLFF, 825 CRIST DRIVE, BILLINGS, MT 59105
16. ROBERT C & BETTE M WOLFF, 825 CRIST DRIVE, BILLINGS, MT 59105
17. M P SOUZA, 1512 MARY STREET, BILLINGS, MT 59105
18. BRENT & CHERYL CATHEY, 200 BRIDLE PATH ROAD, BILLINGS, MT 59105
19. JOSEPH M & NARDA ALLEN, 1432 MARY STREET, BILLINGS, MT 59105
20. SARA WRIGHT, 1430 MARY STREET, BILLINGS, MT 59105
21. JOSEPH M ALLEN, 1414 MARY STREET, BILLINGS, MT 59105
22. KELLY R SELPH, 2347 COLUMBINE DRIVE, BILLINGS, MT 59105
23. COLTON T JAMES, 2346 COLUMBINE DRIVE, BILLINGS, MT 59105
24. CHRISTOPHER W GRUDZINSKI, 2341 HYACINTH DRIVE, BILLINGS, MT 59105
25. CODY W MARTINEZ, 2347 HYACINTH DRIVE, BILLINGS, MT 59105
26. BRYAN GROTJOHN, 2346 HYACINTH DRIVE, BILLINGS, MT 59105
27. DAVID JOHN RUFF, 2340 HYACINTH DRIVE, BILLINGS, MT 59105
28. KALISPELL ASSEMBLY OF GOD CHURCH, 225 SUMMIT RIDGE DRIVE, KALISPELL, MT 59901

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SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Bitterroot Heights Subdivision, 3rd Filing

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(City of Billings)

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Bitterroot Heights Subdivision, 3rd Filing

This agreement is made and entered this _____ day of _____, 20___, by and between ***BCJM Properties, LLC***, whose address for the purpose of this agreement is ***2409 Nina Clare Rd., Billings, MT 59102***, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the Board of Planning recommended conditional approval of a preliminary plat of *Bitterroot Heights Subdivision, 3rd Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the City Council conditionally approved a preliminary plat of *Bitterroot Heights Subdivision, 3rd Filing*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Bitterroot Heights Subdivision, 3rd Filing* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1101, BMCC):

1. No variances have been requested at this time.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. Sidewalks shall be 5-foot boulevard style walk.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

C. Much of the area of this subdivision was previously mined for gravel and has since been reclaimed. There exists the potential for variable soils conditions and groundwater levels within the subdivision area. Assessment and mitigation of these conditions, if necessary, shall be the responsibility of the lot owner. Additional geotechnical studies may be necessary at the time of individual lot development.

D. No water rights have been transferred to the lot owners.

E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned by the completion of the conditions set forth in the Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

F. A Park Maintenance District has been created for the maintenance of the boulevard improvements, maintenance of drainage channels and detention facilities, and future park maintenance. The maintenance of the park, drainage, and boulevard improvements will be performed by the City, but paid for by funds received through the Park Maintenance District. The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development (construction) of the subdivision park will be required when at least 51% of the proposed lots are sold. Development of the park will be the responsibility of the Subdivider.

G. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP

shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

H. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined with Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

I. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the FEMA maps for this area. Please be advised that special development restrictions may apply within these specified areas.

J. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.

III. TRANSPORTATION

A. Streets

- Subdivider will execute a private contract to construct public streets, and curb and gutter within the Subdivision. The improvements will consist of 34-foot from back of curb to back of curb residential streets with 56-foot rights-of-ways.
- Standard curb and gutter will be installed on all of the interior streets being constructed within the Subdivision.
- All streets will be provided with an asphalt concrete driving surface.
- Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb at corner intersection handicap ramps and aprons.
- Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
- Subdivider to install sidewalks and trails fronting parkland/open space areas.

C. Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- Subdivider will install necessary traffic control devices within or adjacent to the Subdivision in conformance with the City of Billings standards.
- Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed by the subdivider in accordance with the specifications of the City of Billings standards.

E. Access

- Subdivision access is limited to a single access to Bitterroot Drive via a public street (Empire Drive) located approximately 1,500 feet north of Mary Street and a single access to Mary Street via a public street (Hawthorne Lane) located approximately 2,600 feet west of Bitterroot Drive. Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.
- An update to the Traffic Accessibility Studies submitted for the 1st and 2nd Filings shall be performed.

F. Billings Area Bikeways and Trail Master Plan

- The Bitterroot Heights Subdivision, 3rd Filing is within the planning area for the Billings Area Bikeway & Trail Master Plan. The Trail Plan indicates a proposed multi-use trail along the south side of Five Mile Creek with a connection to Mary Street within the old railroad right-of-way. The Plan designates Mary Street as a "primary bikeway" and designates Bitterroot Drive as an "arterial bikeway".
- Parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings have been master-planned to include provisions for necessary connections through subdivision property. Construction of the multi-use path through parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings will be undertaken with development of the park and will commence when 51% of the total planned lots in all the filings are platted. In addition, 8-foot wide gravel maintenance paths have been constructed in the Public Open Space dedicated with the 2nd Filing.
- Ownership of trail corridor through Bitterroot Heights Subdivision, 1st and 2nd Filings will be by the City of Billings Parks Department. Maintenance will be the responsibility of the City of Billings Parks Department through establishment of a Park Maintenance District.

G. Public Transit

- Met Transit provides service to the Billings Heights, with the closest route at the intersection of Bench Boulevard and Pemberton Lane, approximately 1 mile from the 3rd Filing. No improvements are required to ensure public transit service.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.
- The Subdivider shall provide a permanent 2nd access to the Subdivision by improving Hawthorne Lane to a 30-foot asphalt road.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

In accordance with the Stormwater Management Plan developed for Bitterroot Heights Subdivision 1st, Filing, a stormwater detention facility for Bitterroot Heights Subdivision has been constructed in the north-central portion of the property to serve ultimate build-out of all of Bitterroot Heights Subdivision. The detention facility is located on lands dedicated as parks and will be maintained by a Park Maintenance District.

Existing natural drainages that traverse the Bitterroot Heights Subdivision will be retained and improved for conveyance of stormwater runoff to the detention facility. The existing west drain has been re-routed with the 2nd Filing to drain to the existing detention facility, in accordance with the Stormwater Management Plan developed for the 1st Filing. The improved natural drainages will be contained within Public Open Space dedicated as parks and will be maintained by a Park Maintenance District.

Where not contained within street rights-of-way, storm drainage facilities will be located within dedicated rights-of-way or on public property. Where storm drain outfalls run between residential lots, a 20-foot wide right-of-way will be provided and a 5-foot concrete pathway will be constructed within the right-of-way.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, County Water District of Billings Heights, Fire Department and the Montana Department of Environmental Quality.

A. Water

Subdivider shall enter into a private contract to extend water mains from those that are existing in the Subdivision. Water will be provided by County Water District of Billings Heights. Each water main will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

B. Sanitary Sewer

Subdivider shall enter into a private contract to extend sanitary sewer mains from those that are existing in the Subdivision. All sanitary sewer mains will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. 8-foot utility easements are provided along the front lot lines of selected lots for utility services as shown on the plat of Bitterroot Heights Subdivision, 3rd Filing.

VII. PARKS/OPEN SPACE

- The parkland requirement for the Bitterroot Heights Subdivision, 3rd Filing is 2.051 acres (11% of net area). The parkland requirement for the anticipated build-out of Bitterroot Heights Subdivision (all filings) is 7.96 acres (11% of net area). A total of 12.441 acres of parkland has been dedicated to the City with Bitterroot Heights Subdivision, 1st and 2nd Filings. Additional parklands will be dedicated with future filings.
- The City and the Subdivider agree that the requirement for park dedication is satisfied by the conveyance of parklands to the City.
- The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development of the subdivision Park Master Plan, adopted by City Council, will be required when at least 51% of proposed lots are sold. The development of the park will be the responsibility of the Subdivider.

VIII. IRRIGATION

- No irrigation facilities are affected by the development of Bitterroot Heights Subdivision, 3rd Filing.
- No water rights have been transferred to the lot owners. Irrigation ditches that exist near this development are for the benefit of other properties. Ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

IX. SOILS/GEOTECHNICAL STUDY

- A geotechnical investigation was performed for the area of Bitterroot Heights Subdivision, 2nd Filing and can be obtained from the City Engineering Department office.

X. PHASING OF IMPROVEMENTS

- Phasing is not proposed for this Subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial

lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER" *BCJM Properties, LLC*

By:_____

Its:_____

STATE OF MONTANA)
: ss
County of)

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 *BCJM Properties, 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

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 _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names 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: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Bitterroot Heights Subdivision, 3rd Filing

Signed and dated this _____ day of _____, 20___.

Subdivider/Owner

_____

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 *BCJM Properties, LLC*, the person who executed the forgoing 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: _____

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

May 24, 2021

BCJM Properties, LLC
2409 Nina Clare Road
Billings, MT 59102

Dear Applicant:

On May 24, 2021, the Billings City Council conditionally approved the preliminary plat of Bitterroot Heights Subdivision, 3rd Filing, subject to the following conditions of approval:

1. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.

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

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

Should you have any questions please contact Dave Green at (406) 247-8666 or by email at greend@billingsmt.gov

Sincerely,

_____
William A. Cole, Mayor

pc: Performance Engineering / Rob Neihart

To Whom It May Concern,

I am writing this email in response to the proposed zoning change for the Bitterroot Heights subdivision. At this time, I am strongly against this zoning change to allow for multi-family units for several reasons:

1) Noise pollution. Changing the lots to allow for multi-family units would increase the number of families occupying the same spice, potentially doubling this number, if every lot contained a multi-family unit. This would significantly increase the noise present within an otherwise quiet neighborhood.

2) Pollution. For much the same reason listed above, increasing the number of families per lot, would increase the amount of vehicle traffic, and thereby increase pollution in the immediate area. This would also lead to more trash in the area. As we all know, the wind blows quite frequently in our area, and many times this leads to trash blowing out of our trash bins. This would only worsen with the presence of multi-family units.

3) Traffic. As it stands, many residents in the subdivision park on the street. When this occurs, it can make it difficult to have traffic moving in both directions. Multi-family units would lead to a significant increase in traffic, which our neighborhood is not currently set up to handle. This would also significantly increase the wear and tear on our roads, increasing the frequency for repairs.

4) Safety. This is, perhaps, the most important point. As noted above, multi-family units would increase the traffic seen. I frequently see children playing in our neighborhood, as well as neighbors walking their pets. Significant increases in traffic, again, with the potential to double what would otherwise be expected, would pose a safety concern for residents that enjoy walking and playing in our beautiful neighborhood.

I am strongly against the change in zone to allow for multi-family units within the Bitterroot Heights subdivision, as it can only harm the neighborhood as it currently stands. I would implore the committee to stop this change, and maintain the single family unit zoning that has been present in the rest of the neighborhood. However, if this change in zoning cannot be avoided, I would at least ask that there be a requirement to buffer the existing neighborhood, by placing only single family units up against the existing properties.

Thank you for your time and consideration.

Sincerely,

Lindsay Miller
2614 Bowles Way
Billings, MT 59105
lmmiller2015@gmail.com

City Council Regular

Date:	05/24/2021
Title:	Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision - Final Minor Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

Staff recommends the City Council approve the final plat and SIA of Amended Lots 4E-1, Block 1, Shiloh Crossing Subdivision.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On April 12, 2021, Stahly Engineering and Associates, applied for final minor plat approval for Amended Lots 4E-1, Block 1, Shiloh Crossing Subdivision. The proposed subdivision creates 2 lots for commercial development. The subject property is generally located between Shiloh Road and Shiloh Crossing Boulevard, west of Scheels. The property is zoned Corridor Mixed Use-2 (CMU2). Staff has reviewed the application and determined that the proposed plat has met all the conditions of approval and is forwarding a recommendation of final approval to the City Council. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

ALTERNATIVES

The City Council may approve or disapprove the final plat of Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision. If the City Council chooses to deny the final plat, the denial must be because the criteria in Section 76-3-611, MCA are not met.

The criteria are as follows: 76-3-611. Review of final plat. (1) The governing body or the agent or agency designated by the governing body shall examine each final plat, and the governing body shall approve the plat only if:
(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and (local) regulations adopted pursuant to this chapter; and
(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.

Staff finds the final plat meets the criteria outlined in 76-3-611 above.

FISCAL EFFECTS

The final plat of this subdivision will have no financial impact on the Planning Division.

Attachments

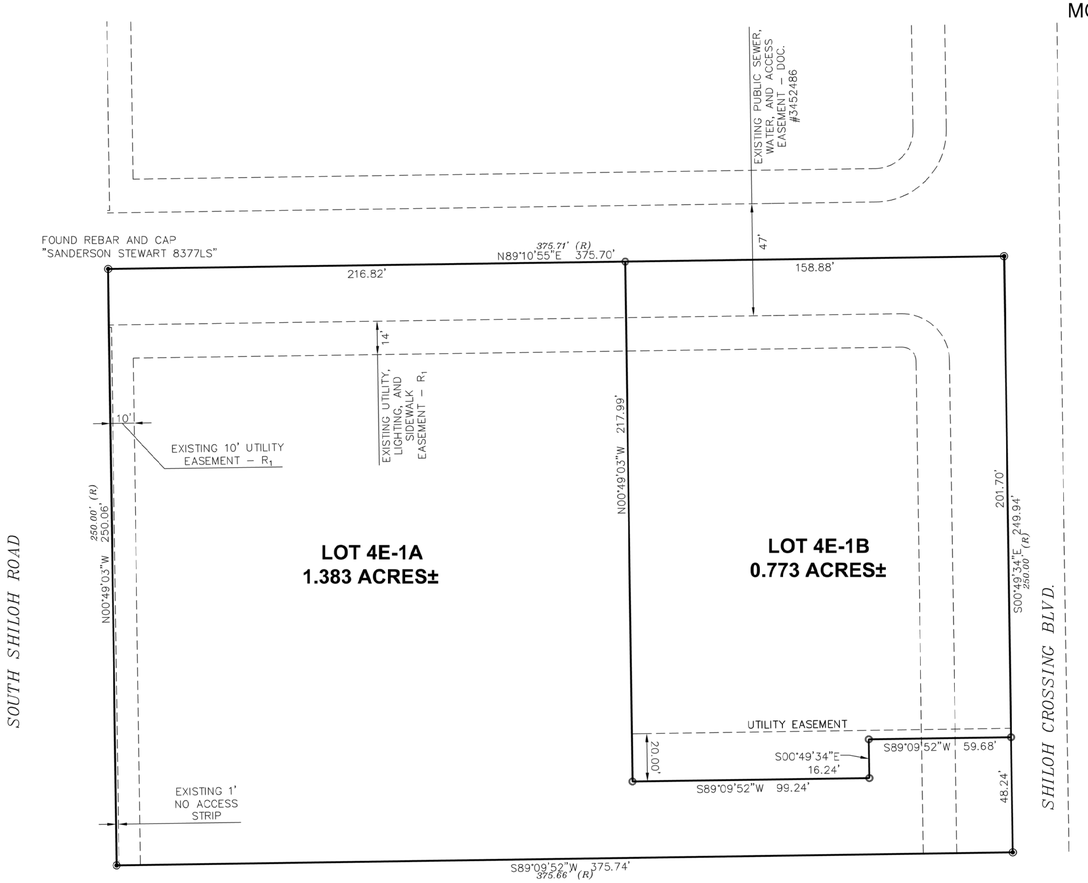
Final Plat
SIA

Conditions of Approval

AMENDED PLAT OF LOT 4E-1, BLOCK 1,

SHILOH CROSSING SUBDIVISION

LOCATED IN THE NW1/4 OF SECTION 14, TOWNSHIP 01 SOUTH, RANGE 26 EAST, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

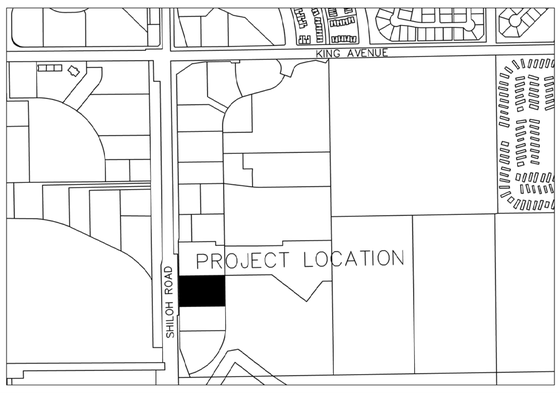


LEGEND

◉	FOUND MONUMENT AS DESCRIBED
○	SET ⅝"x24" REBAR WITH ALUMINUM CAP (AC) OR BRASS CAP (BC) MARKED "STAHLY 41478PLS",
———	BOUNDARY LINE (THIS SURVEY)
M	MEASURED
R	RECORD MEASUREMENT
ROW	RIGHT-OF-WAY
YPC	YELLOW PLASTIC CAP

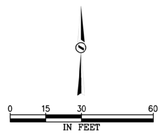
VICINITY MAP

NTS



NOTES:

1. DATE OF SURVEY: November 5th, 2019; Prelim. Plat prepared 05/06/2020
2. PURPOSE OF SURVEY: Minor subdivision.



BASIS OF BEARING:
MONTANA STATE PLANE 2500
NAD83 (CONUS, MOLODENSKY)
GROUND PROJECTION AT:
LATITUDE: N45°44'52.27994"
LONGITUDE: W108°36'51.25986"
ELLIPSOID HEIGHT: 3198.09
CONVERGENCE ANGLE: 0°43'19"
DISTANCES ARE GROUND DISTANCES

CERTIFICATE OF SURVEYOR

I, the undersigned, Christopher W. Kosine, Professional Land Surveyor, do hereby certify that in November, 2019, I surveyed Lot 4-E-1 of the Shiloh Crossing Subdivision, and described the same as shown on the accompanying plat and platted in accordance with the provisions of the Montana Subdivision and Platting Act, Section 76-3-101 through 76-3-625, MCA, and the Yellowstone County Subdivision Regulations.
DATED this _____ day of _____, A.D., 20__.

_____
Christopher W. Kosine, PLS.
Registration No 41478

MONTANA
CHRISTOPHER W. KOSINE
41478 LS
LICENSED
PROFESSIONAL LAND SURVEYOR

CERTIFICATE OF DEDICATION

I, the undersigned property owner, do hereby certify that I have caused to be surveyed, subdivided and platted into lots as shown by the plat herunto included, the following described land in Yellowstone County, to-wit:

LEGAL DESCRIPTION

Two tracts of land located within the northwest quarter of Section 14, Township 1 South, Range 26 East, Principal Meridian Montana, City of Billings, Yellowstone County, Montana, being more particularly described as Lot 4E-1, amended plat of Lots 2A-4A,2A-5A,3A & 4E, Block 1, Shiloh Crossing Subdivision, official plat filed with the Clerk & Recorder of Yellowstone County, Montana, (Document #3611452), containing a gross and net area of 2.156 acres.

DEPARTMENT OF ENVIRONMENTAL QUALITY EXCLUSION

Lots 4E-1A and 4E-1B are excluded from Department of Environmental Quality review pursuant to ARM 17.36.605(2)(b)(i) "no facilities other than those previously approved exist or will be constructed on the parcel;"

and

ARM 17.36.605 (2)(b)(ii) "the division of land will not cause approved facilities to deviate from the conditions of approval, in violation of 76-4-130, MCA."

DATED this _____ day of _____, A.D., 2021

_____
Darryl Rensmon, representative for Opportunity Bank of Montana

State of _____
County of _____

This instrument was acknowledged before me on

_____ _____ by
(Date)

Darryl Rensman, representative for Opportunity Bank of Montana

_____
(Notary – printed)

_____
(Notary – signed)

Notary Public for the State of: _____

Residing at: _____

My commission expires: _____

CERTIFICATE OF CITY COUNCIL

I, _____, City of Billings, Montana, do hereby certify that the accompanying plat has been duly examined and have found the same to conform to the law, approve it, and hereby accept any dedication to public use.

DATED this _____ day of _____, A.D., 2021

CITY OF BILLINGS, MONTANA

BY: _____
Mayor

ATTEST: _____
City Clerk

CERTIFICATE OF CITY ATTORNEY

This document has been reviewed by the City Attorney's office and is acceptable as to form.

DATED this _____ day of _____, A.D., 20__.

Reviewed by: _____

CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-3-611(b) MCA, that the accompanying plat has been duly examined and that all real property taxes and special assessments levied on the land have been paid.

DATED this _____ day of _____, A.D., 2021.

_____
(Signature Treasurer of Yellowstone County)

CERTIFICATE OF EXAMINING LAND SURVEYOR

I, the undersigned, do hereby certify that I have examined this plat for errors and omissions in drafting.

Dated this _____ day of _____, 2021.

_____
Examining Land Surveyor

STAHLY ENGINEERING & ASSOCIATES
PROFESSIONAL ENGINEERS & SURVEYORS
www.seaeng.com

2223 MONTANA AVE. STE. 201
BILLINGS, MT 59101
Phone:(406)601-4055
Fax:(406)601-4062

3530 CENTENNIAL DR.
HELENA, MT 59601
Phone:(406)442-8594
Fax:(406)442-8557

851 BRIDGER DR. STE. 1
BOZEMAN, MT 59715
Phone:(406)522-9526
Fax:(406)522-9528

SUBDIVISION PLAT NO. _____

COUNTY: YELLOWSTONE

PRINCIPAL MERIDIAN, MONTANA

1/4	SEC	T	R
X	14	01S	26E

DESIGNED: _
DRAWN: CWK
CHECKED: _
DATE: 05/05/2020

SHEET
1 OF 1

SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Amended Plat of Lot 4E-1, Block 1, Shiloh Crossing Subdivision

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(City of Billings)

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Amended Plat of Lot 4E-1, Block 1, Shiloh Crossing Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between Opportunity Bank of Montana, whose address for the purpose of this agreement is P.O. Box 4999, Helena, MT 59604-4999, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the amended plat of *Lot 4E-1, Block 1, Shiloh Crossing Subdivision*, located in Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on _____ day of _____, 20__, the City Council conditionally approved an amended preliminary plat of *Lot 4E-1, Block 1, Shiloh Crossing Subdivision*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Lots 4E-1A and 4E-1B, Block 1, Shiloh Crossing Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

There are no variances requested for this subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.

B. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

C. Lot owners should be aware that there are Covenants, Conditions and Restrictions of the Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision recorded in conjunction with this subdivision that outlines additional requirements specific to this subdivision.

D. A geotechnical engineering report was prepared for this development by Tetra Tech titled, *New Opportunity Bank – Shiloh Crossing, Billings, Montana,* dated October 17, 2019. This report details foundation design, and pavement and concrete sections specific to the proposed site improvements.

E. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

F. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned on the completion of the conditions set forth in this Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

G. The subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

H. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined within Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

III. TRANSPORTATION

A. Streets

Shiloh Road has a variable width constructed adjacent to the project limits with curb and gutter and an approximately 73' paved width. No improvements to Shiloh Road are proposed with this subdivision.

An unnamed access road to the north of the project limits has a 47' public sewer, water, and access easement. The road has curb and gutter and an approximately 39' paved width and no improvements are proposed with this subdivision.

Shiloh Crossing Boulevard has a 47' public sewer, water, and access easement. Immediately abutting the public access easement is a 14' utility, lighting and sidewalk easement all lying within the parcel. Shiloh Crossing Boulevard is fully constructed adjacent to the project limits with curb and gutter and an approximately 43' paved width. No improvements to Shiloh Crossing Boulevard are proposed with this subdivision.

B. Sidewalks

An approximately 5' wide concrete sidewalk is currently in place along Shiloh Road. No improvements to the boulevard or sidewalk along Shiloh Road are proposed with this subdivision other than replacing areas that are damaged during construction of the on-site improvements.

A variable width boulevard and 5' wide concrete sidewalk will be constructed along the frontage of the subject parcel along the unnamed north access road and Shiloh Crossing Boulevard. Timing of the sidewalk improvements will be determined in conjunction with City Engineering.

C. Street Lighting

There are no street lighting improvements proposed with this subdivision.

D. Traffic Control Devices

There are existing stop signs on the unnamed access road at the intersections with Shiloh Road and Shiloh Crossing Boulevard. There are no additional traffic control devices proposed with this subdivision.

E. Access

Legal access will be granted by way of the access easement for Shiloh Crossing Boulevard via one approach. A reciprocal access easement will be placed over the access drive to provide legal, shared access to both lots.

F. Billings Area Bikeway and Trail Master Plan

The Billings Area Bikeway and Trail Master Plan Update identifies a shared use path along Shiloh Road. This subdivision will not require the construction of any bikeway or trail improvements.

G. Public Transit

There are no public transit improvements proposed with this subdivision.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

The City of Billings Fire and Police Departments will provide emergency fire and law enforcement services. Emergency access shall be provided via Shiloh Crossing Boulevard. An operational fire hydrant is located south of the property on the west side of Shiloh Crossing Boulevard.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

The proposed stormwater management system will consist of separate infiltration systems on each lot. The collection system will tie into the Subdivision's existing storm sewer system.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

Both proposed lots are currently served by individual water services. No additional water system improvements are proposed for this subdivision.

B. Sanitary Sewer

Both proposed lots are currently served by individual sanitary sewer services. No additional sanitary sewer system improvements are proposed for this subdivision.

C. Power, Telephone, Gas, and Cable Television

Both proposed lots are currently served by individual power, telephone, gas, and cable television services. No additional power, telephone, gas, or cable television improvements are proposed for this subdivision.

VII. PARKS/OPEN SPACE

There is no parkland requirement for amended plat of Lot 4E-1, Block 1, Shiloh Crossing Subdivision, as all parcels are nonresidential [MCA 76-3-621(3)(b)].

VIII. IRRIGATION

Both parcels will utilize private irrigation systems and are not within an irrigation district.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical engineering report was prepared for this development by Tetra Tech titled, *New Opportunity Bank – Shiloh Crossing, Billings, Montana,* dated October 17, 2019. This report details foundation design, and pavement and concrete sections specific to the proposed site improvements.

X. PHASING OF IMPROVEMENTS

There are no phases associated with this subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

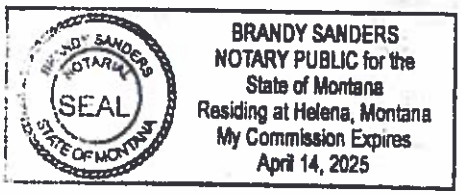
"SUBDIVIDER" *Opportunity Bank Of Montana*

By: _____

Its: SVP / CIO

STATE OF MONTANA)
Lewis & Clark : ss
County of ~~Yellowstone~~)

On this 4th day of May, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Darryl Rensmon, known to me to be the SVP, CIO of *Opportunity Bank of Montana*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.



Brandy Sanders
Notary Public in and for the State of Montana
Printed Name: Brandy Sanders
Residing at: Helena MT
My commission expires: April 14, 2025

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20__.

"CITY"
CITY OF BILLINGS
MONTANA

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 _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names 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: _____

Waiver of Right to Protest
FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision

Signed and dated this 5th day of May, 2021.

Subdivider/Owner

STATE OF MONTANA)
: ss
County of ~~Yellowstone~~ Lewis & Clark)

On this 4th day of May, 2021, before me, a Notary Public in and for the State of Montana, personally appeared Darryl Rensmon, known to me to be *Subdivider/Owner Name*, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

BRANDY SANDERS
NOTARY PUBLIC for the
State of Montana
Residing at Helena, Montana
My Commission Expires
April 14, 2025

Notary Public in and for the State of Montana
Printed Name: Brandy Sanders
Residing at: Helena MT
My commission expires: April 14, 2025

CITY OF BILLINGS

WILLIAM A. COLE, MAYOR

P.O. BOX 1178
BILLINGS, MONTANA 59103
(406) 687-8296
FAX (406) 657-8390

March 22, 2021

Opportunity Bank of Montana
P.O. Box 4999
Helena, MT 59604

Dear Applicant:

On March 22, 2021, the Billings City Council conditionally approved the preliminary plat of Amended Lot 4E-1, Block 1, Shiloh Crossing Subdivision, subject to the following conditions of approval:

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

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

Should you have questions please contact Dave Green at (406) 247-8666 or by email at greend@billingsmt.gov

Sincerely,

William A. Cole

William A. Cole, Mayor

pc: Stahly Engineering

City Council Regular

Date:	05/24/2021
Title:	Bond Resolution for Pooled Sidewalk Bonds
Presented by:	Teri Walker
Department:	Finance
Presentation:	No

RECOMMENDATION

Staff recommends the City Council approve the bond resolution for pooled sidewalk bonds.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

On April 26, 2021, City Council approved a resolution authorizing the issuance and calling for a negotiated sidewalk bond sale for WO 19-02, WO 19-35 and WO 20-12. After receiving the construction bids for WO 20-12 it has been determined that the amount stated in the resolution calling for a negotiated sidewalk bond sale for that project exceeded the authorized dollar amount. WO 20-12 will be pulled from this sale and will be sold at a later date.

The total bond sale amount will now be $325,000, and only for WO 19-02 and WO 19-35.

Once the resolution has been approved, the closing will take place and the bond proceeds will be disbursed to the construction project fund.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve and find an alternative funding source

FISCAL EFFECTS

The term on the bond is 12 years with an interest rate of 3.19%. The property owners identified in the sidewalk creation documents will be assessed yearly on their property tax bill.

Attachments

resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 21-_____ entitled: "RESOLUTION RELATING TO $325,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2021; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on May 24, 2021, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____ _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____ _____.

WITNESS my hand and seal officially this 24th day of May, 2021.

_____
City Clerk

RESOLUTION NO. 21-_____

RESOLUTION RELATING TO $325,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2021; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Prior Acts. This Council, by Resolution No. 21-10922, adopted by the City Council on January 25, 2021, as amended and restated by Resolution No. 21-10944, adopted by the City Council on April 26, 2021 (collectively, the "Authorizing Resolution") and pursuant to Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), authorized the issuance of pooled special sidewalk, curb, gutter and alley approach bonds of the City for the purpose of financing costs of installation, construction, reconstruction or replacement of certain curbs, gutters, sidewalks, drive approaches, driveways, alley approaches and appurtenant improvements to certain locations in the City heretofore ordered by this Council pursuant to Resolution No. 19-10792, adopted May 13, 2019, as the W.O. 19-02, Missing Sidewalk/Miscellaneous Project (the "Missing Sidewalk Improvements"), pursuant to Resolution No. 20-10864, adopted April 13, 2020, as the W.O. 19-35, Metal Streets Improvements (the "Metal Streets Improvements"), and pursuant to Resolution No. 21-10935, adopted March 22, 2021, as the W.O. 20-12, South 32nd Street Improvements (the "South 32nd Street Improvements"). The City has decided to postpone financing of the South 32nd Street Improvements and will proceed with financing of the Missing Sidewalk Improvements and the Metal Streets Improvements (collectively, the "Improvements") on a pooled basis as set forth herein. The Improvements are more specifically described on Exhibit A hereto.

Pursuant to the Authorizing Resolution, this Council determined that it is in the best interests of the City to sell its Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2021 (the "Series 2021 Bonds") at a private negotiated sale, subject to the limitations and conditions set forth therein. The City intends will enter into a Bond Purchase Agreement with Rocky Mountain Bank (the "Purchaser"), pursuant to which the Purchaser will agree to purchase the Series 2021 Bonds from the City at an aggregate purchase price of $325,000 (representing the stated principal amount of the Series 2021 Bonds) upon the terms set forth in this Resolution. The interest rate for the Series 2021 Bonds is 3.19%. In the event of any discrepancy between the Bond Purchase Agreement and this resolution, this Resolution shall control.

In the resolutions ordering in the Missing Sidewalk Improvements and the Metal Streets Improvements, this Council found that is in the public interest, and in the best interest of the City and the properties specifically benefitting from the Improvements, to secure payment of principal of and interest on the Series 2021 Bonds by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"), on the basis of the factors required to be considered under Montana Code Annotated, Section 7-12-4225. Those findings are hereby ratified and confirmed.

1.02. Costs. It is currently estimated that the costs and expenses to be assessed against properties adjacent to the Improvements, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses, including costs of issuance of the Series 2021 Bonds and the deposit of proceeds in the Revolving Fund are as follows:

	Missing Sidewalk Improvements	Metal Streets Improvements
Construction	$160,715.00	$151,232.94
Engineering	16,131.88	25,426.79
Total Project Costs	$176,846.88	$176,659.73
Less Contributions	(16,243.35)	(50,858.57)
Adjusted Project Costs	$160,603.53	125,801.16
City Financing Expense	813.32	813.32
Revolving Fund Deposit	8,883.51	7,085.16
Costs of Issuance	10,500.00	10,500.00
Total	180,800.36	144,199.64

Such amount will be levied and assessed upon the assessable real property adjacent to the Improvements on the bases described in the resolutions referenced above. This Council has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the 2021 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the "2021 Sidewalk Sinking Fund") created for the Improvements.

1.03. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, and the home rule charter of the City, in order to make the Series 2021 Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Series 2021 Bonds.

2.01. Principal Amount, Maturity, Denominations, Date, Interest Rate. For the purpose of paying the costs and expenses incurred in the construction of the Improvements, funding a deposit to the Revolving Fund and paying costs of issuance of the Series 2021 Bonds, and in anticipation of the collection of special assessments to be levied therefor, the City shall forthwith issue and deliver to the Purchaser the Series 2021 Bonds, denominated "Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2021" in the aggregate principal amount of $325,000, payable solely from the 2021 Sidewalk Sinking Fund. The Series 2021 Bonds shall be dated, as originally issued, and be registered as of June 10, 2021, shall mature on July 1, 2033, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 3.19% per annum. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

2.02. Interest Payment Dates. Interest on the Series 2021 Bonds shall be payable on each January 1 and July 1, commencing January 1, 2022, to the owner of record thereof as such appear on the bond register at the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Upon the original delivery of the Series 2021 Bonds to the Purchaser and upon each subsequent transfer or exchange of a Series 2021 Bond pursuant to Section 2.04, the Registrar (as hereinafter defined) shall date the Series 2021 Bonds as of the date of its authentication.

2.03. Method of Payment. The Series 2021 Bonds shall be issued only in fully registered form. The interest on and, upon presentation and surrender thereof at the principal office of the Registrar, the principal of the Series 2021 Bonds shall be payable by check or draft drawn on the Registrar. Notwithstanding the foregoing, so long as a Series 2021 Bond is evidenced by a single, fully registered term bond, it shall not be necessary to present and surrender such Series 2021 Bond until the full redemption thereof pursuant to Section 2.05, but the Registrar shall note in the bond register such principal payment. The principal of and interest on the Series 2021 Bonds are payable in lawful money of the United States of America.

2.04. Registration. The City hereby appoints the City Finance Director, to act as bond registrar, transfer agent and paying agent for the Series 2021 Bonds (the "Registrar"). The City reserves the right to appoint a bank, trust company or fiscal company as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana (the "Registration Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. This Section 2.04 shall establish a system of registration for the Series 2021 Bonds as defined in the Registration Act. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Bond Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of the Series 2021 Bonds and the registration of transfers and exchanges of the Series 2021 Bonds.

(b) Transfer. The Series 2021 Bonds may be transferred in whole but not in part and only to (i) an affiliate of the Purchaser; (ii) a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or accredited investors; or (iii) a person or entity that the Purchaser reasonably believes is qualified to purchase the Series 2021 Bonds or that makes representations substantially similar to the representations the Purchaser makes in the Bond Purchase Agreement. Upon surrender to the Registrar for transfer of any Series 2021 Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing and guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Series 2021 Bond of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of any transfer of the Series 2021 Bonds or any portion thereof selected or called for redemption.

(c) Exchange. Whenever any Series 2021 Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver a new Series 2021 Bond of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. Any Series 2021 Bond surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Series 2021 Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Series 2021 Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owner. The City and the Registrar may treat the person in whose name any Series 2021 Bond is at any time registered on the bond register as the absolute owner of such Series 2021 Bond, whether such Series 2021 Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Series 2021 Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Series 2021 Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer of a Series 2021 Bond or exchange of a Series 2021 Bond (except for an exchange upon the partial redemption of a Series 2021 Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Series 2021 Bonds. In case any Series 2021 Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Series 2021 Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Series 2021 Bond or in lieu of and in substitution for any such Series 2021 Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Series 2021 Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Series 2021 Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. Any Series 2021 Bond so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Series 2021 Bond has already matured or such Series 2021 Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Series 2021 Bond prior to payment.

2.05. Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the 2021 Sidewalk Sinking Fund after payment of the principal and interest due on the Series 2021 Bonds drawn against it, either from the prepayment of assessments or from the transfer of surplus money from a Construction Subaccount to a Principal Subaccount as provided in Section 3.02, the City Finance Director shall call for redemption on the interest payment date the principal amount of the Series 2021 Bonds which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the 2021 Sidewalk Sinking Fund on that date. The redemption price shall equal the principal amount of the Series 2021 Bonds to be redeemed plus interest accrued to the date of redemption. Such mandatory redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2021 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2021 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

(b) Optional Redemption. The Series 2021 Bonds are subject to redemption at any time, at the option of the City, in whole or in part, from sources of funds available therefor (other than those described in Section 2.05(a)), at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. Such optional redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2021 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2021 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

(c) Mandatory Sinking Fund Redemption. The Series 2021 Bonds are subject to redemption on July 1 of the respective years shown below (herein referred to as a "Sinking Fund Payment Date") and in the principal amounts (hereinafter referred to as a "Mandatory Sinking Fund Payment") set forth below:

Term Bond

Sinking Fund Payment Date	July 1 Mandatory Sinking Fund Payment Amount	Sinking Fund Payment Date	July 1 Mandatory Sinking Fund Payment Amount
2022	$22,000	2028	$27,000
2023	24,000	2029	28,000
2024	24,000	2030	29,000
2025	25,000	2031	30,000
2026	26,000	2032	31,000
2027	27,000	2033	32,000

*Final maturity.

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Series 2021 Bonds to be redeemed shall be fixed by the City Finance Director, who shall give notice thereof to the Registrar 45 days prior to the date set for redemption in order for the

Registrar to give notice, by first class mail, postage prepaid, to the owners of the Series 2021 Bonds at their addresses appearing on the bond register, of the respective principal amounts of the Series 2021 Bonds to be redeemed and the date on which payment will be made, which date shall be not less than 30 days after the date of mailing notice. On the date so fixed, interest on the principal amounts of the Series 2021 Bonds so redeemed shall cease to accrue.

2.06. Form. The Series 2021 Bonds shall be prepared in substantially the form set forth in Exhibit B hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.07. Execution, Registration and Delivery. The Series 2021 Bonds shall be prepared under the direction of the City Finance Director and shall be executed on behalf of the City by the signatures of the Mayor, the City Finance Director and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on any Series 2021 Bond shall cease to be such officer before the delivery of such Series 2021 Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Series 2021 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Series 2021 Bond has been duly executed by the manual signature of an authorized representative of the Registrar. The certificate of authentication on a different Series 2021 Bond need not be signed by the same representative. The executed certificate of authentication on the Series 2021 Bonds shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Series 2021 Bonds have been so executed, authenticated and registered, the Series 2021 Bonds shall be delivered by the Registrar to the Purchasers upon payment of the purchase price in accordance with the contract of sale heretofore made and executed.

2.07. Application of Proceeds. From the proceeds of the Series 2021 Bonds, the City Finance Director shall credit forthwith $15,968.67 to the Revolving Fund, as required by Section 7-12-4169(2) of the Act, and the balance of such proceeds to the Construction Subaccount in the respective Project Account (as hereinafter defined), in proportion to the principal amount of the Series 2021 Bonds allocable to the Missing Sidewalk Improvements and the Metal Streets Improvements as set forth in Section 1.02, to be used solely for the purposes described in Section 3.02.

Section 3. 2021 Sidewalk Sinking Fund; Assessments.

3.01. 2021 Sidewalk Sinking Fund. There is hereby created and established the fund designated as the "2021 Sidewalk, Curb, Gutter and Alley Approach Sinking Fund" which shall be maintained by the City Finance Director on the books and records of the City separate and apart from all other funds of the City. Within the 2021 Sidewalk Sinking Fund there shall be maintained separate accounts for the Missing Sidewalk Improvements and the Metal Streets Improvements (collectively, the "Project Accounts"). Within each Project Account there shall be maintained three separate subaccounts, designated as the "Construction Subaccount," the "Principal Subaccount" and the "Interest Subaccount," respectively.

3.02. Construction Subaccounts. There shall be credited to the Construction Subaccount in the respective Project Account the proceeds of the sale of the Series 2021 Bonds attributable to the respective Improvements remaining after the required deposits to the Revolving Fund. Any earnings on investment of money in a Construction Subaccount shall be retained therein. All costs and expenses of constructing the Improvements, including costs of issuance of the Series 2021 Bonds, shall be paid from time to time as incurred and allowed from the Construction Subaccount in the respective Project Account in accordance with the provisions of applicable law, and money in a Construction Subaccount shall be used for no other purpose; provided that upon completion of the Improvements and after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any money remaining in a Construction Subaccount shall be transferred to the Principal Subaccount in the applicable Project Account and used to redeem the principal amount of the Series 2021 Bonds as provided in Section 3.03.

3.03. Principal Subaccounts and Interest Subaccounts. Money in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Series 2021 Bonds as such payments become due or to redeem all or a portion of the principal amount of the Series 2021 Bonds.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements, the City Finance Director shall credit to the Interest Subaccount in the respective Project Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Subaccount in the respective Project Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the Project Accounts. All money in the Interest Subaccounts and the Principal Subaccounts shall be used first to pay interest then due, and any remaining money shall be used to pay principal then due and, if money is available, to redeem all or a portion of the principal amount of the Series 2021 Bonds in accordance with Section 2.05; provided that any money transferred to a Principal Subaccount from a Construction Subaccount pursuant to Section 3.02 shall be applied to redeem the Series 2021 Bonds to the extent possible on the next interest payment date for which notice of redemption has been properly given pursuant to Section 2.05(a). Interest shall be paid from the respective Interest Subaccount as accrued on the Series 2021 Bonds to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.04. Loans From Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to a Project Account in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in such Project Account and issue an order authorizing a loan or advance from the Revolving Fund to a Project Accounts in an amount sufficient to make good any deficiency then existing in the Principal Subaccounts in such Project Account, in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in the Principal Subaccount or Interest Subaccount in a Project Account if the money on deposit therein on any December 15 or June 15 (excluding amounts in the Principal Subaccount representing prepaid special assessments) is less than the amount necessary to pay the principal of the Series 2021

Bonds then due (other than upon mandatory or optional redemption pursuant to Section 2.05(a) and (b) hereof), and interest payable on the Series 2021 Bonds, on the next succeeding interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by annually levying such tax or making such loan from the general fund of the City, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City is not sufficient to make good all deficiencies then existing in the funds for which the City covenants to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City has been paid and to the extent of amounts available in the Revolving Fund. On any date when all accrued interest on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the funds for payment and redemption of bonds and warrants to the extent such funds are deficient for such purpose and, if money in the Revolving Fund is insufficient therefor, *pro rata* in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as Series 2021 Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of the Series 2021 Bonds that until the principal amount of the Series 2021 Bonds and interest thereon are fully paid:

4.01. Compliance with Resolution. The City will hold the 2021 Sidewalk Sinking Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this Resolution. The provisions hereinabove made with respect to the 2021 Sidewalk Sinking Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the sale of the Series 2021 Bonds as set forth in Section 1.01.

4.02. Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts for the Improvements and to ensure the completion of the Improvements in accordance with the plans and specifications and within the

time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Construction Subaccount in the respective Project Account and within the amount of the proceeds of the Series 2021 Bonds appropriated thereto, amounts contributed by the City therefor and prepayments by owners of property adjacent to the Improvements.

4.03. Levy of Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property adjacent to the Improvements, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than the following amounts:

Improvement	Principal Amount
Missing Sidewalk Improvements	$180,800.36
Metal Streets Improvements	$144,199.64

Such special assessments shall be levied on the basis or bases prescribed in the Resolutions ordering the Improvements, and shall be payable in substantially equal semiannual installments of principal and interest over a period of 12 years, at an annual rate equal to the sum of: (i) the average annual interest rate borne by the Series 2021 Bonds, plus (ii) one-half of one percent (0.50%) per annum. The assessments to be levied will be payable on the 30th day of November in each of the years 2021 through 2032, and on the 31st day of May in the years 2022 through 2033, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Series 2021 Bonds to January 1, 2022. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Section 7-12-4191 of the Act. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Section 7-12-4186 of the Act. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Series 2021 Bonds, including investment income thereon, are applied to the redemption of the Series 2021 Bonds, as provided in Sections 7-12-4205 and 7-12-4206 of the Act, or if refunding bonds are issued and the outstanding principal amount of the Series 2021 Bonds is decreased or increased, the City will reduce or increase, respectively, the assessments

levied in the respective project area and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of the Series 2021 Bonds represented by the refunding bonds. The City and this Council, its officers and employees will reassess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Sections 7-12-4176 through 7-12-4178 of the Act.

4.05. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened questioning the validity or regularity of the ordering of the Improvements, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the City to issue the Series 2021 Bonds or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.06. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied for costs of the Improvements, unless the City determines, by resolution of the Council, that such waiver is in the best interest of the owners of the Series 2021 Bonds.

Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Series 2021 Bonds which might cause the Series 2021 Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

5.02. General Covenant. The City covenants and agrees with the owners of the Series 2021 Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2021 Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Series 2021 Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

5.03. Arbitrage Certification. The Mayor, the City Finance Director and the City Clerk, being the officers of the City charged with the responsibility for issuing the Series 2021 Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2021 Bonds, it is reasonably expected that the

proceeds of the Series 2021 Bonds will be used in a manner that would not cause the Series 2021 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

5.04. Arbitrage Rebate. The City acknowledges that the Series 2021 Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2021 Bonds from gross income for federal income tax purposes, unless the Series 2021 Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no "gross proceeds" of the Series 2021 Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the City Finance Director and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

5.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than August 15, 2021, a statement concerning the Series 2021 Bonds containing the information required by Section 149(e) of the Code.

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2021 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Series 2021 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 7. Defeasance.

7.01. General. When the liability of the City on the Series 2021 Bonds issued under and secured by this Resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this Resolution to the owners of the Series 2021 Bonds shall cease.

7.02. Payment. The City may discharge its liability with reference to any Series 2021 Bond or installment of interest thereon which is due on any date by depositing with the Registrar on or before that date funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of the Series 2021 Bonds a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full; or if any Series 2021 Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full with interest accrued to the date of such deposit or mailing.

7.03. Prepayment. The City may also discharge its obligations with respect to any Series 2021 Bond called for redemption on any date when it is prepayable in accordance with its terms, by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Series 2021 Bonds a check or a draft in a sum sufficient and providing proceeds available, for the payment of the principal, interest and redemption premium, if any, which are then due; provided that notice of such redemption has been duly given as provided herein or irrevocably provided for.

7.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to the Series 2021 Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on the Series 2021 Bonds on or before maturity or, if the Series 2021 Bonds has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

7.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owner of the Series 2021 Bonds in respect of which such deposits have been made.

Section 8. Repeals and Effective Date.

8.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

8.02. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 24th day of May, 2021.

_____
Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT A

THE IMPROVEMENTS

General Description

The Series 2021 Bonds are being issued for the purpose of financing costs of installation, construction, reconstruction and/or replacements of certain curbs, gutters, sidewalks, drive approaches, and/or appurtenant features or a combination thereof in certain locations in the City heretofore ordered by this Council as the W.O. 19-02, Missing Sidewalk/Miscellaneous Project (the "Missing Sidewalk Improvements") and W.O. 19-35, Metal Streets Improvements (the "Metal Streets Improvements" and, collectively, the "Improvements"), as further described below.

Missing Sidewalk Improvements (W.O. 19-02)

The Improvements described below constituting the Missing Sidewalk Improvements will be constructed adjacent to the properties shown under each category of Improvements.

1. Sidewalk: 1301 Division St, 2216 Yellowstone Ave, 422 Beverly Hill Blvd, 420 Beverly Hill Blvd, 310 Beverly Hill Blvd, 2213 Burlington Ave, 145 Lexington Ave, 151 Lexington Ave, 1037 Poly Dr, 903 Harvard Ave, 1224 Avenue D, 2640 Burlington Ave, 1708 Cook Ave, 421 5th St W, 3306 Rimrock Rd, Legends Way & Banbury Pl, 4157 Banbury Pl, 3106 E Copper Ridge Loop, 3104 54th St W
2. Curb and Gutter: 140 Pueblo Dr, 204 Pueblo Dr
3. Sidewalk, Curb and Gutter: 317 Beverly Hill Blvd, 1041 Polly Dr, 2515 Howard Ave, 1943 Miles Ave, 1848 Grand Ave
4. Curb, Gutter, Sidewalk and Drive Aprons: 429 N 33rd St, 907 Harvard Ave, 906 Princeton Ave, 4505 Vaughn Ln, 1842 Miles Ave, 429 Nelson Dr, 425 Nelson Dr, 3842 Avenue D, 3113 Solar Blvd
5. Curb, Gutter and Drive Aprons: 4724 Rebecca Pl
6. Sidewalk, Curb, Gutter and ADA Ramps: 1918 18th St W, 852 Parkhill Dr, 902 Parkhill Dr
7. Sidewalk, Curb, Gutter, Drive Aprons and ADA Ramps: 48 Lakewood Ln

Missing Sidewalk Locations

A. 21st St W (Colton Blvd to Polly Drive): 1,600 ft of sidewalk, 10 ADA ramps
Properties: 2420 21st St W, 2404 21st St W, 2104 Iris Ln, 2101 Lyman Ave, 2104 Lyman Ave, 2104 Mariposa Ln, 2046 Mariposa Ln, 2131 21st St W, 2117 21st St W, 2224 Lougee St, 2220 Lougee St, 2212 Lougee St, 2204 Lougee St, 2425 21st St W, 2417 21st St W, 2321 21st St W, 2043 Iris Ln

B. 54th St W (Rimrock Rd to Bobby Jones Blvd): 1,050 ft of sidewalk, 3 ADA ramps
Properties: 5407 Rimrock Rd, 2004 Lloyd Mangrum Ln, 3003 Lloyd Mangrum Ln, 3012 54th St W, 3028 54th St W, 3112 54th St W

C. Murphy Ave (Newman Ln to Calhoun Ln): 700 ft of sidewalk

Properties: 4675 Murphy Ave, 4631 Murphy Ave, 4619 Murphy Ave, 4615 Murphy Ave, 4611 Murphy Ave, 704 Calhoun Ln, 4614 Murphy Ave, 4610 Murphy Ave, 742 Calhoun Ln

D. Barrett Rd (Bitterroot Dr to Columbine Dr): 1,000 ft of sidewalk, 6 ADA ramps
   Properties: 1946 Bitterroot Dr, 1941 Dogwood Dr, 1942 Dogwood Dr, 1941 Columbine Dr, 1404 Barrett Rd, 1945 Bannack Dr, 1944 Bannack Dr
E. Southgate Dr (Properties near S 12th St W): 265 ft of sidewalk, 1 ADA ramp
   Properties: 5123 Southgate Dr, Southgate Dr & S 12th St W

Metal Streets Improvements (W.O. 19-35)

The Improvements described below constituting the Metal Streets Improvements will be the curb/gutter, sidewalk, drive approach and appurtenant as detailed in the attached Schedule I. The streets included in the project are Copper Boulevard, Golden Boulevard, Silver Boulevard, Roth Lane, and Vickery Drive and are generally located north of Poly Drive and west of Beartooth Drive.

SCHEDULE I

CITY OF BILLINGS

W.O. 19-35 METAL STREETS IMPROVEMENTS

RESOLUTION EXHIBIT A

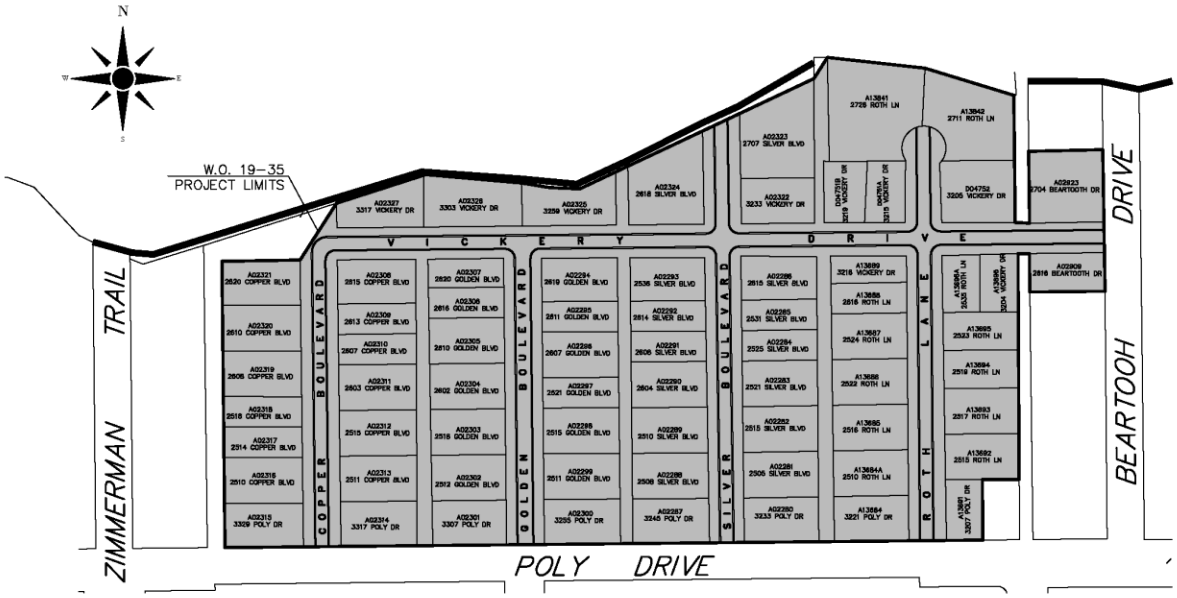


EXHIBIT B

UNITED STATES OF AMERICA
STATE OF MONTANA
YELLOWSTONE COUNTY

CITY OF BILLINGS

POOLED SPECIAL SIDEWALK, CURB, GUTTER AND
ALLEY APPROACH BOND, SERIES 2021

Interest at the rate per annum specified below,
payable on the 1st day of January and the 1st day of July
in each year, commencing January 1, 2022.

Interest Rate	Maturity Date	Date of Original Issue
3.19%	July 1, 2033	June 10, 2021

No. R-1 $325,000.00

REGISTERED OWNER: ROCKY MOUNTAIN BANK

PRINCIPAL AMOUNT: THREE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS

FOR VALUE RECEIVED, the City of Billings, Montana (the "City"), will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. 21-[____], adopted May 24, 2021 (the "Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of original issue specified above, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the City Finance Director. Interest on this Bond is payable semiannually on the 1st day of January and the 1st day of July in each year, commencing January 1, 2022, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof at the principal office of the Registrar, the principal of this Bond, shall be payable by check or draft drawn on the Registrar. Notwithstanding the foregoing, so long as this Bond is evidenced by a single, fully registered term Bond, it shall not be necessary to present and surrender this Bond until the full redemption hereof pursuant to the Resolution, but the Registrar shall note in the bond register such principal payment. The principal of and interest on this Bond are payable in lawful money of the United States of America. Interest on this Bond shall be calculated on the basis of a 360-day year composed of twelve 30-day months. The City Finance Director shall initially serve as Registrar for this Bond.

This Bond is one of an issue in the aggregate principal amount of $325,000 (the "Series 2021 Bonds"), all of like date of original issue and tenor, except as to serial number, denomination, date, maturity date and redemption rights. The Series 2021 Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), and ordinances and resolutions duly adopted by the governing body of the City, including the Resolution, for the purpose of financing costs of installation, construction, reconstruction or replacements of certain curbs, gutters, sidewalks, drive approaches, driveways, alley approaches and appurtenant improvements in certain locations in the City (the "Improvements"), to fund a deposit to the Special Improvement District Revolving Fund (the "Revolving Fund") and to pay costs of issuance of the Bonds.

The Series 2021 Bonds are payable from the collection of a special tax or assessment levied upon all assessable real property adjacent to the Improvements, in an aggregate principal amount not less than $325,000 ($180,800.36 for the Missing Sidewalk Improvements and $144,199.64 for the Metal Streets Improvements, except as such amounts may be reduced or increased in accordance with provisions of Montana law. Such assessments constitute a lien against the property against which they are made and levied and are to be deposited into the 2021 Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the "2021 Sidewalk Sinking Fund"). The Series 2021 Bonds are not general obligations of the City.

The City has validly established the Revolving Fund to secure the payment of certain of its special improvement and sidewalk, curb, gutter and alley approach bonds and warrants, including the Series 2021 Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually, or more often as necessary, authorizing loans or advances from the Revolving Fund to the 2021 Sidewalk Sinking Fund, in amounts sufficient to make good any deficiency in the 2021 Sidewalk Sinking Fund to pay principal of or interest on the Series 2021 Bonds, to the extent money is available in the Revolving Fund, and to provide funds for the Revolving Fund by annually levying such tax or making such loan from its general fund, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

If on any interest payment date there will be a balance in the 2021 Sidewalk Sinking Fund after payment of the principal and interest then due on the Series 2021 Bonds drawn against it, either from the prepayment of assessments or from the transfer of surplus money from a Construction Subaccount to a Principal Subaccount, the City Finance Director shall call for redemption on the interest payment date the principal amount of the Series 2021 Bonds which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the 2021 Sidewalk Sinking Fund on that date. The redemption price shall equal the principal amount of the Series 2021 Bonds to be redeemed plus interest accrued to the date of redemption. Such mandatory redemption payments shall reduce the Mandatory Sinking Fund

Payments *pro rata* among all Series 2021 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2021 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order thereof.

The Series 2021 Bonds are subject to redemption at any time, at the option of the City, in whole or in part, from sources of funds available therefor (other than those described in Section 2.05(a) of the Resolution), at a redemption price equal to the principal amount hereof to be redeemed plus interest accrued to the redemption date, without premium. Such optional redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2021 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2021 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order thereof.

This Bond is subject to redemption on July 1 of the respective years shown below (herein referred to as a "Sinking Fund Payment Date") and in the principal amounts (hereinafter referred to as a "Mandatory Sinking Fund Payment") set forth below:

Term Bond

Sinking Fund Payment Date	July 1 Mandatory Sinking Fund Payment Amount	Sinking Fund Payment Date	July 1 Mandatory Sinking Fund Payment Amount
2022	$22,000	2028	$27,000
2023	24,000	2029	28,000
2024	24,000	2030	29,000
2025	25,000	2031	30,000
2026	26,000	2032	31,000
2027	27,000	2033	32,000

*Final maturity.

The date of redemption and principal amount of this Bond to be redeemed shall be fixed by the City Finance Director, who shall give notice thereof to the Registrar 45 days prior to the date set for redemption in order for the Registrar to give notice, by first class mail, postage prepaid, to the owner of this Bond at its addresses appearing on the bond register, of the principal amount of this Bond to be redeemed and the date on which payment will be made, which date shall not be less than 30 days after the date of mailing of notice. On the date so fixed interest on this Bond or principal amount thereof so redeemed shall cease to accrue.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney. Upon such transfer or exchange, the City will cause a new Bond to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor, the City Finance Director and the City Clerk, and by a printed facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)
MAYOR

(Facsimile Signature)
(Facsimile Seal) CITY FINANCE DIRECTOR

(Facsimile Signature)
CITY CLERK

Dated:

CERTIFICATE OF AUTHENTICATION

This Bond is delivered pursuant to the Resolution mentioned herein.

CITY OF BILLINGS, MONTANA,
as Registrar, Transfer Agent, and
Paying Agent

By _____
City Finance Director

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA….....Custodian…..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	
		under Uniform Gifts to
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	Minor Act…..... (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

_____

_____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended

City Council Regular

Date:	05/24/2021
Title:	SID 1418 Holiday Avenue Improvements Resolution of Intent to Create District and Set a Public Hearing
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1418 and set a public hearing date for June 14, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Holiday Avenue is a gravel street located between Weil Street and Songbird Drive, within City limits. This section of Holiday Avenue will be constructed to City standards, including asphalt, curb and gutter, and sidewalk. The street will be constructed through the SID process, with the improvements assessed to property owners. Gas Tax funds will be used to cover non-assessed improvements.

During the Engineering Division's public outreach for an adjacent project, Songbird Drive, an adjacent property owner expressed interest in the full construction of this unimproved portion of Holiday Avenue. This area is the low point of previously developed subdivisions to the north and has a propensity to flood. This flooding is a recurring maintenance issue, as well as an unwanted nuisance to the adjacent property owner. The Engineering Division had planned to address the stormwater issue within the Songbird Drive project; however, did not anticipate property owner interest in constructing Holiday Avenue.

Three lots front this section of Holiday Avenue, with two separate owners. The Engineering Division contacted both property owners. Both property owners are in favor of the SID. Both property owners are also aware of the upcoming work order constructing Songbird Drive.

ALTERNATIVES

City Council may:

- Approve the Resolution of Intent to Create SID 1418 and set a public hearing for the June 14, 2021 City Council Meeting; or,
- Not Approve the Resolution of Intent to Create SID 1418. If not approved, the improvements will not be constructed along this section of Holiday Avenue.

FISCAL EFFECTS

The funding source, estimated cost of improvements, and total project cost for SID 1418 is as follows:

SID 1418 Funding Source	SID 1418 Estimated Cost
SID	$250,000.00

Gas Tax	$89,797.13
Total	$339,797.13

Funding for SID 1418 is available in FY21 through the gravel streets program.

Attachments

SID 1418 Resolution
SID 1418 Exhibit A
SID 1418 Exhibit B
SID 1418 Exhibit C
SID 1418 Exhibit D
SID 1418 Exhibit E

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No._____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1418; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the "Resolution") was duly adopted by the City Council of the City at a meeting on May 24, 2021; that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;

voted against the same: _____;

or were absent: _____.

WITNESS my hand officially this _____ day of _____, 20____.

_____
Denise Bohlman
City Clerk

RESOLUTION NO. 21-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1418; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings, Montana (the "City"), as follows:

Section 1. Proposed Improvements; Intention to Create District. The City proposes to undertake certain local improvements consisting of installing curb, gutter, sidewalk, drive approach, and street improvements to construct Holiday Avenue, as further described in Section 5 (the "Improvements") to benefit certain property located in the City. The total estimated costs of the Improvements are $339,797.13 and are to be assessed as more particularly described in Sections 7 and 8. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, Special Improvement District No. 1418 (the "District") for the purpose of undertaking the Improvements and assessing property owners in the District for the costs thereof.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1418 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and C are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Sections 7 and 8.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit D, is the construction of Holiday Avenue. This includes construction of curb and gutter, sidewalk, drive approach, and street improvements.

Section 6. Engineer and Estimated Costs of the Improvements. The Engineer for this project will be the City of Billings, Engineering Division. The Engineering Division has estimated that

the costs of the Improvements are $339,797.13.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the District are to be assessed for the costs of the Improvements as specified herein. The costs of the Improvements, less the amount of the City's contribution described in Section 8, shall be assessed against the property in the District benefiting from the Improvements based on the equal option method described in Section 7-12-4162(3)(a), M.C.A., as particularly applied and set forth in this Section 7.

7.1.1 Frontage Option Method. Each property within the District will be assessed for that portion of the total costs of the Improvements that the assessable frontage length of such property bears to the total assessable frontage length in the District. The total assessable frontage length of all properties to be assessed is 740 linear feet. The costs of the Improvements to be assessed against properties in the District, per linear foot of assessable frontage, are estimated to be $337.84.

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the method of assessment and the assessment of costs of the Improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the Improvements by the properties within the District to be assessed therefore.

Section 8. Payment of Costs of Improvements. Costs of the Improvements are to be paid from the following sources: (1) Special Improvement District Bonds (the "Bonds") in an aggregate principal amount not to exceed $250,000.00; and (2) $89,797.13 of cash contribution by the City. Costs of the Improvements include costs of construction and installation of the Improvements, costs for the creation of the District, costs of funding a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"), costs associated with the sale of the Bonds and all other costs incidental to the Improvements.

Section 9. Bonds; Pledge of Revolving Fund; Findings and Determinations. The City intends to issue the Bonds in an aggregate principal amount not to exceed $250,000.00 for the purpose of financing the portion of the costs of the Improvements that are not payable out of the cash contributions described in Section 8, together with costs associated with the sale of the Bonds.

Principal of and interest on the Bonds will be paid from assessments to be levied against the properties in the District benefitting from the Improvements that are not payable out of the cash contributions described in Section 8. Assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds.

All property owners in the District shall have the opportunity to prepay their assessments prior to sale of the Bonds. After the Bonds are issued, all property owners in the District have the right to

prepay assessments as provided by law.

This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize the issuance of the Bonds and the pledge of the Revolving Fund therefor, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated by the County Assessor for property tax purposes ranges from $85,108.00 to $2,686,300.00 and is set forth in Exhibit E. The average market value is $1,061,002.67 with the median being $411,600.00. The special assessments to be levied against the properties in the District are less than the increase in estimated value of the properties as a result of the construction of the Improvements. All of the properties in the District are zoned Commercial.

(b) **Diversity of Property Ownership.** There are a total of 3 properties within the district boundaries. No improvements, public or private, are located on any of the properties within the District. Two of the properties are owned by one owner.

(c) **Comparison of Special Assessments, Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed assessments, any outstanding assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a property in the District) against each property in the District in comparison to the estimated market value of such property after the Improvements, the City concludes that, overall, the estimated market value of the properties in the District exceeds the sum of the proposed assessments, outstanding assessments and delinquent property taxes, and is set forth in Exhibit E. As shown on Exhibit E, neither of the properties have current SID assessments.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 3 properties, zero (0) properties were delinquent, and is set forth in Exhibit E.

(e) **Public Benefit of the Improvements.** The public improvements contemplated under the terms of this proposed District are required by the City Subdivision, Site Development and Zoning Ordinances. Of the three properties, two are developed. The undeveloped property is owned by the property owner with ownership of two properties in the district.

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final

regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of $250,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

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

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 12:00 p.m., M.T., on the expiration date of said 15-day period (June 13, 2021), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 14th day of June, 2021, at 5:30 p.m., in the Billings Public Library, at 510 N. Broadway, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Yellowstone County News, a newspaper of general circulation in the county on May 28, June 4, and June 11, 2021, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

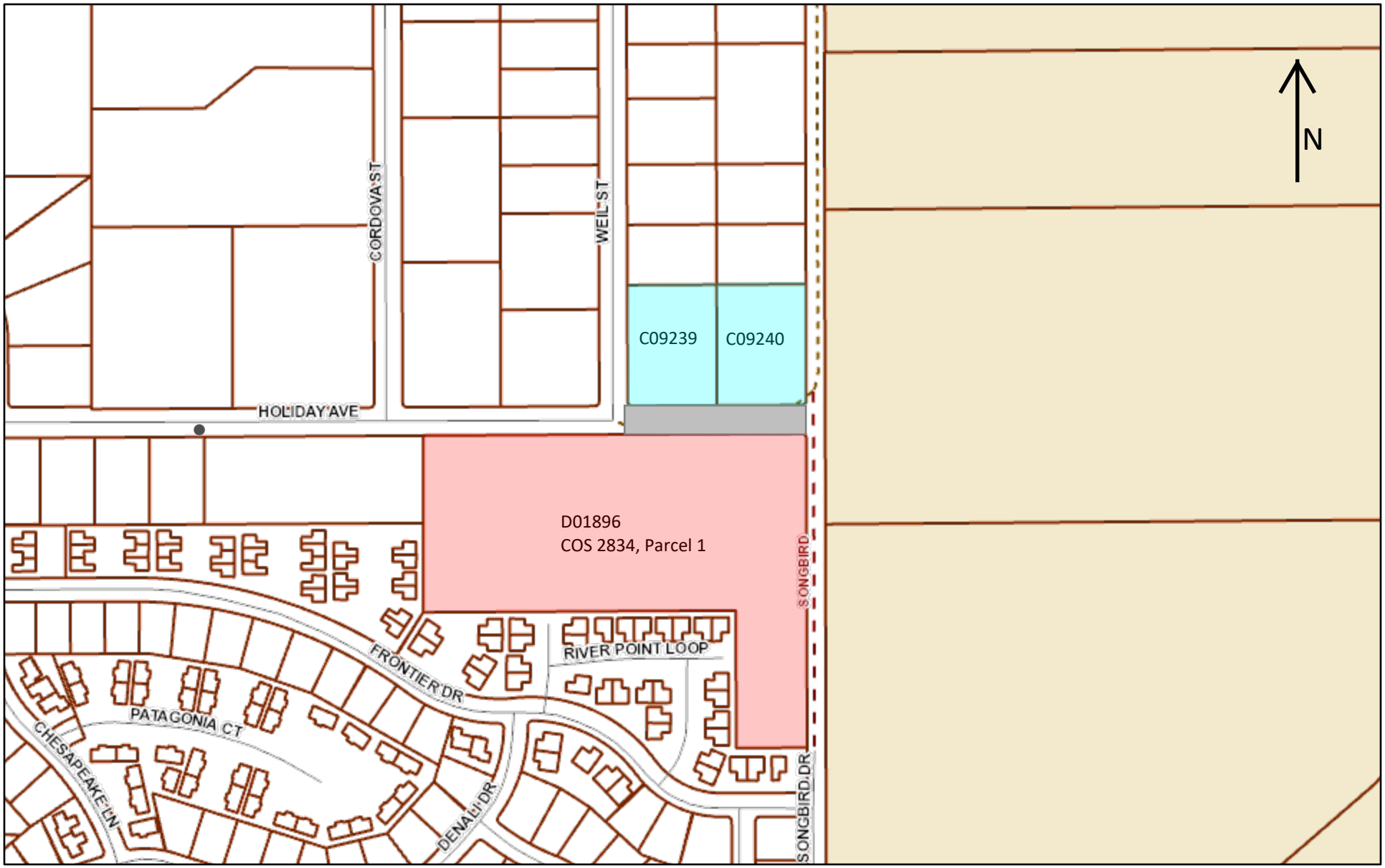
PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 24th day of May 2021.

_____
Mayor

Attest:

_____
City Clerk

Exhibit A - SID 1418 Holiday Avenue



4/5/2021, 12:56:33 PM

1:5,000

0 162.5 325 650 ft

0 45 90 180 m

LEGEND

- SID 1418 Project Extents
- County
- Bell, Richard W & Lori A [Assessed]
- Wells, Daniel (ETAL) [Assessed]

Web AppBuilder for ArcGIS

S.I.D. 1418 Holiday Avenue Improvements

Exhibit B Property Descriptions

Prepared by: City of Billings

SID 1418 includes Weil Subdivision, Block 3, Lots 6-7; and C.O.S. 2834, Parcel 1.

S.I.D. 1418 Holiday Avenue Improvements

Exhibit C - Property Owner Description and Assessment

Prepared By: City of Billings

TAX ID	OWNER	OWNER	MAILING ADDRESS	CITY	STATE	ZIP CODE	FRONTAGE LENGTH	TOTAL ASSESSMENT
C09239	BELL, RICHARD W & LORI A 7223 FOLSOM RD BILLINGS,MT 59106-2536	BELL, RICHARD W & LORI A	7223 FOLSOM RD	BILLINGS	MT	59106-2536	180.97	$ 61,138.51
C09240	BELL, RICHARD W & LORI A 7223 FOLSOM RD BILLINGS,MT 59106-2536	BELL, RICHARD W & LORI A	7223 FOLSOM RD	BILLINGS	MT	59106-2536	189.03	$ 63,861.49
D01896	WELLS, DANIEL (ETAL) 5847 WHISPERINGWOODS DR BILLINGS,MT 59106-9708	WELLS, DANIEL (ETAL)	5847 WHISPERINGWOODS DR	BILLINGS	MT	59106-9708	370.00	$ 125,000.00

S.I.D. 1418 Holiday Avenue Improvements

Exhibit D Description of Improvements

Prepared by: City of Billings

Special Improvement District No. 1418 shall construct street, curb and gutter, drive approach, and sidewalk improvements for Holiday Avenue, between Weil Street and Songbird Drive within the City of Billings.

S.I.D. 1418 Holiday Avenue Improvements

Exhibit E - Property Market Value and Delinquency

Prepared By: City of Billings

TAX I.D. NUMBER	PREVIOUS SID #	PREVIOUS SID PAY-OFF	DELINQUENT	SID 1418 ASSESSMENT	SID PAY-OFF + DELINQUENT + SID 1418 ASSESSMENT	ESTIMATED MARKET VALUE	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
C09239				$ 61,138.51	$61,138.51	$411,600.00	$472,738.51
C09240				$ 63,861.49	$63,861.49	$85,108.00	$148,969.49
D01896				$ 125,000.00	$125,000.00	$2,686,300.00	$2,811,300.00
AVERAGE		**$0.00**	**$0.00**	**$83,333.33**	**$83,333.33**	**$1,061,002.67**	**$1,144,336.00**
MEDIAN		**$0.00**	**$0.00**	**$63,861.49**	**$63,861.49**	**$411,600.00**	**$472,738.51**
LOW		**$0.00**	**$0.00**	**$61,138.51**	**$61,138.51**	**$85,108.00**	**$148,969.49**
HIGH		**$0.00**	**$0.00**	**$125,000.00**	**$125,000.00**	**$2,686,300.00**	**$2,811,300.00**

City Council Regular

Date:	05/24/2021
Title:	SID 1411 Park Lane Paving Resolution of Intent to Create District and Set a Public Hearing
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1411 and set a public hearing date for June 14, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Park Lane is an existing gravel street located west of Highwood Drive, between Rimrock Road and Poly Drive. A formal interest survey for the creation of a special improvement district (SID) to construct Park Lane, dated October 9, 2019, was delivered to the two properties addressed on Park Lane. Both property owners returned the survey, electing the City to move forward with the creation of a special improvement district. The City met with the two property owners on May 11, 2021. Both property owners confirmed interest in moving forward with creation of a special improvement district. The City is proposing to construct Park Lane utilizing the gravel streets paving program, including asphalt pavement to be bound by curb and gutter. As part of the budgeted gravel street paving program, the City will contribute to the cost of the paving, curb and gutter, and minor drainage improvements.

Six (6) total parcels are adjacent to Park Lane within the construction limits. Of those six (6) parcels, only two (2) are physically addressed to Park Lane. These two parcels will comprise the special improvement district, are equally benefited by the special improvement district, and will therefore be assessed with the equal amount option. The remaining four (4) parcels will not be assessed for any of the improvements based on them being addressed on other streets per the City's SID policy.

ALTERNATIVES

City Council may:

- Approve the Resolution of Intent to Create SID 1411 and set a public hearing for the June 14, 2021 Council Meeting; or,
- Not Approve the Resolution of Intent to Create SID 1411. If not approved, this section of Park Lane will remain a gravel street.

FISCAL EFFECTS

The funding source, estimate cost of improvements, and total project cost for SID 1411 is as follows:

SID 1411 Funding Source	SID 1411 Estimated Cost
SID	$30,000.00

Gas Tax	$81,909.23
Total	$111,909.23

Funding for SID 1411 is available in FY21 through the gravel streets program.

Attachments

SID 1411 Resolution
SID 1411 Exhibit A
SID 1411 Exhibit B
SID 1411 Exhibit C
SID 1411 Exhibit D
SID 1411 Exhibit E

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No._____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1411; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on May 24, 2021 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;

voted against the same: _____;

or were absent: _____.

WITNESS my hand officially this _____ day of _____, 20____.

_____

Denise Bohlman City Clerk

RESOLUTION NO. 21-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1411; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings (the City), Montana, as follows:

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local improvements consisting of installing curb, gutter, drive approach, and street improvements to construct Park Lane, as further described in Section 5 (the "Improvements") to benefit certain property located in the City. The total estimated costs of the Improvements are $111,909.23 and are to be assessed as more particularly described in Sections 7 and 8. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, Special Improvement District No. 1411 (the "District") for the purpose of undertaking the Improvements and assessing property owners in the District for the costs thereof.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1411 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and C are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Sections 7 and 8.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit D, is the construction of Park Lane. This includes construction of curb and gutter, drive approaches, and street improvements.

Section 6. Engineer and Estimated Cost. The Engineer for this project will be the City of Billings, Engineering Division. The Engineering Division has estimated that the costs of the Improvements are $111,909.23.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the District are to be assessed for the costs of the Improvements as specified herein. The costs of the Improvements, less the amount of the City's contribution described in Section 8, shall be assessed against the property in the District benefiting from the Improvements based on the equal option method described in Section 7-12-4162(3)(a), M.C.A., as particularly applied and set forth in this Section 7.

7.1.1 Equal Option Method.

Assessment will include the construction of local improvements to Park Lane. The properties to be assessed for these improvements are identified in Exhibit B. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, as above-mentioned, the Engineer has determined that each lot, tract, or parcel of land, receiving local improvements, shall equally bear the costs of the local improvements as set forth in Exhibit C hereto to arrive at an equal cost for the local improvements. The total estimated cost of Assessment is shown in Section 8 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving local improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment is estimated to be $15,000.00. If an increase occurs in the number of properties within the boundaries of the District (due to the subdivision of any one or more properties or otherwise) during the term of the Bonds, the assessment per property then in the District will be recalculated as provided in M.C.A. 7-12-4162(3)(b).

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

Section 8. Payment of Costs of Improvements. Costs of the Improvements are to be paid from the following sources: (1) Special Improvement District Bonds (the "Bonds") in an aggregate principal amount not to exceed $30,000.00; and (2) $81,909.23 of cash contribution by the City. Costs of the Improvements include costs of construction and installation of the Improvements, costs for the creation of the District, costs of funding a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"), costs associated with the sale of the Bonds and all other costs incidental to the Improvements.

Section 9. Bonds; Pledge of Revolving Fund; Findings and Determinations. The City intends to issue the Bonds in an aggregate principal amount not to exceed $30,000.00 for the purpose of financing the portion of the costs of the Improvements that are not payable out of the cash contributions described in Section 8, together with costs associated with the sale of the Bonds.

Principal of and interest on the Bonds will be paid from assessments to be levied against the properties in the District benefitting from the Improvements that are not payable out of the cash contributions described in Section 8. Assessments for the costs of the Improvements shall be payable

over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds.

All property owners in the District shall have the opportunity to prepay their assessments prior to sale of the Bonds. After the Bonds are issued, all property owners in the District have the right to prepay assessments as provided by law.

This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize the issuance of the Bonds and the pledge of the Revolving Fund therefor, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from $284,300.00 to $291,000.00, and is set forth in Exhibit E. The average market value is $287,650.00 with the median being $287,650.00. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements. All of the properties within the District are zoned N3 – Suburban Neighborhood.

(b) **Diversity of Property Ownership.** There are a total of 2 properties within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. The 2 parcels are owned by separate owners.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed assessments, any outstanding assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a property in the District) against each property in the District in comparison to the estimated market value of such property after the Improvements, the City concludes that, overall, the estimated market value of the properties in the District exceeds the sum of the proposed assessments, outstanding assessments and delinquent property taxes, and is set forth in Exhibit E. As shown on Exhibit E, neither of the properties have current SID assessments.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding assessments or property taxes levied against the properties in the District shows that of 2 properties, zero (0) properties were delinquent, and is set forth in Exhibit E.

(e) **The Public Benefit of the Improvements.** The public improvements contemplated

under the terms of this proposed District are required by the City Subdivision, Site Development and Zoning Ordinances. All of the parcels are developed.

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of $30,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

10.05. Reimbursement Allocations. The City's financial officer shall be

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

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 12:00 p.m., M.T., on the expiration date of said 15-day period (June 13, 2021), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 14th day of June, 2021, at 5:30 p.m., in the Billings Public Library, at 510 N. Broadway, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Yellowstone County News, a newspaper of general circulation in the county on May 28, June 4, and June 11, 2021, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 24th day of May, 2021.

_____
Mayor

Attest:

_____
City Clerk

Exhibit A - SID 1411 Park Lane



5/5/2021, 11:29:30 AM

LEGEND

SID 1411 Project Extents

Within SID 1411, Addressed (Assessed Parcels)

1:1,400

0 0.01 0.01 0.03 mi

0 0.01 0.03 0.05 km

Web AppBuilder for ArcGIS

S.I.D. 1411 Park Lane Paving

Exhibit B Property Descriptions

Prepared by: City of Billings

SID 1411 includes Bever Subdivision, Lot 17C, AMD LT 15-17, and Bever Subdivision Lot 1, AMD LT 13-14

S.I.D. 1411 Park Lane Paving

Exhibit C - Property Owner Description and Assessment

Prepared By: City of Billings

TAX ID	OWNER	OWNER	MAILING ADDRESS	CITY	STATE	ZIP CODE	TOTAL ASSESSMENT
A02964	LOWE, PAMELA EILEEN 814 PARK LN BILLINGS,MT 59102-1946	LOWE, PAMELA EILEEN	814 PARK LN	BILLINGS	MT	59102-1946	$ 15,000.00
A02969	ST JOHN'S LUTHERAN MINISTRIES, INC 2429 MISSION WAY BILLINGS,MT 59102-0161	ST JOHN'S LUTHERAN MINISTRIES, INC	2429 MISSION WAY	BILLINGS	MT	59102-0161	$ 15,000.00

S.I.D. 1411 Park Lane Paving

Exhibit D Description of Improvements

Prepared by: City of Billings

Special Improvement District No. 1411 shall construct curb, gutter, drive approach, and street improvements to Park Lane, west of Highwood Drive, within the City of Billings.

S.I.D. 1411 Park Lane Paving

Exhibit E - Property Market Value and Delinquency

Prepared By: City of Billings

TAX I.D. NUMBER	PREVIOUS SID #	PREVIOUS SID PAY-OFF	DELINQUENT	SID 1411 ASSESSMENT	SID PAY-OFF + DELINQUENT + SID 1411 ASSESSMENT	ESTIMATED MARKET VALUE	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
A02964				$ 15,000.00	$15,000.00	$291,000.00	$306,000.00
A02969				$ 15,000.00	$15,000.00	$284,300.00	$299,300.00
AVERAGE		**$0.00**	**$0.00**	**$15,000.00**	**$15,000.00**	**$287,650.00**	**$302,650.00**
MEDIAN		**$0.00**	**$0.00**	**$15,000.00**	**$15,000.00**	**$287,650.00**	**$302,650.00**
LOW		**$0.00**	**$0.00**	**$15,000.00**	**$15,000.00**	**$284,300.00**	**$299,300.00**
HIGH		**$0.00**	**$0.00**	**$15,000.00**	**$15,000.00**	**$291,000.00**	**$306,000.00**

City Council Regular

Date:	05/24/2021
Title:	Ward Boundary Expansion Ordinance Second Reading - Annexation 20-05B
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No

RECOMMENDATION

Staff recommends the City Council approve this ordinance on second reading, adding recently annexed property to Ward I. A public hearing was conducted and the first reading was unanimously approved by City Council on May 10, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Lupine Holdings LLC submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located North of Highway 3 and West of AJ Way. The property is described as Tracts of Land situated in the NE 1/4 and the SE 1/4 of Section 26, T.1N., R.25E, P.M.M., Yellowstone County, Montana, more particularly described as follows: Tracts 1A and 1B, of Certificate of Survey No. 1889 Amended, recorded December 28, 2010, under Document No. 3574908, on file and of record in the Records of Yellowstone County; Including all adjacent rights-of-way of Montana State Highway No. 3. The property contains 21.852 gross and 20.016 net acres.

Upon Council approval, this annexation requires a change in the boundaries of Ward I. Two readings are required for this action. The first reading of the ordinance was May 10th along with a public hearing, and the second reading is scheduled for this meeting.

STAKEHOLDERS

No public comment was received during the public hearing on May10, 2021.

ALTERNATIVES

City Council may:

- Approve adding the subject property to Ward I, or;
- Disapprove adding the subject property to Ward I

Disapproval will not modify the boundary of Ward I and will create a problem where property inside the City Limits is not within a City Ward.

FISCAL EFFECTS

This item has no impact on the Planning Division Budget.

Attachments

Ward Boundary Ordinance

ORDINANCE NO. 21-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward I the following described real property:

   Tracts of Land situated in the NE 1/4 and the SE 1/4 of Section 26, T.1N., R.25E,

   P.M.M., Yellowstone County, Montana, more particularly described as follows:

   Tracts 1A and 1B, of Certificate of Survey No. 1889 Amended, recorded

   December 28, 2010, under Document No. 3574908, on file and of record in the

   Records of Yellowstone County;

   Including all adjacent rights-of-way of Montana State Highway No. 3.

   Said annexation containing 21.852 gross and 20.016 net acres.

   (# 20-05B) See Exhibit "20-05 B" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this10th day of May 2021.

PASSED by the City Council on the second reading this 24th day of May, 2021.

THE CITY OF BILLINGS:

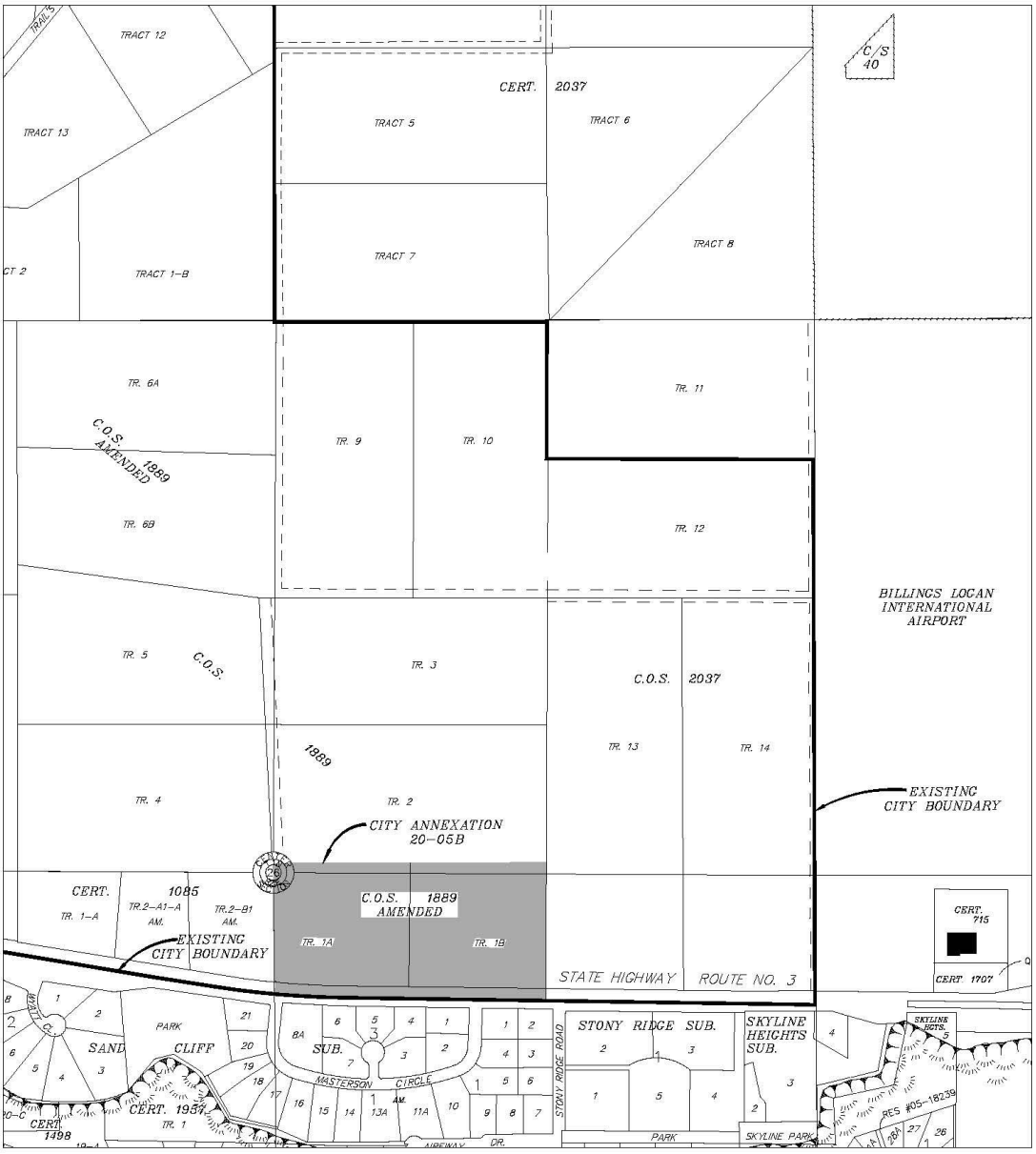
_____
William A. Cole, MAYOR

ATTEST:

BY: _____
Denise Bohlman, CITY CLERK

(AN 20-05B)

EXHIBIT "20-05 B"



City Council Regular

Date:	05/24/2021
Title:	Payment of Claims for week of April 19, 2021
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Claims in the amount of $1,636,143.04 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department.

Payment Approval Process

Every invoice for payment in entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.) Each invoice goes through a multi-step approval process depending upon the amount of the payment.

First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment.

Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached.

If the payment is greater than $1,000, then it must be approved by the Finance Director or designee.
If that payment is greater than $10,000, then it must be approved by the City Administrator or Assistant City Administrator.

Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of $2,500 is generated and placed on the next City Council meeting for review.

ALTERNATIVES

- No other alternatives were analyzed

FISCAL EFFECTS

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.

Attachments

Councilmemo wk of 04192021

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842131	Ambiente H2O	Wastewater	$ 7,907.64	MLR pump cranes
04/19/2021	842135	Baker Tilly Virchow Krause	Library GO Debt	$ 28,353.90	Service to the Issuance of General Obligation Refunding Bonds
04/19/2021	842135	Baker Tilly Virchow Krause	SID Fund	$ 3,100.00	Arbitrage Compliance Report: Special Improvement District 1388 Bonds
04/19/2021	842139	Billings Community Cable	General	$ 47,740.50	Quarterly Disbursement 4-6/2021
04/19/2021	842141	Billings Monument Co	Property Ins	$ 8,999.10	installation of replacement granite sign for Mountview Cemetery
04/19/2021	842143	Billings Precast Enterprises	Solid Waste	$ 3,124.70	5 Jersey Barriers
04/19/2021	842143	Billings Precast Enterprises	Solid Waste	$ 3,124.70	5 Jersey Barriers
04/19/2021	842143	Billings Precast Enterprises	Solid Waste	$ 3,749.64	6 Jersey Barriers
04/19/2021	842146	Bison Motor Company	Street/Traffic	$ 54,140.40	2021 full size 3/4 ton 2 wheel drive long box
04/19/2021	842146	Bison Motor Company	Street/Traffic	$ 4,410.00	liftgates
04/19/2021	842156	Century Link	Airport	$ 45.66	406-245-5834 Airport Alarm
04/19/2021	842156	Century Link	Engineering	$ 120.77	406-259-7758 Measured Lines Depot
04/19/2021	842156	Century Link	EOC 911	$ 46.26	406-245-2296 911
04/19/2021	842156	Century Link	EOC 911	$ 45.65	406-245-3107 911
04/19/2021	842156	Century Link	EOC 911	$ 45.65	406-245-3108 911
04/19/2021	842156	Century Link	EOC 911	$ 311.26	406-245-7101 9-1-1 Center Landfill #2
04/19/2021	842156	Century Link	EOC 911	$ 311.26	406-245-7102 9-1-1 Center Fox Reservoir #2
04/19/2021	842156	Century Link	EOC 911	$ 6,426.78	406-245-8527 New 9-1-1 Center
04/19/2021	842156	Century Link	P.W. Admin	$ 81.95	406-259-7758 Measured Lines Depot
04/19/2021	842156	Century Link	Phone System	$ 65.88	406.259.7121 CPC
04/19/2021	842156	Century Link	Phone System	$ 667.47	406.259.7214 CPC
04/19/2021	842156	Century Link	Phone System	$ 65.88	406.259.7752 PRPL
04/19/2021	842156	Century Link	Phone System	$ 228.20	406-248-3049 Main System T1 City/County Tie
04/19/2021	842156	Century Link	Public Safety	$ 119.32	406-245-7469 Fire
04/19/2021	842156	Century Link	Public Safety	$ 118.32	406-373-3742 Fire RR Crossing Alarm
04/19/2021	842156	Century Link	Radio	$ 311.26	406-248-3635 Fire Airport Radio Tower WCK
04/19/2021	842156	Century Link	Radio	$ 311.26	406-248-3636 Fire Airport Radio Tower Jellison
04/19/2021	842156	Century Link	Water	$ 39.44	406-245-3659 PUD Alarm Water Tower
04/19/2021	842160	Community Seven	General	$ 13,033.00	PEG Fees January 1 to March 31, 2021 // 3rd Qtr FY21
04/19/2021	842164	Crowley Fleck PLLP	General	$ 6,000.00	Lobbyist contract for March 2021
04/19/2021	842165	CTC Solutions Inc	Wastewater	$ 91,753.00	WRF 15kV Switchgear Rehab Project materials
04/19/2021	842166	Cubic Corp & Subsidiaries	Transit	$ 3,000.00	Invoice #21-MET-02. Handheld Validators
04/19/2021	842167	Cummins Rocky Mt	Transit	$ 4,947.97	38-42146. Injector Replacement Unit 1817. W/O 195991
04/19/2021	842172	Digital Video Systems	Solid Waste	$ 19,475.28	Billings Landfill Door Access Control System
04/19/2021	842173	Dixie Petro-Chem	Water	$ 3,752.00	BULK CHLORINE
04/19/2021	842174	Donnes Inc	Street/Traffic	$ 8,910.00	32nd riprap repair

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842174	Donnes Inc	Street/Traffic	$ 19,552.50	shiloh ditch cleaning
04/19/2021	842174	Donnes Inc	Water	$ 3,900.00	8 hours of mobilization (February 2,2021)
04/19/2021	842175	DOWL	Planning	$ 3,732.50	Billings ByPass Corridor Study
04/19/2021	842177	Downtown Blgs Partners	Tax Incrmnt N27	$ 23,286.75	Urban Revitalization District Operating Agreement
04/19/2021	842179	E Oregon Communication	Wastewater	$ 2,127.50	Electrical Services
04/19/2021	842179	E Oregon Communication	Wastewater	$ 2,172.50	Electrical Services
04/19/2021	842179	E Oregon Communication	Wastewater	$ 2,482.50	ELECTRICAL SERVICES
04/19/2021	842179	E Oregon Communication	Water	$ 2,127.50	Electrical Services
04/19/2021	842179	E Oregon Communication	Water	$ 2,172.50	Electrical Services
04/19/2021	842179	E Oregon Communication	Water	$ 2,482.50	ELECTRICAL SERVICES.
04/19/2021	842184	Energy Laboratories	Wastewater	$ 2,592.00	SAMPLE TESTING
04/19/2021	842184	Energy Laboratories	Wastewater	$ 74.00	Sample testing
04/19/2021	842184	Energy Laboratories	Wastewater	$ 10.00	Work order: B21030396
04/19/2021	842184	Energy Laboratories	Wastewater	$ 10.00	Work order: B21030443
04/19/2021	842184	Energy Laboratories	Wastewater	$ 74.00	Work Order: B21031814 & B21031814-002
04/19/2021	842184	Energy Laboratories	Wastewater	$ 54.50	Work Order: B21040181
04/19/2021	842184	Energy Laboratories	Water	$ 109.00	Analysis B21031815-001 and B21031815-002
04/19/2021	842184	Energy Laboratories	Water	$ 52.00	B21031218-001 Yellowstone River at Duck Creek analysis
04/19/2021	842184	Energy Laboratories	Water	$ 144.00	Work order: B21032315-001 and B 21032315-002
04/19/2021	842184	Energy Laboratories	Water	$ 27.00	Work order: B21040492 Analysis parameter
04/19/2021	842184	Energy Laboratories	Water	$ 144.00	Work order: B21040517 & B21040517-002
04/19/2021	842185	Ferguson Enterprise	Water	$ 79.32	8" PLASTIC PIPE CLASS - 200 SDR-14- C-900 SLIP HUB
04/19/2021	842185	Ferguson Enterprise	Water	$ 267.83	IMPROVED LOWER STEM H-79 - # 185310
04/19/2021	842185	Ferguson Enterprise	Water	$ 2,040.00	MAIN VALVE RUBBER 5-1/4" IMPROVED HYDRANT H-88
04/19/2021	842185	Ferguson Enterprise	Water	$ 2,047.28	UPPER STEM FOR IMPROVED - MUELLER #H103 P/N: M185683
04/19/2021	842186	Firemaster Mt Region	Wastewater	$ 652.52	Annual Maintenance
04/19/2021	842186	Firemaster Mt Region	Water	$ 1,957.57	Annual Maintenance
04/19/2021	842187	First Montana Title	CDBG	$ 10,000.00	FTHB Erica Zink 903 Lynch Drive #3
04/19/2021	842189	Fisher's Technology	Central Services	$ 4.16	877767 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 773.80	879171 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 296.78	879172 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 35.90	879255 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 183.56	882891 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 269.29	887473 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 6.02	887476 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 186.37	887477 copy fund

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842189	Fisher's Technology	Central Services	$ 54.09	888339 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 630.99	891790 copy fund
04/19/2021	842189	Fisher's Technology	Central Services	$ 178.04	895536 copy fund
04/19/2021	842189	Fisher's Technology	Public Safety	$ 2.22	884891 ICAC - NMC01138
04/19/2021	842189	Fisher's Technology	Public Safety	$ 2.20	894981 ICAC - NMC01138
04/19/2021	842189	Fisher's Technology	Water	$ 41.34	Canon/DXC3725I
04/19/2021	842194	Graber Manufacture	Park Dist 1	$ 9,667.10	invoice 83692 - Q93695-Benches
04/19/2021	842195	Grainger Parts	Wastewater	$ 31.76	Safety glasses
04/19/2021	842195	Grainger Parts	Wastewater	$ 22.73	Safety glasses
04/19/2021	842195	Grainger Parts	Wastewater	$ 316.24	Safety glasses and LED bulbs
04/19/2021	842195	Grainger Parts	Wastewater	$ 78.84	Suction Tool
04/19/2021	842195	Grainger Parts	Water	$ 192.54	Anchor flange
04/19/2021	842195	Grainger Parts	Water	$ 27.42	Consumable tools
04/19/2021	842195	Grainger Parts	Water	$ 38.88	D BATTERIES ALKALINE P/N: 5LE21
04/19/2021	842195	Grainger Parts	Water	$ 115.67	Drop in flange
04/19/2021	842195	Grainger Parts	Water	$ 36.72	Electrical Supplies
04/19/2021	842195	Grainger Parts	Water	$ 163.38	Linear LED Bulb
04/19/2021	842195	Grainger Parts	Water	$ 24.98	SAFETY GLASSES
04/19/2021	842195	Grainger Parts	Water	$ 35.53	SAFETY GLASSES
04/19/2021	842195	Grainger Parts	Water	$ 31.76	Safety glasses
04/19/2021	842195	Grainger Parts	Water	$ 22.73	Safety glasses
04/19/2021	842195	Grainger Parts	Water	$ 316.24	Safety glasses and LED bulbs
04/19/2021	842195	Grainger Parts	Water	$ 497.29	Sample pump starter
04/19/2021	842195	Grainger Parts	Water	$ 108.12	SHOP SUPPLIES
04/19/2021	842195	Grainger Parts	Water	$ 139.20	Starter for sample pump
04/19/2021	842195	Grainger Parts	Water	$ 178.70	STORAGE RACK
04/19/2021	842195	Grainger Parts	Water	$ 78.84	Suction Tool
04/19/2021	842195	Grainger Parts	Water	$ 235.50	V-GARD HARD HAT - WHITE P/N: 4LN96
04/19/2021	842195	Grainger Parts	Water	$ 162.00	WTP lights for filter gallery
04/19/2021	842196	Granite Peak Pump	Park Dist 1	$ 4,573.80	invoice 21018-02 Pioneer upper Pump Station
04/19/2021	842199	Gunarama Wholesale	Public Safety	$ 120.00	GLOCK front night sight, green
04/19/2021	842199	Gunarama Wholesale	Public Safety	$ 4,908.00	GLOCK GEN-5 G17, 9mm, 4.5" with Glock night sights 3-17 round magazines
04/19/2021	842202	HDR, Inc.	Solid Waste	$ 25,000.00	WO 17-12 Landfill Drop-off Facility
04/19/2021	842205	Idera Inc	IT Resources	$ 3,032.40	Two Year Renewal -SQL Diagnostic Manager and Defrag Manager -IT
04/19/2021	842207	Ingram Library Service	Library	$ 14.72	51986182
04/19/2021	842207	Ingram Library Service	Library	$ 11.20	51986183

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842207	Ingram Library Service	Library	$ 4.79	51986184
04/19/2021	842207	Ingram Library Service	Library	$ 11.97	51986185
04/19/2021	842207	Ingram Library Service	Library	$ 18.27	51986186
04/19/2021	842207	Ingram Library Service	Library	$ 9.59	51986186
04/19/2021	842207	Ingram Library Service	Library	$ 5.99	51986187
04/19/2021	842207	Ingram Library Service	Library	$ 10.02	51986188
04/19/2021	842207	Ingram Library Service	Library	$ 91.02	51986189
04/19/2021	842207	Ingram Library Service	Library	$ 344.79	51986189
04/19/2021	842207	Ingram Library Service	Library	$ 85.22	51986189
04/19/2021	842207	Ingram Library Service	Library	$ 287.24	51986189
04/19/2021	842207	Ingram Library Service	Library	$ 118.06	52009000
04/19/2021	842207	Ingram Library Service	Library	$ 31.84	52009000
04/19/2021	842207	Ingram Library Service	Library	$ 41.09	52009001
04/19/2021	842207	Ingram Library Service	Library	$ 10.59	52009002
04/19/2021	842207	Ingram Library Service	Library	$ 16.52	52009002
04/19/2021	842207	Ingram Library Service	Library	$ 20.65	52009002
04/19/2021	842207	Ingram Library Service	Library	$ 10.02	52009003
04/19/2021	842207	Ingram Library Service	Library	$ 17.70	52009003
04/19/2021	842207	Ingram Library Service	Library	$ 11.20	52009004
04/19/2021	842207	Ingram Library Service	Library	$ 15.32	52009004
04/19/2021	842207	Ingram Library Service	Library	$ 236.29	52009005
04/19/2021	842207	Ingram Library Service	Library	$ 63.15	52082594
04/19/2021	842207	Ingram Library Service	Library	$ 39.95	52082594
04/19/2021	842207	Ingram Library Service	Library	$ 35.85	52082594
04/19/2021	842207	Ingram Library Service	Library	$ 20.22	52082595
04/19/2021	842207	Ingram Library Service	Library	$ 11.20	52111630
04/19/2021	842207	Ingram Library Service	Library	$ 15.90	52111631
04/19/2021	842207	Ingram Library Service	Library	$ 14.72	52111631
04/19/2021	842207	Ingram Library Service	Library	$ 24.26	52111632
04/19/2021	842207	Ingram Library Service	Library	$ 57.37	52111632
04/19/2021	842207	Ingram Library Service	Library	$ 35.71	52111633
04/19/2021	842207	Ingram Library Service	Library	$ 16.52	52111633
04/19/2021	842207	Ingram Library Service	Library	$ 18.00	52111633
04/19/2021	842207	Ingram Library Service	Library	$ 11.79	52111634
04/19/2021	842207	Ingram Library Service	Library	$ 20.65	52111635
04/19/2021	842207	Ingram Library Service	Library	$ 66.05	52111636

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842207	Ingram Library Service	Library	$ 11.79	52111637
04/19/2021	842207	Ingram Library Service	Library	$ 10.79	52111638
04/19/2021	842207	Ingram Library Service	Library	$ 304.27	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 76.39	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 18.93	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 127.75	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 652.52	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 10.99	52111639
04/19/2021	842207	Ingram Library Service	Library	$ 24.79	52138066
04/19/2021	842207	Ingram Library Service	Library	$ 10.02	52138067
04/19/2021	842207	Ingram Library Service	Library	$ 33.26	52138068
04/19/2021	842207	Ingram Library Service	Library	$ 19.24	52138069
04/19/2021	842207	Ingram Library Service	Library	$ 36.75	52138069
04/19/2021	842207	Ingram Library Service	Library	$ 14.74	52138070
04/19/2021	842207	Ingram Library Service	Library	$ 21.60	52138070
04/19/2021	842207	Ingram Library Service	Library	$ 22.95	52138071
04/19/2021	842207	Ingram Library Service	Library	$ 34.86	52138072
04/19/2021	842207	Ingram Library Service	Library	$ 9.19	52138072
04/19/2021	842207	Ingram Library Service	Library	$ 14.72	52138073
04/19/2021	842207	Ingram Library Service	Library	$ 41.26	52138073
04/19/2021	842207	Ingram Library Service	Library	$ 14.98	52138073
04/19/2021	842207	Ingram Library Service	Library	$ 31.99	52138073
04/19/2021	842207	Ingram Library Service	Library	$ 126.35	52138074
04/19/2021	842207	Ingram Library Service	Library	$ 63.04	52138074
04/19/2021	842207	Ingram Library Service	Library	$ 21.99	52138074
04/19/2021	842207	Ingram Library Service	Library	$ 11.99	52138074
04/19/2021	842207	Ingram Library Service	Library	$ 36.21	52138075
04/19/2021	842208	Invoice Cloud	Building	$ 10.22	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842208	Invoice Cloud	City Ins Fund	$ 22.49	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842208	Invoice Cloud	Parking	$ 43.20	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842208	Invoice Cloud	Solid Waste	$ 7,772.66	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842208	Invoice Cloud	Wastewater	$ 9,825.13	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842208	Invoice Cloud	Water	$ 11,558.96	For Service Period of 03/01/2021 through 3/31/2021
04/19/2021	842209	Jacobs Engineering	Gas Tax	$ 291.23	Asset Management Program Project
04/19/2021	842209	Jacobs Engineering	Light Maint	$ 291.23	Asset Management Program Project
04/19/2021	842209	Jacobs Engineering	Storm Sewer	$ 1,396.97	Asset Management Program Project

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842209	Jacobs Engineering	Street/Traffic	$ 873.69	Asset Management Program Project
04/19/2021	842209	Jacobs Engineering	Wastewater	$ 5,150.95	Asset Management Program Project
04/19/2021	842209	Jacobs Engineering	Water	$ 5,257.14	Asset Management Program Project
04/19/2021	842215	Knife River	Street/Traffic	$ 9,397.08	winter traction material
04/19/2021	842219	L N Curtis & Sons	Public Safety	$ 7,944.97	Less than lethal rounds and launchers.
04/19/2021	842221	Land Design Inc	Park Dist 1	$ 11,211.50	invoice 016031- phase I of the Poly Vista project
04/19/2021	842236	MT Dakota Utilities	Fleet	$ 4,371.08	041321 PO NUM 312306
04/19/2021	842240	MT Municipal Interlocal	Payroll Clearing	$480,065.31	Workers' Compensation January 1 - March 31, 2021
04/19/2021	842241	MT Municipal Interlocal	Property Ins	$ 39,393.43	April Liability Program DR1005085
04/19/2021	842241	MT Municipal Interlocal	Property Ins	$ (748.55)	April Liability Program Credit DN1005099
04/19/2021	842244	Murray Floor & Window	Wastewater	$ 1,743.05	Materials & installation of window coverings at the Belknap service center
04/19/2021	842244	Murray Floor & Window	Water	$ 5,229.14	Materials & installation of window coverings at the Belknap service center
04/19/2021	842250	NorthWestern Energy	Building	$ 18.64	1569631-3
04/19/2021	842250	NorthWestern Energy	CDBG	$ 15.74	817 N 22nd Street / Account #3793773-7
04/19/2021	842250	NorthWestern Energy	General	$ 48.01	0712387-0
04/19/2021	842250	NorthWestern Energy	General	$ 105.55	0712536-2
04/19/2021	842250	NorthWestern Energy	General	$ 147.02	0712538-8
04/19/2021	842250	NorthWestern Energy	General	$ 42.67	0720818-4
04/19/2021	842250	NorthWestern Energy	General	$ 249.87	0720821-8
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 36.90	0723045-1
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 25.98	0813489-2
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ -	1191404-1
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 6.00	1588262-4
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 24.10	1836666-6
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 51.73	1849408-8
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 53.97	1904944-4
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 45.83	1941243-6
04/19/2021	842250	NorthWestern Energy	Park Dist 1	$ 54.68	3241436-9
04/19/2021	842250	NorthWestern Energy	Parking	$ 27.63	3835890-9
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 6.76	0881455-0
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ -	1029192-0
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ -	1045813-1
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 1.31	1265177-4
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 7.13	1514388-6
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 1.07	1948667-9
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 5.35	2055817-7

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 0.59	3707234-5
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 0.14	3707235-2
04/19/2021	842250	NorthWestern Energy	Parks Maint	$ 0.16	3707236-0
04/19/2021	842250	NorthWestern Energy	Public Safety	$ 354.95	0720817-6
04/19/2021	842250	NorthWestern Energy	Public Safety	$ 644.86	0871546-8
04/19/2021	842250	NorthWestern Energy	Radio	$ 149.49	1006915-1
04/19/2021	842250	NorthWestern Energy	Street/Traffic	$ 0.35	1740357-7
04/19/2021	842250	NorthWestern Energy	Street/Traffic	$ 0.59	1748896-6
04/19/2021	842250	NorthWestern Energy	Street/Traffic	$ -	3088038-9
04/19/2021	842250	NorthWestern Energy	Street/Traffic	$ 0.83	3590004-2
04/19/2021	842250	NorthWestern Energy	Transit	$ 551.35	0719225-5
04/19/2021	842250	NorthWestern Energy	Wastewater	$ 67,462.90	0100591-7
04/19/2021	842250	NorthWestern Energy	Wastewater	$ 796.30	0100606-3
04/19/2021	842250	NorthWestern Energy	Water	$ 2,388.90	0100606-3
04/19/2021	842250	NorthWestern Energy	Water	$ 60,518.60	0100606-3
04/19/2021	842250	NorthWestern Energy	Water	$ 2,805.44	0722264-9
04/19/2021	842250	NorthWestern Energy	Water	$ 2,178.80	0723040-2
04/19/2021	842250	NorthWestern Energy	Water	$ 18.15	0723059-2
04/19/2021	842250	NorthWestern Energy	Water	$ 200.22	1142253-2
04/19/2021	842250	NorthWestern Energy	Water	$ 6.00	1160807-2
04/19/2021	842250	NorthWestern Energy	Water	$ 4.20	1346673-5
04/19/2021	842250	NorthWestern Energy	Water	$ 12.95	1867265-9
04/19/2021	842250	NorthWestern Energy	Water	$ 2,103.41	5809 Canyon Woods
04/19/2021	842257	Perkin Elmer Las Inc	Water	$ 9,650.76	WATER PLANT LAB - SAMPLE PUMP & 2-YEAR MAINTENANCE
04/19/2021	842260	Public Works-Admin	Water	$ 1,585.00	Account # 101434 PUD ENGINEERING PERMITS-March 2021
04/19/2021	842260	Public Works-Admin	Water	$ 8,475.00	Account # 101434 PUD ENGINEERING PERMITS-March 2021
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 175.40	CHEMP0090, FOUR-GAS CALIBRATION MIX, CO, CH4, LEL, O2
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 205.32	CHEMP0091, HYDROGEN CYANIDE
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 205.32	GQAP0157, AMMONIA 50PPM
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 3,375.00	HAZMAT SUITS DURACHEM 500 CLASS 1&2, FRONT-ENTRY COVERALL
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 1,237.00	HAZMAT SUITS DURACHEM 500, CLASS 1&2 COVERALL
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 1,143.00	QRAE 3 PUMPED CSA LEL/H2S/CO/O2-LI ION WIRELESS
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 35.00	SHIPPING
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ 50.00	SHIPPING/HANDLING
04/19/2021	842261	Qal-Tek Associates	Fire Grants	$ -	SUIT PRESSURE-TESTING EQUIPMENT AT NO CHARGE
04/19/2021	842262	Quest Services Corp.	Facilities	$ 29,290.00	Consultant to manage multiple hail repair projects

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842265	Rimrock Foundation	Court Grants	$ 360.00	21 February Rimrock Ancillary
04/19/2021	842265	Rimrock Foundation	Court Grants	$ 1,890.00	21 February Rimrock DUI Ancillary
04/19/2021	842265	Rimrock Foundation	Court Grants	$ 1,922.50	21 February Rimrock DUI Other
04/19/2021	842265	Rimrock Foundation	Court Grants	$ 1,400.00	21 February Rimrock Other Services
04/19/2021	842265	Rimrock Foundation	Court Grants	$ 400.00	21 February Rimrock Screenings
04/19/2021	842266	Rocky Mt Compost	Park Dist 1	$ 2,880.00	playground chips for rose
04/19/2021	842268	Rollinger Companies	Facilities	$ 15,440.04	Polishing and sealing concrete floors at BOC Administration Building
04/19/2021	842271	SHI International	IT Resources	$ 258.70	upgrading five (5) of the G1 licenses Only still need G3
04/19/2021	842271	SHI International	IT Resources	$ 970.70	upgrading five (5) of the G1 licenses to a G3 level & new Exchange Plan 1
04/19/2021	842271	SHI International	Public Safety	$ 269.56	1-MS Office Standard -Police Training laptop
04/19/2021	842271	SHI International	Public Safety	$ 2,156.48	Qty. 8MS Office Standard Licenses -Police
04/19/2021	842278	St V Occupation Health	Airport	$ 95.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	City Ins Fund	$ 585.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	City Ins Fund	$ 1,225.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Fleet	$ 95.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	General	$ 2,020.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Public Safety	$ 95.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Public Safety	$ 657.75	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Public Safety	$ 40.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Solid Waste	$ 760.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Street/Traffic	$ 475.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Transit	$ 190.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Wastewater	$ 96.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842278	St V Occupation Health	Water	$ 144.00	March 2021 DOT Physicals, Drug Testing, On-Site Nursing, COVID Testing
04/19/2021	842281	SUEZ WTS Analytical	Water	$ 21,414.90	TOTAL ORGANIC CARBON ANALYZER
04/19/2021	842283	T W Enterprises Inc	Public Safety	$ 5,541.92	Reduce AMP on transfer switch- electrical donduit & connection
04/19/2021	842283	T W Enterprises Inc	Public Safety	$ 41,103.39	FIRE 5: GENERATOR. PROVIDE AND INSTALL 60KW generator
04/19/2021	842283	T W Enterprises Inc	Water	$ 923.00	Annual generator service for Ironwood and Waldo/Christensen generator
04/19/2021	842283	T W Enterprises Inc	Water	$ 920.66	Annual generator service for Ironwood and Waldo/Christensen generator
04/19/2021	842283	T W Enterprises Inc	Water	$ 1,688.32	Generator servicing/testing for Ironwood pump station generator
04/19/2021	842284	Tacoma Screw Products	Fleet	$ 33.41	27137361 PO NUM 312313
04/19/2021	842284	Tacoma Screw Products	Street/Traffic	$ 19.53	plug tap, hex die for broom on unit 1249
04/19/2021	842284	Tacoma Screw Products	Street/Traffic	$ 108.13	pipe wrenches
04/19/2021	842284	Tacoma Screw Products	Wastewater	$ 24.96	Clamp
04/19/2021	842284	Tacoma Screw Products	Wastewater	$ 42.63	Hot water check valve and shop supplies
04/19/2021	842284	Tacoma Screw Products	Water	$ 24.95	Clamp

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/19/2021	842284	Tacoma Screw Products	Water	$ 88.37	ELECTRICAL SUPPLIES
04/19/2021	842284	Tacoma Screw Products	Water	$ 46.78	MAINTENANCE
04/19/2021	842284	Tacoma Screw Products	Water	$ 1,781.80	NITRILE GLOVES - LARGE P/N: 566-342
04/19/2021	842284	Tacoma Screw Products	Water	$ 1,781.80	NITRILE GLOVES - X-LARGE P/N: 566-343
04/19/2021	842284	Tacoma Screw Products	Water	$ 176.95	Tools and Supplies
04/19/2021	842285	Tel Net Systems	Phone System	$ 2,559.00	Additional splice installed from CH up N27th to Airport
04/19/2021	842285	Tel Net Systems	Phone System	$ 9,988.00	Fiber installing from CH up N27th St to Airport
04/19/2021	842285	Tel Net Systems	Phone System	$ 12,877.00	Install 96 strand fiber from CH up 27th to Airport
04/19/2021	842286	TESSCO	Water	$ 2,823.28	Electrical supplies- Aprisa radio upgrade for pump stations
04/19/2021	842286	TESSCO	Water	$ 4,453.74	UPS Cards for water plant and pump station ups alarms
04/19/2021	842288	Titan Machinery	Street/Traffic	$ 2,940.00	rear brooms for sweepers
04/19/2021	842290	Town & Country Supply	Fleet	$ 18,124.54	4169014 PO NUM 312308
04/19/2021	842290	Town & Country Supply	General	$ 587.32	diesel fuel for the cemetery - 416059
04/19/2021	842290	Town & Country Supply	Public Safety	$ 1,800.95	416358 FIRE 1,3,5 - DIESEL
04/19/2021	842290	Town & Country Supply	Public Safety	$ 605.63	416358: FIRE 1 - UNLEADED
04/19/2021	842290	Town & Country Supply	Transit	$ 12,717.28	416290 PO NUM 312317. 5999 Gallons Diesel Dyed #2
04/19/2021	842291	TPG Pressure, Inc.	Water	$ 4,066.74	Order # B207508-3
04/19/2021	842291	TPG Pressure, Inc.	Water	$ 6,520.00	Order # B217134
04/19/2021	842293	Tri County Rentals	Water	$ 1,989.00	Boomlift Rental 2/16/2021-3/16/2021
04/19/2021	842293	Tri County Rentals	Water	$ 1,989.00	Boomlift Rental 3/16/2021-4/13/2021
04/19/2021	842298	Tyler Technology	EOC 911	$ 1,848.00	9-1-1 Center Annual New World Maintenance
04/19/2021	842298	Tyler Technology	IT Resources	$ 2,500.00	3 year subscription -Red Hat Virtual Message project
04/19/2021	842298	Tyler Technology	IT Resources	$ 378.00	Sheriff Mobile Annual New World Maintenance
04/19/2021	842298	Tyler Technology	PD Program	$ 260.06	Server Maintenance 5/1/2021-4/30/2022
04/19/2021	842298	Tyler Technology	Public Safety	$ 437.00	Fire Mobile Annual New World Maintenance
04/19/2021	842298	Tyler Technology	Public Safety	$ 5,334.63	Police Annual New World Maintenance
04/19/2021	842298	Tyler Technology	Public Safety	$ 2,736.00	Qty.3 Mobile Licenses -CPC
04/19/2021	842300	Unemploy Ins Contributes	Payroll Clearing	$ 28,415.80	Unemployment Insurance for Quarter ending 3/31/2021
04/19/2021	842304	Us Bank	Facilities	$ 1,750.00	Refunding Certificates of Participation, Series 2013
04/19/2021	842304	Us Bank	Tax Incrmnt N27	$ 350.00	Tax Increment Urban Renewal Revenue Bonds, Series 2013A
04/19/2021	842304	Us Bank	Tax Incrmnt N27	$ 350.00	Tax Increment Urban Renewal Revenue Bonds, Taxable Series 2013B
04/19/2021	842304	Us Bank	Wastewater	$ 350.00	Montana Sewer Revenue Bonds, Series 2017
04/19/2021	842308	Watterson	General	$ 799.99	2 14" Asus i7 P2451FA-XS74 laptops, 14" Asus i5 P2451FA-XS51 laptop
04/19/2021	842308	Watterson	IT Resources	$ 2,021.93	3 14" Asus i7 P2451FA-XS74 laptops, 14" Asus i5 P2451FA-XS51 laptop
04/19/2021	842310	Wesco Distribution Inc	Wastewater	$ 31,270.00	2 Replacement Power Transformers. Approved 1/12/2021
04/19/2021	842315	Ylwstn Valley An Shelter	Public Safety	$ 23,000.00	contract

City Council Regular

Date:	05/24/2021
Title:	Payment of Claims for week of April 26, 2021
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Claims in the amount of $994,841.70 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department.

Payment Approval Process

Every invoice for payment in entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.) Each invoice goes through a multi-step approval process depending upon the amount of the payment.

First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment.

Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached.

If the payment is greater than $1,000, then it must be approved by the Finance Director or designee.
If that payment is greater than $10,000, then it must be approved by the City Administrator or Assistant City Administrator.

Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of $2,500 is generated and placed on the next City Council meeting for review.

ALTERNATIVES

- No other alternatives were analyzed

FISCAL EFFECTS

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.

Attachments

Councilmemo wk of 04262021

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842318	A & I Distributors	Fleet	$ 2,370.20	3596445 PO NUM 311667
04/26/2021	842318	A & I Distributors	Fleet	$ 93.92	3604696 PO NUM 311667
04/26/2021	842318	A & I Distributors	Fleet	$ 2,787.56	3605379 PO NUM 311667
04/26/2021	842318	A & I Distributors	Fleet	$ 665.02	3608325 PO NUM 311667
04/26/2021	842318	A & I Distributors	Fleet	$ (289.51)	3610422 PO NUM 311667
04/26/2021	842318	A & I Distributors	Public Safety	$ 39.79	3596445
04/26/2021	842318	A & I Distributors	Solid Waste	$ 40.33	3596445
04/26/2021	842318	A & I Distributors	Solid Waste	$ 412.50	330 gal Def Tote
04/26/2021	842318	A & I Distributors	Solid Waste	$ 412.50	330Gal Def Tote
04/26/2021	842318	A & I Distributors	Solid Waste	$ 439.45	55G purus Red Elc 5050
04/26/2021	842318	A & I Distributors	Solid Waste	$ 412.50	DEF
04/26/2021	842318	A & I Distributors	Solid Waste	$ 36.72	Lever pump attachment
04/26/2021	842318	A & I Distributors	Street/Traffic	$ 39.79	3596445
04/26/2021	842318	A & I Distributors	Transit	$ 93.00	3604535, Used Antifreeze Disposal
04/26/2021	842318	A & I Distributors	Transit	$ 93.00	3604536. Used Antifreeze Disposal
04/26/2021	842318	A & I Distributors	Transit	$ 439.45	3604837 PO NUM 311667. DEF
04/26/2021	842318	A & I Distributors	Transit	$ 92.95	3605832. 220 Qts. Coolant
04/26/2021	842318	A & I Distributors	Water	$ 123.48	WATER PARTS AND SUPPLIES PO NUM 312095
04/26/2021	842319	A+ Electric Motor Repair	Wastewater	$ 3,938.99	Back drive motor for centrifuges
04/26/2021	842319	A+ Electric Motor Repair	Wastewater	$ 591.61	Grit scarper motor
04/26/2021	842319	A+ Electric Motor Repair	Wastewater	$ 440.00	Grit scraper motor backup
04/26/2021	842320	A-1 Landscape & Nursery	Transit	$13,810.50	Invoice #3681. Downtown Transfer Center Landscape Project
04/26/2021	842323	Advanced Eng & Enviro	Wastewater	$19,679.92	Professional Services Agreement for Water and Wastewater Rate Study
04/26/2021	842323	Advanced Eng & Enviro	Water	$18,021.08	Professional Services Agreement for Water and Wastewater Rate Study
04/26/2021	842329	Archie Cochrane	Fleet	$ 154.95	5363547 PO NUM 312334
04/26/2021	842329	Archie Cochrane	Fleet	$ 113.99	5363930 PO NUM 312334
04/26/2021	842329	Archie Cochrane	Fleet	$ 113.99	5364666 PO NUM 312334
04/26/2021	842329	Archie Cochrane	Property Ins	$ 4,711.85	BDP Car 1512 #2021-047
04/26/2021	842329	Archie Cochrane	Property Ins	$ 106.95	BPD 1512 #2021-047
04/26/2021	842329	Archie Cochrane	Property Ins	$ 426.57	BPD Car 1413 #2021-041
04/26/2021	842329	Archie Cochrane	Property Ins	$ 4,119.72	BPD Car 1413 #2021-041
04/26/2021	842329	Archie Cochrane	Public Safety	$ 286.00	5363547
04/26/2021	842329	Archie Cochrane	Public Safety	$ 37.83	5363564
04/26/2021	842329	Archie Cochrane	Public Safety	$ 146.90	5363930
04/26/2021	842329	Archie Cochrane	Public Safety	$ 94.24	5364307
04/26/2021	842329	Archie Cochrane	Public Safety	$ 92.06	5364418

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842329	Archie Cochrane	Public Safety	$ 146.90	5364666
04/26/2021	842329	Archie Cochrane	Public Safety	$ 36.70	5364804
04/26/2021	842329	Archie Cochrane	Street/Traffic	$ 35.90	5363385
04/26/2021	842329	Archie Cochrane	Transit	$ (15.12)	5364237. Cooler Gasket Unit 1821. W/O 192293
04/26/2021	842332	Beartooth Enviro	Solid Waste	$ 4,881.05	HHW solid waste shipment.
04/26/2021	842339	Border States Electric	Wastewater	$ 106.78	ELECTRICAL SUPPLIES
04/26/2021	842339	Border States Electric	Wastewater	$ 68.81	FR BIBS - CHARLES
04/26/2021	842339	Border States Electric	Wastewater	$ 140.94	HEADWORKS COMPACTOR/WASHER
04/26/2021	842339	Border States Electric	Wastewater	$ 1,294.66	HEATERS FOR SECONDARY CLARIFIERS
04/26/2021	842339	Border States Electric	Wastewater	$ 913.51	REPLACEMENT PLC MODULE FOR EXXON DATA TO WRF
04/26/2021	842339	Border States Electric	Wastewater	$ 21.45	Strut foot for conduit run to bio reactor fiber rack
04/26/2021	842339	Border States Electric	Water	$ 117.01	Conduit run at WTP
04/26/2021	842339	Border States Electric	Water	$ 3,078.02	Ethernet gateway card, fuses, plc term blocks
04/26/2021	842339	Border States Electric	Water	$ 68.81	FR BIBS - CHARLES
04/26/2021	842339	Border States Electric	Water	$ 11.16	FUSES FOR BOX CAR WTP
04/26/2021	842339	Border States Electric	Water	$ 8.35	Hardware for thin manager installation WTP
04/26/2021	842339	Border States Electric	Water	$ 291.59	MAINTENANCE MATERIALS
04/26/2021	842339	Border States Electric	Water	$ 237.81	MAINTENANCE SERVICES
04/26/2021	842339	Border States Electric	Water	$ 262.63	MTW-12AWG-BLACK 500R
04/26/2021	842339	Border States Electric	Water	$ 107.29	MTW-14AWG BLUE-WHITE 19ST - R CU-500R WIRE
04/26/2021	842339	Border States Electric	Water	$ 190.33	MTW-14AWG-BLUE-19ST-CU- - 500R WIRE
04/26/2021	842339	Border States Electric	Water	$ 4,011.22	Network appliances for WTP
04/26/2021	842339	Border States Electric	Water	$ 801.70	Power supplies for radio upgrade
04/26/2021	842339	Border States Electric	Water	$ 309.12	SCHOTCHLOK UR 19-26 AWG BUTT CONNECTOR
04/26/2021	842339	Border States Electric	Water	$ 76.22	THIN CLIENT HARDWARE WTP
04/26/2021	842339	Border States Electric	Water	$ 34.59	TOOLS
04/26/2021	842353	Conditioned Air System	Public Safety	$ 5,601.42	Fire1/Bureau Area-replace existing HVAC System
04/26/2021	842356	Cummins Rocky Mt	Fleet	$ (333.57)	38-13378 PO NUM 312248
04/26/2021	842356	Cummins Rocky Mt	Solid Waste	$ 816.87	42213
04/26/2021	842356	Cummins Rocky Mt	Transit	$ 4,307.88	38-42992. Turbo Unit 1814. W/O 199672
04/26/2021	842356	Cummins Rocky Mt	Transit	$ 184.33	38-43271. Rocker Cover Gasket & Hardware Unit 1814. W/O 199672
04/26/2021	842357	Cushing Terrell	Public Safety	$ 3,633.14	Design to replace & repair exterior finishes at Fire Station #4
04/26/2021	842360	Dell Computer	General	$ 165.23	1-24" Monitor -Finance
04/26/2021	842360	Dell Computer	General	$ 1,105.28	14" Dell latitude 3420, i5, 8GB RAM, 1TB SSD
04/26/2021	842360	Dell Computer	General	$ 2,312.24	2-Precision 3440 i7, 16GB RAM, 512GB SSD & 24" monitors
04/26/2021	842360	Dell Computer	Public Safety	$ 1,259.56	15.6" Mobile Precision 3551 -i7, 16GB, 256GB -Police Training

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842360	Dell Computer	Transit	$ 660.92	Qty. 4 24" monitors -MET Dispatcher
04/26/2021	842362	Desert Mt Corporation	Street/Traffic	$ 5,282.48	ice slicer
04/26/2021	842363	DOWL	Arterial Streets	$ 6,757.50	24th St W/Central Ave Signal Improvements
04/26/2021	842363	DOWL	SID Const	$ 187.50	SID 1410 Annafeld Subdivision 2nd Filing Streetlights and Park Improvements
04/26/2021	842366	Electrical Consultants	Water	$ 3,118.50	WTP - RELAY CONFIGURATION UPDATE
04/26/2021	842369	Enviro Resources	Water	$ 2,745.17	WTP annual audit samples
04/26/2021	842370	EPACT Newtwork	General	$ 2,635.00	auto archiving yearly payment-ePact enterprise network for Rose Pool
04/26/2021	842374	Fisher Sand & Gravel	Street/Traffic	$ 226.05	asphalt
04/26/2021	842374	Fisher Sand & Gravel	Street/Traffic	$ 1,344.75	asphalt
04/26/2021	842374	Fisher Sand & Gravel	Street/Traffic	$ 1,323.30	asphalt
04/26/2021	842374	Fisher Sand & Gravel	Street/Traffic	$ 564.85	asphalt
04/26/2021	842374	Fisher Sand & Gravel	Street/Traffic	$ 1,309.00	asphalt
04/26/2021	842376	Gaynor's Auto Body	Property Ins	$ 3,172.33	Repairs to Planning Car 1957 #2021-130
04/26/2021	842380	HDR, Inc.	Light Maint	$ 514.49	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842380	HDR, Inc.	Solid Waste	$ 1,028.98	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842380	HDR, Inc.	Storm Sewer	$ 2,057.95	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842380	HDR, Inc.	Street/Traffic	$ 1,543.47	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842380	HDR, Inc.	Wastewater	$ 3,834.41	WO 19-21 WRF Influent Lift Station
04/26/2021	842380	HDR, Inc.	Wastewater	$ 7,619.47	WO 20-11 Lloyd Mangrum & Lake Hills Lift Station Rehab
04/26/2021	842380	HDR, Inc.	Wastewater	$ 2,572.44	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842380	HDR, Inc.	Wastewater	$14,144.61	WO 20-44 WRF Nutrient Recovery Improvements Project
04/26/2021	842380	HDR, Inc.	Water	$55,964.23	WO 19-12 West End Reservoir
04/26/2021	842380	HDR, Inc.	Water	$ 2,127.62	WO 19-37 High Service Pump Replacement H2-2
04/26/2021	842380	HDR, Inc.	Water	$ 2,572.44	WO 20-33 Public Works GIS Services, 1200325034
04/26/2021	842385	Iaff	Payroll Clearing	$ 5,197.14	Payroll Summary
04/26/2021	842394	KTVQ Communication	General	$ 200.00	787772-3 03/01/2021-03/31/2021 Job Advertising
04/26/2021	842394	KTVQ Communication	General	$ 1,425.00	787787-3 Advertising 03/01/2021-03/31/2021
04/26/2021	842394	KTVQ Communication	P.W. Admin	$ 5,000.00	All-inclusive strategic planning, creative & production for video & digital
04/26/2021	842394	KTVQ Communication	P.W. Admin	$ 500.00	All-inclusive strategic planning, creative & production for video & digital
04/26/2021	842394	KTVQ Communication	P.W. Admin	$ 4,500.00	All-inclusive strategic planning, creative & production for video & digital
04/26/2021	842398	Lamar Companies	General	$ 2,970.00	bill boards throughout Billings-advertising 112388421
04/26/2021	842401	Lee Law Firm LLC	General	$ 2,817.00	21 March Lee Pro Tem
04/26/2021	842403	Less, Inc	PD Program	$ 7,500.00	Annual subscription for 7-1-20 to 6-30-21.
04/26/2021	842406	Livingston Auto Center	Capital Replace	$31,662.00	2021 Dodge Ram 2500-crew cab 4x4
04/26/2021	842406	Livingston Auto Center	Engineering	$25,359.00	2021 1/2 Ton, 4 Wheel Drive, Extended Cab
04/26/2021	842414	MFPE	Payroll Clearing	$ 2,698.75	Payroll Summary

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04/26/2021	842410	Modern Machinery	Street/Traffic	$ 4,760.00	2694548
04/26/2021	842412	Montana CSED	Payroll Clearing	$ 3,229.90	Payroll Summary
04/26/2021	842419	Morrison Maierle	Wastewater	$ 1,283.62	WO 20-01 Water/Sewer Replacement Project
04/26/2021	842419	Morrison Maierle	Wastewater	$ 1,023.00	WO 20-01 Water/Sewer Replacement Project
04/26/2021	842419	Morrison Maierle	Wastewater	$ 8,478.79	WO 20-01 Water/Sewer Replacement Project
04/26/2021	842419	Morrison Maierle	Water	$ 819.50	WO 20-40 Walter Pump Station Generator
04/26/2021	842419	Morrison Maierle	Water	$26,486.11	WO 21-01 Water/Sewer Replacement Project Pioneer Park
04/26/2021	842419	Morrison Maierle	Water	$50,390.41	WO 21-01 Water/Sewer Replacement Project Pioneer Park
04/26/2021	842419	Morrison Maierle	Water	$72,192.06	WO 21-01 Water/Sewer Replacement Project Pioneer Park
04/26/2021	842419	Morrison Maierle	Water	$ 702.20	WO1815 Voelker Pump Station Improvements
04/26/2021	842420	MPPA	Payroll Clearing	$ 3,595.80	Payroll Summary
04/26/2021	842413	MT Dakota Utilities	Airport	$ 434.84	139 573 1000 1. Mud Wash. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 148.33	160 723 3573 6. USDA. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 272.23	185 580 1000 7. TSA. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 48.71	229 573 1000 0. Detail Bay 1 Hertz. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 147.07	283 116 0655 3. Alpine. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 759.44	285 580 1000 6
04/26/2021	842413	MT Dakota Utilities	Airport	$ 142.63	295 580 1000 4. Aero Interiors. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 30.23	329 573 1000 9. Detail Bay 3 Enterprise. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 44.28	429 573 1000 8. Detail Bay 4 Avis/Budget. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 49.35	529 573 1000 7. Detail Bay 5 Thrifty/Dollar. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 5,666.94	595 580 1000 1
04/26/2021	842413	MT Dakota Utilities	Airport	$ 71.09	629 573 1000 6. Detail Bay 2 National/Alamo. April 2021
04/26/2021	842413	MT Dakota Utilities	Airport	$ 977.58	706 580 1000 7
04/26/2021	842413	MT Dakota Utilities	Airport	$ 1,236.88	889 373 1000 6. Car Wash. April 2021
04/26/2021	842413	MT Dakota Utilities	Engineering	$ 156.18	595 373 1000 1
04/26/2021	842413	MT Dakota Utilities	Facilities	$ 2,247.62	929 780 1000 4
04/26/2021	842413	MT Dakota Utilities	General	$ 149.00	437 780 1000 9
04/26/2021	842413	MT Dakota Utilities	Library	$ 2,965.26	219 924 4851 0
04/26/2021	842413	MT Dakota Utilities	P.W. Admin	$ 39.04	595 373 1000 1
04/26/2021	842413	MT Dakota Utilities	Park Dist 1	$ 60.86	501 473 1000 2
04/26/2021	842413	MT Dakota Utilities	Parking	$ 75.64	303 725 2591 2
04/26/2021	842413	MT Dakota Utilities	Parking	$ 22.74	717 353 1000 6
04/26/2021	842413	MT Dakota Utilities	Parking	$ 65.46	799 152 1209 0
04/26/2021	842413	MT Dakota Utilities	Public Safety	$ 559.73	169 233 1000 3
04/26/2021	842413	MT Dakota Utilities	Public Safety	$ 61.03	514 117 0478 9

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04/26/2021	842413	MT Dakota Utilities	Public Safety	$ 302.60	533 653 1000 1
04/26/2021	842413	MT Dakota Utilities	Public Safety	$ 523.70	885 880 1000 4
04/26/2021	842413	MT Dakota Utilities	Transit	$ 1,185.76	962 880 1000 0
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 3,969.01	293 780 1000 2
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 7,938.03	293 780 1000 2
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 3,969.02	293 780 1000 2
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 56.32	596 733 1000 5
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 54.04	713 064 3190 0
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 56.90	735 453 1000 2
04/26/2021	842413	MT Dakota Utilities	Wastewater	$ 58.83	843 879 2205 1
04/26/2021	842413	MT Dakota Utilities	Water	$ 58.77	076 225 9180 3
04/26/2021	842413	MT Dakota Utilities	Water	$ 29.17	373 580 1000 9
04/26/2021	842413	MT Dakota Utilities	Water	$ 29.16	373 580 1000 9
04/26/2021	842413	MT Dakota Utilities	Water	$ 58.97	541 380 1000 1
04/26/2021	842413	MT Dakota Utilities	Water	$ 58.83	921 580 1000 6
04/26/2021	842417	MT State Fireman	Payroll Clearing	$ 4,410.67	Payroll Summary
04/26/2021	842421	MT Waterworks	Water	$ 6,470.64	3/4" METER LOOPS AKA YOKE
04/26/2021	842421	MT Waterworks	Water	$ 8,924.00	3/4" METER LOOPS AKA YOKE
04/26/2021	842421	MT Waterworks	Water	$ (784.30)	CREDIT FOR INCORRECT PRICING ON INVOICE AR 34524
04/26/2021	842426	Northwest Pipe	Public Safety	$ 59.18	7494414
04/26/2021	842426	Northwest Pipe	Wastewater	$ 35.10	CLAMPS FOR SAMPLING DEVICE. WRF LAB
04/26/2021	842426	Northwest Pipe	Wastewater	$ 112.21	GENERAL MAINTENANCE WRF
04/26/2021	842426	Northwest Pipe	Water	$ 62.44	2" PVC SCH 80 TEES - (801020)
04/26/2021	842426	Northwest Pipe	Water	$ 205.80	3/4" BALL VALVE - THREADED
04/26/2021	842426	Northwest Pipe	Water	$ 120.05	3/4" BALL VALVE - THREADED
04/26/2021	842426	Northwest Pipe	Water	$ 33.45	3/4" T-10 BOTTOM CAP CAST - IRON
04/26/2021	842426	Northwest Pipe	Water	$ 78.05	3/4" T-10 BOTTOM CAP CAST - IRON
04/26/2021	842426	Northwest Pipe	Water	$ 31.00	3/4" X 2" BRASS THREADED NIPPLES
04/26/2021	842426	Northwest Pipe	Water	$ 14.30	3/4" X 3" PVC SCH 80 NIPPLE
04/26/2021	842426	Northwest Pipe	Water	$ 24.60	3/4" X CLOSE BRASS NIPPLE
04/26/2021	842426	Northwest Pipe	Water	$ 2,433.20	METER SHOP TEST PARTS
04/26/2021	842426	Northwest Pipe	Water	$ 520.50	METER SHOP TEST PARTS
04/26/2021	842426	Northwest Pipe	Water	$ 5,271.65	METER SHOP TEST PARTS
04/26/2021	842426	Northwest Pipe	Water	$19,040.00	R-900 ENHANCED WALL RR - MIU 13341-200
04/26/2021	842426	Northwest Pipe	Water	$19,397.00	R-900 ENHANCED WALL RR - MIU 13341-200
04/26/2021	842426	Northwest Pipe	Water	$ 464.01	REPAIR KIT. BULK CHEM BACKFLOW

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04/26/2021	842427	NorthWestern Energy	Airport	$ 2,462.83	0100483-7. Runway Lights. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 1,832.36	0100484-5. ARFF Facility. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 112.83	1138926-9. Aero Interiors. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 127.29	1647695-4. De Icer. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 504.94	1669567-8. TSA. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 1,097.22	1993430-6. Car Wash. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 351.17	2001846-1. Mud Wash. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 448.40	2001848-7. Detail Bay 1 Hertz. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 207.94	2001855-2. Detail Bay 2 National/Alamo. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 176.84	2001862-8. Detail Bay 3 Enterprise. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 268.42	2001865-1. Detail Bay 4 Avis/Budget. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 74.39	2001867-7. Detail Bay 5 Thrifty/Dollar. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 78.58	3085107-5. New Employee Parking Zone. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 190.34	3446396-8. USDA. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 1,216.78	3477231-9. Parking Zone. April 2021
04/26/2021	842427	NorthWestern Energy	Airport	$ 37.57	3733186-5. Airport Storage. April 2021
04/26/2021	842427	NorthWestern Energy	Facilities	$ 1,597.26	0975808-7
04/26/2021	842427	NorthWestern Energy	Facilities	$ 794.15	1160802-3
04/26/2021	842427	NorthWestern Energy	Facilities	$ 2,237.31	1160804-9
04/26/2021	842427	NorthWestern Energy	Facilities	$ 2,868.86	1269391-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,684.51	SILMD 10 Acct# 0712546-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,005.34	SILMD 100 Acct# 0712559-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,709.67	SILMD 107 Acct# 0712560-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 4,287.74	SILMD 109 Acct# 0712561-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 195.70	SILMD 113 Acct# 0712562-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 922.69	SILMD 114 Acct# 0712563-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 217.10	SILMD 115 Acct# 0712564-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 569.88	SILMD 116 Acct# 0712565-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 3,098.79	SILMD 117 Acct# 0712566-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 198.11	SILMD 118 Acct# 0712567-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 120.41	SILMD 119 Acct# 0712568-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,442.39	SILMD 121 Acct# 0712570-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 183.02	SILMD 122 Acct# 0712571-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 325.65	SILMD 123 Acct# 0712572-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 949.81	SILMD 124 Acct# 0712573-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 379.92	SILMD 125 Acct# 0712574-3

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04/26/2021	842428	NorthWestern Energy	Light Maint	$ 189.96	SILMD 126 Acct# 0712575-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 686.32	SILMD 127 Acct# 0712576-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 480.42	SILMD 128 Acct# 0712577-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 325.65	SILMD 129 Acct# 0712578-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 4,479.06	SILMD 13 Acct# 0721276-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 116.18	SILMD 130 Acct# 0712579-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 841.26	SILMD 131 Acct# 0712580-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 215.76	SILMD 133 Acct# 0712581-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 497.91	SILMD 134 Acct# 0712582-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 503.30	SILMD 135 Acct# 0712583-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 461.34	SILMD 136 Acct# 0712584-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 359.53	SILMD 137 Acct# 0712585-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 732.71	SILMD 138 Acct# 0712586-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 244.25	SILMD 139 Acct# 0712587-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,189.75	SILMD 14 Acct# 0721277-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 569.88	SILMD 143 Acct# 0712588-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 27.10	SILMD 144 Acct# 0712589-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 457.56	SILMD 145 Acct# 0712590-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 352.78	SILMD 146 Acct# 0712591-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 427.42	SILMD 147 Acct# 0712592-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,501.19	SILMD 149 Acct# 0712593-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 732.07	SILMD 150 Acct# 0712594-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 624.15	SILMD 151 Acct# 0712595-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 4,211.96	SILMD 152 Acct# 0712596-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 526.17	SILMD 153 Acct# 0712597-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,189.64	SILMD 154 Acct# 0712598-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 488.47	SILMD 155 Acct# 0712599-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 892.23	SILMD 157 Acct# 0712600-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 786.98	SILMD 158 Acct# 0712601-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 940.89	SILMD 159 Acct# 0712602-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 705.58	SILMD 160 Acct# 0712603-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,029.49	SILMD 161 Acct# 0712604-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 45.90	SILMD 162 Acct# 0712605-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 718.18	SILMD 163 Acct# 0712606-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 366.05	SILMD 164 Acct# 0712607-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 868.39	SILMD 165 Acct# 0712608-9

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04/26/2021	842428	NorthWestern Energy	Light Maint	$ 228.78	SILMD 167 Acct# 0712609-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,123.78	SILMD 17 Acct# 0712553-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 549.06	SILMD 171 Acct# 0712610-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 497.92	SILMD 172 Acct# 0712611-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,143.88	SILMD 173 Acct# 0712612-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 960.85	SILMD 174 Acct# 0712613-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 320.28	SILMD 175 Acct# 0712614-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 32.79	SILMD 176 Acct# 0712615-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 251.65	SILMD 178 Acct# 0712616-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 503.30	SILMD 179 Acct# 0712617-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 95.48	SILMD 18 Acct# 0712554-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 343.17	SILMD 180 Acct# 0712618-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,655.40	SILMD 181 Acct# 0712619-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 571.94	SILMD 182 Acct# 0712620-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,143.89	SILMD 183 Acct# 0712621-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 366.15	SILMD 184 Acct# 0712622-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 137.28	SILMD 185 Acct# 0712623-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 659.82	SILMD 186 Acct# 0712624-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 11.70	SILMD 187 Acct# 0712625-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 274.53	SILMD 188 Acct# 0712626-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 228.78	SILMD 189 Acct# 0712627-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,189.64	SILMD 190 Acct# 0712628-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 408.31	SILMD 191 Acct# 0712629-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 297.40	SILMD 192 Acct# 0712630-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 732.07	SILMD 193 Acct# 0712631-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 289.38	SILMD 194 Acct# 0712632-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 231.52	SILMD 195 Acct# 0712633-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 74.01	SILMD 196 Acct# 0712634-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 74.01	SILMD 197 Acct# 0712635-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 114.39	SILMD 198 Acct# 0712636-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 98.16	SILMD 200 Acct# 0712637-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 480.42	SILMD 201 Acct# 0712638-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 614.54	SILMD 202 Acct# 0712639-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 19.74	SILMD 203 Acct# 0712640-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 436.51	SILMD 204 Acct# 0712641-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 26.24	SILMD 205 Acct# 0712642-8

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04/26/2021	842428	NorthWestern Energy	Light Maint	$ 320.28	SILMD 206 Acct# 0712643-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 366.05	SILMD 207 Acct# 0712644-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 253.30	SILMD 208 Acct# 0712645-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 526.17	SILMD 209 Acct# 0712646-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 88.82	SILMD 210 Acct# 0712647-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 49.33	SILMD 211 Acct# 0712648-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 49.33	SILMD 212 Acct# 0712649-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 29.61	SILMD 213 Acct# 0712650-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 368.38	SILMD 214 Acct# 0712651-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 137.28	SILMD 216 Acct# 0712652-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 375.80	SILMD 217 Acct# 0712653-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 269.17	SILMD 220 Acct# 0712654-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 6.55	SILMD 221 Acct# 0712655-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 78.22	SILMD 222 Acct# 0712656-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 118.44	SILMD 223 Acct# 0712657-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,387.50	SILMD 224 Acct# 0712658-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 400.99	SILMD 225 Acct# 0712659-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 244.26	SILMD 226 Acct# 0712660-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 646.10	SILMD 227 Acct# 0712661-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 786.98	SILMD 228 Acct# 0712662-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 407.07	SILMD 229 Acct# 0712663-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 949.82	SILMD 230 Acct# 0712664-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 569.88	SILMD 231 Acct# 0712665-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,469.52	SILMD 232 Acct# 0712666-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 872.20	SILMD 233 Acct# 0712667-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 488.52	SILMD 234 Acct# 0712668-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 546.42	SILMD 235 Acct# 0712669-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 173.64	SILMD 236 Acct# 0712670-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 388.93	SILMD 237 Acct# 0712671-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 13.11	SILMD 238 Acct# 0712672-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 91.52	SILMD 239 Acct# 0712673-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 416.72	SILMD 240 Acct# 0712674-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 569.31	SILMD 241 Acct# 0712675-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 81.41	SILMD 242 Acct# 0712676-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 108.56	SILMD 244 Acct# 0712677-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 72.01	SILMD 245 Acct# 0712678-2

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 325.65	SILMD 246 Acct# 0712679-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 954.96	SILMD 247 Acct# 0712680-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,686.62	SILMD 249 Acct# 0718734-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 208.35	SILMD 250 Acct# 0719001-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 3,802.69	SILMD 251 Acct# 0718801-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 542.76	SILMD 252 Acct# 0719162-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,781.12	SILMD 253 Acct# 0719644-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 156.42	SILMD 254 Acct# 0719763-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 166.35	SILMD 255 Acct# 0720813-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 929.55	SILMD 257 Acct# 0720360-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,557.31	SILMD 258 Acct# 0720606-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,356.39	SILMD 259 Acct# 0720810-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 488.47	SILMD 261 Acct# 0720705-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 3,034.58	SILMD 262 Acct# 0720937-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,004.48	SILMD 263 Acct# 0720716-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 170.64	SILMD 264 Acct# 0721427-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 356.51	SILMD 265 Acct# 0721556-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 48.78	SILMD 266 Acct# 0721684-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 455.21	SILMD 270 Acct# 0906944-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 935.48	SILMD 271 Acct# 0995095-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,781.28	SILMD 272 Acct# 0905005-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 201.78	SILMD 273 Acct# 0926386-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 495.92	SILMD 276 Acct# 0961926-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 837.96	SILMD 277 Acct# 1058710-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 219.92	SILMD 278 Acct# 1087619-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 58.16	SILMD 279 Acct# 1124127-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 728.62	SILMD 280 Acct# 1045653-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 470.63	SILMD 283 Acct# 1172743-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 319.85	SILMD 285 Acct# 1206985-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 240.12	SILMD 286 Acct# 1296582-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,824.53	SILMD 288 Acct# 1303978-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 232.30	SILMD 289 Acct# 1685375-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 128.95	SILMD 290 Acct# 1433921-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 597.02	SILMD 292 Acct# 1481532-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 228.78	SILMD 293 Acct# 1481534-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 457.56	SILMD 294 Acct# 1481535-1

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 108.56	SILMD 295 Acct# 1481536-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,212.51	SILMD 296 Acct# 1481537-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 205.91	SILMD 297 Acct# 1481539-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 183.02	SILMD 298 Acct# 1481540-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 401.73	SILMD 300 Acct# 1662840-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 5,381.93	SILMD 301 Acct# 1687005-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 294.82	SILMD 302 Acct# 1607534-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 980.05	SILMD 305 Acct# 1695873-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 203.49	SILMD 306 Acct# 1740353-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 2,812.24	SILMD 307 Acct# 2049005-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 266.80	SILMD 308 Acct# 2072459-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 334.77	SILMD 309 Acct# 2001311-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 259.96	SILMD 310 Acct# 2060519-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 275.08	SILMD 311 Acct# 3014475-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 258.30	SILMD 312 Acct# 3146127-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 449.23	SILMD 315 Acct# 3305804-1
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,191.63	SILMD 316 Acct# 3291842-7
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 95.33	SILMD 317 Acct# 3253826-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 800.18	SILMD 318 Acct# 3372018-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 56.98	SILMD 320 Acct# 0712569-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 433.10	SILMD 321 Acct# 3338917-2
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 91.01	SILMD 322 Acct# 3402033-9
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 774.35	SILMD 323 Acct# 3597170-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 358.12	SILMD 324 Acct# 1246537-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 236.81	SILMD 325 Acct# 3587598-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 139.06	SILMD 326 Acct# 3840455-4
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 183.03	SILMD 327 Acct# 3810801-5
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 374.62	SILMD 8 Acct# 0712544-6
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 348.62	SILMD 9 Acct# 0712545-3
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 500.93	SILMD 95 Acct# 0712556-0
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 9,509.74	SILMD 97 Acct# 0712557-8
04/26/2021	842428	NorthWestern Energy	Light Maint	$ 1,076.17	SILMD 99 Acct# 0712558-6
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 6.00	0722247-4
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ -	0722254-0
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 103.53	0722255-7
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 0.01	0722256-5

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 81.84	0722257-3
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ -	0722263-1
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 101.73	0722266-4
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 16.64	0722269-8
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 10.40	0722292-0
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 19.69	0722293-8
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 6.00	0722905-7
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 109.44	0722933-9
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 112.12	0723035-2
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 7.78	0723036-0
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 163.57	0723037-8
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 47.10	0723042-8
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ -	0723048-5
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ -	0723050-1
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ -	0723054-3
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 6.00	0723055-0
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 33.44	0723056-8
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 10.68	0723057-6
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 22.32	0723058-4
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 8.70	0723090-7
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 6.00	0723162-4
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 23.47	0789437-1
04/26/2021	842427	NorthWestern Energy	Park Dist 1	$ 324.00	0925496-2
04/26/2021	842427	NorthWestern Energy	Radio	$ 187.96	0721580-9
04/26/2021	842427	NorthWestern Energy	Solid Waste	$ 2,953.68	3252194-0
04/26/2021	842427	NorthWestern Energy	Street/Traffic	$ 6.00	0723645-8
04/26/2021	842428	NorthWestern Energy	Street/Traffic	$12,426.68	NWE Signal Bills -Signal Bills 4.20.21
04/26/2021	842427	NorthWestern Energy	Wastewater	$ 239.91	April services
04/26/2021	842427	NorthWestern Energy	Wastewater	$ 395.00	April usage
04/26/2021	842427	NorthWestern Energy	Water	$ 655.81	0100485-2
04/26/2021	842427	NorthWestern Energy	Water	$ 6,116.46	0100540-4
04/26/2021	842427	NorthWestern Energy	Water	$ 814.39	1116452-2
04/26/2021	842430	PeopleReady Inc	Solid Waste	$ 2,315.56	Contract labor for landfill.
04/26/2021	842430	PeopleReady Inc	Solid Waste	$ 1,062.88	Contract labor for landfill.
04/26/2021	842430	PeopleReady Inc	Solid Waste	$ 4,526.73	Contract labor for landfill.
04/26/2021	842431	Perimeter Solution	Public Safety	$ -	FULL PALLET, FREE SHIPPING IN THE CONTINENTAL U.S.

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842431	Perimeter Solution	Public Safety	$ 4,992.00	WD881 FIRE FOAM, CLASS 'A' - 48 5-GALLON PAILS
04/26/2021	842439	S. Conley Sales	Airport	$ 4,182.00	Invoice #1-21-9506-01. Cooling Tower VFD for Fan Motor
04/26/2021	842441	Simply Family Magazine	General	$11,943.98	printing cost for the summer brochure-2021c-4591
04/26/2021	842451	Tire-Rama	Solid Waste	$ 1,938.32	445/65R22.5 Michelin 22.5x13 Alum HP Wheel
04/26/2021	842451	Tire-Rama	Solid Waste	$ 1,034.00	55 Gallons Sealtite
04/26/2021	842451	Tire-Rama	Solid Waste	$ 1,034.00	55 Gallons Sealtite
04/26/2021	842451	Tire-Rama	Solid Waste	$ 2,320.44	6 - Roadmaster 315/80RR22.5
04/26/2021	842451	Tire-Rama	Solid Waste	$ 1,900.00	Tire 1050015421
04/26/2021	842451	Tire-Rama	Solid Waste	$ 4,988.00	Tires
04/26/2021	842451	Tire-Rama	Solid Waste	$ 4,809.60	Tires 1050015419
04/26/2021	842451	Tire-Rama	Solid Waste	$ 3,325.36	Tires 1050015423
04/26/2021	842451	Tire-Rama	Solid Waste	$ 4,101.64	Tires 1050015428
04/26/2021	842451	Tire-Rama	Street/Traffic	$ 1,472.80	105 0015535
04/26/2021	842452	Town & Country Supply	Fleet	$17,926.69	416609 PO NUM 312331
04/26/2021	842454	Tru Pipe, Inc	Gas Tax	$ 2,992.50	Vac truck to pothole utilities on Song Bird for JD
04/26/2021	842455	Tyler Technologies	Public Safety	$59,085.00	60 Brazos and 60 DL Swipe licenses
04/26/2021	842457	Van Arsdale Const	CDBG	$ 6,934.31	817 N 22nd Street / Retainage Release
04/26/2021	842460	Verizon Wireless	Airport	$ 51.81	Airport
04/26/2021	842460	Verizon Wireless	Engineering	$ 136.60	PW-Engineering
04/26/2021	842460	Verizon Wireless	General	$ 99.23	City Administrator 0100-13130-403450
04/26/2021	842460	Verizon Wireless	Parking	$ 27.32	Parking 406-690-5822
04/26/2021	842460	Verizon Wireless	PD Program	$ 397.35	CCSIU Cell/PTT
04/26/2021	842460	Verizon Wireless	PD Program	$ 54.64	CCSIU MDT
04/26/2021	842460	Verizon Wireless	PD Program	$ 80.02	CCSIU RAVEN
04/26/2021	842460	Verizon Wireless	Public Safety	$ 600.68	MDT Toughbooks
04/26/2021	842460	Verizon Wireless	Public Safety	$ 80.02	Police iPad
04/26/2021	842460	Verizon Wireless	Public Safety	$ 40.01	Police MiFi
04/26/2021	842460	Verizon Wireless	Public Safety	$ 51.81	Police -Mike Robinson
04/26/2021	842460	Verizon Wireless	Solid Waste	$ 27.32	PW Dozer Trimble Dozer
04/26/2021	842460	Verizon Wireless	Solid Waste	$ 109.28	PW-Solid Waste
04/26/2021	842460	Verizon Wireless	Solid Waste	$ 259.76	PW-SW-ON CALL Solid Waste On Call
04/26/2021	842460	Verizon Wireless	Solid Waste	$ 479.90	Solid Waste Tablets -Routware
04/26/2021	842460	Verizon Wireless	Street/Traffic	$ 81.96	PW-Streets 406-647-1377 iPad, 406-633-1991 iPad
04/26/2021	842460	Verizon Wireless	Street/Traffic	$ 163.92	PW-Streets City Works
04/26/2021	842460	Verizon Wireless	Transit	$ 309.02	MET AVL
04/26/2021	842460	Verizon Wireless	Wastewater	$ -	PW Mobile Service Orders

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/26/2021	842460	Verizon Wireless	Wastewater	$ -	PW-DIS-COLL Cityworks 60/40
04/26/2021	842460	Verizon Wireless	Wastewater	$ 32.78	PW-Distribution Collection Tablets 60/40
04/26/2021	842460	Verizon Wireless	Water	$ 27.32	PW Belknap Meter Shop
04/26/2021	842460	Verizon Wireless	Water	$ 27.32	PWBLKNP Water Treatment
04/26/2021	842460	Verizon Wireless	Water	$ 191.24	PWBLNP Comm-Meter CityWorks/Neptune
04/26/2021	842460	Verizon Wireless	Water	$ -	PW-DIS-COLL Cityworks 60/40
04/26/2021	842460	Verizon Wireless	Water	$ 49.18	PW-Distribution Collection Tablets 60/40
04/26/2021	842464	Voegele Acquisition	Street/Traffic	$ 2,036.58	fertilizer on right of way
04/26/2021	842464	Voegele Acquisition	Street/Traffic	$ 3,315.00	spring fertilization for trees on shiloh
04/26/2021	842464	Voegele Acquisition	Street/Traffic	$ 1,365.00	spring tree fertilization
04/26/2021	842464	Voegele Acquisition	Street/Traffic	$ 1,157.00	spring tree fertilization
04/26/2021	842464	Voegele Acquisition	Street/Traffic	$ 91.00	tree fertilization
04/26/2021	842465	Wildin	Public Safety	$ 2,559.54	reimbursement for trip to TN for background investigations
04/26/2021	842468	Ylstn Valley Elec	Light Maint	$ 364.67	SILMD 299 Vintage Estates
04/26/2021	842468	Ylstn Valley Elec	Light Maint	$ 665.82	SILMD 313 Vintage Estates Sub Phase II
04/26/2021	842468	Ylstn Valley Elec	Public Safety	$ 665.64	FIRE7: ELECTRICAL SERVICE TO STATION & PD3
04/26/2021	842468	Ylstn Valley Elec	Radio	$ 144.78	LANDFILL TOWER ELECTRICAL SERVICE
04/26/2021	842468	Ylstn Valley Elec	Solid Waste	$ 4,614.51	Electricity Service Landfill 03/01/21 - 04/01/21.
04/26/2021	842468	Ylstn Valley Elec	Street/Traffic	$ 49.43	54th St W & Grand Signal
04/26/2021	842468	Ylstn Valley Elec	Street/Traffic	$ 76.86	54th St W & Rimrock
04/26/2021	842468	Ylstn Valley Elec	Street/Traffic	$ 62.91	Alkali Cr Rd & Interbelt Loop lights
04/26/2021	842468	Ylstn Valley Elec	Street/Traffic	$ 31.35	Ben Steele School - 56th St W
04/26/2021	842468	Ylstn Valley Elec	Wastewater	$ 19.00	Service for 3/1/2021-4/1/2021
04/26/2021	842468	Ylstn Valley Elec	Wastewater	$ 215.62	Service from 3/1/2021-4/1/2021

City Council Regular

Date:	05/24/2021
Title:	Public Hearing and Resolution Adopting Water and Wastewater Rates and Fees
Presented by:	Jennifer Duray
Department:	Public Works
Presentation:	Yes

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the proposed resolution adopting the water and wastewater rate and fee schedule effective July 1, 2021.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Public Works engaged AE2S Nexus to conduct a cost of service rate study to review and recommend appropriate water and wastewater user rates, the resale rate for the County Water District of Billings Heights, and wholesale rates for Lockwood Water and Sewer District, Exxon Refinery, and Phillips 66 Billings Refinery, as well as calculate the System Development Fees (SDFs) for water and wastewater. The study also addressed converting usage from Ccf to gallons, revising the residential tier levels, and bulk water reseller classification. The methodology used in the study follows industry standard approaches and recommends rates for each class of customer. The rates allow the Public Works Department to adequately recover costs in proportion to the cost of providing service to each customer class. The following is a summary of the rates and fees proposed for FY22 and FY23:

1. Increase the water minimum monthly fees for all water customers by an average of 1.8% in both FY22 and FY23.
2. Increase the volumetric rate for residential water customers by an average of 3.0% in FY22 and 2.8% in FY23.
3. Increase the volumetric fee for inside non-residential water customers by 4.2% in FY 22 and 2.8% in FY 23. Outside non-residential water customers will see an increase of 4.0% in FY22 and 3.3% in FY23.
4. Increase the seasonal water volumetric fee by an average of 5.9% in FY22 and 2.0% in FY23.
5. Increase the multi-family water users volumetric rate by 2.8% in FY22 and 3.0% in FY23.
6. Increase the resale rate for the County Water District of Billings Heights by 0.7% in FY22 and 31.0% in FY 23.
7. Increase private fire protection charges to reflect the current costs of services by increasing the fee an average of 6.0% in FY22 and in FY23.
8. Increase the wastewater minimum monthly fees by an average of 1% in FY22 and 1.8% in FY23.
9. Increase the wastewater volumetric charge by an average of 2.8% in FY22 and 2.7% in FY23.
10. Adjust the volume charge, fixed monthly fee, and SDF for Lockwood Water and Sewer District, Exxon Refinery, and Phillips 66 Billings Refinery to reflect the current costs of services.

11. Create a new class of users for bulk water resellers and calculate rates similarly to other contract customers using a 15% rate of return. Currently, bulk water resellers are being charged the same rate as inside non-residential customers. This new class will establish rates that are $.97 per 1,000 gallons more than the non-residential rate in FY22 and $1.91 more than the non-residential rate in FY23.
12. Increase the water SDF for residential connections by 1.5%, non-residential connections by 4.5%, and irrigation connections by 7.4%
13. Increase the wastewater SDF connection by 18.5%.
14. Adjust water and wastewater fees and charges for various permits and miscellaneous special fees.

The attached resolution specifies the proposed rates and fees. A comparison of current versus proposed rates is also attached. A public hearing is required per MCA 69-7-111 and if the current proposed resolution is approved, rates will be effective July 1, 2021 and July 1, 2022 as indicated.

ALTERNATIVES

City Council may:

- Approve the recommended resolution;
- Approve an amended resolution; or
- Not approve a resolution. If Council does not approve a resolution specifying rates and fees for FY22 and FY23, the rates and fees will continue at current levels, leaving insufficient revenues in the water and wastewater funds to sustain the adopted capital improvement program.

FISCAL EFFECTS

The proposed rate and fee adjustments will generate approximately $1,030,000 in water revenues in FY22 and an additional $1,570,000 in FY23, as well as an additional $774,000 in wastewater revenues in FY22 and an additional $487,0000 in FY23.

Attachments

FY22-23 Water Wastewater Resolution

FY22-23 Water Wastewater Rate Schedule and Fee Comparison

RESOLUTION 21-

A RESOLUTION SPECIFYING WATER AND WASTEWATER RATE AND FEE SCHEDULE ADJUSTMENTS ENACTED PURSUANT TO TITLE 69, CHAPTER 7, MONTANA CODE ANNOTATED.

WHEREAS, water and wastewater cost of service studies have been completed and water and wastewater rate and fee schedules have been prepared for the municipal water and wastewater utility that would generate adequate funds to operate the utilities, as well as require each customer class of the utilities to pay its fair share of the cost of operating the water and wastewater systems; and

WHEREAS, the cost of service studies anticipate a need for extension, repair, improvement, and continued operation and maintenance of existing and proposed water and wastewater system facilities for the providing of water and wastewater services to inhabitants of the City of Billings, Montana; and

WHEREAS, under Title 69, Chapter 7 of the Montana Code Annotated, and under the terms of City Resolution Number 13585, the City of Billings is authorized to regulate the City's municipal water and wastewater utility and to change water and wastewater rates, fees, and charges as may be deemed by the City Council to be reasonable and just, and

WHEREAS, it is essential to the public health, welfare, and safety of the inhabitants of the City of Billings and its environs to provide an adequate public water and wastewater system and to provide adequate funding to meet the cost of constructing, maintaining, and operating the same;

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

1. That the following schedule of rates, fees, and charges are found to be just, reasonable, and necessary for the continued sound operation of the water and wastewater utilities and that the proposed rates, fees, and charges are approved, adopted, and published as the rates, fees, and charges of the City of Billings, Montana water and wastewater utilities, effective July 1, 2021 and July 1, 2022.

WATER RATE AND FEE SCHEDULES

Schedule I METERED WATER MONTHLY VOLUME CHARGES

Customers within the City

Customer Class	Effective 7/1/21 $ per kGal	Effective 7/1/22 $ per kGal
Residential		
Tier 1 (0-5,000 Gallons)	$ 3.66	$ 3.77
Tier 2 (6-32,000 Gallons)	$ 4.40	$ 4.52
Tier 3 (33-75,000 Gallons)	$ 5.71	$ 5.87
Tier 4 (> 75,000 Gallons)	$ 8.58	$ 8.82
Non-Residential	$ 3.20	$ 3.29
Bulk Water Resellers	$ 4.17	$ 5.20
Seasonal	$ 5.37	$ 5.48
Multi-Family	$ 3.70	$ 3.81

Customers outside the City

Customer Class	Effective 7/1/21 $ per kGal	Effective 7/1/22 $ per kGal
Residential		
Tier 1 (0-5,000 Gallons)	$ 3.80	$ 3.90
Tier 2 (6-32,000 Gallons)	$ 4.56	$ 4.69
Tier 3 (33-75,000 Gallons)	$ 5.94	$ 6.10
Tier 4 (> 75,000 Gallons)	$ 8.89	$ 9.14
Non-Residential	$ 3.38	$ 3.49
Resale	$ 2.81	$ 3.68

Schedule II MINIMUM MONTHLY WATER CHARGES

Customers within the City

Meter Size	Effective 7/1/21	Effective 7/1/22
3/4"	$ 8.30	$ 8.45
1"	$ 9.35	$ 9.55
1-1/2"	$ 11.30	$ 11.55
2"	$ 16.20	$ 16.50
3"	$ 50.50	$ 51.50
4"	$ 65.80	$ 67.10
6"	$ 98.70	$ 100.65
8"	$ 134.85	$ 137.55
10"	$ 200.41	$ 200.41

Customers outside the City

Meter Size	Effective 7/1/21	Effective 7/1/22
3/4"	$ 8.95	$ 9.15
1"	$ 10.20	$ 10.40
1-1/2"	$ 12.30	$ 12.55
2"	$ 17.70	$ 18.05
3"	$ 54.90	$ 56.00
4"	$ 71.50	$ 72.95
6"	$ 107.25	$ 109.40
8"	$ 146.55	$ 149.50
10"	$ 222.20	$ 222.20

Schedule III PRIVATE FIRE PROTECTION CHARGES

Connection Size	Inside City Effective 7/1/21	Inside City Effective 7/1/22
1-1/4"	$ 29.30	$ 30.75
1-1/2"	$ 39.10	$ 41.05
2"	$ 62.60	$ 65.75
3"	$ 156.35	$ 164.15
4"	$ 273.60	$ 287.30
6"	$ 625.25	$ 656.50
8"	$ 1,094.20	$ 1,148.90
10"	$ 1,719.35	$ 1,805.30
12"	$ 2,475.95	$ 2,599.75
14"	$ 3,370.00	$ 3,538.50

	Outside City Effective 7/1/21	Outside City Effective 7/1/22
1-1/4"	$ 29.75	$ 31.25
1-1/2"	$ 39.60	$ 41.60
2"	$ 63.40	$ 66.55
3"	$ 158.50	$ 166.45
4"	$ 277.35	$ 291.20
6"	$ 633.95	$ 665.65
8"	$ 1,109.40	$ 1,164.85
10"	$ 1,743.35	$ 1,830.50
12"	$ 2,510.35	$ 2,635.85
14"	$ 3,416.90	$ 3,587.75

Schedule IV WATER SPECIAL FEES AND CHARGES

	Effective 7/1/21	Effective 7/1/22
1.) Application for extension of the water distribution system of the City	$ 190.00	$ 190.00
2.) Application for water service line installation permits	$ 125.00	$ 125.00
3.) Special agreements	$ 130.00	$ 130.00
4.) Water meter accuracy test fee		
(a) Small meter (in shop)	$ 65.00	$ 65.00
(b) Large meter (in field)	$ 200.00	$ 200.00
(c) Hydrant meter rental ($/day)	$ 5.50	$ 5.50
5.) Construction meter setting and removal fee ($/meter)	$ 65.00	$ 65.00
6.) Fireflow fee ($/hydrant)	$ 112.00	$ 112.00
7.) Turn-on/Turn-off charge		
(a) Normal working hours	$ 36.00	$ 36.00
(b) Outside normal working hours	$ 100.00	$ 100.00
8.) Water main tapping fee		
(a) Two-inch diameter tap or smaller ($/tap each visit)	$ 155.00	$ 155.00
(b) Over two-inch diameter tap ($/tap each visit)	$ 355.00	$ 355.00
9.) Flushing, testing, and chlorinating fee ($ each visit)	$ 155.00	$ 155.00
--Water for flushing, testing, and chlorinating charged at current seasonal rate per kGal		
10.) Delinquent service charge		
(a) Normal working hours	$ 80.00	$ 80.00
(b) After 5:00 p.m. weekdays	$ 120.00	$ 120.00
(c) Weekends/Holidays	$ 260.00	$ 260.00
11.) NSF fee	$ 25.00	$ 25.00
12.) Late payment interest charge (%/month)	1.5%	1.5%
13.) Water service line/fireline repair program fee ($/month)	$ 1.30	$ 1.30

Schedule V WATER SYSTEM DEVELOPMENT FEES

Meter or Service Line Size	Effective 7/1/21 Residential	Non-Residential	Irrigation
3/4" or less (1 EDU)	$ 2,950	$ 8,925	$ 11,030
1"	$ 2,950	$ 15,140	$ 18,705
1-1/2"	$ 2,950	$ 30,270	$ 37,415
2"	$ 2,950	$ 48,435	$ 59,875

3"	$ 2,950	$ 96,875	$ 119,720
4"	$ 2,950	$ 151,370	$ 187,075

For connections to the water system with meters larger than 4 inches or when the unique usage characteristics of a large water user may require, the City will forecast the demands on an average day basis. The System Development Fee (SDF) will be calculated as follows: SDF = (ADD * 8.49) * 1.04

Where:

ADD is the projected average day demand of the new user in gallons per day,

8.49 equals the unit cost of the existing system buy-in component plus the unit cost of the development related new facility component and .04 equals the administrative fee.

WASTEWATER RATE AND FEE SCHEDULES

Schedule I — WASTEWATER MONTHLY VOLUME CHARGES

Customer Class	Effective 7/1/21 $ per kGal	Effective 7/1/22 $ per kGal
Customers within the City		
Residential	$ 4.95	$ 5.08
Large Residential	$ 4.95	$ 5.08
Commercial-Domestic Strength	$ 4.95	$ 5.08
Customers outside the City	$ 4.95	$ 5.08

Schedule IA — MINIMUM MONTHLY WASTEWATER CHARGES

Customers within the City

Meter Size	Effective 7/1/21	Effective 7/1/22
3/4"	$ 6.95	$ 7.05
1"	$ 8.80	$ 9.00
1-1/2"	$ 10.80	$ 11.05
2"	$ 11.35	$ 11.55
3"	$ 18.25	$ 18.65
4"	$ 69.25	$ 70.65
6"	$ 86.85	$ 89.95
8"	$ 132.20	$ 134.90
10”	$ 182.60	$ 186.30

Customers outside the City

Meter Size	Effective 7/1/21	Effective 7/1/22
3/4"	$ 7.65	$ 7.75
1"	$ 9.65	$ 9.90
1-1/2"	$ 11.85	$ 12.15
2"	$ 12.45	$ 12.70
3"	$ 20.00	$ 20.50

4"	$ 76.20	$ 77.70
6"	$ 96.95	$ 98.95
8"	$ 145.40	$ 148.40
10"	$ 200.85	$ 204.95

Schedule IB **LOCKWOOD WASTEWATER MONTHLY CHARGES**

Lockwood Sewer District	Effective 7/1/21	Effective 7/1/22
Volume Charge	$1.466/kGal	$1.513/kGal
Fixed Monthly Fee	$ 23,582	$ 25,239
Surcharge Fee	6%	6%

Schedule IC **PHILLIPS 66 WASTEWATER MONTHLY CHARGES**

Phillips 66 Billings Refinery	Effective 7/1/21	Effective 7/1/22
Volume Charge	$0.604/kGal	$0.625/kGal
Fixed Monthly Fee	$ 13,106	$ 14,032
Surcharge Fee	6%	6%

Schedule ID **EXXONMOBIL WASTEWATER MONTHLY CHARGES**

ExxonMobil Refinery	Effective 7/1/21	Effective 7/1/22
Volume Charge	$0.578/kGal	$0.597/kGal
Fixed Monthly Fee	$ 27,775	$ 29,741
Surcharge Fee	6%	6%

Schedule II **WASTEWATER EXTRA STRENGTH SURCHARGE**

Unit Charges	Effective 7/1/21	Effective 7/1/22
X = BOD ($/lb)	$ 0.9019	$ 0.9019
Y = TSS ($/lb)	$ 0.5811	$ 0.5811
Z = TKN ($/lb)	$ 1.7217	$ 1.7217

WASTEWATER SPECIAL FEES AND CHARGES

Schedule III	Effective 7/1/21	Effective 7/1/22
1.) Application for extension of the wastewater collection system of the City	$ 190.00	$ 190.00
2.) Application for sanitary sewer service permits:		
(a) Domestic users service line installation permit	$ 125.00	$ 125.00

(b) Industrial users permit	$ 2,250.00	$ 2,250.00
3.) Special agreements	$ 130.00	$ 130.00
4.) Septage disposal permit fee ($/1,000 gallons)	$ 61.12	$ 61.12
5.) Delinquent service charge		
(a) Normal working hours	$ 80.00	$ 80.00
(b) After 5:00 p.m. weekdays	$ 120.00	$ 120.00
(c) Weekends/Holidays	$ 260.00	$ 260.00
6.) NSF fee	$ 25.00	$ 25.00
7.) Late payment interest charge (%/month)	1.5%	1.5%

Schedule IV **WASTEWATER SYSTEM DEVELOPMENT FEES**

	Effective 7/1/21	
Meter or Service Line Size	**City Service Area**	**Lockwood Service Area**
3/4" or less (*1EDU)	$ 3,120	$ 1,430
1"	$ 9,575	$ 4,385
1-1/2"	$ 27,795	$ 12,740
2"	$ 47,985	$ 21,990
3"	$ 124,485	$ 57,050
4"	$ 291,435	$ 133,570

For connections to the wastewater system with meters larger than 4 inches or when the unique usage characteristics of a large wastewater user may require, the City will forecast the requirements for the flow, Biochemical Oxygen Demand (BOD), and Total Suspended Solids (TSS) to determine the number of Equivalent Dwelling Units (EDUs). The System Development Fee (SDF) will be calculated as follows:

($7.40 * Flow * (0.5234 + (BOD * 0.1782/ 200) + (TSS *.01847/200) + (TKN * 0.1136/55))) * 1.04

Where:

BOD is the projected BOD loading of the new user's effluent in milligrams per liter, and
TSS is the projected TSS loading of the new user's effluent in milligrams per liter, and
TKN is the projected TKN loading of the new user's effluent in milligrams per liter.

The constants used in the above formula are:

$ 7.40 equals the unit cost of the existing system buy-in component plus the unit cost of the development related new facility component.

0.5234 equals the proportion of the City's wastewater facilities allocated to the flow parameter in its cost-of service analysis.

0.1782 equals the proportion of the City's wastewater facilities allocated to the BOD parameter in its cost-of service analysis.

0.1847 equals the proportion of the City's wastewater facilities allocated to the TSS parameter in its cost-of service analysis.

0.1136 equals the proportion of the City's wastewater facilities allocated to the TKN parameter in its cost-of service analysis.

1.04 represents the administrative charge.

2. That this Resolution is to be immediately filed in the City Clerk's Office and that the decision adopting the adjusted rates shall be final ten days after such are so filed.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, on the 24th day of May 2021.

CITY OF BILLINGS

BY: _____
William A. Cole, Mayor

ATTEST:

_____
Denise Bohlman, City Clerk

Water and Wastewater Rate and Fee Comparison

METERED WATER MONTHLY VOLUME CHARGES

Customer Class	Within the City			
	Volume	Current Rate	Effective 07/01/2021	Effective 07/01/2022
Residential				
Tier 1	0-5,000 Gallons	$3.56	$3.66	$3.77
Tier 2	6-32,000 Gallons	$3.56/$4.26	$4.40	$4.52
Tier 3	33-75,000 Gallons	$5.55	$5.71	$5.87
Tier 4	> 75,000 Gallons	$8.33	$8.58	$8.82
Non-Residential		$3.07	$3.20	$3.29
Bulk Water Resellers		$3.07	$4.17	$5.20
Seasonal		$5.07	$5.37	$5.48
Multi-family		$3.60	$3.70	$3.81

Customer Class	Outside the City			
	Volume	Current Rate	Effective 07/01/2021	Effective 07/01/2022
Residential				
Tier 1	0-5,000 Gallons	$3.69	$3.80	$3.90
Tier 2	6-32,000 Gallons	$4.43	$4.56	$4.69
Tier 3	33-75,000 Gallons	$5.76	$5.94	$6.10
Tier 4	> 75,000 Gallons	$8.64	$8.89	$9.14
Non-Residential		$3.25	$3.38	$3.49
Resale		$2.79	$2.81	$3.68

MINIMUM MONTHLY WATER CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2021	Effective 07/01/2022	Current Fee	Effective 07/01/2021	Effective 07/01/2022
3/4"	$8.15	$8.30	$8.45	$8.75	$8.95	$9.15
1"	$9.15	$9.35	$9.55	$10.00	$10.20	$10.40
1-1/2"	$11.08	$11.30	$11.55	$12.04	$12.30	$12.55
2"	$15.91	$16.20	$16.50	$17.34	$17.70	$18.05
3"	$49.49	$50.50	$51.50	$53.78	$54.90	$56.00
4"	$64.48	$65.80	$67.10	$70.09	$71.50	$72.95
6"	$96.77	$98.70	$100.65	$105.14	$107.25	$109.40
8"	$132.18	$134.85	$137.55	$143.68	$146.55	$149.50
10”	$200.41	$200.41	$200.41	$222.20	$222.20	$222.20

PRIVATE FIRE PROTECTION CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2021	Effective 07/01/2022	Current Fee	Effective 07/01/2021	Effective 07/01/2022
1 ¼"	$27.65	$29.30	$30.75	$28.05	$29.75	$31.25
1 ½"	$36.90	$39.10	$41.05	$37.35	$39.60	$41.60
2"	$59.05	$62.60	$65.75	$59.80	$63.40	$66.55
3"	$147.50	$156.35	$164.15	$149.55	$158.50	$166.45
4"	$258.10	$273.60	$287.30	$261.65	$277.35	$291.20
6"	$589.85	$625.25	$656.50	$598.05	$633.95	$665.65
8"	$1,032.25	$1,094.20	$1,148.90	$1,046.60	$1,109.40	$1,164.85
10"	$1,622.05	$1,719.35	$1,805.30	$1,644.65	$1,743.35	$1,830.50
12"	$2,335.80	$2,475.95	$2,599.75	$2,368.25	$2,510.35	$2,635.85
14"	$3,179.25	$3,370.00	$3,538.50	$3,223.50	$3,416.90	$3,587.75

WATER SPECIAL FEES AND CHARGES

	Current Fee	Effective 07/01/2021	Effective 07/01/2022
Application for extension of the water distribution system of the City	$180.00	$190.00	$190.00
Application for water service line installation permits	$120.00	$125.00	$125.00
Special agreements	$125.00	$130.00	$130.00
Water meter accuracy test fee			
Small meter	$60.00	$65.00	$65.00
Large meter	$200.00	$200.00	$200.00
Hydrant meter rental ($/day)	$5.00	$5.50	$5.50
Construction meter setting and removal fee	$60.00	$65.00	$65.00
Fireflow fee	$105.00	$112.00	$112.00
Turn-on/Turn-off charge - Normal working hours	$35.00	$36.00	$36.00
Turn-on/Turn-off charge - After hours	$90.00	$100.00	$100.00
Water main tapping fee			
Two-inch diameter tap or smaller	$145.00	$155.00	$155.00
Over two-inch diameter tap	$335.00	$355.00	$355.00
Flushing, testing, and chlorinating fee	$140.00	$155.00	$155.00
Delinquent service charge - Normal working hours	$80.00	$80.00	$80.00
Delinquent service charge - Outside normal working hours	$120.00	$120.00	$120.00
NSF fee	$25.00	$25.00	$25.00
Late payment interest charge (%/month)	1.50%	1.50%	1.50%
Water service line/fireline repair program fee ($/month)	$1.30	$1.30	$1.30

WATER SYSTEM DEVELOPMENT FEES

Meter or Service Line Size	Residential		Non-Residential		Irrigation	
	Current Fee	Effective 07/01/2021	Current Fee	Effective 07/01/2021	Current Fee	Effective 07/01/2021
3/4" or less (1 EDU)	$2,905	$2,950	$8,535	$8,925	$10,270	$11,030
1"	$2,905	$2,950	$14,480	$15,140	$17,410	$18,705
1-1/2"	$2,905	$2,950	$28,945	$30,270	$34,830	$37,415
2"	$2,905	$2,950	$46,320	$48,435	$55,735	$59,875
3"	$2,905	$2,950	$92,640	$96,875	$111,430	$119,720
4"	$2,905	$2,950	$144,755	$151,370	$174,115	$187,075

WASTEWATER MONTHLY VOLUME CHARGES

Customer Class	Within the City		
	Current Rate	Effective 07/01/2021	Effective 07/01/2022
Residential	$4.81	$4.95	$5.08
Large Residential	$4.81	$4.95	$5.08
Commercial	$4.81	$4.95	$5.08
Public Buildings	$4.81	$4.95	$5.08
	Outside the City		
All Users	$4.81	$4.95	$5.08

MINIMUM MONTHLY WASTEWATER CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2021	Effective 07/01/2022	Current Fee	Effective 07/01/2021	Effective 07/01/2022
3/4"	$6.85	$6.95	$7.05	$7.55	$7.65	$7.75
1"	$8.75	$8.80	$9.00	$9.60	$9.65	$9.90
1-1/2"	$10.70	$10.80	$11.05	$11.75	$11.85	$12.15
2"	$11.20	$11.35	$11.55	$12.30	$12.45	$12.70
3"	$18.10	$18.25	$18.65	$19.90	$20.00	$20.50
4"	$68.60	$69.25	$70.65	$75.45	$76.20	$77.70
6"	$87.30	$88.15	$89.95	$96.05	$96.95	$98.95
8"	$130.90	$132.20	$134.90	$144.00	$145.40	$148.40
10"	$180.80	$182.60	$186.30	$198.90	$200.85	$204.95

LOCKWOOD WATER AND SEWER DISTRICT WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2021	Effective 07/01/2022
Volume Charge	$1.084/kGal	$1.466/kGal	$1.513/kGal
Fixed Monthly Fee	$26,868	$23,582	$25,239
Surcharge Fee	6%	6%	6%

PHILLIPS 66 BILLINGS REFINERY WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2021	Effective 07/01/2022
Volume Charge	$0.647/kGal	$0.604/kGal	$0.625/kGal
Fixed Monthly Fee	$19,388	$13,106	$14,032
Surcharge Fee	6%	6%	6%

EXXONMOBIL WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2021	Effective 07/01/2022
Volume Charge	$0.386/kGal	$0.578/kGal	$0.597/kGal
Fixed Monthly Fee	$24,200	$27,775	$29,741
Surcharge Fee	6%	6%	6%

WASTEWATER EXTRA STRENGTH SURCHARGE

Unit Charges	Current Fee	Effective 07/01/2021	Effective 07/01/2022
X = BOD ($/lb)	$0.9019	$0.9019	$0.9019
Y = TSS ($/lb)	$0.5811	$0.5811	$0.5811
Z = TKN ($/lb)	$1.7217	$1.7217	$1.7217

WASTEWATER SPECIAL FEES AND CHARGES

	Current Fee	Effective 07/01/2021	Effective 07/01/2022
Application for extension of the wastewater collection system of the City	$180.00	$190.00	$190.00
Application for domestic service line installation permit	$120.00	$125.00	$125.00
Application for industrial users permit	$2,100.00	$2,250.00	$2,250.00
Special Agreements	$125.00	$130.00	$130.00
Septage disposal permit fee ($/1,000 gallons)	$54.00	$61.12	$61.12
Delinquent service charge - Normal working hours	$80.00	$80.00	$80.00
Delinquent service charge - Outside normal working hours	$120.00	$120.00	$120.00
NSF fee	$25.00	$25.00	$25.00

Late payment interest charge (%/month)	1.50%	1.50%	1.50%

WASTEWATER SYSTEM DEVELOPMENT FEES

Meter or Service Line Size	City Service Area		Lockwood Service Area	
	Current Fee	Effective 07/01/2021	Current Fee	Effective 07/01/2021
3/4" or less (1 EDU)	$2,630	$3,120	$1,370	$1,430
1"	$8,075	$9,575	$4,210	$4,385
1-1/2"	$23,440	$27,795	$12,230	$12,740
2"	$40,465	$47,985	$21,110	$21,990
3"	$104,980	$124,485	$54,770	$57,050
4"	$245,775	$291,435	$128,230	$133,570

City Council Regular

Date:	05/24/2021
Title:	Public Hearing - Zone Change 991 - Lenhardt Square Planned Development Amendment
Presented by:	Nicole Cromwell
Department:	Planning & Community Services
Presentation:	Yes

RECOMMENDATION

The Zoning Commission recommends approval of Zone Change 991, the proposed amendments to the Lenhardt Square Planned Development zone, based on the findings of the 10 review criteria.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

This is a zone change request to amend parts of the Lenhardt Square Planned Development agreement including:

- **Eliminate** the Residential Single Family and Residential Multi-Family (four-plex) (MF-4) underlying zone district (single family and up to 4-unit dwelling units allowed - more than 4 units requires special review approval)
- **Change** the underlying zoning of two parcels, Tracts 2A and 5A-1 of C/S 2063, currently zoned MF-4 to the Residential Multi-Family-Restricted (MF-R) zone. The MF-R zone allows any number of dwelling units in a structure based on lot area
- **Change** building height measurement from numerical height in feet to number of building stories
- **Increase** maximum average dwelling unit density in the MF-R zone from 20 to 21 dwelling units per acre and in the Mixed Use (MU) zone district from 20 to 35 dwelling units per acre.
- **Minor** changes to wording and language to update the original 2008 Planned Development agreement and Master Site Plan

APPLICATION DATA

OWNER: Lenhardt Square Master Association - Allan R. Lenhardt
AGENT: Sanderson Stewart - Rick Leuthold, P.E.
LEGAL DESCRIPTION: All lots in the Lenhardt Square Planned Development
ADDRESS: King Avenue West and 44th St West
CURRENT ZONING: Planned Development
EXISTING LAND USE: Developed and Undeveloped Land
PROPOSED USE: Residential and Mixed Use
SIZE OF PARCEL: 114.5 acres

The applicants conducted a pre-application neighborhood meeting on March 29, 2021, in a virtual format. Thirteen surrounding property owners or agents for owners attended the meeting. The surrounding owners were concerned with connection to and access from Shiloh Road, and the importance of allowing single family and two-family dwellings (not just multi-family) in the MF-R zone districts. One surrounding property owner, Sharon Wetsch

owner of 4625 King Ave West, provided written comment to the Planning Division. Mrs. Wetsch's concern is building height, and multi-family apartments as opposed to single family or two-family dwellings. Several emails were received in support of the proposed zone change including from Jeannette Woodgerd, Shawn Johnston, Nathan Lightfoot, Burk Johnston, Joseph Wheeler, Abbie Hanser, Jamie Cozby and Bill Hanser. Both sets of public comments are included as attachments.

SURROUNDING LAND USE & ZONING
NORTH: Zoning: Agriculture (A)
Land Use: Vacant land and Agriculture
SOUTH: Zoning: NX3 and CMU2
Land Use: Hoop Dreams Apartments and vacant land
EAST: Zoning: St V's Healthcare PD and RR1
Land Use: Vacant land and single family residences
WEST: Zoning: Agriculture (A) and RR1
Land Use: Agricultural and single family residences

In 2008, the original Planned Development for this family-owned farm property was proposed along with an annexation to the city. At the time, the water pressure for this area of Billings was not adequate to supply the number of potential dwelling units in the development, in addition to the surrounding developments in Montana Sapphire, Western Sky Subdivision, St. Vincent's Healthcare, Legends West Subdivision, Twin Pines development and the Morningstar Senior Living development, all west of Shiloh Road. The annexation was at first denied and then conditioned to allow only 600 dwelling units until the city resolved the water pressure issue by upgrading the existing reservoir system for this area. This water system upgrade has been installed and now there are no restrictions on the number of dwelling units based on water supply.

The market for all types of housing choices in Billings has significantly changed since 2008 and especially in the last year during the pandemic. Housing demand has reached a high level while supply of all types of housing choices has not kept up with the demand. At least two decades ago, our local planning and growth policy documents indicated a need for independent living units for aging residents who want to "downsize" from a maintenance heavy single family dwelling on a large lot to unit ownership or townhomes as well as rental apartments. The 2010 Census indicated Billings, like many other urban areas, saw a reduction in average household size to 2.3 persons. Smaller households, aging residents and the higher costs of all housing has driven the demand for apartments, townhomes, and smaller multi-family products. Developers have made robust investments in multi-family dwelling choices in Lenhardt Square already including the InterUrban and Interpointe Apartments, and the KWO Apartments. A new multi-family project is planned for the northern piece of Lenhardt Square. Several other multi-family developments have come on-line in the last 15 years around King Avenue West and Shiloh Road. Apartments, townhomes and unit ownership housing choices are still in high demand in Billings especially in areas close to shopping, schools and recreational opportunities.

The proposed changes to the Planned Development will adjust the maximum average dwelling unit density for the majority of the subdivision from 20 dwelling units an acre to 21 dwelling units an acre. This is a minor adjustment and the existing and proposed developments in the MF-R zone will not be perceptively larger than current code allows. This minor increase will not alter the current forms and styles in Lenhardt Square that are already close to the 20 dwelling units/acre maximum average density. The calculation of this density is based on the

gross acres of the parcel minus the open-space and pathways. For example, Tract 5A-1 is 11.56 acres total and 1.08 acres is intended to be open-space and pathways. The proposed increase from 20 dwelling units per acre would add only 10 dwelling units over this 10.5 acre development area.

The proposed density increase in the MU zone from 20 units per acre and 35 units per acre appears to be more significant, however the existing zone district uses and intention for a landmark building or building complex on this King Ave W frontage lot can handle the additional dwelling units. This level of mixed use and dwelling unit density is not usually found in Billings outside the downtown area. The intent of the MU zone is to allow an urban design and to distinguish this location as a neighborhood center. The Shiloh Commons development at Shiloh Rd and Central Avenue is the most recent mixed use development in Billings. Each of these four buildings has ample parking with a first floor of retail and service business. The dwelling unit density of Shiloh Commons is about 26 dwelling units per net acre of land. This works well with the 4-story design with ground-floor commercial, retail, services and offices. Closer to downtown, the Avenue C Apartments northwest of the West Park Plaza are at about 30 dwelling units per net acre of land. This is also a 4-story apartment building with amenities and parking but no ground-floor commercial businesses. Several apartment building downtown are in the range of 40 to 45 dwelling units per net acre of land, such as the Pinehurst Apartments at 6th Ave N and N 30th St or the apartments in the Montana Power Building at 113/115 N Broadway.

The Montana Department of Transportation (MDT) in partnership with the City of Billings manages the access to and development of King Avenue West at this location. Several planned intersection improvements will help ameliorate the poor performance of these locations. These include future traffic control measures and accommodations for turning lanes. A traffic study has been completed and updated for Lenhardt Square when new developments are proposed. In 2009 at the time of the first filing of Lenhardt Square Subdivision, MDT indicated a likelihood that King Avenue West at this location west of Shiloh would someday need to be a 5-lane arterial street to accommodate all the traffic from the adjacent developments and to continue the favorable east/west arterial traffic flows. Current construction is a three to four lane street from the Shiloh roundabout up to 44th St West that narrows down to a 2 lane street west of 44th St West. Existing traffic counts for average daily traffic are not yet significant, however peak travel times - morning and late afternoon - can cause long wait times to make safe turn movements into and out of the adjacent neighborhoods onto to King Ave West. Another portion of Monad Rd, to the north end of Lenhardt Square, will likely be built this coming season to accommodate the new 4-year medical college planned for the adjacent St. Vincent's Healthcare Subdivision (east). This will not complete the road section all the way to Lenhardt Square, but additional development on the north end of Lenhardt Square will require completion of the full road section to create a second access into and out of the property. This connection is essential to further development.

The Planning staff reviewed the proposed amendments and recommended approval to the Zoning Commission based on proposed findings of the 10 review criteria. The original development document would have allowed about 2,000 dwelling units on this 114+ acre parcel of land or about 17.5 dwelling units per gross acre. The proposed increase in the dwelling unit average density increases this amount by about 14% or about 2.5 more dwelling units per acre after the remaining vacant parcels are developed - if the lots are developed at the maximum allowed average density of 21 dwelling units and 35 dwelling units per acre. There will still be a diversity of actual dwelling unit density based on the form and housing

choice proposed by each developer. The city, state and private developers have invested in the necessary infrastructure to support this additional development density in West Billings. The city's new Capital Improvement Plan for the coming fiscal year includes additional investments as well.

There are challenges to an area of urban development that is on the edge of the city limits. These challenges include ensuring the adjacent county property owners and uses are protected as much as possible from conflicts with the new urban neighborhood residents and uses. This is not meant to ensure similarity or homogenous development patterns between the city and county, but the development plan includes buffering, connectivity where and when needed, and recognition of similar goals for both types of property. The 2016 Billings Growth Policy and the 2001 West Billings Neighborhood Plan goals and policies support the proposed change to the Planned Development agreement. The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The proposed changes support these goals. The 2016 Billings Growth Policy supports a broad range of housing choices, encourages more walkable neighborhoods with connectivity to other transportation options, and building the community fabric through urban designed public spaces. The proposed zone change supports these goals as well.

Before making a decision on the proposed zone change, the City Council shall consider the following findings as recommended by the City Zoning Commission:

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 and the West Billings Neighborhood Plan (2001):
The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The West Billings Plan adopted a number of Goals, Policies, and Implementation Strategies. The proposed amendments to the Planned Development agreement and the master plan map changes are consistent with the following adopted Policies of **Planned Growth Goal 1: Establish Development Patterns that Use Land More Efficiently**
Policy R "Encourage innovative land-use planning techniques to be used in building higher density and mixed-use developments as well as infill developments."
The proposed adjustments to the underlying zoning map are compatible with goals of the West Billings Neighborhood Plan. The proposed amendment will accommodate uses that are compatible in a mixed-use environment. The proposed development will also have good access to outdoor activities and is in close proximity to commercial centers and transportation options.
The proposed amendment is also in line with the adopted 2016 Growth Policy goals for:

Strong Neighborhoods:
- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, goodwill and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces
- Neighborhoods that are safe and attractive and provide essential services are much

desired
- Implementation of the Infill Policy is important to encourage development of underutilized properties

Home Base:
- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community

The proposed change to the PD agreement will expand the density allowed for multi-family development and even mixed-uses where neighborhood service businesses are paired with apartments. The efficient and economical use of land will continue to support the significant investments made and planned for in this area of West Billings. Lenhardt Square has additional master design guidelines and restrictions that govern most lot landscaping and the zoning for Lenhardt Square includes specifications for street frontage improvement, open-space and pathways throughout. The design guidelines and zoning requirements will ensure the compatibility between this urban neighborhood and the county areas to the north and west. The proposed landscaping and street scape will ensure the livability of this neighborhood.

2. Is the new zoning designed to secure from fire and other dangers?
The zoning requires minimum setbacks, open and landscaped areas and building separations. The zoning realignment would not change provisions for adequate building separations and the proposed density limits will 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 change. Undeveloped city land can create uncertainty for surrounding owners and prolong the inconvenience for residents dealing with development activity in a new neighborhood. This 114-acre parcel has been under development since 2009 but only about 26 acres has been developed during that time. Public health, safety and welfare will be promoted by these adjustments to the zoning that encourages and supports a steady rate of development. Areas where major portions of a subdivision remain undeveloped, experience lower or stagnant property values and a more challenging market for new builders and buyers.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: The city has reviewed a traffic study for the entire subdivision and proposed uses. The developer will be implementing the required mitigation and traffic improvements stipulated by Engineering. As new developments are proposed, the City will re-review the traffic study to ensure the requirements are still sufficient. City Engineering may require periodic updates to the study.
Water and Sewer: The City will provide water and sewer to the property. There will be no additional impacts to the system from the proposed changes.

Schools and Parks: Schools and parks may be effected by the proposed amendment, but this would depend on the demographic of the new residents. SD #2 did not provide any comments.
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 setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning effect motorized and non-motorized transportation?
Non-motorized travel – walking and biking – is an essential part of the circulation plan both within the proposed development and connecting to adjacent areas including the multi-use trail on Shiloh Road and to the nearby Shiloh Conservation Area Trail system to the east. Pedestrian connections will be ensured through the development, and the property is close to a fixed route MET bus line. Traffic counts in the area on King Ave West and 48th St West are well below the expected volume on a principal arterial street. King Avenue West has an average daily traffic volume of 8,010 vehicles per day at this location, less than Poly Drive at 13th Street West. 48th Street West is less than most local streets with about 860 vehicles per day. As development increases in the area, these 2 arterial streets will need to build in additional controls, management facilities and safety features. MDT retains jurisdiction over the management of King Avenue West

7. Will the new zoning will promote compatible urban growth?
The proposed increase in the overall development density is compatible with urban growth and the provision of city level services to the new residents. The proposed zone district boundaries are consistent with the urban growth in this area and will be compatible with the surrounding neighborhood.

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. This area between Shiloh Road and 48th St West is an area undergoing rapid urban development and growth. Demand for local neighborhood and commercial services is increasing. Increasing the area for these services is suitable for this location.

9. Will the new zoning conserve the value of buildings?
The property is a combination of developed and undeveloped parcels. Approval of the zone change will continue to provide certainty to surrounding landowners and may help to maintain property values of adjacent buildings.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed amendment may encourage the most appropriate use of this land in Billings.

STAKEHOLDERS

The Zoning Commission held a public hearing in a virtual format on May 4, 2021, and received the Planning staff recommendation and testimony from the applicant and agent. Additional testimony was received from the public including from Sara Creedon who lives at 4733 Georgina Drive (County) and Sharon Wetsch who owns 4625 King Ave W (County). Ms. Creedon and Mrs. Wetsch were concerned with multi-family dwellings being so close to the city limits, the additional traffic burden on King Ave West when there is no apparent plan to deal with the traffic and the potential to impact the rural county land uses in the area. Ms. Creedon pointed out the lots on Georgina Drive in the County are all about one acre lots for single family dwellings and this does not seem compatible with multi-story multi-family apartments.

Rick Leuthold, agent for the applicants, stated there is a traffic impact study for this subdivision as well as all the adjacent subdivisions and developments that projects incremental improvements to King Ave West when new dwellings are constructed. This includes significant traffic management improvements at 44th St West and 48th St West where these streets intersect with King Ave West. Mr. Leuthold also stated the next development in Lenhardt Square will trigger the full street improvements and connection on Monad Road east to Shiloh Road. This will provide the full second access required for development in Lenhardt Square and will ease the traffic burden at 44th St West and King Ave West. Mr. Leuthold stated both the 2016 Growth Policy for the city and the 2001 West Billings Neighborhood Plan both support increasing housing choices, taking full advantage of arterial street frontage for mixed uses and becoming more efficient with city and urban-level services such as water, sewer, public safety services and transportation services. He stated providing this level of urban services is not financially sustainable without the ability to accommodate more density. Mr. Leuthold stated the overall increase of 2.5 dwelling units per acre over the 114+ acre development can be accommodated and the applicants were thoughtful in the amendments to the existing PD. He stated the Mixed Use (MU) zone for the frontage lots on King Ave West has been in place for over 13 years and was always intended to accommodate an urban mixed use development with higher densities mixed with retail and service business.

Commission member Jack King made a motion to recommend approval and adoption of the findings of the 10 criteria. The motion was seconded by Commission member Dan Brooks and the motion was approved on a 4 to 0 vote.

ALTERNATIVES

The City Council may:

- Approve the zone change and adopt the findings of the 10 review criteria as recommended by the Zoning Commission to the City Council; or,
- Deny the zone change and adopt different findings of the 10 review criteria; or
- Delay the decision on the proposed zone change until the next available meeting date; or
- At the request of an applicant, allow the proposed zone change to be withdrawn.

FISCAL EFFECTS

Approval or denial of the proposed zone change should not have an effect on the Planning Division budget.

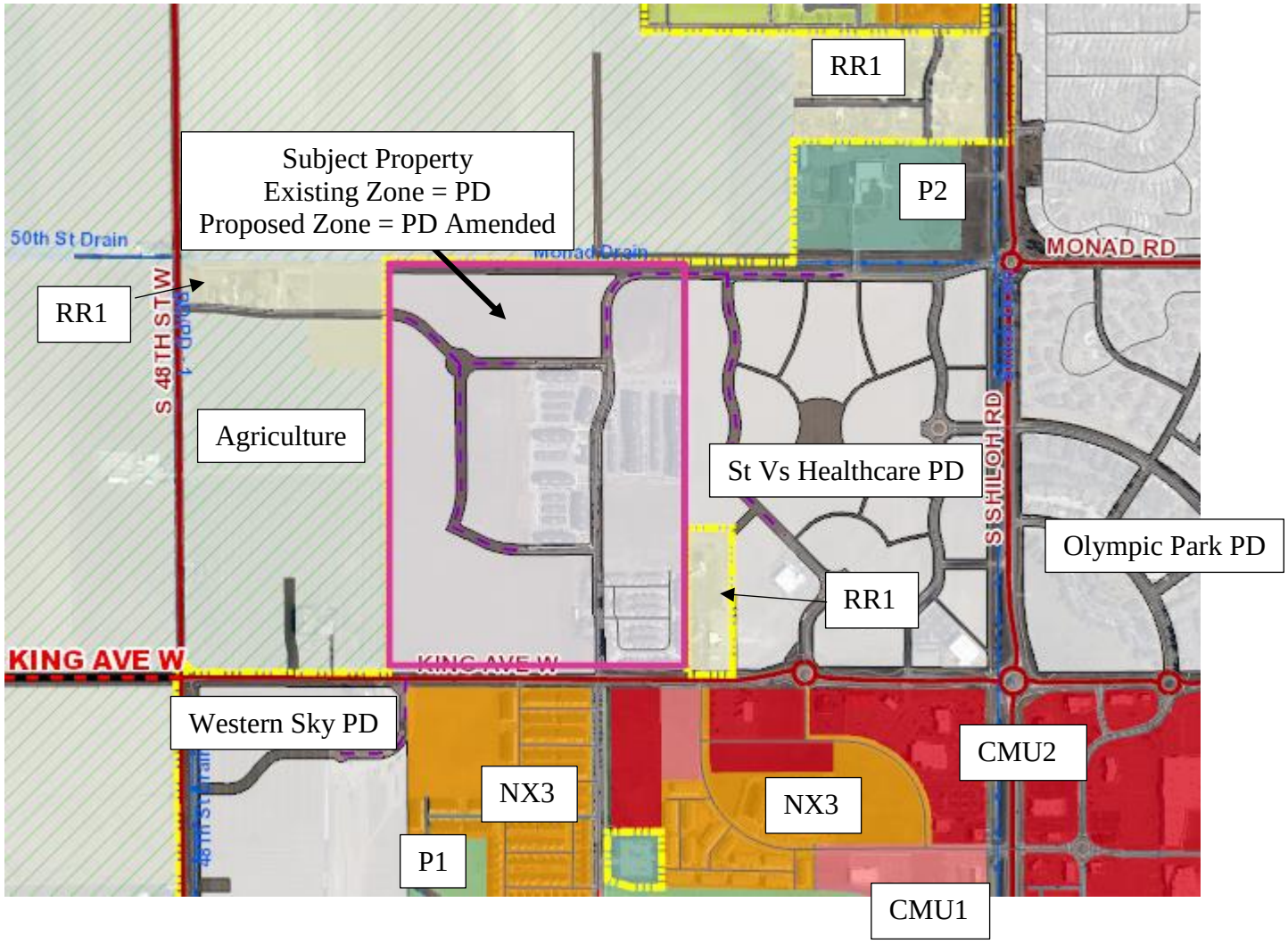
Attachments

Zoning Map and Site Photos

Existing PD Agreement and Master Plan
Proposed Amended Lenhardt Sq PD and Master Plan
Preapplication Meeting Notes
Applicant Letter
Zoning History
Comments in Opposition
Comments in Favor
Ordinance ZC 991

City Zone Change 991 – Lenhardt Square

Zoning Map and Site Photos



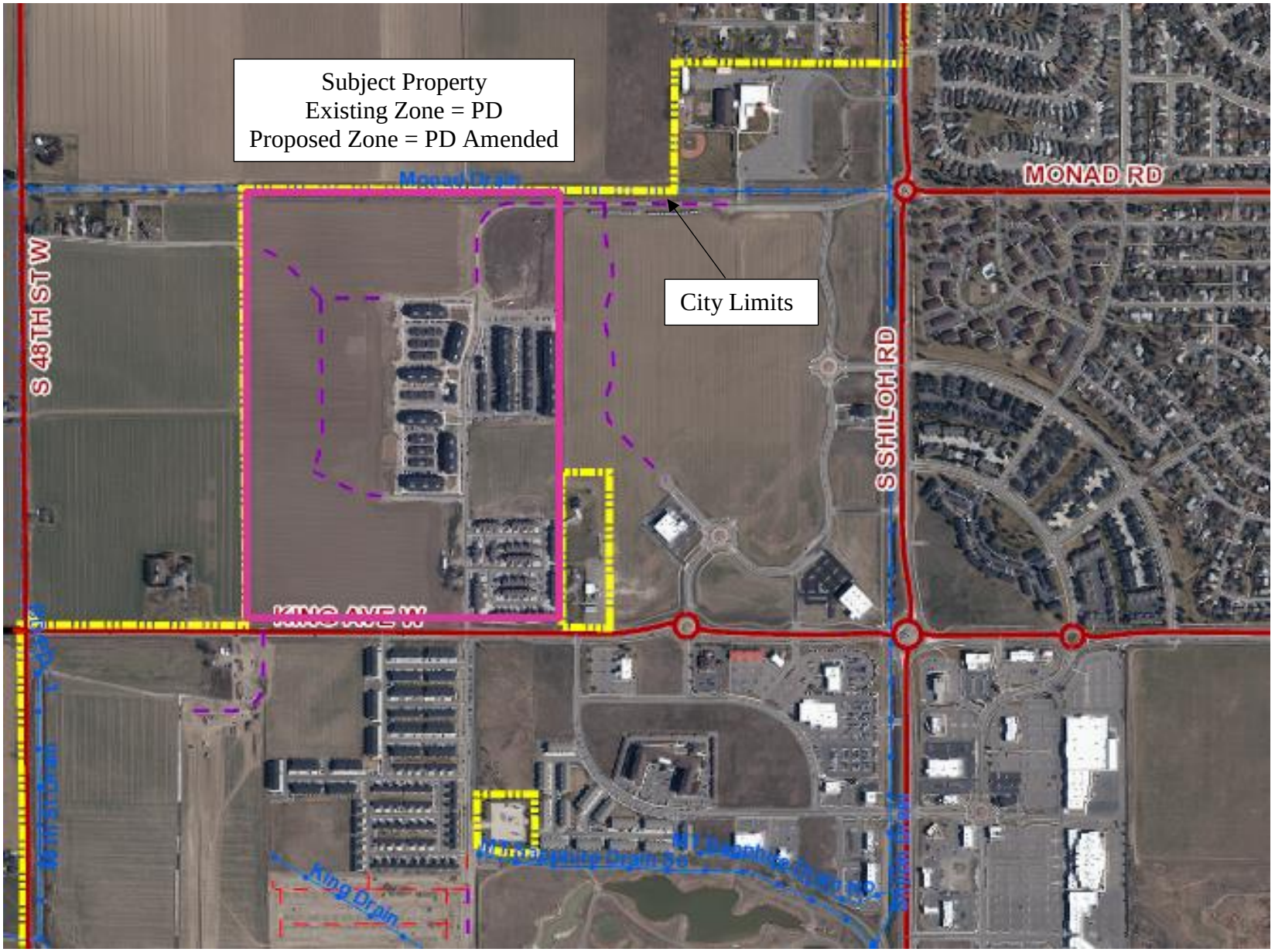
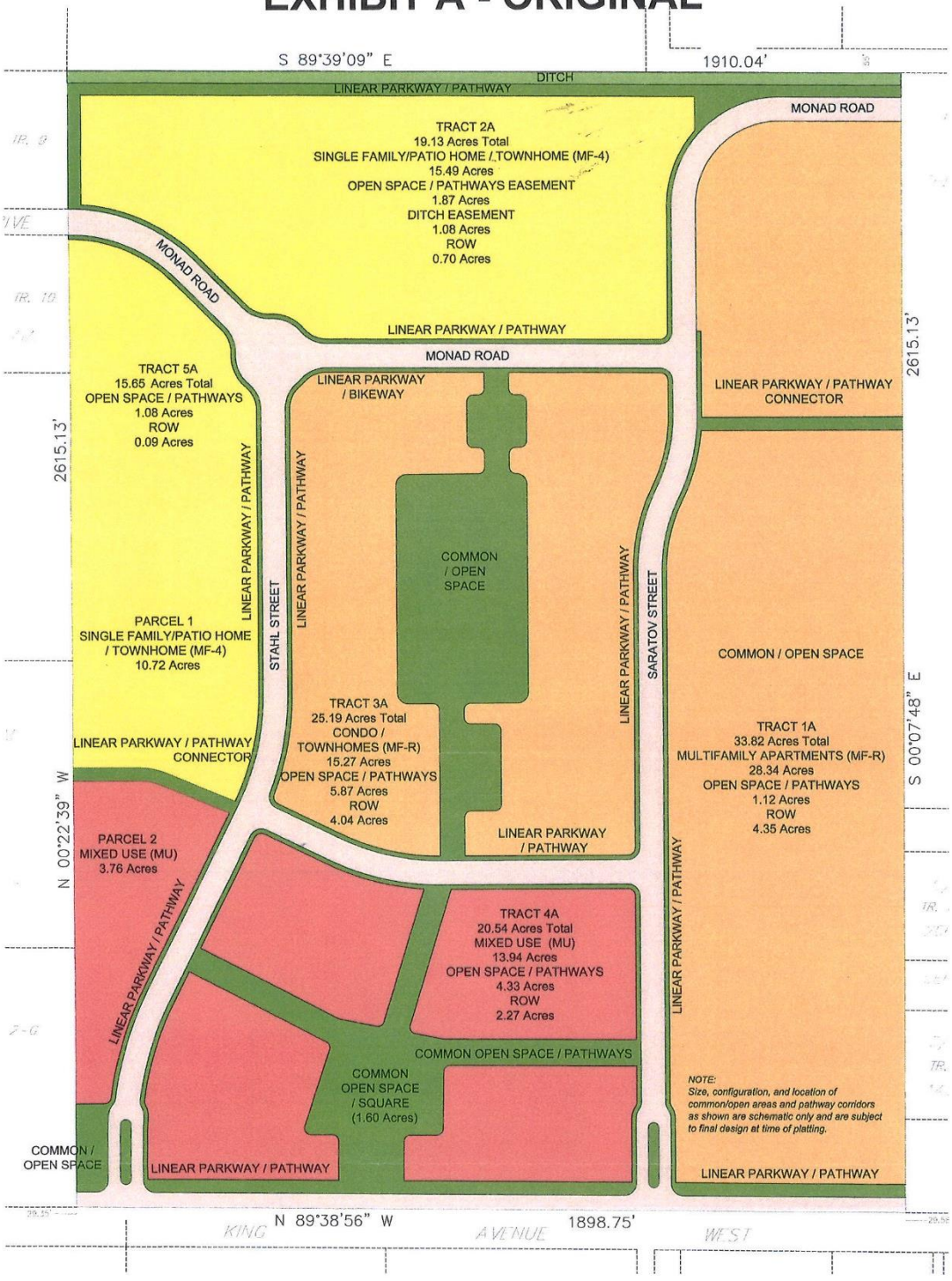

Subject Property
Existing Zone = PD
Proposed Zone = PD Amended
City Limits
MONAD RD
S 48TH ST W
S SHILOH RD
KING AVE W
King Drain

EXHIBIT A - ORIGINAL



LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

Billings, Yellowstone County, Montana

January 22, 2008

Studio VBM LLC
Land Planning / Landscape Architecture / Design
1601 S. Rainbow Blvd. Suite 250
Las Vegas, Nevada 89146
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F: 702.255.0466
www.studiovbm.com

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

GRAPHIC SCALE
0 100' 200'
(IN FEET)
1" = 100' - 0"

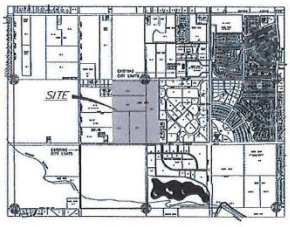
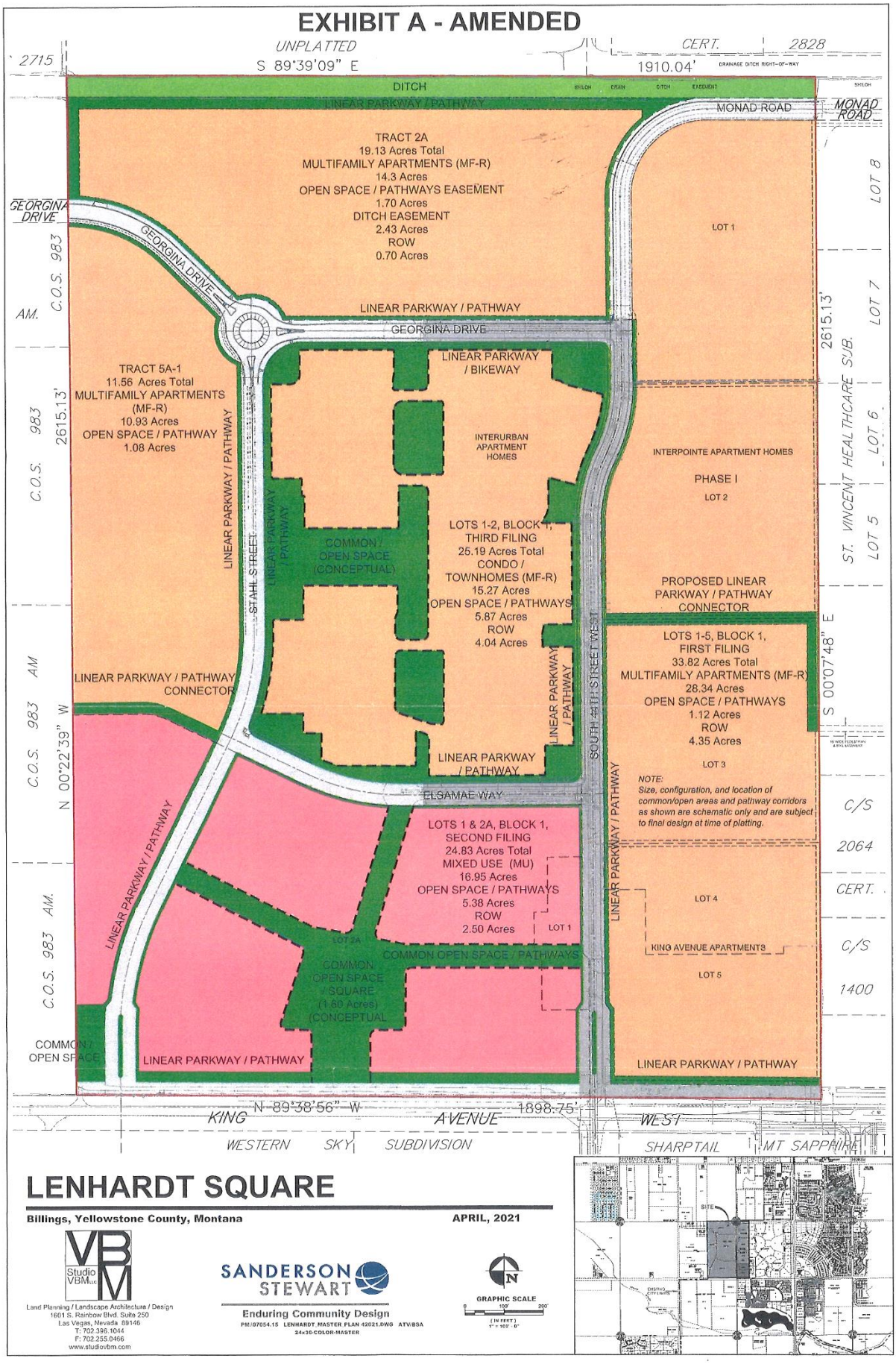


EXHIBIT A - AMENDED



LENHARDT SQUARE

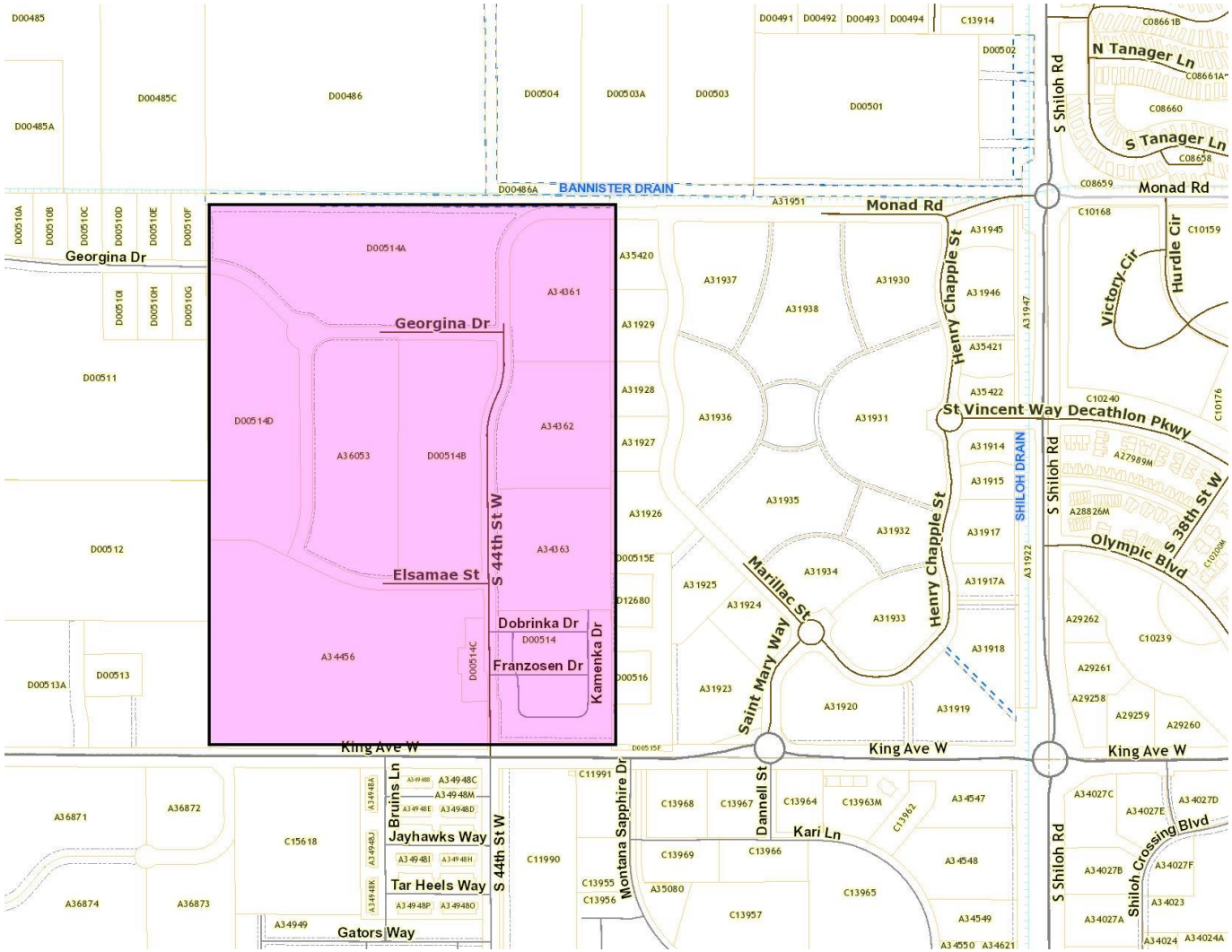
Billings, Yellowstone County, Montana **APRIL, 2021**

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SANDERSON STEWART
Enduring Community Design

PM:07054.15 LENHARDT MASTER PLAN 42021.DWG ATV/BSA
24x36-COLOR-MASTER

GRAPHIC SCALE
0 100' 200'
(IN FEET)
1" = 100'-0"


BANNISTER DRAIN
Georgina Dr
Monad Rd
S Shiloh Rd
N Tanager Ln
S Tanager Ln
Victory Cir
Hurdle Cir
Henry Chapple St
St Vincent Way Decathlon Pkwy
SHILOH DRAIN
S 38th St W
Olympic Blvd
S 44th St W
Elsamae St
Dobrinka Dr
Franzosen Dr
Kamenka Dr
Marillac St
Saint Mary Way
King Ave W
Bruins Ln
Jayhawks Way
Tar Heels Way
Gators Way
Montana Sapphire Dr
Dannell St
Kari Ln
Shiloh Crossing Blvd



Lenhardt Square view north from King Ave West at S 44th St W



Lenhardt Square view north west across property from King Ave W



KWO Apartments from King Ave West view north and east



Hoop Dreams Apartments from King Ave West & S 44th St W view south



Hoop Dreams Apartments from King Ave West & S 44th St W view south and west



KWO Apartments in Lenhardt Square view east along King Ave West at S 44th St W

Return to: City of Billings
Cari Martin, City Clerk
210 N. 27th Street
Billings, MT 59101

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Page: 1 of 47
05/09/2008 04:49P
Yellowstone County AG 329.00

PLANNED DEVELOPMENT AGREEMENT FOR

LENHARDT SQUARE

By and between:

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

and

THE CITY OF BILLINGS, MONTANA

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PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE ("Agreement" or "PDA") is made and entered into this 28th day of April, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively "Founders"), and the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

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

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

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

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

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

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);

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

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

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

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

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

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

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

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

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

AGREEMENT

ARTICLE I – PURPOSES

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

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

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

LENHARDT SQUARE:

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II – DEFINITIONS

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

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

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

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

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

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

D. Developer. "Developer" means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

subdivision plats filed for property within LENHARDT SQUARE.

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

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

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

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

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

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

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

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

ARTICLE III – BINDING EFFECT

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

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

ARTICLE IV – USE RESTRICTIONS

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

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

2. **Tract 4A and Tract 5A.2 – Mixed-Use (MU).** Tracts 4A and 5A.2 are located, respectively, on the southern and western borders of LENHARDT SQUARE near King Avenue West as shown on Exhibit "A." Tracts 4A and 5A.2 are designed for residential and complementary commercial uses as further described in the definition of "mixed-use" found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified

development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

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

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

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

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

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

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

1. Accessory uses and detached structures (other than garages) less than 300

square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.

2. Assisted living facilities serving up to eight (8) persons;

3. Bus stops;

4. Common Areas;

5. Community center;

6. Community residential facility as defined by Unified Zoning Regulations;

7. Garages, subject to size limitations described in Article V.B.4.(d);

8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;

9. Home occupations;

10. Family day care home serving up to 6 children or adults;

11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;

12. Single family residential uses;

13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

1. Animal grooming facilities;

2. Art galleries;

3. Assisted living facilities serving any number of persons;

4. Bakeries;

5. Banks, credit unions, and savings and loan offices;

6. Barber and beauty shops;

7. Bicycle sales, rental, and repair shops;

8. Boarding, lodging, and bed and breakfast houses;

9. Bookstores;

10. Building supply stores and hardware stores (but not lumber yards);

11. Bus stops;

12. Camera, hobby, toy, and gift stores;

13. Ceramics and pottery shops;

14. Charitable, religious, educational or nonprofit institutions;

15. Clothing and apparel stores;

16. Common Areas;

17. Community centers;

18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;

19. Convalescent, nursing, and retirement homes;

20. Convenience and specialty food stores (but no gasoline sales);

21. Cultural, educational, and instructional facilities;

22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);

23. Denturists;

24. Department stores;

25. Drug stores - prescription and pharmacy;

26. Dry cleaning or laundry drop-off and pick-up store;

27. Eating and drinking establishments that do not sell alcohol for on-site consumption;

28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;

29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;

30. Finance and loan companies;

31. Florists;

32. Food and grocery stores;

33. Furniture - retail only;

34. Flower shops and nurseries (provided that there is no outside storage);

35. Garages, subject to size limitations described in Article V.B.4.(d);

36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;

37. Hardware and appliance – retail only;

38. Health clubs, spas, and gymnasiums;

39. Health and fitness related businesses;

40. Home occupations (mixed-use area)

41. Hotels and motels;

42. Jewelry stores;

43. Libraries, museums, and art galleries;

44. Liquor stores

45. Medical and dental offices;

46. Membership organization offices;

47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;

48. Offices, including real estate, financial, counseling, professional, medical, and dental;

49. Office supply and equipment, copying and mail services stores – retail only;

50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;

51. Parking facilities, including above or below ground parking garages;

52. Parks, playgrounds, pools, sport courts;

53. Pet stores;

54. Photo studios, shops, and processing - retail only;

55. Physical therapy facilities;

56. Postal service facilities;

57. Public administration facilities, including government facilities, except correctional institutions;

58. Publicly-owned or government operated buildings and uses;

59. Retail stores;

60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;

61. Senior and assisted living residential facility;

62. Sports medicine and rehabilitation facilities;

63. Theaters;

64. Veterinary clinic, outpatient only;

65. Wine store;

66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

1. Accessory uses and structures (other than garages) not larger than 300 square feet associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement;

2. Assisted living facilities serving up to eight (8) persons;

3. Bus stops;

4. Common Areas;

5. Community centers;

6. Community residential facilities as defined by Unified Zoning Regulations serving up to eight (8) persons on a 24-hour-a-day basis;

7. Family day care facilities serving up to six (6) children or adults;

8. Garages, subject to size limitations described in Article V.B.4(d);

9. Health clubs, spas, gymnasiums, and other recreational facilities if part of a residential building or multi-family residential complex;

10. Home occupations;

11. Multi-family residential structures containing up to four (4) Dwelling Units;

12. Single family residential units;

13. Any use permitted in a single family residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

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

2. Animal boarding facilities (allowed in Tract 4A and Tract 5A.2 only);

3. Assisted living facilities serving more than 8 persons;*

4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A and Tract 5A.2 only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);

6. Convalescent, nursing and retirement homes;*

7. Day care centers serving more than 12 children or adults;*

8. Churches, synagogues, and places of worship;

9. Emergency services, including fire stations and ambulance services;

10. Funeral homes and mortuaries;

11. Group day care home serving 7 to 12 children or adults;*

12. Health and fitness related businesses not associated with a residential facility;*

13. Hospitals and hospital related services (allowed in Tract 4A and Tract 5A.2 only);

14. Medical, dental and health-related clinics (allowed in Tract 4A and Tract 5A.2 only);

15. Medical, dental, and other professional offices;*

16. Medical laboratories (allowed in Tract 4A and Tract 5A.2 only);

17. Modular homes;

18. Offices and small-scale retail;*

19. Pharmacies (allowed in Tract 4A and Tract 5A.2 only);

20. Physical therapy facilities;*

21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);

22. Residential multi-family housing consisting of more than four (4)

Dwelling Units (special review required only in Tracts Tract 5A.1 and 2A);

23. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A and Tract 5A.2 only);

24. Retirement facilities larger than eight (8) persons per Unit;

25. Sports and rehabilitative commercial facilities;*

26. Veterinary clinic with boarding facilities (allowed in Tract 4A and Tract 5A.2 only).

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

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;

2. The proposed use is compatible with surrounding uses;

3. The proposed use is not detrimental to other property in LENHARDT SQUARE;

4. The proposed use complies with other provisions of law and ordinances of the City of Billings;

5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);

6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment;

7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;

8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;

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

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

1. Amusement park services or facilities;

2. Animal shelters, public or private;

3. Apparel fabrication;

4. Arcades, including but not limited to video arcades;

5. Auction houses or auction yards;

6. Auto body and collision repair;

7. Automobile repair shops;

8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;

9. Auto parts supply;

10. Competitive sporting facilities as described in Article IV.J.9.

11. Beverage bottling plant or wholesaling operations;

12. Billboard signs;

13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;

14. Brewery (except as incidental to a restaurant, such as a brew pub);

15. Broadcasting (radio and television) stations, studios and antenna support structures;

16. Building fabrication, except construction of buildings for use on-site;

17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;

18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;

19. Campground;

20. Car wash;

21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;

22. Chain link fencing;

23. Crematoriums;

24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;

25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;

26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;

27. Electronic component manufacturing;

28. Equipment rental shop;

29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;

30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;

31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;

32. Fire sale or bankruptcy sale;

33. Fireworks. Fireworks manufacture and/or sales;

34. Flea markets;

35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;

36. Foundries and factory operations;

37. Furniture fabrication;

38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;

53. Machine and welding shops;

54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;

55. Manufacturing businesses;

56. Metal fabrication and manufacturing;

57. Mill work and cabinet shops;

58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);

59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;

60. Motocross tracks;

61. Motorcycle racing;

62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.

63. Paper warehouses;

64. Pawn shops;

65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;

66. Product manufacturing unless the product is intended primarily for local consumption or use;

67. Propane sales;

68. Race tracks;

69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.

70. Recycling centers;

71. Rental car dealerships;

72. Vehicular, small engine and appliance repair shops;

73. Roller skating rinks;

74. Roping and rodeo arenas;

75. Sanitary dumps;

76. Scrap or waste material processing;

77. Septic systems;

78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;

79. Repair shops. Shop facilities containing open or visible storage;

80. Stables;

81. Storage facilities other than garages associated with residential structures;

82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);

83. Surplus store;

84. Taxidermists;

85. Tire sales, except as incidental to the operation of a general retail store;

86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A and Tract 5A.2 only);

87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over-night parking of recreational vehicles;

88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

89. Truck Terminals. Truck terminals, cartage operations, and similar uses;

90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;

91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;

92. Trucking operation offices and warehouses;

93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;

94. Warehouses;

95. Wholesale lumber and wholesale building materials;

96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a retail pet store;

97. Wholesale distribution and sales.

J. Other Use Regulations

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

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

3. Nuisance. No nuisance shall be permitted to exist or operate on any property in LENHARDT SQUARE so as to be offensive or detrimental to other property or occupants in LENHARDT SQUARE. A nuisance includes, but is not limited to, any operations or uses that create vibration, electro-magnetic disturbances, radiation, air or

water pollution, dust, emissions of odorous, toxic or nontoxic matter (including steam), and excessive noise; provided, however, that agricultural activities authorized by Founders shall not be considered a nuisance. No noxious, offensive, or hazardous activities shall be permitted upon any Unit in LENHARDT SQUARE, nor shall anything be done or placed upon any Unit that is or may become a nuisance to others. No light shall trespass onto another Unit unless approved by adjacent Unit owners or in conjunction with shared parking facilities, nor shall any light be produced from any Unit that is unreasonably bright or causes unreasonable glare. No sound shall be produced upon any Unit that is unreasonably loud or annoying, including but not limited to speakers, horns, whistles, bells, excessive barking, or other animal noises.

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

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

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

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

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

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

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

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

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

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

(a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;

(b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;

(c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and

(d) The business may employ sign advertising, but such advertising must be located on the Lot where the Home Occupation is located and shall comply with all applicable government regulations and private covenants or restrictions. In addition, any signage advertising a Home Occupation shall be

displayed in a lobby or other place inside the structure where the business is located or, if located on or outside of the structure, the sign shall not exceed two (2) square feet in size. Only one sign may be displayed for each Home Occupation. Section 27-606(f) and (g) of the Unified Zoning Regulations shall not apply to such a business to the extent those provisions are inconsistent with this subparagraph.

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

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

ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS

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

B. **Tract Development Standards.** Tract development standards are provided to establish minimum guidelines for the development of facilities within LENHARDT SQUARE, including site work, buildings, accessory structures, parking, signage, lighting, fencing and landscaping. These standards establish the minimum construction requirements to be adopted by Developers within LENHARDT SQUARE. More detailed architectural and landscape design

guidelines (Master Design Guidelines) will be adopted by the Founders pursuant to the CCRs to govern the aesthetic and functional standards for public areas, streetscape, pedestrian areas, buildings and signage. Developers may, subject to approval by the Reviewer, adopt more (but not less) detailed and/or stringent site, building and landscape design criteria to govern construction within their respective Tracts. All construction within LENHARDT SQUARE shall comply with the Unified Zoning Regulations, International Building Code, or any other building codes or building regulations applicable under local, state, or federal law.

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

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

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

4. **Parking.**

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

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

(ii) **MF-R.** Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. At least one parking stall for each Dwelling Unit shall be provided in covered or enclosed parking facilities. In order to insure adequate parking, parking

spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

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

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

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

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

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

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

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

7. **Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

8. **Loading, Storage and Service Areas.** Loading and service areas shall not be permitted in the front of any Lot or in any side yard adjacent to and visible from a

street within LENHARDT SQUARE and shall be subject to design standards adopted by the Founders.

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

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

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

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

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

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

12. Signage. The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose only Tracts 1A and 3A shall be deemed to be a residential professional zone; Tracts 4A and 5A.2 shall be deemed to be a commercial zone; and Tracts 5A.1 and 2A shall be deemed to be a residential zone. For purposes of regulating signage the mixed-used areas (Tract 4A and Tract 5A.2) shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

13. **Lighting**.

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

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

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

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

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

ARTICLE VI – OPEN SPACE

A. **Master Plan Common Areas Generally.** Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A is approximately 15.35 acres. The general size, location, and design of Master Common Areas described in this Agreement and designated in the Master Plan are conceptual in nature and are subject to modification by Founders and future Developers through the platting process. Any such modifications must, however, be approved by the Reviewer, and the City of Billings must receive the consent of the Reviewer prior to approving any plat that modifies the size, location, or design of the Master Common Areas

described herein. The City of Billings shall be entitled to review and approve any material reduction in the size of the Master Common Areas or material change of the function of those areas if such reduction or change would entitle the City to withdraw its waiver of statutory and local park dedication requirements mandated under M.C.A. § 76-3-621(6) and BMCC Sec. 23-1009.A. Nothing in this Agreement shall prohibit a Developer from establishing Developer Common Areas within its Tract, provided maintenance of such additional common areas shall be the responsibility of the Developer and/or any Owners Association created by the Developer, unless the Master Association agrees in writing to undertake such maintenance responsibilities. Developers may agree to assume maintenance responsibilities for Master Common Areas by entering into a written agreement with the Master Association.

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

C. Roof-Top Amenity Areas. The roof area of each building over forty feet (40") in height (measured to the top of the enclosed structure and not including non-enclosed structures, towers, antennae, etc.) in a mixed-use zone (Tract 4A and Tract 5A.2) shall include roof-top amenities that comply with this Agreement. Such roof-top amenities may include, but are not limited to, one or more of the following: Green Roofs, gardens, pools, terraces, decks, balconies, porches, atriums, greenhouses, picnic areas, recreational facilities, or similar amenities. For purposes of this Article VI.C. "roof area" shall include both the roof structure immediately above the uppermost floor of the building and also any horizontal setback areas created when a floor of the building is recessed from the line of the façade of the floor below. One hundred percent of each roof area not necessary for the use, storage, or operation of mechanical equipment related to the function of the building shall be devoted to such roof-top amenities unless the Reviewer grants a partial exemption from this requirement after receiving a written request from the Developer. The Reviewer may exempt part of the roof area from this requirement if the Reviewer determines in its discretion that the portion proposed for exemption is too small, inaccessible, or otherwise unavailable for reasonable construction or maintenance as a roof-top amenity. All roof-top amenities shall be professionally designed and constructed and shall comply with all applicable building codes, ordinances, and laws. ~~Neither~~ Reviewer ~~nor the City~~ shall not be required to review any building design, specifications or drawings for compliance with such codes, ordinances, laws or other building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES

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

ARTICLE VIII - ENFORCEMENT

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

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

C. Right to Enforce by Unit Owners and Master Association. The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

ARTICLE IX –AMENDMENTS AND VARIANCES

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

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

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

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

ARTICLE X - GENERAL PROVISIONS

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

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

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

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

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

If to Founders:

Lenhardt Property, LP
4035 Cedarbrook Court
Bellingham, WA 98229-5007

[and]

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

[and]

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

With copies to:

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

If to the City:

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

With Copies to:

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

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

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

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

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

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

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

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

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

L. Captions and Headings. The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

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

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

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

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

NOTICE

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

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

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

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

FOUNDERS:

LENHARDT PROPERTY, LP

By: Lorraine M Newman
LORRAINE NEWMAN
Its: Partner

LENHARDT FARM, LLC

By: Janice L Rehberg
JANICE L. REHBERG
Its: Managing Member

LENHARDT ENTERPRISES, LLC

By: Allan R. Lenhardt
ALLAN R. LENHARDT
Its: Member

CITY:

CITY OF BILLINGS

By: _____
Ron Tussing
Its: Mayor

By: Cari Martin
Cari Martin
Its: City Clerk

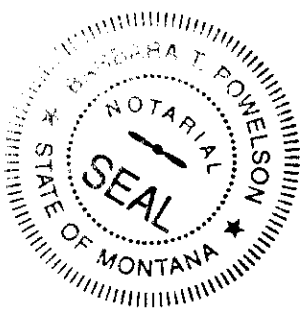
STATE OF Montana)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 7th day of May, 2008, by Lorraine M. Newman known to me to be a partner of Lenhardt Property, L.P.

Barbara T. Powelson
[signature]
Barbara T. Powelson
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: January 5, 2010

STATE OF Montana)
)ss.
County of Yellowstone)

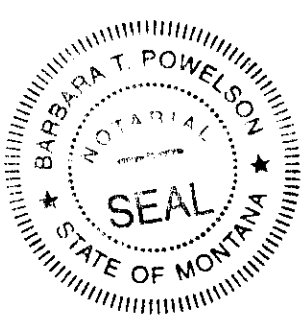
This instrument was acknowledged before me on the 7th day of May, 2008, by Janice L. Rehberg known to me to the Managing Member of Lenhardt Farm, LLC



Barbara T. Powel
[signature]
Barbara T. Powelson
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: January 5, 2010

STATE OF MONTANA)
)ss.
County of Yellowstone)

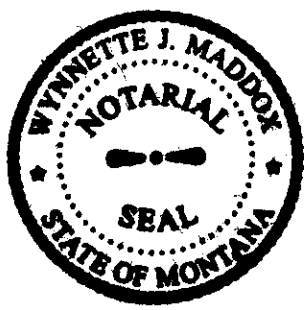
This instrument was acknowledged before me on the 7th day of May, 2008, by Allan R. Lenhardt known to me to ~~XXX~~ a member of Lenhardt Enterprises, LLC



Barbara T. Powel
[signature]
Barbara T. Powelson
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: January 5, 2010

STATE OF MONTANA)
)ss.
County of Yellowstone)

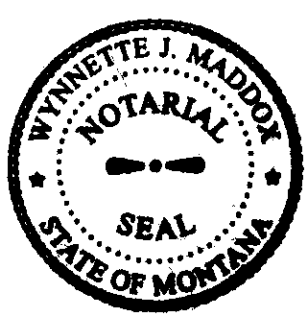
This instrument was acknowledged before me on the 9th day of May, 2008, by Ron Tussing, known by me to be the Mayor of the City of Billings.



wynnette J Maddox
[signature]
wynnette J Maddox
[typed/printed name]
Notary Public for the State of Montana
Residing at: Shepherd, Montana
My Commission Expires: 9-16, 2010

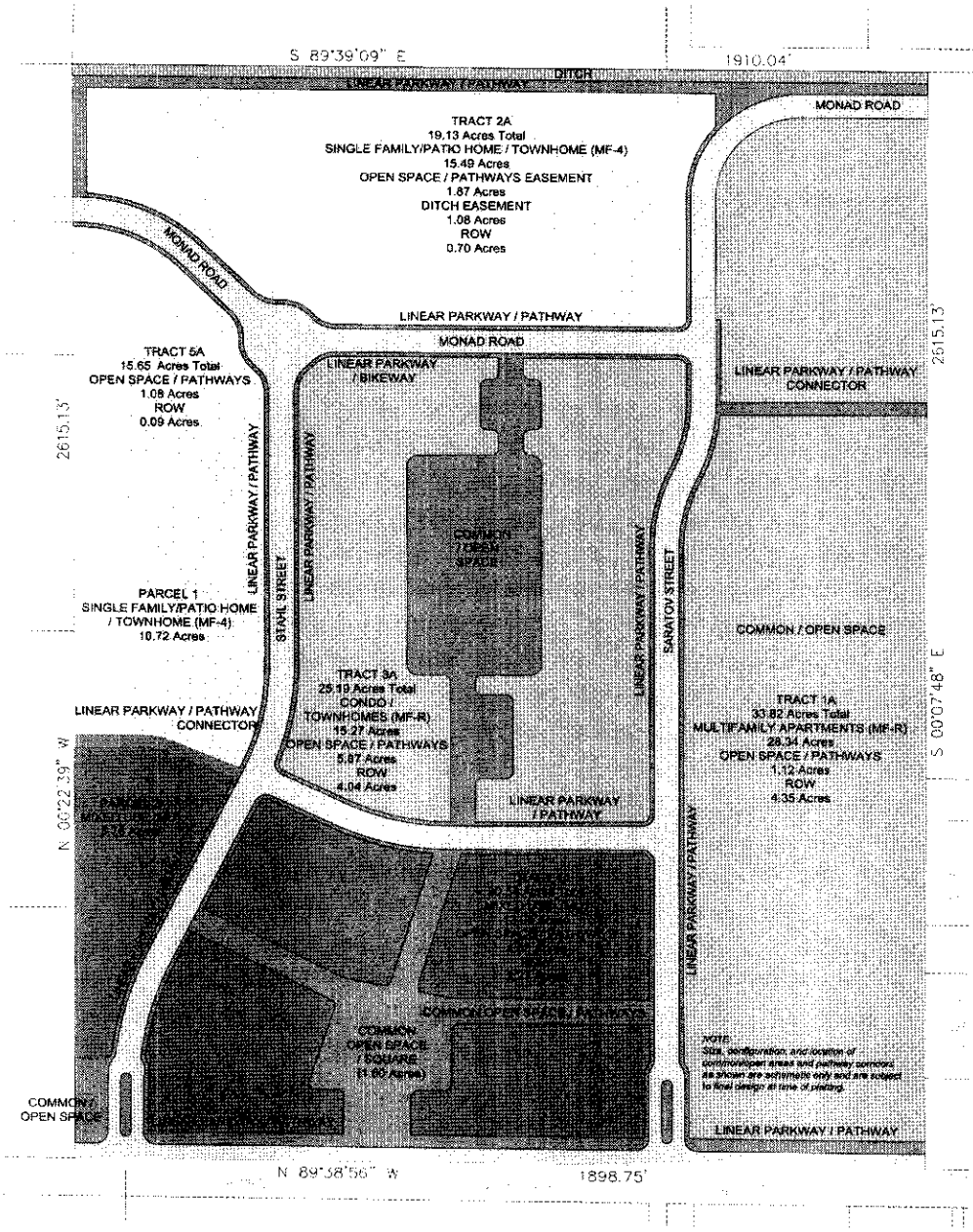
STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 9th day of May, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.



wynnette J Maddox
[signature]
wynnette J Maddox
[typed/printed name]
Notary Public for the State of Montana
Residing at: Shepherd, Montana
My Commission Expires: 9-16, 2010

EXHIBIT A



LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

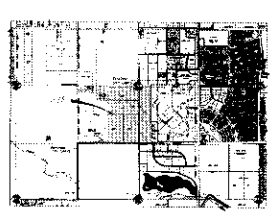
Billings, Yellowstone County, Montana

January 22, 2008

VBM Studio VBM, Inc. — Urban Planning / Landscape Architecture / Design
1021 S. Rainbow Blvd. Suite 250
Las Vegas, Nevada 89145
T 702.396.1344
F 702.365.0486
www.studiovbm.com

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

GRAPHIC SCALE



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

EXHIBIT B
GENERAL REQUIREMENTS*

Minimum Lot Size Per Structure	**MF-4****	**MF-R****	**MU****
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
Setback Requirements (in feet)			
Front:			
From Linear Parkway	5[1]	5	5
From streets (right-of-way)	20[2]	20	0[3]
Sides:[4]			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1	9 + 1	0
Side Adjacent to Street	10	10	0
Rear[4]	20	15	0
Arterials	25	25	25
Maximum Height (in feet)	34	40	80[5]
Maximum Lot Coverage	50%	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	10	20 (Tract 1A) 15 (Tract 3A)	20[7]
Fence/Wall/Berm/Shrub Max. Height			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

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

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

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

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

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

[4] Zero lot lines allowed pursuant to 27-617 Unified Zoning Regulations and for accessory structures and garages.

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

EXHIBIT C

PART 1
PARKING REQUIREMENTS – MIXED-USE ZONE

TYPE OF USE	REQUIRED PARKING (spaces / dwelling unit)
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator upon request of Developer and consent of Reviewer

PART 2
JOINT PARKING FACTORS REDUCTION MATRIX

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

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

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

Return to: City of Billings
Cari Martin, City Clerk
210 N. 27th Street
Billings, MT 59101

Yellowstone County AG 69.00
3505105
Page: 1 of 7
04/29/2009 04:25P

CONSENT TO MINOR MODIFICATION OF PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE

In accordance with Unified Zoning Code Section 27-1310, the parties to the Planned Development Agreement for Lenhardt Square ("Agreement") recorded on May 9, 2008 as Document No. 3464966 and relating to the following real property:

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

desire to make a minor modification to the Agreement by substituting the attached "Exhibit B (First Amended)/General Requirements" in the place of "Exhibit B/General Requirements" (page 45 and 46 of the original Agreement). The parties to the Agreement consent to this modification, said parties being the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, Montana 59101, and LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively "Founders"). In addition, M & K BLUE ONE, LLC, as equitable owner and successor in interest of Founders under a contract for deed involving the sale of Tract 1A of LENHARDT SQUARE (as such tract is described by Certificate of Survey 2063, Amended, filed in the office of the Clerk and Recorder of Yellowstone County, Montana as Document No. 3460596), also consents to this modification.

IN AGREEMENT WITH THE FOREGOING, the authorized representatives of the foregoing parties have executed this document on the date or dates appearing below. The parties agree that this document may be signed in counterparts using separate signature pages.

CITY OF BILLINGS

By: Nicole Cromwell
NICOLE CROMWELL
Zoning Coordinator, Planner II

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 29th day of April, 2009, by Nicole Cromwell, known by me to be the Zoning Coordinator of the City of Billings.

BARBARA T. POWELSON NOTARIAL SEAL STATE OF MONTANA

Barbara T. Powelson
[signature]
Barbara T. Powelson
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: January 5, 2010

LENHARDT PROPERTY, LP

By: Lorraine M Newman
LORRAINE NEWMAN
Its: General Partner

STATE OF Washington)
)ss.
County of Whatcom)

This instrument was acknowledged before me on the 24th day of March, 2009, by Lorraine Newman, known to me to be the general partner of Lenhardt Property, L.P.

B K GAINER NOTARY PUBLIC COMMISSION EXPIRES 01-08-2013 STATE OF WASHINGTON

B K Gainer
[signature]
B K Gainer
[typed/printed name]
Notary Public for the State of Washington
Residing at: 336 30th St. Bellingham
My Commission Expires: Jan. 08, 2013

LENHARDT FARM, LLC

By: Janice L. Rehberg
JANICE L. REHBERG
Its: Authorized member

STATE OF Montana)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 14th day of April, 2009, by Janice L. Rehberg known to me to the authorized member of Lenhardt Farm, LLC.

BARBARA T. POWELSON NOTARIAL SEAL STATE OF MONTANA

Barbara T. Powelson
[signature]
Barbara T. Powelson
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana,
My Commission Expires: January 5, 2010

LENHARDT ENTERPRISES, LLC

By: _____
ALLAN R. LENHARDT
Its: Authorized member

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2009, by Allan R. Lenhardt known to me to the _____ of Lenhardt Enterprises, LLC

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

LENHARDT FARM, LLC

By: _____
JANICE L. REHBERG
Its: Authorized member

STATE OF _____)
)ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 2009, by Janice L. Rehberg known to me to the authorized member of Lenhardt Farm, LLC.

_____
[signature]

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

LENHARDT ENTERPRISES, LLC

By: _____
ALLAN R. LENHARDT
Its: Authorized member

STATE OF ~~MONTANA~~ Louisiana)
Parish of East Baton Rouge)ss.
~~County of~~ Yellowstone)

This instrument was acknowledged before me on the 7th day of April, 2009, by Allan R. Lenhardt known to me to the managing member of Lenhardt Enterprises, LLC

_____
[signature]

Leah W Thibaut
Notary # 61601

_____
[typed/printed name]
Notary Public for the State of ~~Montana~~ Louisiana
Residing at: Livonia, ~~Montana~~
My Commission Expires: Life, 20__

M & K BLUE ONE, LLC

By: _____
CAL KUNKEL
Its: Authorized Member

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the 20th day of April, 2009, by Cal Kunkel known to me to an authorized member of M & K Blue One, LLC

GRETCHEN BUSCHER NOTARIAL SEAL STATE OF MONTANA
GRETCHEN BUSCHER
NOTARY PUBLIC MONTANA
Residing in Billings, Montana
MY COMM. EXPIRES DEC. 05, 2010

_____
[signature]
Gretchen Buscher
[typed/printed name]
Notary Public for the State of Montana
Residing at: Billings, Montana
My Commission Expires: 12/5, 2010

3505105
Page: 6 of 7
04/29/2009 04:25P
Yellowstone County AG 69.00

Note: This Exhibit B (First Amended) is a minor modification of the Planned Development Agreement for Lenhardt Square, Exhibit B (pages 45-46), recorded on May 9, 2008 as Document No. 3464966.

EXHIBIT B (First Amended)
GENERAL REQUIREMENTS*

Minimum Lot Size Per Structure	**MF-4****	**MF-R****	**MU****
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
Minimum Setback Requirements (in feet from property line unless otherwise specified)			
Front:			
From Linear Parkway[1]	5	5	5
From back of curb	20[2]	20	0[3]
Sides:[4]			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1/story	9 + 1/story	0
Side Adjacent to Street	10	10	0
Rear[4]	20	15	0
Arterials	25	25	25
Maximum Height (in feet)	34	40	80[5]
Maximum Lot Coverage	50%	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	10	20 (Tract 1A) 15 (Tract 3A)	20
Fence/Wall/Berm/Shrub Max. Height			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

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

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

[1] If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear Parkway on the north side of King Avenue.

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

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

[4] The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

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

City Clerk
Attn: Ceri Marton

AG 3676656
07/25/2013 11:29 AM Pages: 1 of 5 Fees: 45.00
Jeff Martin Clerk & Recorder, Yellowstone MT

AMENDED PLANNED DEVELOPMENT AGREEMENT
LENHARDT SQUARE
For Tract 3A, C/S 2063
in the City of Billings, Yellowstone County, Montana

THIS AGREEMENT, made and entered into this 10th day of June, 2013, by and between STOCK LAND PROPERTIES, Inc., a Montana corporation (hereinafter referred to as "Owner"), and the City of Billings (hereinafter referred to as "City").

WITNESSETH

WHEREAS, the undersigned is the Owner of all of Tract 3A, C/S 2063 within the Lenhardt Square Planned Development, according to a Document No. 3460596 on file with County Clerk and Recorder;

WHEREAS, Tract 3A, C/S 2063 is currently governed by a planned development agreement on file with Clerk and Recorder as Document No. 3464966 and as amended by Document No. 3501505 and as outlined within the City Zoning Ordinance;

WHEREAS, the aforesaid Owner applied for a change of the development density allowed as shown in Exhibit B (First Amended) – General Requirements for the above-described real property from 15 dwelling units per acre to 20 dwelling units per acre;

WHEREAS, the City has approved the change to Exhibit B (First Amended) – General Requirements after due and proper administrative review, notice and public hearing, all in accordance with City Ordinances and requirements;

NOW, THEREFORE, in consideration of the premises, the Owner and the City hereby establish and declare that Exhibit B (First Amended) – General Requirements of the Lenhardt Square Planned Development Agreement is hereby amended to allow a development density of 20 units per acre on Tract 3A, C/S 2063, effective immediately.

I. PERSONS BOUND BY THE PLANNED DEVELOPMENT AGREEMENT. All persons, corporations or other entities, who now have or shall hereafter acquire any interest in and to the above-described real property shall be taken and held to agree to the zoning of the above-described real property as Planned Development and as described in the foregoing documents and as amended by this agreement.

AG 3676656
07/25/2013 11:29 AM Pages: 2 of 5 Fees: 45.00
Jeff Martin Clerk & Recorder, Yellowstone MT

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"OWNER"

STOCK LAND PROPERTIES, Inc.
a Montana corporation

By: _____
Michael D. Stock
Its President and duly authorized agent

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 16th day of July, 2013, before me, a Notary Public for the State of Montana, personally appeared Michael D. Stock, known to me to be the person who executed the foregoing instrument as the President of Stock Land Properties, Inc., and who acknowledged to me that said company executed the same.

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

PETER B. KNAPP NOTARIAL SEAL STATE OF MONTANA

PETER B. KNAPP
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
November 08, 2014

_____
Notary Public for the State of _____
Printed name: _____
Residing in _____
My commission expires: _____

AG 3676656
07/25/2013 11:29 AM Pages: 3 of 5 Fees: 45.00
Jeff Martin Clerk & Recorder, Yellowstone MT

"CITY"

CITY OF BILLINGS
MONTANA

By Thomas W. Hanel
Thomas W. Hanel
Its Mayor and duly authorized agent

Attest: Cari Martin
Cari Martin, City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 22nd day of July, 2013, before me, a Notary Public for the State of Montana, personally appeared Thomas W. Hanel and Cari Martin, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana whose names are subscribed to in the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

WYNNETTE J MADDOX
NOTARY PUBLIC for the
State of Montana
Residing at Shepherd, Montana
My Commission Expires
September 16, 2014

Wynnette J Maddox
Notary Public for the State of Montana
Printed name: Wynnette J Maddox
Residing in ~~Billings~~ Shepherd, Montana
My commission expires: 9.16.2014

AG 3676656
07/25/2013 11:29 AM Pages: 4 of 5 Fees: 45.00
Jeff Martin Clerk & Recorder, Yellowstone MT

Note: This Exhibit B (Second Amended) is a modification of the Planned Development Agreement for Lenhardt Square, Exhibit B (First Amended) (pages 6 and 7), recorded on April 29, 2009 as Document No. 3505105.

EXHIBIT B (Second Amended)
GENERAL REQUIREMENTS

Minimum Lot Size Per Structure	MF-4**	MF-R**	MU**
1 dwelling unit	6,000	6,000	
2 dwelling units	7,000	7,000	
3 dwelling units	8,500	8,500	
4 dwelling units	10,000	10,000	
5 dwelling units		11,000	
6 dwelling units		12,000	
7 dwelling units		13,000	
8 dwelling units		14,500	
9 dwelling units		16,000	
10 or more dwelling units		1,500 sq.ft. each additional dwelling unit	
Minimum Setback Requirements (in feet from property line unless otherwise specified)			
Front:			
From Linear Parkway[1]	5	5	5
From back of curb	20[2]	20	0[3]
Sides:[4]			
1 Story	5	5	5
2 Story	8	8	8
3+ Story	9 + 1/story	9 + 1/story	0
Side Adjacent to Street	10	10	0
Rear[4]	20	15	0
Arterials	25	25	25
Maximum Height (in feet)	34	40	80[5]
Maximum Lot Coverage	50%	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	10	20 (Tract 1A & 3A) ~~15 (Tract 3A)~~	20
Fence/Wall/Berm/Shrub Max. Height			
Front Yard and Adjacent to Street	2	2	2
Rear and Side Yards not on Street	8	8	6

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

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

[1] If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear Parkway on the north side of King Avenue.

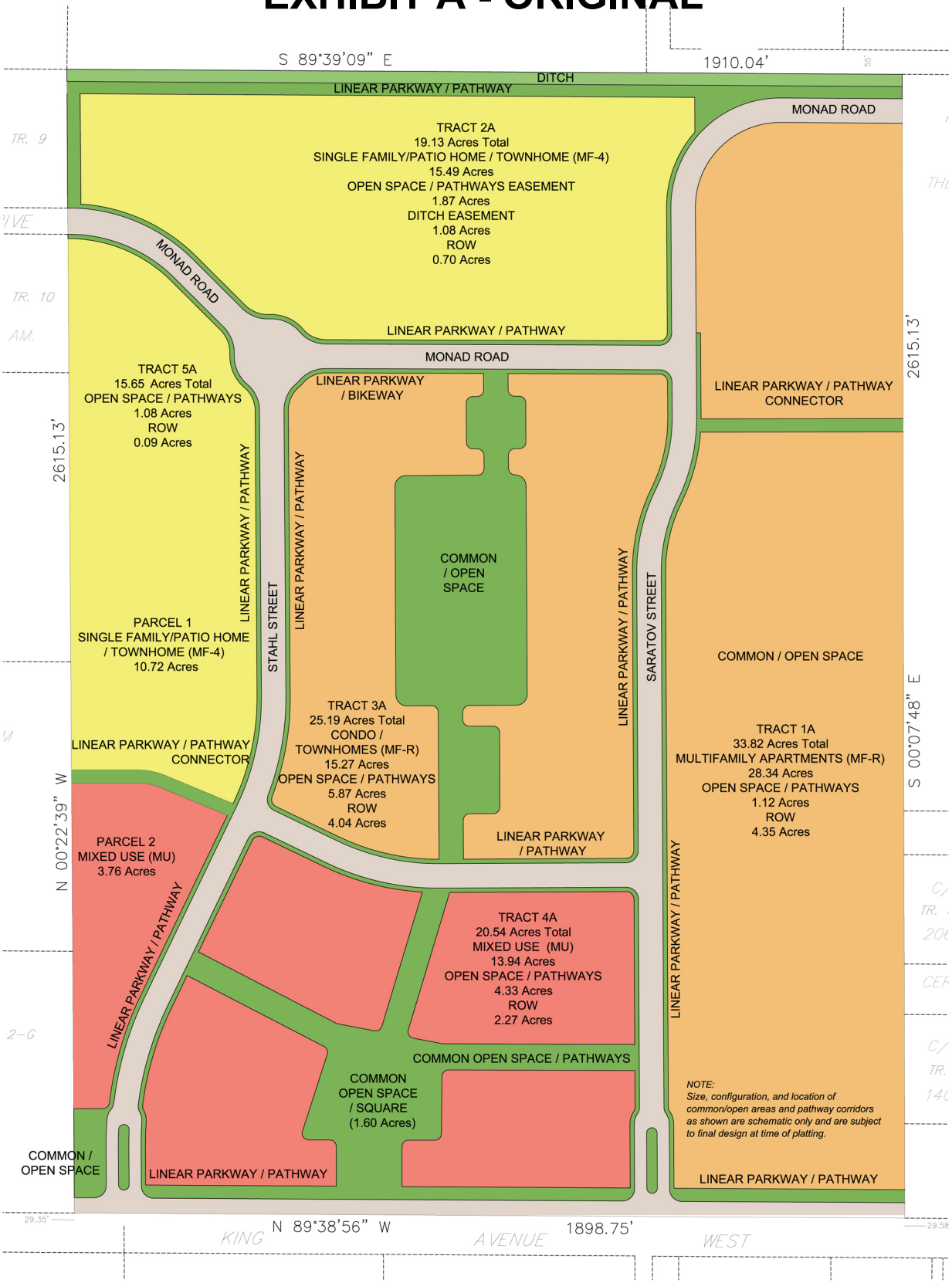
[2] Staggered building facades and angled placement of structures relative to the front lot line are encouraged in all zones. The minimum setback requirement in the MF-4 zone is also a maximum setback or "build-to" requirement. In that zone at least 20% of the façade must be at the applicable minimum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

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

[4] The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

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

EXHIBIT A - ORIGINAL



LENHARDT SQUARE

CONCEPTUAL MASTER PLAN

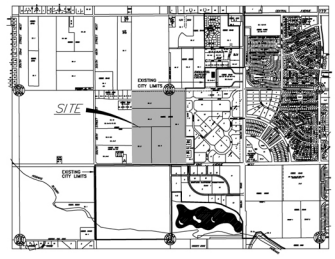
Billings, Yellowstone County, Montana

January 22, 2008

Studio VBM LLC
Land Planning / Landscape Architecture / Design
1601 S. Rainbow Blvd. Suite 250
Las Vegas, Nevada 89146
T: 702.396.1044
F: 702.255.0466
www.studiovbm.com

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

GRAPHIC SCALE
0 100' 200'
(IN FEET)
1" = 100' - 0"



AMENDED
PLANNED DEVELOPMENT AGREEMENT FOR
LENHARDT SQUARE

This AMENDED PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE ("Agreement" or "PDA") is made and entered into this _____ day of _____, 2021 by and between, the LENHARDT SQUARE MASTER ASSOCIATION, INC., a Montana corporation ("LSMA") and the CITY OF BILLINGS, a Montana municipality ("the City") of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

1. The Lenhardt Square Master Association is an association of the owners of the property in Lenhardt Square established under the Covenants, Conditions, Restrictions and Easements for Lenhardt Square.

2. The Lenhardt Square Planned Development agreement was entered into between the Founders and the City of Billings 13 years ago and in the interceding years, there have been significant changes in the Billings housing market, infrastructure constraints and funding, surrounding development and the general economics of construction.

3. Since the original PDA was adopted, a portion of the Lenhardt Square property has been sold and developed and in that process variances from the PDA have been requested and granted.

4. The Founders and Developers of Lenhardt Square desire to update the PDA to allow for continued development within Lenhardt Square in a manner that better meets the needs of the housing market, the Developers, and the City.

NOW THEREFORE, the undersigned hereby establish and declare that the following amendments to the Lenhardt Square Planned Development Agreement shall apply to all of the real estate in Lenhardt Square and shall bind all of the present and future property owners of such real estate and shall run with the land.

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE ("Agreement" or "PDA") is made and entered into this 28th day of April, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively "Founders"), and the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

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

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

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

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

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

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);
- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

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

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

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

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

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

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

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

27-1301 through 27-1310.

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

AGREEMENT

ARTICLE I – PURPOSES

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

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

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

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>ARTICLE II – DEFINITIONS</u>

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

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

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

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

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

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

D. Developer. "Developer" means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

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

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

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

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

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

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

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

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

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

N. **Mixed-Use.** "Mixed-use" refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area

featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

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

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

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

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

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

Q. The Reviewer. "The Reviewer" means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and subdivision plats filed for property within LENHARDT SQUARE.

R. Shiloh Drain. "Shiloh Drain" means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A (First Amended).

S. Shiloh Drain Easement Area. The "Shiloh Drain Easement Area" means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A (First Amended) hereto.

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

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

V. Tract. "Tract(s)" means one or more of Tracts 1A through 5A of C.O.S. 2063, Amended. Platting, subdivision and property line adjustments have been implemented in Lenhardt Square resulting in new descriptions and adjusted boundaries. The Amended Master Plan reflects these changes. For reference purposes, the Amended Agreement shall refer to the original Tract designations which now appear on the Master Plan as follows:

Tract 1A – Lots 1-5 Block 1, First Filing
Tract 2A – Tract 2A
Tract 3A – Lot 1 & 2 Block 1, Third Filing
Tract 4A – Lots 1 & 2A, Block 1, 2nd Filing
Tract 5A – Tract 5A-1

If the exterior boundaries of Tract 5A is changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract shall be deemed to instead apply to that successor Tract that most closely approximates the boundaries, location, size and character of the Tract originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

W. Unified Zoning Regulations. "Unified Zoning Regulations" means the Unified Zoning Regulations of the City of Billings, Yellowstone County Jurisdictional Area.

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

Y. Unit Owner. "Unit Owner" means the owner of a Unit within one of the Tracts in LENHARDT SQUARE.

ARTICLE III – BINDING EFFECT

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

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

ARTICLE IV – USE RESTRICTIONS

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

1. Tracts 1A, 2A 3A and 5A – Residential Multi-Family-Restricted (MF-R). Tracts 1A, 2A, 3A and 5A are located, respectively, along the east border, the north border, the center and the west border of LENHARDT SQUARE as shown on Exhibit A (First Amendedhereto. The use of the Lots in Tracts 1A, 2A, 3A and 5A are contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A, 2A, 3A and 5A are set forth in Exhibit B (Second Amended).

2. Tract 4A– Mixed-Use (MU). Tract 4A is located on the southern border of LENHARDT SQUARE near King Avenue West as shown on Exhibit A (Second Amended. Tract 4A is designed for residential and complementary commercial uses as further described in the definition of "mixed-use" found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi-family residential uses are also permitted.

B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements. Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or

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

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

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

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

D. Permitted Uses – Tracts 1A, 2A, 3A and 5A (MF-R). Units in Tracts 1A, 2A, 3A and 5A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a

residential building or multi-family residential complex;

9. Home occupations;

10. Family day care home serving up to 6 children or adults;

11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;

12. Single family residential uses;

13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

1. Animal grooming facilities;

2. Art galleries;

3. Assisted living facilities serving any number of persons;

4. Bakeries;

5. Banks, credit unions, and savings and loan offices;

6. Barber and beauty shops;

7. Bicycle sales, rental, and repair shops;

8. Boarding, lodging, and bed and breakfast houses;

9. Bookstores;

10. Building supply stores and hardware stores (but not lumber yards);

11. Bus stops;

12. Camera, hobby, toy, and gift stores;

13. Ceramics and pottery shops;

14. Charitable, religious, educational or nonprofit institutions;

15. Clothing and apparel stores;

16. Common Areas;

17. Community centers;

18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;

19. Convalescent, nursing, and retirement homes;

20. Convenience and specialty food stores (but no gasoline sales);

21. Cultural, educational, and instructional facilities;

22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);

23. Denturists;

24. Department stores;

25. Drug stores - prescription and pharmacy;

26. Dry cleaning or laundry drop-off and pick-up store;

27. Eating and drinking establishments that do not sell alcohol for on-site consumption;

28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;

29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;

30. Finance and loan companies;

31. Florists;

32. Food and grocery stores;

33. Furniture - retail only;

34. Flower shops and nurseries (provided that there is no outside storage);

35. Garages, subject to size limitations described in Article V.B.4.(d);

36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;

37. Hardware and appliance – retail only;

38. Health clubs, spas, and gymnasiums;

39. Health and fitness related businesses;

40. Home occupations (mixed-use area)

41. Hotels and motels;

42. Jewelry stores;

43. Libraries, museums, and art galleries;

44. Liquor stores

45. Medical and dental offices;

46. Membership organization offices;

47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;

48. Offices, including real estate, financial, counseling, professional, medical, and dental;

49. Office supply and equipment, copying and mail services stores – retail only;

50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;

51. Parking facilities, including above or below ground parking garages;

52. Parks, playgrounds, pools, sport courts;

53. Pet stores;

54. Photo studios, shops, and processing - retail only;

55. Physical therapy facilities;

56. Postal service facilities;

57. Public administration facilities, including government facilities, except

correctional institutions;

58. Publicly-owned or government operated buildings and uses;

59. Retail stores;

60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;

61. Senior and assisted living residential facility;

62. Sports medicine and rehabilitation facilities;

63. Theaters;

64. Veterinary clinic, outpatient only;

65. Wine store;

66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

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

2. Animal boarding facilities (allowed in Tract 4A only);

3. Assisted living facilities serving more than 8 persons;*

4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);

6. Convalescent, nursing and retirement homes;*

7. Day care centers serving more than 12 children or adults;*

8. Churches, synagogues, and places of worship;

9. Emergency services, including fire stations and ambulance services;

10. Funeral homes and mortuaries;

11. Group day care home serving 7 to 12 children or adults;*

12. Health and fitness related businesses not associated with a residential facility;*

13. Hospitals and hospital related services (allowed in Tract 4A only);

14. Medical, dental and health-related clinics (allowed in Tract 4A only);

15. Medical, dental, and other professional offices;*

16. Medical laboratories (allowed in Tract 4A only);

17. Modular homes;

18. Offices and small-scale retail;*

19. Pharmacies (allowed in Tract 4A only);

20. Physical therapy facilities;*

21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);

22. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A only);

23. Retirement facilities larger than eight (8) persons per Unit;

24. Sports and rehabilitative commercial facilities;*

25. Veterinary clinic with boarding facilities (allowed in Tract 4A only).

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

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;

2. The proposed use is compatible with surrounding uses;

3. The proposed use is not detrimental to other property in LENHARDT SQUARE;

4. The proposed use complies with other provisions of law and ordinances of the City of Billings;

5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);

6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment or strategies;

7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;

8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;

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

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

1. Amusement park services or facilities;

2. Animal shelters, public or private;

3. Apparel fabrication;

4. Arcades, including but not limited to video arcades;

5. Auction houses or auction yards;

6. Auto body and collision repair;

7. Automobile repair shops;

8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;

9. Auto parts supply;

10. Competitive sporting facilities as described in Article IV.J.9.

11. Beverage bottling plant or wholesaling operations;

12. Billboard signs;

13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;

14. Brewery (except as incidental to a restaurant, such as a brew pub);

15. Broadcasting (radio and television) stations, studios and antenna support structures;

16. Building fabrication, except construction of buildings for use on-site;

17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;

18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;

19. Campground;

20. Car wash;

21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;

22. Chain link fencing;

23. Crematoriums;

24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;

25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;

26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;

27. Electronic component manufacturing;

28. Equipment rental shop;

29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;

30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;

31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;

32. Fire sale or bankruptcy sale;

33. Fireworks. Fireworks manufacture and/or sales;

34. Flea markets;

35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;

36. Foundries and factory operations;

37. Furniture fabrication;

38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;

53. Machine and welding shops;

54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;

55. Manufacturing businesses;

56. Metal fabrication and manufacturing;

57. Mill work and cabinet shops;

58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);

59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;

60. Motocross tracks;

61. Motorcycle racing;

62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.

63. Paper warehouses;

64. Pawn shops;

65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;

66. Product manufacturing unless the product is intended primarily for local consumption or use;

67. Propane sales;

68. Race tracks;

69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.

70. Recycling centers;

71. Rental car dealerships;

72. Vehicular, small engine and appliance repair shops;

73. Roller skating rinks;

74. Roping and rodeo arenas;

75. Sanitary dumps;

76. Scrap or waste material processing;

77. Septic systems;

78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;

79. Repair shops. Shop facilities containing open or visible storage;

80. Stables;

81. Storage facilities other than garages associated with residential structures;

82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);

83. Surplus store;

84. Taxidermists;

85. Tire sales, except as incidental to the operation of a general retail store;

86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);

87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over-night parking of recreational vehicles;

88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

89. Truck Terminals. Truck terminals, cartage operations, and similar uses;

90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;

91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;

92. Trucking operation offices and warehouses;

93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;

94. Warehouses;

95. Wholesale lumber and wholesale building materials;

96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a

retail pet store;

97. Wholesale distribution and sales.

J. Other Use Regulations

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

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

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

4. The Shiloh Drain. Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any degradation of water quality, any reduction in the flow of water, and any damage to the bed or banks of the

Shiloh Drain. Certain portions of the Shiloh Drain Easement Area may require modifications during the course of development of LENHARDT SQUARE to accommodate storm drainage from within the property. No such modifications shall be made without first obtaining written permission from the City of Billings. The cost of these modifications shall be the responsibility of Developer or Unit Owner(s) requiring access for drainage to the Shiloh Drain. In addition to the foregoing, the owner of any Unit or Tract in LENHARDT SQUARE shall not conduct or permit the conduct of the following activities:

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

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

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

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

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

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

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

7. Recreational Vehicles. Recreational vehicles, including but not limited to

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

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

(a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;

(b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;

(c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and

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

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

9. **Scheduled Sporting Events and Related Facilities.** Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping, benches, picnic and game tables, walkways, children's play facilities, and other amenities that serve the immediate neighborhood and appeal to a diversity of users. Amenities that promote traffic and parking congestion should be avoided as much as possible. To that end no Common Area shall be used for, and no

Common Area shall be constructed to include infrastructure that is specifically intended to be used for the organized play of football, baseball, soccer, track, or other similar sports by competing teams on a scheduled or regular basis. No permanent goal posts, field-striping, baseball diamonds, baseball pitching mounds, dugouts, or score boards shall be constructed in any Common Area. Nothing in this Agreement shall prohibit the construction of baseball backstops and outdoor basketball or tennis courts in the Common Areas.

ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS

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

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

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

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

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

4. Parking.

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

(ii) MF-R. Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. Covered or enclosed parking facilities shall be provided at a rate of .70 parking spces per Dwelling Unit. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

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

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

(c) Off-Site Parking. Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so

served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, which distance shall be measured along a straight line between the two (2) nearest points of the Lots containing the main use and the accessory parking use.

(d) Garages. The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 10500 square feet and may accommodate no more than fifty-two (52) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

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

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

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

7. Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400. A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

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

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

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

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

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

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

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

12. Signage. The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this

Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose Tracts 1A, 2A, 3A and 5A shall be deemed to be a residential professional zone and Tract 4A shall be deemed to be a commercial zone. For purposes of regulating signage Tract 4A shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

13. Lighting.

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

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

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

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

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

ARTICLE VI – OPEN SPACE

A. Master Plan Common Areas Generally. Founders hereby agree that certain portions of LENHARDT SQUARE will be permanently set aside for park and recreational uses sufficient to meet the needs of the residents of LENHARDT SQUARE. Founders further agree that they will cause an easement for pedestrian and bike travel by the general public to be dedicated in or near the Shiloh Drain Easement Area for inclusion in the Heritage Trail System. The lands set aside in accordance with this Article VI.A. will include the Master Common Areas shown on the Master Plan (Exhibit A (First Amended)) and may include, but are not limited to, open spaces, Green Roofs and other roof-top amenities, park areas, Linear Parkways and pocket parks, gardens, athletic fields, open space corridors, bike trails, walking paths, exercise or play areas or other recreational facilities, sitting areas, picnic areas, roundabout centers, landscaped entryways, indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A (First Amended) is approximately 15.35 acres.

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

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

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

negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES

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

ARTICLE VIII - ENFORCEMENT

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

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

C. **Right to Enforce by Unit Owners and Master Association.** The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

ARTICLE IX –AMENDMENTS AND VARIANCES

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

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

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

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

ARTICLE X - GENERAL PROVISIONS

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

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

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

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

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

If to Founders:

Lenhardt Property, LP
4035 Cedarbrook Court
Bellingham, WA 98229-5007

[and]

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

[and]

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

If to the LSMA:

Lenhardt Square Master Association
c/o Lorraine M. Newman
4035 Cedarbrook Court
Bellingham, WA 98229-5007

If to the City:

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

With Copies to:

City-County Planning Department

Billings, MT 59101

[and]

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

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

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

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

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

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

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

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

L. Captions and Headings. The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

M. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter

hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

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

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

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

NOTICE

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

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

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

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

FOUNDERS:

LENHARDT PROPERTY, LP

By: _____
LORRAINE NEWMAN
Its: _____

LENHARDT FARM, LLC

By: _____
JANICE L. REHBERG
Its: _____

LENHARDT ENTERPRISES, LLC

By: _____
ALLAN R. LENHARDT
Its: _____

CITY:

CITY OF BILLINGS

By: _____
William A. Cole
Its: Mayor

By: _____
Cari Martin
Its: City Clerk

STATE OF _____)
)ss.
County of _____)

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

_____
[signature]

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

STATE OF _____)
)ss.
County of _____)

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

_____
[signature]

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

STATE OF MONTANA)
)ss.
County of Yellowstone)

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

_____
[signature]

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

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the ____ day of _____, 2008, by William A. Cole known by me to be the Mayor of the City of Billings.

_____
[signature]

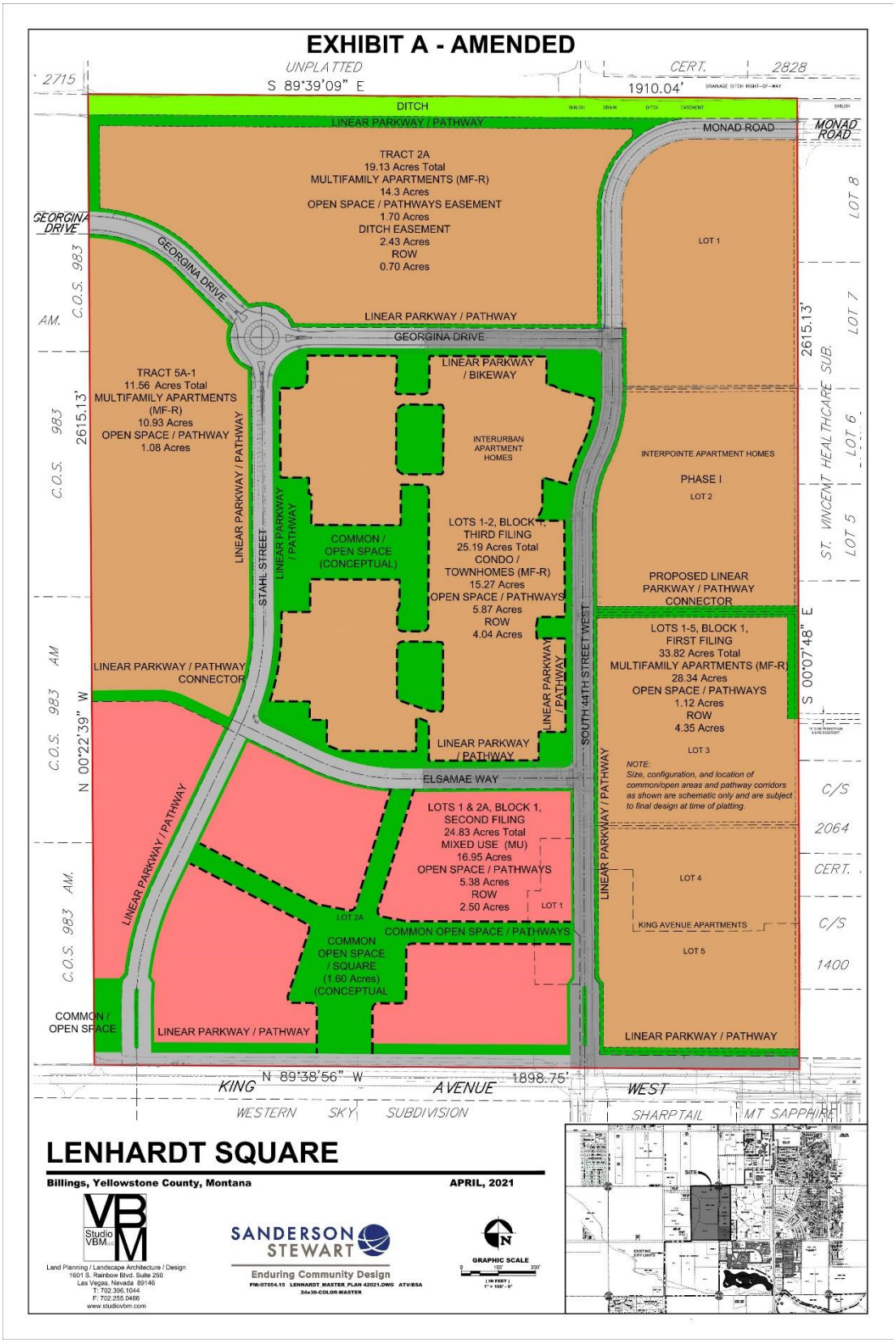
_____
[typed/printed name]
Notary Public for the State of Montana
Residing at:_____, Montana
My Commission Expires:_____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

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

_____
[signature]

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



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

EXHIBIT B (Second Amend)
GENERAL REQUIREMENTS*

Minimum Lot Size Per Structure	**MF-R****	**MU****
1 dwelling unit	6,000	850 sq.ft
2 dwelling units	7,000	For each
3 dwelling units	8,500	Dwelling
4 dwelling units	10,000	Unit
5 dwelling units	11,000	
6 dwelling units	12,000	
7 dwelling units	13,000	
8 dwelling units	14,500	
9 dwelling units	16,000	
10 or more dwelling units	1,500 sq.ft. each additional dwelling unit	
Setback Requirements (in feet)~~[1]~~		
Front:~~[2]~~		
From Linear Parkway	5[1]	5
From streets (right-of-way)	20[2]	0
Sides:[4]		
1 Story	5	5
2 Story	8	8
3+ Story	9 + 1	0
Side Adjacent to Street	10	0
Rear[4]	15	0
Arterials	25	25
Maximum Height (in stories)	4	7[4]
Maximum Lot Coverage	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	21	35~~[7]~~
Fence/Wall/Berm/Shrub Max. Height		
Front Yard and Adjacent to Street	2	2
Rear and Side Yards not on Street	8	6

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

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

[1] If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear parkway on the northside of King Avenue.

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

[3] The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations and for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.
[4]Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

EXHIBIT C

PART 1
PARKING REQUIREMENTS – MIXED-USE ZONE

TYPE OF USE	REQUIRED PARKING (spaces / dwelling unit)
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator upon request of Developer and consent of Reviewer

PART 2
JOINT PARKING FACTORS REDUCTION MATRIX

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

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

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

EXHIBIT A - AMENDED

UNPLATTED
S 89°39'09" E
1910.04'
CERT. 2828
2715
DRAINAGE DITCH RIGHT-OF-WAY
DITCH
SHILOH DRAIN DITCH EASEMENT
SHILOH
LINEAR PARKWAY / PATHWAY
MONAD ROAD
MONAD ROAD

TRACT 2A
19.13 Acres Total
MULTIFAMILY APARTMENTS (MF-R)
14.3 Acres
OPEN SPACE / PATHWAYS EASEMENT
1.70 Acres
DITCH EASEMENT
2.43 Acres
ROW
0.70 Acres

GEORGINA DRIVE
GEORGINA DRIVE
LOT 1
LOT 8
LOT 7
LOT 6
LOT 5
ST. VINCENT HEALTHCARE SUB.
C.O.S. 983
AM.
2615.13'
LINEAR PARKWAY / PATHWAY
GEORGINA DRIVE
LINEAR PARKWAY / BIKEWAY

TRACT 5A-1
11.56 Acres Total
MULTIFAMILY APARTMENTS (MF-R)
10.93 Acres
OPEN SPACE / PATHWAY
1.08 Acres

INTERURBAN APARTMENT HOMES
INTERPOINTE APARTMENT HOMES
PHASE I
LOT 2

LINEAR PARKWAY / PATHWAY
STAHL STREET
LINEAR PARKWAY / PATHWAY
COMMON / OPEN SPACE (CONCEPTUAL)

LOTS 1-2, BLOCK 1,
THIRD FILING
25.19 Acres Total
CONDO / TOWNHOMES (MF-R)
15.27 Acres
OPEN SPACE / PATHWAYS
5.87 Acres
ROW
4.04 Acres

PROPOSED LINEAR PARKWAY / PATHWAY CONNECTOR

LOTS 1-5, BLOCK 1,
FIRST FILING
33.82 Acres Total
MULTIFAMILY APARTMENTS (MF-R)
28.34 Acres
OPEN SPACE / PATHWAYS
1.12 Acres
ROW
4.35 Acres

LOT 3

NOTE:
Size, configuration, and location of common/open areas and pathway corridors as shown are schematic only and are subject to final design at time of platting.

LINEAR PARKWAY / PATHWAY CONNECTOR
LINEAR PARKWAY / PATHWAY
LINEAR PARKWAY / PATHWAY
SOUTH 44TH STREET WEST
LINEAR PARKWAY / PATHWAY
LINEAR PARKWAY / PATHWAY
ELSAMAE WAY
15' WIDE PEDESTRIAN & BIKE EASEMENT
C/S 2064
CERT.
C/S 1400

LOTS 1 & 2A, BLOCK 1,
SECOND FILING
24.83 Acres Total
MIXED USE (MU)
16.95 Acres
OPEN SPACE / PATHWAYS
5.38 Acres
ROW
2.50 Acres

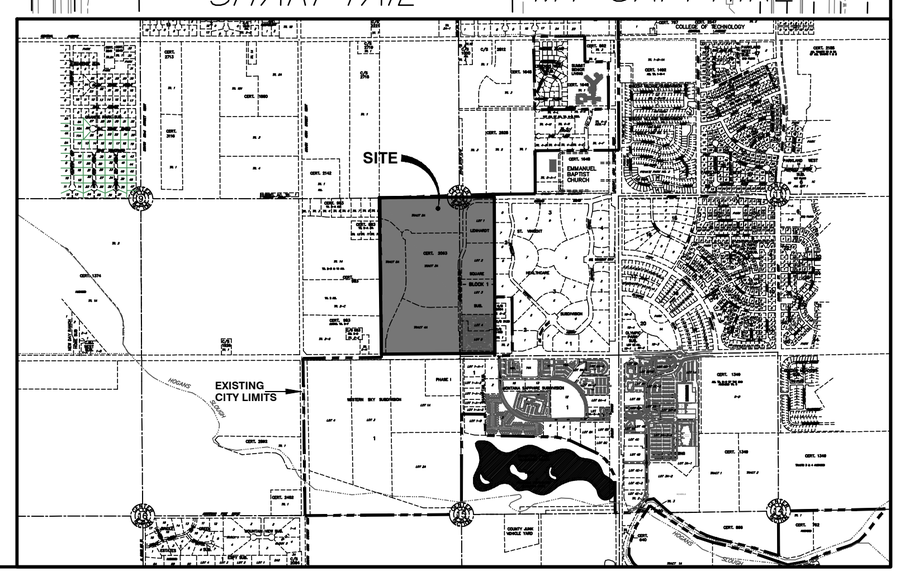
LOT 4
LOT 1
LOT 2A
KING AVENUE APARTMENTS
LOT 5
COMMON OPEN SPACE / PATHWAYS
COMMON OPEN SPACE / SQUARE (1.60 Acres) (CONCEPTUAL
COMMON / OPEN SPACE
LINEAR PARKWAY / PATHWAY
LINEAR PARKWAY / PATHWAY

N 00°22'39" W
C.O.S. 983 AM
C.O.S. 983 AM.
N 89°38'56" W
1898.75'
KING AVENUE WEST
WESTERN SKY SUBDIVISION
SHARPTAIL MT SAPPHIRE

LENHARDT SQUARE

Billings, Yellowstone County, Montana

APRIL, 2021



Studio VBM LLC
Land Planning / Landscape Architecture / Design
1601 S. Rainbow Blvd. Suite 250
Las Vegas, Nevada 89146
T: 702.396.1044
F: 702.255.0466
www.studiovbm.com

SANDERSON STEWART
Enduring Community Design

PM:\07054.15 LENHARDT_MASTER_PLAN 42021.DWG ATV/BSA
24x36-COLOR-MASTER

N

GRAPHIC SCALE
0 100' 200'
(IN FEET)
1" = 100' - 0"

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**: Planned Development Agreement - PD

2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

   Planned Development Agreement – PD Amended

3. **Subject Property Map**: please attach to this form

4. **Legal Description of Property**:

   All of Lenhardt Square (Per attached property and ownership document)

5. **Neighborhood Task Force Area**: Yes /// No. If Yes, Name of Task Force and mailing address of Chairperson:

   Billings West End Task Force, Howard Holz at billingswetf@gmail.com

6. **Roster of persons who attended the pre-application neighborhood meeting**: please see attached minutes with attendees list

7. **A copy of the meeting notice.** Please attach to this form

8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form

9. **The undersigned affirm the following:**
   1) The pre-application neighborhood meeting was held on the 29th , day of March, 2021.
   2) The zone change application is based on materials presented at the meeting.

Owner (s): See attached property and ownership document

Telephone: 225-223-3121
Address: 3860 Ave B, Ste C West Email: allan@lenhardtenterprises.com
Billings, MT 59102

Agent (s): Sanderson Stewart c/o Rick Leuthold
Telephone: 406-698-6910
Address: 1300 N. Transtech Way Email: rleuthold @ Sandersonstewart.com
Billings, MT 59102

MEETING MINUTES

PROJECT: Proposed Zone Change / Planned Development Update – Lenhardt Square			
Project No: 07054.37			
Meeting Location: Microsoft Teams		Meeting Date: 3/29/21 5:30 P.M.	
Meeting Subject: Neighborhood Mtg		Prepared by: Bryan Alexander	
Attending:	See listing at end of minutes		
Date of Issue: 3/29/21			

Minutes:

- Rick providing information on process for Neighborhood meeting and future public meeting
    - Can provide comment in writing, via phone, or email to City in addition to attending the public hearing
- Rick presented original Master Plan exhibit from 2008
- Rick explained the PD agreement (Planned Development) is a zoning document that is more restrictive than typical zoning
    - Property has three existing zones: MF-R, MF-4, and MU
- Proposed PD update eliminates MF-4 zone to replace it with MF-R and reconfigures open space to match site plans
- Updating map and PDA as changes in the market has increased demand for multi-family housing
    - Increasing density, near retail centers
    - Seeing empty nesters, wanting flexibility
    - Young professionals, wanting amenities
    - Mobile individuals, not tied to mortgage or home

- Scheduled to go into City April 5th and formal documents will be available to public after they are finalized
- Only Lots on north and west (2A and 5A1) are changing from MF-4 to MF-R
- Current MF-R density is 20 units/acre, request is for 21 units/acre
    - Important for planning perspective for walkability in community
- Height adjustment is to allow for 3 story building with a peaked roof: proposing max height change from 40 feet to 50 feet
- Proposing covered parking requirement (no change to overall parking requirement). Proposing reducing to approximately 0.75 covered parking spaces per unit instead of 1.0 covered spaces per unit.
    - Adjusting ground-level footprint of parking structures to be larger and allow for more vehicles in actual garages
- 850 sf/dwelling unit density added to MU zoning district (35 units/acre)
- Jan Rehberg – new zone change ordinance speaks in terms of stories, so may change to 4 stories instead of height limit; allows flexibility to developers by allowing 4 stories. On covered parking, proposing change to covered parking to make it in a better configuration. The exact figure is not yet determined, and they are working with the City on this to assure it aligns with the new Recode document
- 294-6500 Al McCormick – Would like to see final draft going into planning; access to Shiloh Road is a concern
    - Rick – there are some new projects in area where Monad Road will be extended to Shiloh Road. Discussed Georgina in an easement to the west, so we acknowledge that through access will need to be addressed at a later date, probably by the City and existing owners. Georgina on Lenhardt Square was placed per direction of City during platting
- 690-7271 Dan Dyk – No comments at this time
- Bill Hanser – No comments at this time
- Gordon Olson – n/a
- Joy Culver – n/a
- Lorna Dyk – No mechanism for single-family or duplex homes? Question related to transition between existing homes on the west to the multi-family.
    - Rick – there is a listing in original PD that has various land uses and unit counts. Update will still allow (MF-R zone) to have

single family, duplex, etc. but would be allowed an increased density. Some proposed developments have a mix of smaller multi-family homes with apartment buildings.
    - Any commercial projects currently contemplated along King? Rick, not that he is aware of.
- Aileen Kindsfather – No comments at this time.
- Pat Schindele – Happy to see Monad completed out to Shiloh Road, which will direct a lot of traffic out of area. It will make a big difference to what they are seeing at King. Happy to hear about more housing in Billings as market needs it.
    - Rick clarified that zone change will not impact Monad construction, but it will be built alongside one of these next coming developments
- Steve Zeier – No comments at this time.
- Rick re-iterated the intent to submit on Monday and will have the finalized documentation available for viewing.

<u>Attendees</u>

Rick Leuthold
Bryan Alexander
Jan Rehberg
Allan Lenhardt
Lorraine Newman
Al McCormick
Dan Dyk
Bill Hanser
Cam
Gordon Olson
Joy Culver
Lorna Dyk
Mike and Aileen Kindsfater
Pat Schindele
Steve Zeier
Sarah Creeden
Ted Cross

LENHARDT SQUARE

PLANNED DEVELOPMENT AGREEMENT ZONE CHANGE AMENDMENT MODIFYING CERTAIN LAND USES, AND UPDATING AND CLARIFYING CERTAIN DEVELOPMENT STANDARDS

Statement of Proposal

Lenhardt Square Master Association, the Representative of the owners of Lenhardt Square, is seeking a zone change amendment for all of Lenhardt Square, generally located to the north of S. 44th Street West and King Ave West. The property is approximately 114 acres in size.

Responses to Questions in Zoning Application

In what ways is your proposal consistent with the statutory criteria, guidelines and policies of the adopted Growth Policy?

The Growth Policy states:

In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists of can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe and provide a choice of housing and transportation options.

The 10 Zone Change Criteria

1. **Whether the new zoning is designed in accordance with the Growth Policy?**
   Yes. Lenhardt Square was originally conceived with the sentiments of the Growth Policy statement above and the changes, updates and clarifications proposed within this amendment do not alter that compliance.
2. **Whether the new zoning is designed to secure from fire and other dangers?**
   Lenhardt Square is serviced by City fire and police services and is designed in accordance with City of Billings rules and regulations thus assuring protection form common dangers.
3. **Whether the new zoning will promote public health, public safety and general welfare?**
   Lenhardt Square was designed to be a walkable community in close proximity to retail services and those offered by the developing SCL medical property to the east and is designed in accordance with City of Billings rules and regulations assuring compliance to this criterion.
4. **Whether the new zoning will facilitate the adequate provision of transportation, water sewerage, schools, parks and other public requirements?**
   The changes proposed in this amendment insure and area that is desirable for developers and the current demographic trends they face. By continuing with this process, new roads and connections such as Monad Road to Shiloh Road will be completed easing transportation connections. In addition, by allowing slightly higher densities, the area comes

closer to achieving the City's required densities for bus service. The development is already serviced by City water and sewer. Lenhardt Square was designed with ample open green space as indicated on Exhibit A and is also near the proposed City Lakes project.

5. **Whether the new zoning will provide adequate light and air?**
   Lenhardt square was originally conceived with this in mind and nothing herein will modify or impact that consideration.
6. **Whether the new zoning will effect motorized and nonmotorized transportation?**
   The amendment items will continue to support growth and additional connections to the local street network while concentrating housing near commercial and recreational opportunities that can be reached on nonmotorized vehicles.
7. **Whether the new zoning will promote compatible urban growth?**
   The amendment is intended to continue promotion of urban level densities and growth compatible with that which is developing in the area.
8. **Whether the new zoning considers the character of the district and the peculiar suitability of the property for the particular use?**
   Because the property is in close proximity to commercial, recreational and health-oriented developments as well as being fairly flat which allows for efficient use of the building sites, the land use and its conditions fit the site very well.
9. **Whether the new zoning will conserve the value of buildings?**
   Lenhardt Square was conceived of with an eye on promoting mixed uses that would enhance both its value and the value of developments in its proximity.
10. **Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings?**
    As the City has grown, this area has proven to be in the path of appreciation.it borders one corner of the fastest growing commercial triangles in the State of Montana. A triangle bounded by the West Billings Interchange, the Zoo Drive Interchange and the corner of Shiloh Road and King Avenue West. Lenhardt Square and its multifamily, mixed use vision is ideally suited for this location in the continued growth of the City of Billings.

Essential Investments (Relating Public and Private Expenditures to Public Values)

- ***Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors***

  New development on the noted lots will be subject to the City of Billings requirements for site development, including landscaping. This will ensure the visual appeal of the project development.

- ***Infill development and development near existing City infrastructure may be the most cost effective***

  This property is annexed and has existing City infrastructure adjacent to and within the site. This zone change amendment will allow for efficient use of City infrastructure improvements and assure that it is secure from fire and other dangers.

- ***Neighborhoods that are safe and attractive and provide essential services are much desired***

There will be no adverse impact to the public health, safety and welfare from the proposed land uses or setbacks to the City or other adjacent developments as most of the area is developing as retail, residential and mixed use.

Place Making (Enhance, Maintain, Preserve, and Improve Existing Public Places)

- ***Enhancements and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community***

  The proposed uses help to accommodate an important service sector in this west end area. The development area has adequate transportation, water, sewerage, schools, parks and public lands planned in and around it and will promote a better sense of community to the ever-growing neighborhood by allowing staff to find work where they live.

- ***The history and heritage of Billings are cornerstones of our community***

  Billings has always adapted to the changes in economic drivers and been welcoming of businesses and services that allow the community to continue to grow and prosper. This amendment will follow in that light.

Community Fabric (Attractive, Aesthetically Pleasing, Uniquely Billings)

- ***Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors***

  The nature of the mixed use land uses proposed herein call for a much more harmonious placement among the retail, commercial and office types. These uses will be subject to all City zoning and building regulations within the development and as such will continue to promote adequate light, air and aesthetically pleasing facilities in and along our commercial rights of way.

Strong Neighborhoods (Livable, Safe, Social and Resilient 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***

  By allowing the amended uses to the Planned Development Agreement, the development can capitalize on the unique character of the area allowing for staff who live nearby to drive and/or walk to their place of employment fostering better uses of urban growth areas such as this.

- ***Neighborhoods that are safe and attractive and provide essential services are much desired***

By allowing for the proposed uses in the existing Planned Development Agreement, certain residential types of development can better be provided for in Billings. This in turn will provide a safer and more attractive focus for area community development and cohesion.

- ***Implementation of the Infill Policy is important to encourage development of underutilized properties***

  The property considered under this amendment is annexed and services exist to and within it. By allowing these proposed uses, the community is promoting use of existing parcels and services as opposed to forcing such uses to potentially relocate to county parcels further to the west.

Prosperity (Promoting Equal Opportunity and Economic Advancement)

- ***Successful businesses that provide local jobs benefit the community***

  There are developers that are actively building in this area and looking to continue meeting the needs of their clients in this area. This will help to promote local jobs that bring benefit to the overall community while protecting the integrity and value of the localized development area.

- ***Retaining and supporting existing businesses helps sustain a healthy economy***

  By supporting this zone change amendment, existing businesses that help sustain and build a healthy economy will be retained and supported and choice of housing types that are affordable and available to all will be provided.

Lenhardt Square and these amendments will help Billings manage its growth by encouraging development within and adjacent to the existing City limits, giving preference to areas where City infrastructure exists helping to maintain fiscal responsibility for the City. This development and the amendment will allow the City to increase tax revenue and the City will prosper by further developing strong neighborhoods with their own unique character that are clean, safe and provide a choice of housing and transportation options.

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
	City ZC 829	4/28/2008	A-1 to Planned Development	Yes	Initial denial of Annexation Reversed & Conditioned
	City ZC 909	6/10/2013	Amend PD	Yes	Amended PD to allow 20/du/acre on Tract 3A C/S 2063
	City SR 917	7/28/2014	Allow Assisted Living	Yes	Not developed
	City Variance 1324	1/6/2021	Allow up to 17.2/du/acre	No	Tract 2A C/S 2063
SURROUNDING PROPERTY	**Zone Change #**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
Western Sky Sub	City ZC 977	July 13, 2020	Adjust Zone District Boundaries	Y	
Western Sky Sub	City ZC 975	Jan 27, 2020	Underlying zoning amendment	Y	
Western Sky Sub	City ZC 802	May 17, 2007	A-1 to CC, RMF-R, R-50, R-70, R-96 & Public	Y	Included entire NW section of 160 acres
Western Sky Sub	City ZC 957	Sept 11, 2017	CC, RMF-R, R-50, R-70, R-96 & Public to Planned Development	Y	Underlying zones CC, NC RMF & RMH
Hoop Dreams – Apartments	City ZC 900	Aug 13, 2012	R-50 to RMF-R	Y	Apartment Developments at 44th St W and King Ave W
Hoop Dreams – Apartments	City ZC 912	July 8, 2013	Public & R-50 to RMF-R	Y	Additional apartments
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 722	May 24, 2004	A-1 to Planned Development	Y	PD for healthcare & ancillary commercial uses
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 870	Jan 24, 2011	PD Amendment	Y	Adjustment to allow flexibility
Montana Sapphire Sub	City ZC 673	July 9, 2001	A-1 to Entryway Light Industrial (ELI)	Y	New industrial park
Montana Sapphire Sub	City ZC 903	Sept 24, 2012	ELI to HC	Y	Affinity of Billings Fuel Fitness Divide Bar & Grill
Montana Sapphire Sub Long Beach Apts	City ZC 878	Aug 22, 2011	ELI to HC	Y	New apartments
3815 Hesper Road	City ZC 907	March 25, 2013	A-1 to CI	Y	New FedEx Ground Terminal

From: Sharon Wetsch <sharonwetsch@yahoo.com>
Sent: Tuesday, April 20, 2021 7:49 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] project number PZ-21-00084

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

I am very opposed to your zone change for this area. We purchased our forever home right in the middle of this proposed project last year, with no idea that anyone was planning on putting 3 or 4 story buildings surrounding us. This is not acceptable .... It is a perfect area for single family homes, which at this time is very much in demand. Look at the housing demand in Billings... there is no inventory of single family homes. There are a lot of apartments for rent that are not currently being rented.
We bought our home because of the closeness of the city and the businesses out there. We have no desire to be annexed into the city and be surrounded by huge apartments.
This city needs low income apartments and not in this area. Please reconsider this whole plan. I can see single family homes or duplexes but not huge apartment buildings.

I do wish to be notified of all meetings and I wish I would have been notified of the meeting held March 29th, 2021.
I would have expressed my views at that time also..

My info is as follows:

Sharon Wetsch
sharonwetsch@yahoo.com
406-351-1409

mailing address is
Sharon Wetsch
PO Box 1309
Forsyth, Mt 59327

Billings Metropolitan Planning Organization
2825 3rd Avenue North
Billings, Montana 59101

May 7, 2021

RECEIVED
MAY 10 2021
PLANNING & COMMUNITY SERVICES DEPARTMENT

Re: City Zone Change 991 Project Number PZ-21-00084

Dear Planning Board,

Yesterday, May 6th, I received a notice from you dated April 16th, 2021, concerning a Zoning Change hearing scheduled for May 4th.

A few months ago this same request to increase the density of the zoning for the second time came before your organization and there were 16 objections to increasing the zoning again after it was already increased once. This late notice did not allow us to participate in the hearing this time.

The only reason for increasing the density at the previous hearing was because those requesting the change stated: "The project does not pencil at the present density." That is not in any way a concern for the citizens affected by the change, and increasing a developer's profit margins is not in any way a concern of our government.

The following specific points were discussed in the previous review of the same property, where the request was denied, and these points have not changed:

- The properties to the West of the development are 1 acre city lots with traditional Montana and Billings amenities that would be negatively affected by a increased neighboring density. We purchased our properties and built based on previously approved zoning of this area.
- The shown access to Georgina Drive would not be permitted by the present private owners of Georgina Drive. This would cause a barricade to be built and would not allow apparent access shown by the developer. This was discussed and agreed upon in your previous hearing.
- The increased density was not approved by both law enforcement or fire enforcement responsible for the location at the time of the previous hearing.
- It is not in the interest of Billings to create huge areas of high density that cause the related issues in the future. This would be as bad as trying to consolidate all present trailer parks into one location in the city. Higher density locations should be well spaced from each other to maintain our Billings quality of life.
- I suspect from the late notice, that the zoning may have been approved, as the opposing citizen views were not represented. If it was in fact approved, I would like to request that this letter and the results from your previous decision declining the zoning change be included in the City Council zoning review. I am sure you will agree that long term planning and citizens concerns are more important considerations for our planning and city government than giving developers some increased profit margins.

Thank your for your consideration,

Anthony J. Seitz
4631 Georgina Drive
Billings, Montana 59106

cc: Billings City Council
Legal Files

From: Jeanette Woodgerd <jeanettefaye21@gmail.com>
Sent: Friday, April 30, 2021 11:55 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] City Zone change 991 - Lenhardt Square

Hi Nicole,
This email is in support of the above mentioned zone change request for Lenhardt Square. It is difficult to find good places to rent in Billings and the population is growing. I recommend this zone change be approved to allow for more rental housing.

--
Jeanette Woodgerd
406.670.5783

From: Shawn Johnston <adunamislife@gmail.com>
Sent: Friday, April 30, 2021 1:54 PM
To: Bartley, Robbin <bartleyr@billingsmt.gov>
Subject: [EXTERNAL] City Zone Change 991

Hi Robbin,

I am writing this email to let the commission know that I am in favor of the zone change referenced above. With the lack of rental housing on the rise in Billings this zone change makes sense.

Thanks,

Shawn Johnston

"He is no fool who gives what he cannot keep, to gain what he cannot lose!" *Jim Elliott*

From: Nathan Lightfoot <lightfoot_nathan@yahoo.com>
Sent: Monday, May 3, 2021 8:37 AM
To: Bartley, Robbin <bartleyr@billingsmt.gov>
Subject: [EXTERNAL] Support

Hello there!
This email is in support of the above mentioned zone change request for Lenhardt Square. It is difficult to find good places to rent in Billings and the population is growing. I recommend this zone change be approved to allow for more rental housing.

Have a great day!

From: Burk Johnston <burkjohnston@kw.com>
Sent: Monday, May 3, 2021 11:19 AM
To: Bartley, Robbin <bartleyr@billingsmt.gov>
Subject: [EXTERNAL] City Zone change 991- Lenhardt Square

Hi Nicole,

This email is in support of the zone change request for Lenhardt Square. It is difficult to find good places to rent in billings and the population is growing very quickly. I recommend and support that this zone change be approved to allow for more rental housing.

Thank you

Burk Johnston

From: Joseph Wheeler <jwheeler@wheatridgepartners.com>
Sent: Monday, May 3, 2021 2:03 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Dear Members of the Zoning Commission,

My wife and I moved to Billings from Denver and have experienced first hand what out of control and unaffordable housing costs look like.

Absent additional rental housing in Billings, it is destined to become like so many cities that are unaffordable.

It is very difficult to find affordable places to rent in Billings right now. Please approve Zone Change 991. Thank you.

Respectfully,
Joe Wheeler

From: Abbie Hanser <abbiehanser@gmail.com>
Sent: Monday, May 3, 2021 3:07 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone change 991

Dear Members of the Zoning Commission,

This letter is in support of Zone Change 991.
I recently moved back to my hometown of Billings and work for a cpa firm. It was very difficult to find quality housing that is affordable. It took me months to find an apartment. When I spoke with my friends, all young professionals in their late 20s, they had similar dilemmas. Billings needs quality, affordable housing for professionals. It is something that is severely lacking in our community and I feel that it could drive quality residents out of our city. Please approve zone change 991.

Thank you for your time,
Abbie Hanser

From: Jamie Cozby <jamie.cozby@kw.com>
Sent: Monday, May 3, 2021 3:58 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Approval Change 991

To Whom it May Concern:

Thank you for accepting my request to support the present "zone change 991". In an intentional effort to support affordable housing in Billings, MT, (where affordable housing and local inventory of real estate is at an all time low), I ask that my opinion and vote be considered in support of a proposed project at Lenhardt Square Subdivision. I encourage the approval of Zone Change 991 immediately to ensure today's housing needs and those of the near future are met in Billings, MT.
V/R,
Jamie L. Cozby
CEO/Team Leader
Keller Williams Yellowstone Properties
745 Henesta Drive
Billings, MT 59102
Cell: (406) 363-8784
Office: (406) 655-0005

From: Bill Hanser <bill@hanserconstruction.com>
Sent: Tuesday, May 4, 2021 7:32 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991
Good Morning Nicole, can you please forward to the zoning commission.
Members of the Zoning Commission,

As the owner of Tract 2A1 of the Lenhardt Square development, this letter is in support of the proposed zone change. This zone change will help us create much needed, attractive and livable neighborhoods, with desired amenities that improve the Billings resident's quality of life, at an affordable cost of living. I ask that you support Zone Change 991.

Thank you for your consideration.

Sincerely,
Bill Hanser
2916 Thousand Oaks St
Billings, MT 59102

From: Kaitlyn Kuchin <kaitlyn.kuchin@gmail.com>
Sent: Tuesday, May 4, 2021 10:20 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Dear Members of the Zoning Committee,

I support Zone Change 991. The rental market in Billings has been tough for renters for a long time and rents continue to climb. I was lucky enough to live with my grandmother instead of renting, but most people are not so fortunate. We need more quality rentals available in our town and for that reason, I urge you to approve zone change 991.

Sincerely,
Kaitie Kuchin

From: Kennedy Hildebrand <kennedy.hildebrand8@gmail.com>
Sent: Tuesday, May 4, 2021 10:26 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Good morning to whomever this may concern,

This letter is in support of Zone Change 991. Affordable, quality housing in Billings is in very short supply. It is difficult as a college graduate with an Elementary Education degree to find adorable places to rent. As a new teacher, Montana does not provide me with the best income. Therefore, needing a place to rent that is great in quality and in budget is greatly wanted/needed. It is very difficult to find affordable homes to rent that'll help change and maintain this teachers life. Please approve Zone Change 991.

Thank you for listening to me,
Kennedy Hildebrand

From: Maggie Meyer <maggiemeyer101@gmail.com>
Sent: Tuesday, May 4, 2021 10:28 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zoning 991

Hello,
My name is Maggie, and I'm a college student who is 23 and still living with my parents! By signing this zoning project, there would be more affordable housing in Billings which we desperately need! I have been unable to move out due to the high housing prices and small amount of housing options! This would be a huge improvement to our community and I am highly in support of more affordable housing! Thank you for you time!

From: Ellie Hanser <ellie.hanser1020@gmail.com>
Sent: Tuesday, May 4, 2021 10:34 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Dear Members of the Zoning Commission,

This email is in support of Zone Change 991. Affordable, quality housing in Billings is in very short supply, and nearly impossible to find. It is difficult to find affordable, and livable places to rent. Please approve zone change so young adults like myself can find housing.

-Ellie Hanser

From: Keera Stookey <keerastookey14@hotmail.com>
Sent: Tuesday, May 4, 2021 10:37 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Dear Members of the Zoning Commission,

My name is Keera Stookey and I am writing this letter in support of Zone Change 991. I am a recent college graduate, who is currently working for an accounting firm in Billings. I am still living at home because rent is very expensive and low quality for young adults in Billings right now. I am trying to build up my savings to prepare for this ever changing world and I can't afford the places to rent in Billings. I would love to rent a place in Billings that I feel safe in and don't have to live pay check to pay check to afford. Please approve zone change 991.

Thank you for taking the time to read this email.

Sincerely,

Keera Stookey

From: Emily Frey <emilyf1802@gmail.com>
Sent: Tuesday, May 4, 2021 10:47 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone change 991

Dear Members of the Zoning Commission,

I feel that you should support the since change 991. It is extremely difficult to find affordable housing. Being a full time student and working full time, I cannot afford to live on my own because of the prices of rent. Please approve the zoning changes.

Thank you

From: Maggie Hanser <mhanser9@gmail.com>
Sent: Tuesday, May 4, 2021 11:45 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone change 991

Dear Members of the Zoning Commission,

This letter is in support of Zone Change 991. Affordable, quality housing in Billings is in very short supply. It is difficult to find affordable places to rent. Please approve zone change 991.

Maggie McCullough
5451 Gene Saracen
Billings Mt 59106

From: Catie Gragert <catie.gragert@floberg.com>
Sent: Tuesday, May 4, 2021 11:52 AM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Zone Change 991

Subject: Zone Change 991

Dear Members of the Zoning Commission,
This letter is in support of Zone Change 991. Affordable, quality housing in Billings is in very short supply. I am a realtor in town and right now our housing prices are making it almost impossible for first time home buyers to find a home. Our town needs more affordable housing options. It is difficult to find affordable places to rent. Please approve zone change 991.

Sincerely,

Catherine A Hanser
1529 Windriver Lane
Billings MT 59101
406.697.4321

From: Ty Elkin <Ty.Elkin@StockmanBank.com>
Sent: Tuesday, May 4, 2021 12:45 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Lenhardt Square Zone Change

To Whom It May Concern:

Please accept this e-mail as our general support for the City of Billings' Planned Growth Goals centered around establishing development patterns that use land more efficiently. The result of these efforts has proven to create more affordable housing for all demographics, adequate live-to-work space, and has encouraged commercial development in areas that meet the needs of the surrounding properties.

The Lenhardt Square project currently being contemplated for approval by the City Planning and Community Services Department appears to meet the desired outcomes of the stated Planned Growth Goals, and is consistent with neighboring property uses to the both the South and East of the property. Smaller households, aging residents and the higher costs of all housing in our area continues to drive the demand for higher density projects. The proposed change seems to fit with the need for affordable housing in our region.

Respectfully,

Ty

Ty Elkin
SVP – Billings Market
P 406-655-2447
ty.elkin@stockmanbank.com

From: Frosty Erben <frosty@kw.com>
Sent: Tuesday, May 4, 2021 1:50 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: [EXTERNAL] Lenhardt Sub Zone change

To Nicole Cromwell
City of Billings

Dear Nicole,
It has come to my attention that a zone change is being sought for the Lenhardt Subdivision. I believe the zone change #is 991. I am in support of the change. I am asking you to support the change also. Billings wants to grow. We need more housing, and the Lenhardt Subdivision will allow that to occur.

William F Erben
805 Granite Estates Lane

ORDINANCE 21-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE PLANNED DEVELOPMENT ZONE FOR LENHARDT SQUARE INCLUDING ALL LOTS AND BLOCKS WITHIN LENHARDT SQUARE SUBDIVISIONS (FIRST, SECOND AND THIRD FILINGS), AND C/S 2063, TRACTS 2A1 AND 5A1, A TOTAL OF APPROXIMATELY 114 ACRES OF LAND GENERALLY LOCATED NORTH OF KING AVENUE WEST NEAR THE INTERSECTION OF S 44TH ST WEST, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

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

Section 2. **DESCRIPTION. ALL LOTS AND BLOCKS WITHIN LENHARDT SQUARE SUBDIVISIONS (FIRST, SECOND AND THIRD FILINGS), AND C/S 2063, TRACTS 2A1 AND 5A1**, is presently zoned **PLANNED DEVELOPMENT** and is shown on the official zoning map within this zone.

Section 3. **ZONE DISTRICT AMENDMENT.** The official **Planned Development** on file in the office of the City Clerk under Ordinance 08-5460 and recorded with the County Clerk and Recorder under Doc. No. 3464966 as amended by Doc. No. 3505105 (minor modification), Doc. No. 3676656 (Zone Change 909 approved June 11, 2013) is hereby amended as shown in **Exhibit A by deleting these existing Planned Development documents in their entirety and replacing with the updated language and master zoning plan**.

Section 4. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 5. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 6. **SEVERABILITY**. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 24th day of May, 2021.

PASSED, ADOPTED and APPROVED on second reading this 14th day of June, 2021.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 991 – Lenhardt Square PD update

Exhibit A

AMENDED

PLANNED DEVELOPMENT AGREEMENT FOR

LENHARDT SQUARE

This AMENDED PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE ("Agreement" or "PDA") is made and entered into this_____day of _____, 2021 by and between, the LENHARDT SQUARE MASTER ASSOCIATION, INC., a Montana corporation ("LSMA") and the CITY OF BILLINGS, a Montana municipality ("the City") of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

1. The Lenhardt Square Master Association is an association of the owners of the property in Lenhardt Square established under the Covenants, Conditions, Restrictions and Easements for Lenhardt Square.

2. The Lenhardt Square Planned Development agreement was entered into between the Founders and the City of Billings 13 years ago and in the interceding years, there have been significant changes in the Billings housing market, infrastructure constraints and funding, surrounding development and the general economics of construction.

3. Since the original PDA was adopted, a portion of the Lenhardt Square property has been sold and developed and in that process variances from the PDA have been requested and granted.

4. The Founders and Developers of Lenhardt Square desire to update the PDA to allow for continued development within Lenhardt Square in a manner that better meets the needs of the housing market, the Developers, and the City.

NOW THEREFORE, the undersigned hereby establish and declare that the following amendments to the Lenhardt Square Planned Development Agreement shall apply to all of the real estate in Lenhardt Square and shall bind all of the present and future property owners of such real estate and shall run with the land.

This PLANNED DEVELOPMENT AGREEMENT FOR LENHARDT SQUARE ("Agreement" or "PDA") is made and entered into this 28th day of April, 2008, by and between tenants in common LENHARDT PROPERTY, LP, a Montana limited partnership, of 4035 Cedarbrook Court, Bellingham, Washington 98229-5007, LENHARDT FARM LLC, of 240 East Drive, Baton Rouge, Louisiana 70806, and LENHARDT ENTERPRISES, LLC, of 4401 Highway 3, Billings, Montana 59106 (collectively "Founders"), and the CITY OF BILLINGS, a Montana municipality ("the City"), of 210 North 27th Street, Billings, Montana 59101.

RECITALS

NOW WHEREAS:

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

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

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

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

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

- Recognition that it is not desirable for West Billings to develop with a low-density, rural character (p. 14);
- More compact development patterns are desirable because they make full use of urban services, offer cost-effective infrastructure, and hold down costs to the taxpayer (p. 15);
- Concentrate multi-family, office, and non-retail uses between commercial nodes along arterial streets (p. 17);
- Provide opportunities for a mix of housing types and mixed-use development by encouraging planned unit developments (pp. 22, 24);
- Increase residential densities and promote medium and high-density residential development within walking distance to commercial centers, medical facilities, and recreational amenities (pp. 21, 23);
- Link pedestrian-friendly residential, commercial, mixed-use, and park areas through a linear open space network, subdivision entryways, and special arterial treatments (p. 38);
- Create commercial developments with unique, identifiable focal points such as parks and linear open space (p. 38).

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

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

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

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

8. Founders desire to provide an opportunity for future development consistent with the West Billings Plan that will accommodate a variety of residential living opportunities and necessary services to support the increased commercial development occurring on the west end of Billings; encourage pedestrian and non-motorized interconnectivity; promote densities that economically support the extension of city services; and utilize economies of scale to increase the affordability of residential housing in West Billings.

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

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

27-1301 through 27-1310.

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

AGREEMENT

ARTICLE I – PURPOSES

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

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

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

1. To provide for an appealing architectural arrangement of buildings and spaces through the use of a wide variety of living opportunities, architectural sizing, and residential services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>ARTICLE II – DEFINITIONS</u>

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

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

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

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

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

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

D. **Developer**. "Developer" means any person or entity who purchases a Tract or any portion of a Tract within LENHARDT SQUARE from Founders or their successors in interest for further subdivision, development, or resale in the ordinary course of business or for investment purposes.

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

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

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

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

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

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

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

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

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

N. **Mixed-Use.** "Mixed-use" refers to the mixing of different land uses – residential, retail, employment, entertainment, lodging, civic, cultural, etc. – in one relatively discrete area

featuring stacked uses in low to mid-rise buildings, arranged along streets and around public squares or other open spaces. Mixed-used developments have these additional characteristics:

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

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

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

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

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

Q. The Reviewer. "The Reviewer" means that person, entity, or committee appointed by Founders that shall have all of the rights, duties and responsibilities assigned to the Reviewer in this Agreement and the CCRs, including but not limited to the review and approval or denial of the design and planning elements of all subsequent development of Tracts and subdivision plats filed for property within LENHARDT SQUARE.

R. Shiloh Drain. "Shiloh Drain" means the lateral drainage ditch that lies within the boundaries of the Shiloh Drain Easement Area shown on Exhibit A (First Amended).

S. Shiloh Drain Easement Area. The "Shiloh Drain Easement Area" means the easement within which the Shiloh Drain is located on the north property line of LENHARDT SQUARE as depicted on Exhibit A (First Amended) hereto.

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

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

V. **Tract.** "Tract(s)" means one or more of Tracts 1A through 5A of C.O.S. 2063, Amended. Platting, subdivision and property line adjustments have been implemented in Lenhardt Square resulting in new descriptions and adjusted boundaries. The Amended Master Plan reflects these changes. For reference purposes, the Amended Agreement shall refer to the original Tract designations which now appear on the Master Plan as follows:

Tract 1A – Lots 1-5 Block 1, First Filing
Tract 2A – Tract 2A
Tract 3A – Lot 1 & 2 Block 1, Third Filing
Tract 4A – Lots 1 & 2A, Block 1, 2nd Filing
Tract 5A – Tract 5A-1

If the exterior boundaries of Tract 5A is changed for any reason, including, but not limited to, as a result of replatting, road dedication, or boundary line adjustment, any reference herein to a particular Tract shall be deemed to instead apply to that successor Tract that most closely approximates the boundaries, location, size and character of the Tract originally referenced in this Agreement and depicted on the Master Plan attached hereto. Nothing in this paragraph shall prohibit the parties or their successors in interest from specifically amending this Agreement or the Master Plan, seeking a variance, or pursuing other zone change procedures in accordance with Article IX to specifically address any issue created as a result of a change in the external boundaries of any Tract or parcel.

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

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

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

ARTICLE III – BINDING EFFECT

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

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

ARTICLE IV – USE RESTRICTIONS

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

1. **Tracts 1A, 2A 3A and 5A – Residential Multi-Family-Restricted (MF-R).** Tracts 1A, 2A, 3A and 5A are located, respectively, along the east border, the north border, the center and the west border of LENHARDT SQUARE as shown on Exhibit A (First Amendedhereto. The use of the Lots in Tracts 1A, 2A, 3A and 5A are contemplated to be multi-family residential in scale and character. These tracts are intended primarily to accommodate apartments, townhomes, condominiums, and other multi-family and attached single-family complexes and uses permitted in the Residential Multi-Family-Restricted Zoning District as defined in the Unified Zoning Regulations; however, single family residences are permitted. Additional requirements for multi-family Units in Tracts 1A, 2A, 3A and 5A are set forth in Exhibit B (Second Amended).

2. **Tract 4A– Mixed-Use (MU).** Tract 4A is located on the southern border of LENHARDT SQUARE near King Avenue West as shown on Exhibit A (Second Amended. Tract 4A is designed for residential and complementary commercial uses as further described in the definition of "mixed-use" found in Article II, including, but not limited to, in-home and small-scale professional and retail space. These tracts may be developed as a combination residential-commercial-cultural center with retail activities conducted in a unified development designed to serve the residential Dwelling Units in the Tract and surrounding neighborhood with shopping facilities consisting of convenience, retail and personal service establishments that secure their principal trade by supplying the daily needs of the neighboring population. Multi- family residential uses are also permitted.

B. Procedure for Obtaining Reviewer Approval; Mixed-Use Requirements. Any Developer of property in LENHARDT SQUARE shall obtain the written approval of the Reviewer prior to submitting any application for subdivision, zone change, building permit, or

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

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

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

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

D. <u>Permitted Uses – Tracts 1A, 2A, 3A and 5A (MF-R)</u>. Units in Tracts 1A, 2A, 3A and 5A, unless otherwise prohibited herein, may be used for any of the following uses:

1. Accessory uses and detached structures (other than garages) less than 300 square feet in size that are associated with a permitted principal structure, subject to the additional allowances and requirements of Article V.B.9 of this Agreement.
2. Assisted living facilities serving up to eight (8) persons;
3. Bus stops;
4. Common Areas;
5. Community center;
6. Community residential facility as defined by Unified Zoning Regulations;
7. Garages, subject to size limitations described in Article V.B.4.(d);
8. Health clubs, spas, gymnasiums, and other recreational facilities if part of a

residential building or multi-family residential complex;

9. Home occupations;

10. Family day care home serving up to 6 children or adults;

11. Multi-family or attached dwellings including apartments, residential suites, condominiums, townhomes and other multiplex housing units;

12. Single family residential uses;

13. Any use that is permitted in a residential zoning district pursuant to the Unified Zoning Regulations, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

1. Animal grooming facilities;

2. Art galleries;

3. Assisted living facilities serving any number of persons;

4. Bakeries;

5. Banks, credit unions, and savings and loan offices;

6. Barber and beauty shops;

7. Bicycle sales, rental, and repair shops;

8. Boarding, lodging, and bed and breakfast houses;

9. Bookstores;

10. Building supply stores and hardware stores (but not lumber yards);

11. Bus stops;

12. Camera, hobby, toy, and gift stores;

13. Ceramics and pottery shops;

14. Charitable, religious, educational or nonprofit institutions;

15. Clothing and apparel stores;

16. Common Areas;

17. Community centers;

18. Community residential facility as defined by Unified Zoning Regulations serving up to 8 persons on a 24-hour-a-day basis;

19. Convalescent, nursing, and retirement homes;

20. Convenience and specialty food stores (but no gasoline sales);

21. Cultural, educational, and instructional facilities;

22. Day care center (as defined in Unified Zoning Regulations Sec. 27-201);

23. Denturists;

24. Department stores;

25. Drug stores - prescription and pharmacy;

26. Dry cleaning or laundry drop-off and pick-up store;

27. Eating and drinking establishments that do not sell alcohol for on-site consumption;

28. Education facilities, including elementary and secondary schools, colleges, universities, professional schools, and junior colleges;

29. Family day care home (as defined in Unified Zoning Regulations Sec. 27-201) serving up to six children or adults;

30. Finance and loan companies;

31. Florists;

32. Food and grocery stores;

33. Furniture - retail only;

34. Flower shops and nurseries (provided that there is no outside storage);

35. Garages, subject to size limitations described in Article V.B.4.(d);

36. Group day care home services (as defined in Unified Zoning Regulations Sec. 27-201) for 7 to 12 children or adults;

37. Hardware and appliance – retail only;

38. Health clubs, spas, and gymnasiums;

39. Health and fitness related businesses;

40. Home occupations (mixed-use area)

41. Hotels and motels;

42. Jewelry stores;

43. Libraries, museums, and art galleries;

44. Liquor stores

45. Medical and dental offices;

46. Membership organization offices;

47. Multifamily residential uses consistent with a mixed-use development, including apartments, residential suites, condominiums and townhomes;

48. Offices, including real estate, financial, counseling, professional, medical, and dental;

49. Office supply and equipment, copying and mail services stores – retail only;

50. Open spaces, park areas, gardens, squares, athletic fields, bike trails, playgrounds, and walking paths, and other Common Areas;

51. Parking facilities, including above or below ground parking garages;

52. Parks, playgrounds, pools, sport courts;

53. Pet stores;

54. Photo studios, shops, and processing - retail only;

55. Physical therapy facilities;

56. Postal service facilities;

57. Public administration facilities, including government facilities, except

correctional institutions;

58. Publicly-owned or government operated buildings and uses;

59. Retail stores;

60. Satellite dishes up to 2 feet in diameter if not otherwise restricted by applicable design criteria or other restrictions;

61. Senior and assisted living residential facility;

62. Sports medicine and rehabilitation facilities;

63. Theaters;

64. Veterinary clinic, outpatient only;

65. Wine store;

66. Any use permitted in a residential multi-family, residential multi-family restricted, residential professional, neighborhood commercial or community commercial zoning district pursuant to the Unified Zoning, provided such use is not otherwise limited or prohibited herein and is approved by the Reviewer.

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

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

2. Animal boarding facilities (allowed in Tract 4A only);

3. Assisted living facilities serving more than 8 persons;*

4. Bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption (allowed on Tract 4A only). However, bars, taverns, lounges, and eating establishments that serve alcoholic beverages for on-site consumption are exempt from Sec. 27-612(a)(1).

5. Cell, communication and satellite towers and satellite dishes greater than 2 feet in diameter provided such towers are incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);

6. Convalescent, nursing and retirement homes;*

7. Day care centers serving more than 12 children or adults;*

8. Churches, synagogues, and places of worship;

9. Emergency services, including fire stations and ambulance services;

10. Funeral homes and mortuaries;

11. Group day care home serving 7 to 12 children or adults;*

12. Health and fitness related businesses not associated with a residential facility;*

13. Hospitals and hospital related services (allowed in Tract 4A only);

14. Medical, dental and health-related clinics (allowed in Tract 4A only);

15. Medical, dental, and other professional offices;*

16. Medical laboratories (allowed in Tract 4A only);

17. Modular homes;

18. Offices and small-scale retail;*

19. Pharmacies (allowed in Tract 4A only);

20. Physical therapy facilities;*

21. Research and testing facilities (allowed in Tract 4A and Tract 5A.2 only);

22. Non-residential permitted uses requiring more than 8,000 square feet of floor space (allowed in Tract 4A only);

23. Retirement facilities larger than eight (8) persons per Unit;

24. Sports and rehabilitative commercial facilities;*

25. Veterinary clinic with boarding facilities (allowed in Tract 4A only).

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

1. The proposed use is consistent with the terms, intent and objectives of this Agreement;

2. The proposed use is compatible with surrounding uses;

3. The proposed use is not detrimental to other property in LENHARDT SQUARE;

4. The proposed use complies with other provisions of law and ordinances of the City of Billings;

5. Reviewer has given its written consent to the special use (Reviewer may, in its discretion, withhold its consent, and no special review shall be granted for any use in LENHARDT SQUARE without the express written consent of Reviewer);

6. The proposed use will not attract large volumes of vehicular traffic or create traffic congestion that cannot be properly managed and regulated with traffic control equipment or strategies;

7. The proposed use is of a similar architectural scale to existing development in the neighborhood, or will use an existing building for its purposes;

8. Minimum visual and functional conflict will be created between the proposed use and nearby uses;

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

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

1. Amusement park services or facilities;

2. Animal shelters, public or private;

3. Apparel fabrication;

4. Arcades, including but not limited to video arcades;

5. Auction houses or auction yards;

6. Auto body and collision repair;

7. Automobile repair shops;

8. Automotive Sales and Service. Any establishment engaged in automotive sales, leasing, repair, service, salvage, rental, or storage;

9. Auto parts supply;

10. Competitive sporting facilities as described in Article IV.J.9.

11. Beverage bottling plant or wholesaling operations;

12. Billboard signs;

13. Body Alteration Salons. Any establishment engaged in body painting, body piercing, or tattooing;

14. Brewery (except as incidental to a restaurant, such as a brew pub);

15. Broadcasting (radio and television) stations, studios and antenna support structures;

16. Building fabrication, except construction of buildings for use on-site;

17. Building construction operations other than for temporary, on-site construction by general contractors or subcontractors unless office-only without outside equipment or materials storage;

18. Bus terminal and maintenance facilities, except for shuttle bus storage facilities intended to service shuttle buses that operate solely within LENHARDT SQUARE or the immediately surrounding neighborhood;

19. Campground;

20. Car wash;

21. Casinos and gambling or gambling activity, as defined in M.C.A. 23-5-112, unless permitted with legally enforceable restrictions described in the CCRs;

22. Chain link fencing;

23. Crematoriums;

24. Dumping concrete, cement residue, refuse, dirt, garbage, or fill materials without authorization of property owner;

25. Drugs or drug paraphernalia. Using, promoting, or facilitating the use of illegal drugs or any business engaged in selling so-called drug paraphernalia;

26. Dry cleaning, laundry plant or public laundromat, but this prohibition shall not be applicable to facilities for pickup and delivery by the ultimate consumer;

27. Electronic component manufacturing;

28. Equipment rental shop;

29. Excavation. Businesses engaged in commercial excavation, providing that this prohibition shall not be construed to prohibit any excavation necessary in the course of approved construction;

30. Exotic dancing. Any establishment permitting exotic dancing, including semi-nude and nude clubs;

31. Extractive industries. Any establishment engaged in the sale, extraction, or storage of sand, gravel, or minerals unless such sale or storage is an ancillary part of a hardware, home-improvement, or similar retail store;

32. Fire sale or bankruptcy sale;

33. Fireworks. Fireworks manufacture and/or sales;

34. Flea markets;

35. Food processing or wholesaling, except ancillary services associated with retail, restaurant, and grocery operations;

36. Foundries and factory operations;

37. Furniture fabrication;

38. Garbage handling.. Any dumping, disposing, incineration or reduction of garbage, but this prohibition shall not prohibit garbage compactors located near the rear of any building or small-scale recycling containers intended to collect recyclable materials as a convenience for neighborhood residents;

39. Gas or diesel stations;

40. Go-cart tracks;

41. Greenhouses for commercial or retail purposes;

42. Gun or archery range unless located within a structure and not visible or audible from outside the structure;

43. Guns and Ammunition. The sale of firearms and ammunition, unless incidental to a general retail store or sporting goods store;

44. Heavy equipment sales and service;

45. Ice manufacturing for resale of ice not intended for use on-site ;

46. Illegal Drugs. The sale, manufacture, or possession of illegal drugs;

47. Industrial production or manufacturing facilities;

48. Jails. Jails, prisons, half-way houses for pre-release inmates, and/or detention facilities, except public facilities if permitted by Section 76-2-411, Montana Code Annotated;

49. Junk shops, second-hand stores, and antique stores;

50. Livestock and Wild Animals. No swine, poultry, goats, horses, cows, or other livestock or domestic or wild animals shall be kept on the property within LENHARDT SQUARE except for domestic pets and other animals specifically permitted under this Agreement and, which shall be subject to any applicable restrictions contained herein, and no agricultural grazing is allowed unless specifically permitted by Founders in accordance with this Agreement;

51. Livestock Production. Any establishment engaged in livestock production or slaughter, except for agricultural grazing permitted by Founders on undeveloped tracts within LENHARDT SQUARE;

52. Livestock and Farm Equipment. Any establishment engaged in the sale of livestock, ranch, or farm equipment;

53. Machine and welding shops;

54. Manufactured Homes and Manufactured Home Parks. The sale, use, maintenance, rental, repair or storage of manufactured housing or mobile homes;

55. Manufacturing businesses;

56. Metal fabrication and manufacturing;

57. Mill work and cabinet shops;

58. Motorized sports vehicle repair, storage, and/or sales (including parts sales);

59. Mining and Related Activities. Mining, drilling for, or removing oil, gas, or other hydrocarbon substances;
60. Motocross tracks;

61. Motorcycle racing;

62. Nuisances. Any use that constitutes a nuisance under Article IV.J.3 of this Agreement.

63. Paper warehouses;

64. Pawn shops;

65. Power Poles and Overhead Power Lines. Installing new power poles and overhead power and utility lines; provided, however, this shall not prohibit existing power poles and lines and shall not prohibit adding new lines to the existing poles;

66. Product manufacturing unless the product is intended primarily for local consumption or use;

67. Propane sales;

68. Race tracks;

69. Recreational vehicles. The commercial sale, maintenance, rental, repair or storage of boats, trailers, motorcycles, ATVs, or other recreational vehicles. The private repair or storage of such vehicles must comply with other provisions of this Agreement.

70. Recycling centers;

71. Rental car dealerships;

72. Vehicular, small engine and appliance repair shops;

73. Roller skating rinks;

74. Roping and rodeo arenas;

75. Sanitary dumps;

76. Scrap or waste material processing;

77. Septic systems;

78. Sexually Oriented Businesses. Sexually oriented businesses as defined by Section 27-611 of the Unified Zoning Regulations;

79. Repair shops. Shop facilities containing open or visible storage;

80. Stables;

81. Storage facilities other than garages associated with residential structures;

82. Super Stores. Retail sales uses (for goods and/or merchandise) by any person, firm, or entity that utilizes more than 40,000 square feet of any structure (nothing in this prohibition shall be interpreted to permit retail sales uses smaller than 40,000 square feet if otherwise prohibited in this Agreement);

83. Surplus store;

84. Taxidermists;

85. Tire sales, except as incidental to the operation of a general retail store;

86. Towers and Dishes. Freestanding communication and satellite towers and dishes greater than two (2) feet in diameter unless incorporated into the building structure and materially obscured from view by nearby residents and pedestrian and vehicular traffic (allowed in Tract 4A only);

87. Trailer Parks and Campgrounds. Mobile home parks, trailer parks, recreational vehicle campgrounds, or any commercial establishment that permits over- night parking of recreational vehicles;

88. Truck Stop. Truck stop, as defined by Section 27-201 of the Unified Zoning Regulations;

89. Truck Terminals. Truck terminals, cartage operations, and similar uses;

90. Truck Wash. Truck wash as defined by Section 27-201 of the Unified Zoning Regulations;

91. Trucks. Sale, leasing, manufacture, rental or repair of trucks;
92. Trucking operation offices and warehouses;

93. Utility sub-stations and other utility installations other than utility lines, utility boxes, and other utility facilities used to service an individual Lot;

94. Warehouses;

95. Wholesale lumber and wholesale building materials;

96. Wild Animals and Livestock. Any establishment, structure, or enterprise housing any wild animals, poultry, or domestic livestock unless sold as domestic pets in a

retail pet store;

97. Wholesale distribution and sales.

I. Other Use Regulations

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

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

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

4. The Shiloh Drain. Any Unit Owner or Developer in LENHARDT SQUARE shall at all times conduct its use and activities in a manner that will preserve the integrity of the Shiloh Drain and the Shiloh Drain Easement Area, including preventing any

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

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

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

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

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

(e) Polluting water in the Shiloh Drain;

(f) The discharge of any Hazardous Materials. The term "Hazardous Materials" shall mean: petroleum products, asbestos, poly-chlorinated biphenyls, radioactive materials, and all other dangerous, toxic, or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. The term "Environmental Law" shall mean all federal, state, county, city, local, and other statutes, laws, ordinances, and regulations that relate or deal with human health or the environment, all as may be amended from time to time.

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

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

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

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

(a) Hours of operation may extend from 7:30 A.M. to 9:00 P.M.;

(b) The activity must constitute a permitted use in the mixed-use zone established in this Agreement;

(c) The business may employ up to three persons, including the residents of the dwelling, who are present on the property at any given time or who visit the property at least once a day. The unit must meet any applicable building and fire codes; and

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

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

9. Scheduled Sporting Events and Related Facilities. Parks and other Common Areas located in LENHARDT SQUARE are intended primarily for the benefit of residents of LENHARDT SQUARE and only secondarily for the benefit of other persons. Common Areas should be constructed to include attractive landscaping,

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

ARTICLE V – INFRASTRUCTURE AND TRACT DEVELOPMENT STANDARDS

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

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

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

2. **Lot Coverage.** Lot coverage requirements are set forth in the General Requirements

in Exhibit B (Second Amended) and are based upon a percentage of total square footage of the Lot. The total combined lot coverage for all structures on any Lot shall not exceed the maximum requirements established in Exhibit B (Second Amended).

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

4. Parking.

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

(i) MF-R. Minimum parking requirements for multi-family residential uses shall be 1.5 parking spaces times the number of Dwelling Units (rounded to the next highest number of spaces). Except as provided hereafter, the maximum number of parking spaces shall not exceed 1.75 times the number of Dwelling Units (rounded to the next highest number of spaces). Developer may construct more than 1.75 parking spaces per Dwelling Unit, but all spaces in excess of that number must be incorporated as part of a structure that includes multi-family Dwelling Units or in a separate underground or multi-level parking facility. Covered or enclosed parking facilities shall be provided at a rate of .70 parking spces per Dwelling Unit. In order to insure adequate parking, parking spaces, including enclosed spaces, must be maintained in a manner that accommodates vehicle parking and may not be used primarily for non-vehicular storage.

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

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

(c) **Off-Site Parking**. Each off-site parking area shall be accessible by a public right-of-way. If space is leased in an off-site parking area to meet minimum parking requirements, the term of any lease while minimum parking requirements are in effect shall be for the duration of the time that the building, use, or activity served by such parking area is in existence at such location. Each such lease shall be subject to prior review by the City of Billings and shall provide that if the right to use the designated off-site parking is for any reason terminated or forfeited the City shall be immediately advised. In case of such termination or forfeiture, all uses and activities so

served shall cease until adequate off-street parking meeting the requirements of this Agreement is again provided. All requirements for setbacks, landscaping, signage, and lighting established in this Agreement, the CCRs, and/or the Master Design Guidelines or other applicable standards shall apply to off-site parking facilities. All off-site and on-site parking facilities shall satisfy any applicable handicapped accessibility requirements. Off-site parking shall be located within six hundred (600) feet of the building or use for which it is required, which distance shall be measured along a straight line between the two (2) nearest points of the Lots containing the main use and the accessory parking use.

(d) **Garages.** The incorporation of multi-level parking garages into principal building structures in the Mixed-Use and Multi-Family-Restricted zones is encouraged. Ground level parking garages shall be limited to 10500 square feet and may accommodate no more than fifty-two (52) vehicles unless approved by the Reviewer. Freestanding multi-level parking garages shall be considered a principal structure. A minimum of ten (10) feet, or the applicable IBC minimum standard, whichever is greater, shall be maintained between garages and other structures. Parking garages must conform to CCRs and Master Design Guidelines.

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

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

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

7. **Landscaped Green Belts Along King Avenue, C/S 2064, C/S 3125 and C/S 1400.** A minimum twenty (20) foot wide landscaped green belt shall be maintained inside the south property line of all Units in Tracts 1A, 4A and 5A adjoining King Avenue. A minimum fifteen (15) foot wide landscaped green belt shall be maintained inside the property line of the portion of Tract 1A adjoining C/S 2064 (Tracts 6B), C/S 3125 (Tract 4A), and C/S 1400 (Tract 1A). The Developers of Tracts 1A, 4A, and 5A shall be responsible for installation of the landscaped green belts in accordance with the CCRs and Master Design Guidelines. The landscaped green belts described in this paragraph shall be maintained in accordance with Article V.B.5. Landscaped green belts and required setbacks may overlap so that the total area of the two is the greater of either the green belt area or the setback.

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

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

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

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

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

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

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

12. **Signage.** The signage requirements included in Article 27-700 of the Unified Zoning Regulations ("Sign Code") and any subsequent amendments thereto shall

govern the regulation of signage in LENHARDT SQUARE so far as they are not inconsistent with this Agreement. To the extent that different Sign Code regulations apply depending upon the zoning category where the signage is located, for this purpose Tracts 1A, 2A, 3A and 5A shall be deemed to be a residential professional zone and Tract 4A shall be deemed to be a commercial zone. For purposes of regulating signage Tract 4A shall be subject to the same regulations that govern the Central Business District, including Ordinance No. 07-5437 approved October 22, 2007 amending Section 27-705(c) of the Unified Zoning Regulations. In addition all signs shall comply with CCRs and Master Design Guidelines.

13. **Lighting**.

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

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

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

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

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

ARTICLE VI – OPEN SPACE

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

indoor or outdoor gathering places and community centers. The total acreage set aside for park and recreational use as depicted on Exhibit A (First Amended) is approximately 15.35 acres.

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

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

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

building standards and therefore shall not be responsible for any violation of the same or any negligence in the design or construction of any roof-top amenity or other element of any structure. All roof-top amenities shall be well constructed, according to any applicable building and safety codes, repaired, and maintained so that they provide a useful and attractive area for the private or semi-private use of tenants or owners in the subject building or adjacent mixed-use neighborhood in the Tract.

ARTICLE VII - CROSS EASEMENTS FOR PEDESTRIANS AND VEHICLES

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

ARTICLE VIII - ENFORCEMENT

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

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

C. **Right to Enforce by Unit Owners and Master Association.** The terms of this Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto and the owners of property within LENHARDT SQUARE and any person or entity claiming under them. The terms of this Agreement may be enforced by the parties hereto as well as the Unit Owners within LENHARDT SQUARE. The parties further agree that the Master Association shall have standing to enforce the terms of this Agreement relative to the City or any Unit Owner or Owners Association regardless of whether the Master Association owns property in LENHARDT SQUARE. In addition to all rights inuring to them under this Agreement, the parties specifically reserve all rights and remedies available at law or in equity, by statute or otherwise. All such rights and remedies shall be cumulative.

ARTICLE IX –AMENDMENTS AND VARIANCES

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

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

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

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

ARTICLE X - GENERAL PROVISIONS

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

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

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

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

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

If to Founders:

Lenhardt Property, LP
4035 Cedarbrook Court
Bellingham, WA 98229-5007

[and]

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

[and]

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

If to the LSMA:

Lenhardt Square Master Association
c/o Lorraine M. Newman
4035 Cedarbrook Court
Bellingham, WA 98229-5007

If to the City:

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

With Copies to:

City-County Planning Department

Billings, MT 59101

[and]

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

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

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

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

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

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

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

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

L. **Captions and Headings.** The paragraph headings used throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

M. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter

hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

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

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

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

NOTICE

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

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

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

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

FOUNDERS:

LENHARDT PROPERTY, LP

By:_____
LORRAINE NEWMAN
Its: _____

LENHARDT FARM, LLC

By: _____
JANICE L. REHBERG
Its: _____

LENHARDT ENTERPRISES, LLC

By: _____
ALLAN R. LENHARDT
Its: _____

CITY:

CITY OF BILLINGS

By:_____
William A. Cole
Its: Mayor

By:_____
Cari Martin
Its: City Clerk

STATE OF_____)
)ss.
County of_____)

This instrument was acknowledged before me on the_____day of_____, 2008, by _____
_____known to me to be a partner of Lenhardt Property, L.P.

_____

[signature]

_____

[typed/printed name]

Notary Public for the State of _____
Residing at:_____, _____
My Commission Expires:_____, 20__

STATE OF_____)
)ss.
County of_____)

This instrument was acknowledged before me on the_____day of_____, 2008, by Janice L. Rehberg known to me to the_____of Lenhardt Farm, LLC

_____

[signature]

_____

[typed/printed name]

Notary Public for the State of _____
Residing at:_____, _____
My Commission Expires:_____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the_____day of_____, 2008, by Allan R. Lenhardt known to me to the_____of Lenhardt Enterprises, LLC

_____

[signature]

_____

[typed/printed name]

Notary Public for the State of Montana
Residing at:_____, Montana
My Commission Expires:_____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

This instrument was acknowledged before me on the_____day of_____, 2008, by William A. Cole known by me to be the Mayor of the City of Billings.

_____
[signature]

_____

[typed/printed name]

Notary Public for the State of Montana
Residing at:_____, Montana
My Commission Expires:_____, 20__

STATE OF MONTANA)
)ss.
County of Yellowstone)

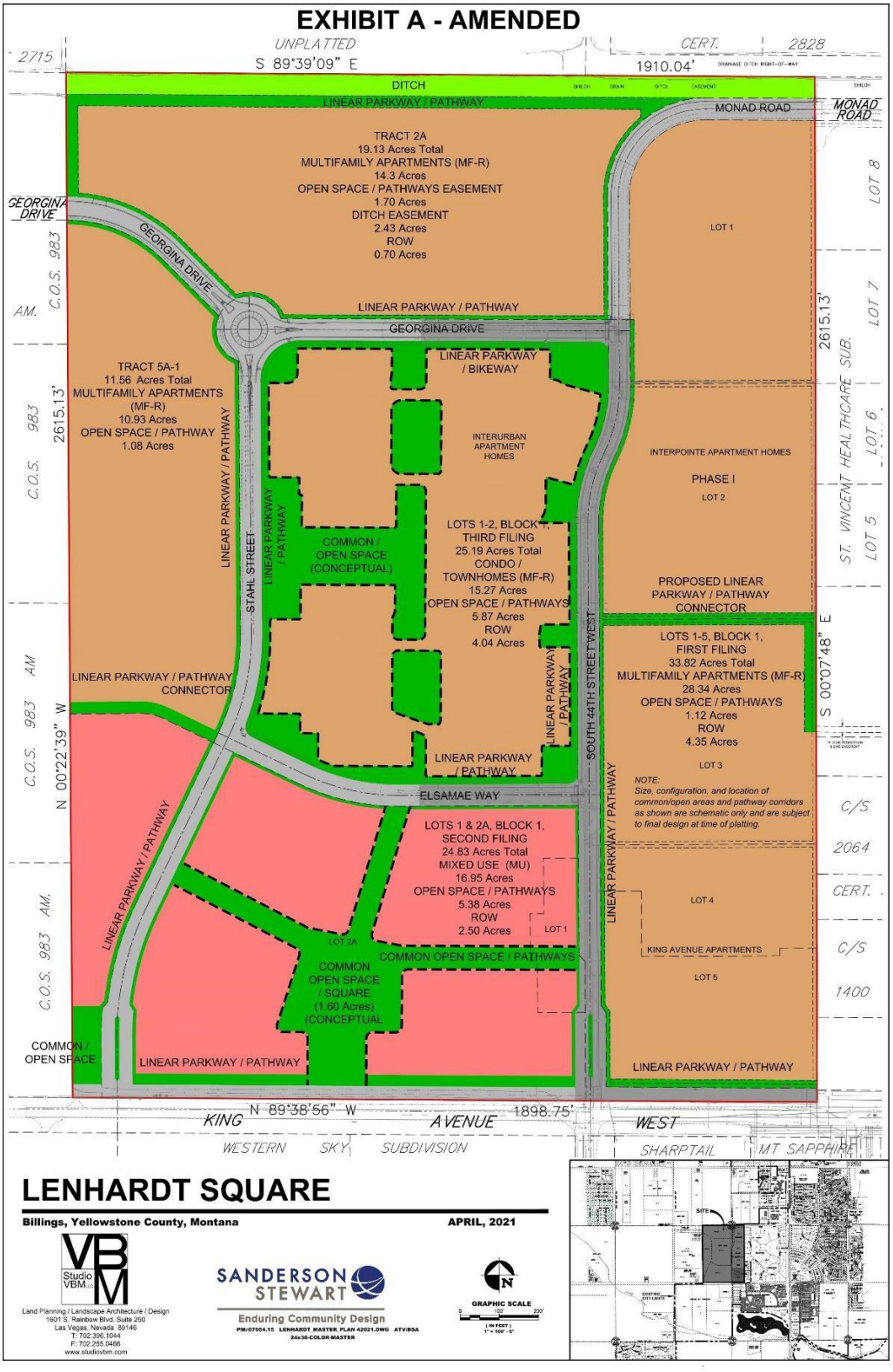
This instrument was acknowledged before me on the_____day of_____, 2008, by Cari Martin, known by me to be the City Clerk of the City of Billings.

_____
[signature]

_____

[typed/printed name]

Notary Public for the State of Montana
Residing at:_____, Montana
My Commission Expires:_____, 20__



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

EXHIBIT B (Second Amend)
GENERAL REQUIREMENTS*

Minimum Lot Size Per Structure	**MF-R****	**MU****
1 dwelling unit	6,000	850 sq.ft
2 dwelling units	7,000	For each
3 dwelling units	8,500	Dwelling
4 dwelling units	10,000	Unit
5 dwelling units	11,000	
6 dwelling units	12,000	
7 dwelling units	13,000	
8 dwelling units	14,500	
9 dwelling units	16,000	
10 or more dwelling units	1,500 sq.ft. each additional dwelling unit	
Setback Requirements (in feet)[1]		
Front:[2]		
From Linear Parkway	5[1]	5
From streets (right-of-way)	20[2]	0
Sides:[4]		
1 Story	5	5
2 Story	8	8
3+ Story	9 + 1	0
Side Adjacent to Street	10	0
Rear[4]	15	0
Arterials	25	25
Maximum Height (in stories)	4	7[4]
Maximum Lot Coverage	50%	100%
Maximum Average Densities (Dwelling Units/Acre)	21	35[7]
Fence/Wall/Berm/Shrub Max. Height		
Front Yard and Adjacent to Street	2	2
Rear and Side Yards not on Street	8	6

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

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

1 If not inconsistent with the Master Design Guidelines and upon approval of the Reviewer, the front setback from any Linear Parkway may be reduced to less than 5 feet, provided the structure is a minimum of 5 feet from any hard surface walkway or bikeway in the Linear Parkway. This setback does not apply from the Linear parkway on the northside of King Avenue.

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

[3] The zero lot line on one side of a shared property line allowed pursuant to 27-617 Unified Zoning Regulations and for adjacent single family dwellings shall also be permitted in all zones and for accessory structures and garages.

[4] Height limitation applies to the uppermost, enclosed portion of the structure. Antennae, towers, and non-enclosed portions of a structure may extend fifteen feet (15') above the uppermost, enclosed portion of the structure. The enclosed portion of a structure is the portion that is contained on all sides and overhead.

EXHIBIT C

PART 1

PARKING REQUIREMENTS – MIXED-USE ZONE

TYPE OF USE	REQUIRED PARKING (spaces / dwelling unit)
Residential	1.0/dwelling unit
Lodging	1.0/bedroom
Office	2.0/1,000 square feet
Retail	3.0/1,000 square feet
Other Uses	To be determined by Zoning Coordinator upon request of Developer and consent of Reviewer

PART 2

JOINT PARKING FACTORS REDUCTION MATRIX

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

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

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

City Council Regular

Date:	05/24/2021
Title:	Resolution amending Property Purchase Resolution 93-16740
Presented by:	Iverson Jessica
Department:	City Hall Administration
Presentation:	Yes

RECOMMENDATION

City Staff recommends approval and adoption of the Property Purchasing Resolution, amending Resolution 93-16740.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

The current property purchasing resolution is 18 years old and has presented compliance challenges for city staff when pursuing property purchases. The revised resolution addresses the following issues:

- The order in which negotiations and appraisals may occur
- The number of appraisals required
- The process by which market value is determined, reviewed, and presented to Council
- Adjusting the dollar amount at which a review appraisal is required
- Clarifying that the City Administrator may approve property purchases within their signing authority
- Revising the process by which the City may negotiate a price above appraised market value

ALTERNATIVES

City Council may:

- Approve the resolution amending Resolution 93-16740; or,
- Not Approve and provide further direction to staff

FISCAL EFFECTS

The revised resolution will require fewer appraisals, which will reduce costs and time for property acquisition. Further, the new resolution will allow for greater negotiating flexibility.

Attachments

Resolution 93-16740

Revised Property Purchasing Resolution

RESOLUTION NO. 93 – 16740 .

A RESOLUTION REPEALING RESOLUTION 86-15515, AND ESTABLISHING A POLICY OF THE CITY OF BILLINGS, MONTANA AS IT RELATES TO THE ACQUISITION OF PROPERTY.

WHEREAS, from time to time the City of Billings has need to acquire property in order to carry out the programs and projects adopted by the City Council; and

WHEREAS, the city is desirous of developing a uniform guide to determine the number and type of appraisals in the acquisition of real property.

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

Resolution No. 86-15515 is hereby repealed.

GUIDE TO DETERMINE THE NUMBER AND TYPE OF APPRAISALS:

Since these matters are largely governed by the magnitude of the appraised compensation for each parcel, the following rules are set forth on this basis. If these differ from requirements tied to a specific funding source, then the more rigorous standards will be used.

A. RANGE OF VALUE: LESS THAN $100,000:

1. Appraisals required: One.

2. Type of Appraisal: Short form

B. RANGE OF VALUE FROM $100,000 to $200,000:

1. Appraisals required: One.

2. Type of Appraisal: Long form

C. RANGE OF VALUE OVER $200,000:

1. Appraisals required: Two.

2. Type of Appraisal: Long form

D. APPRAISALS FOR PROPERTY $100,000 AND OVER IN VALUE MUST BE REVIEWED BY A QUALIFIED REVIEW APPRAISER SELECTED BY THE CITY OF BILLINGS ACCORDING TO REQUIREMENTS SET FORTH FOR REVIEW APPRAISERS, WHICH ARE MADE A PART OF THIS RESOLUTION.

1. After the review appraiser has reviewed the appraisals and arrived at a fair market value of the property being appraised, the city staff will

present the review appraisal to the City Council for the purpose of establishing the fair market value.

2. For appraisals less than $100,000 in value, the staff will present the appraisal as reviewed by staff to the City Council for the purpose of establishing fair market value.

3. In any case, after the appraisals have been completed and reviewed, city staff may enter into contingent acquisition negotiations with the property owner prior to presenting the appraisals to the City Council to establish fair market value. However, city staff shall not acquire or enter into a binding agreement to acquire the property prior to the establishment of the fair market value by the City Council.

E. NEGOTIATING FLEXIBILITY: In cases of extreme need where expeditious decisions are critical to the success of the development of a public improvement project, the city administrator may authorize an offer over the fair market value established by the City Council. The offer may not exceed 5% of the fair market value or $10,000, whichever is less.

F. MINIMUM PAYMENT POLICY: It is the City of Billings' policy to employ the minimum payments described below whenever the estimated just compensation, based on recognized appraisal techniques, is less than these amounts, including those instances where the estimated compensation is zero. In these cases, the appraisal report should show the property values as estimated using recognized techniques and in addition, the report should show the applicable minimum payment as described below.

1. MINIMUM PAYMENT FOR PERMANENT PROPERTY INTERESTS: The minimum payment for any property interest acquired by deed or easement will be $300.

2. MINIMUM PAYMENT FOR TEMPORARY USE OF PROPERTY: The minimum payment for the temporary right to occupy and use property during construction, e.g., streets, waterlines, sewer lines, traffic signals, will be $150.

Minimum payment appraisal is limited to those parcels where total compensation is $500 or less.

G. QUALIFICATION OF FEE AND REVIEW APPRAISERS: The City of Billings will maintain a current list of contract fee and review appraisers in the office of the director of development services who have been approved f or an appraisal assignment. Before an appraiser can be approved, they must first submit a demonstration appraisal of his/her current appraisal work which will be used to evaluate their knowledge of appraisal theory and principles and the clarity of their written communication. As a minimum, fee and review appraisers must be Montana Certified Appraisers with two or more full-time years of appraisal experience. In addition, appraisers with higher qualifications may be retained 1) to meet the needs of projects involving federal, state or local grant conditions, 2)

to participate in projects anticipated to involve eminent domain proceedings, or 3) to meet other special requirements, situations and conditions.

Appraisers meeting the above criteria will be hired as would any other professional service provider.

H. THIS RESOLUTION IS INTENDED TO PROVIDE A SET OF GUIDELINES. IN CASES WHERE THE DEMANDS OF A PROJECT REQUIRE A VARIANCE FROM THESE GUIDELINES, THE CITY ADMINISTRATOR MAY COME TO THE CITY COUNCIL TO REQUEST A VARIANCE.

APPROVED AND PASSED by the City Council of the City of Billings this 13th day of September 1993.

THE CITY OF BILLINGS:

BY:_____
MAYOR

ATTEST:

_____
CITY CLERK

RESOLUTION NO. _____.

A RESOLUTION REPEALING RESOLUTION 93-16740, AND ESTABLISHING A POLICY OF THE CITY OF BILLINGS, MONTANA AS IT RELATES TO THE PURCHASE OF REAL PROPERTY.

WHEREAS, from time to time the City of Billings has need to purchase real property in order to carry out the programs and projects adopted by the City Council; and

WHEREAS, the City is desirous of developing a uniform guide for the purchase of real property; and

WHEREAS, market value shall be defined as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts regarding the property.

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

Resolution No. 93-16740 is hereby repealed.

A. NEGOTIATIONS: City staff may enter into contingent acquisition negotiations with the property owner prior to determining market value. Contingencies include, but are not limited to, market value determination and City Council or City Administrator approval.

B. GUIDE TO DETERMINE MARKET VALUE: The City of Billings shall have an appraisal performed to determine the market value prior to purchase of real property. The appraisal must be by "a disinterested, certified, general real estate appraiser" selected by staff.

   Staff shall review the appraisal and bring their recommendation of market value to the City Council for approval. In cases where staff does not recommend approval of the appraisal, staff may request additional appraisals and/or that a certified appraiser reviews the appraisal(s).

   Appraisals for property $750,000 and over in value must be reviewed by a qualified review appraiser selected by the City of Billings. After the review appraiser has reviewed the appraisal(s) and arrived at a market value of the property being appraised, the city staff will present the review appraisal to the City Council for the purpose of establishing the market value.

   The City may not purchase property for more than the appraised market value, except as allowed within the established negotiating flexibility, absent approval of City Council.

   The City Administrator may approve real property purchases with appraised values within the limits of his/her signing authority.

C. NEGOTIATING FLEXIBILITY: In cases of extreme need where expeditious decisions are critical to the success of the development of a public improvement project, the City Administrator will bring to the City Council an offer over the fair market value. The City Council will than determine if the amount over market value is appropriate.

   For purchases within their signing authority, the City Administrator may approve a purchase price above appraised value at their discretion.

D. THIS RESOLUTION IS INTENDED TO PROVIDE A SET OF GUIDELINES FOR THE CITY'S PURCHASE OF REAL ESTATE.

E. THIS RESOLUTION IS NOT INTENDED FOR PROPERTY AGREEMENTS, SUCH AS EASEMENTS AND DEEDED ACCESS, WHICH DO NOT INCLUDE OWNERSHIP TRANSFER OF REAL PROPERTY.

F. THIS RESOLUTION IS NOT INTENDED FOR CONDEMNATION OR EMINENT DOMAIN ACTIONS.

G. WHERE THE REAL PROPERTY WILL BE PURCHASED WITH FEDERAL FUNDS, THE CITY IS REQUIRED TO FOLLOW THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 AS AMENDED.

H. IN CASES WHERE THE DEMANDS OF A PROJECT REQUIRE A VARIANCE FROM THESE GUIDELINES, THE CITY ADMINISTRATOR MAY COME TO THE CITY COUNCIL TO REQUEST A VARIANCE.

APPROVED AND PASSED by the Council of the City of Billings this _____ day of _____.

THE CITY OF BILLINGS:

BY:

_____

MAYOR

ATTEST:

_____

CITY CLERK

City Council Regular

Date: 05/24/2021

Title: SBBURD TIF Assistance for Newman Elementary School

Presented by: Wyeth Friday

Department: Planning & Community Services

Presentation: Yes

RECOMMENDATION

The South Billings Urban Renewal Association (SBURA) Board of Directors recommends the City Council approve up to a maximum reimbursement of $61,200 from the South Billings Boulevard Urban Renewal District (SBBURD) tax increment finance funds to Billings Public Schools on behalf of the Newman Elementary School PTA for improvements to the student pickup and drop off area off Newman Lane.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)

Safety concerns have shifted the primary student pick-up/drop-off location for Newman Elementary School at 605 South Billings Boulevard from South Billings Boulevard on the west side of the school to Newman Lane on the east side of the school. Given the high activity level in this area of the east side of the school, the Newman Elementary PTA and school staff has found the Newman Lane pick-up/drop-off location needs improvements, including shade trees, fencing, sidewalk upgrades and benches. These improvements will add to the safety and functionality of this area both for pickup and drop-off students, but also for the use and enjoyment of students, teachers, parents and residents of the neighborhood. These improvements also will beautify the neighborhood and help enhance community pride.

This is a request for an unmatched grant for $61,200. The funds will provide for trees and additional landscaping, fencing and benches, a signed archway at the entrance to the school property, a roofed gathering space, and some concrete work. The work will be along Newman Lane on the school property's east frontage and on open space on the school property just inside the Newman Lane right-of-way. This is a non-profit request and a 5-1 matching ratio would require the Newman Elementary PTA to raise approximately $51,000. Newman Elementary is a Title 1 school, which means it serves mostly low-income students and 100% of the Newman Elementary students are eligible for free or reduced lunches. The Newman Elementary PTA will contribute as much manual labor as possible in order to keep the costs down and the PTA has committed to maintaining the improvements.

The requested public and school infrastructure improvements in this TIF application are eligible under Montana Code Annotated, meet the intent of the City of Billings TIF Policy, 2012 South Billings Master Plan (https://www.southbillings.org/reports) and the 2019 Urban Renewal Plan (See attached) for the South Billings Boulevard Urban Renewal Area. See the summary in Table 1 below and the funding breakdown from the SBURA Board recommendation attached to this memo.

Table 1.

Qualified Improvements	SBBURD Master Plan	City TIF Policy	Urban Renewal Plan	Montana Code Annotated
Concrete, Fencing, Landscaping/trees, Benches, Entryway Treatment, Pavilion	This project correlates with the SBBURD Master Plan by promoting the development of	Permitted uses of TIF Funds: Public infrastructure 1 (b)	2019 Project and Program Recommendations - School and Community Services	7-15-4288 (4)

	community amenities.		(page 23)	

The SBURA Board of Directors voted to support funding of the application at its meeting on April 6, 2020, under its authority per a Memorandum of Understanding between the City of Billings and SBURA approved by the City Council in May 2019.

STAKEHOLDERS

Aside from this application being presented at this City Council meeting, the SBURA Board considered the application at its March and April meetings, ultimately taking action to recommend the project at its April meeting. Discussion at both meetings included members of the Newman Elementary PTA and staff, the SBURA Board and members of the public. Billings Public Schools Superintendent Greg Upham participated in the March meeting discussion on this application.

ALTERNATIVES

The City Council is the final authority in disbursing tax increment funds. The City Council may:

- Approve the recommendation from the SBURA Board for the expenditure of these TIF funds, or;
- Modify and approve the recommendation from the SBURA Board for the expenditure of these TIF funds; or
- Disapprove the recommendation from the SBURA Board for the expenditure of these funds

FISCAL EFFECTS

The request is for up to a maximum of $61,200 to be reimbursed to Billings Public Schools on behalf of the Newman Elementary School PTA for the identified improvements (See attached Application). The funds are payable pending satisfactory submission of all paid invoices showing the completion of the approved expenditures for the project. The SBBURD TIF budget has not included this project specifically, however there is $500K budgeted in FY21 for development projects that remains unused.

Attachments

Newman School TIF Application

SBURA Recommendation and Funding Breakdown

SBBURD Urban Renewal Plan

City TIF Policy

SOUTH BILLINGS BOULEVARD TAX INCREMENT FINANCING ASSISTANCE APPLICATION

Project Name: Newman Lane Community Unification Project
Date Submitted: 1/20/21

APPLICANT INFORMATION

1. Name: _____Newman PTA _____
2. Address: ____605 South Billings Blvd_____
3. Telephone Number: ___406-281-6215_____

PROJECT INFORMATION

1. Building Address: _____605 South Billings Blvd_____
2. Legal Description: __Public School Building_____
3. Ownership: _____Public Building_____
4. Address: _____605 South Billings Blvd_____
5. If property is not owned by the Applicant, list leasehold interests (Attach evidentiary materials.)

   Lessor's Name: _____NA_____

   Lessor's Address:_____NA_____
6. Existing/Proposed Businesses: _____Elementary School_____
7. Business Description: _____School_____
8. Employment: Existing FTE jobs _____Approximately 35_____
9. New Permanent FTE jobs created by project _____0____Construction FTE jobs __0
10. Architectural Firm: _____Good Earth Works Co / Lilac Designs
    Address: _____4215 Hwy 312 Billings, MT_____
    Representative: _____Jeff Spooner_____

8. Description of Project: See Attached

See Attachment A

9. Rehabilitation/construction plans: See Attached

See Attachment B

Project Schedule:

January 2021 – Planning & Fundraising
February 2021- Application Submitted
March 2021- Approval of plans, applications, and final steps
April 2021 – June 2021 – Construction
July 2021 – Project Completed

CRITERIA FOR REVIEW

Materials contained in TIF Assistance applications are used to assess the merits of projects in relation to the goals and objectives of the South Billings Urban Renewal Master Plan and in relation to other District development and urban renewal projects. Projects will be evaluated based on the following criteria.

1. **Relevance to the South Billings Urban Renewal Master Plan** – This document is available on SBURA's website (www.southbillings.org).

2. **Economic Stimulus** – The amount of economic activity to be generated by the project.

3. **Tax Generation** – The increase in taxable value due to new construction/rehabilitation as estimated by the County Assessor's office.

4. **Employment Generation** – Total employment generated by the project assessed in terms of new permanent and part-time jobs, and construction jobs.

5. **Elimination of Blight** – The project's direct and indirect impact on the physical and fiscal condition within the District.

6. **Special or Unique Opportunities** – The extent to which the project represents a unique opportunity, meets a special need, or addresses community goals. The provision of public space or workforce housing are examples of special and unique opportunities.

7. **Impact Assessment** – The extent of both positive and negative environmental impacts, appropriateness of the project design, and impact on existing businesses or residents.

8. **Financial Assistance** – Other forms of financing available to the Applicant i.e. lender participation and state and federal grant monies,

9. **Project Feasibility** – Demonstration of market demand for the project

10. **Developer's Ability to Perform** – Applicant's capability to undertake the relative complexities of the project based on past performance on similar or comparable projects.

11. **Timely Completion** – The feasibility of completing the project according to the Applicant's project schedule.

PROJECT COSTS

Land and Site Improvements (Itemized)

1. Equity in Land and Buildings $ Publicly held school grounds
2. $_____
3. $_____
4. $_____

Subtotal $_____

Construction/Rehabilitation Costs (or attach separate statement) See Attachment B

1. $_____
2. $_____
3. $_____
4. $_____
5. $_____
6. $_____
7. $_____
8. $_____

Subtotal $_____

Fees

1. Architectural design/Supervision $ _____
2. Permits _____ $ _____
3. Other fees _____ $ _____

Subtotal $ _____

Total Project Development Costs $ _____

PROJECT FINANCING

Please complete Sources of Funds detail and summarize below.

Developer Equity

Cash in bank at 12/31/20 = $9,100

This is an unmatched grant.

Cash Invested $ 6000.00

Land & Buildings $ _____

Other (Specify) _____ $ _____

_____ $ _____

Subtotal $ 6000.00

Lender Commitments (Attach evidence i.e. Letters of Credit or other documentation.)

Lender	Loan Amount	Interest	Term	Payment/Period
na	$ _____	_____%	____yrs	$ _____/Month
na	$ _____	_____%	____yrs	$ _____/Month

Total Loan Amount $_____

DEVELOPER STATEMENT OF QUALIFICATIONS AND FINANCIAL RESPONSIBILITY

Applicant

1. Name: _____Newman PTA_____

   Address: _____605 South Billings Blvd_____

2. If the applicant is not an individual doing business under his/her own name, the applicant has the status indicated below and is organized or operating under the laws of ___State of Montana Parent Teacher Association_____.

3. The applicant is:

   _____ A corporation.

   _____x___ A nonprofit or charitable institution or corporation

   _____x____ A partnership known as ____Parent Teacher Association_____

   _____ Other (explain): _____

   Date of organization: _____Approximately 1960_____

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

Name and Address	Nature and Extent of Interest
_____Kerry Schillinger_____	_____President _____
_____Marissa Cook _____	_____Vice President_____
_____Kathy Bentley_____	_____Secretary_____
_____Kelphen Tolkar_____	_____Treasurer_____

Financial Condition

1. Provide a current financial statement for each private entity involved in the project. Documentation of financial capacity may include net worth statements, balance sheets, or profit and loss statements. See Attached

   See Attachment A

2. Has the applicant or any individual or entity affiliated with the development of this project been adjudged bankrupt, either voluntary or involuntary, within the past ten years?
   No __x___ Yes _____ If yes, give date, place, and under what name:

   _____

3. Has the applicant or any individual or entity affiliated with the development of this project been indicted for or convicted of any felony within the past ten years:
   No __x___ Yes _____ If yes, give date, charge, place, court and action taken for each case.

   _____

   _____

CONSTRUCTION CONTRACTOR

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

   Name: _____ Good Earth Works Co / Lilac Designs _____

   Address: _____ 4215 Hwy 312 Billings, MT _____

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

CERTIFICATION

I (we), ____Newman PTA (Newman Lane Committee) _____ (please print), certify that the statements and estimates within this Application as well as any and all documentation submitted as attachments to this Application or under separate cover are true and correct to the best of my (our) knowledge and belief.

Signature _____ Signature _____

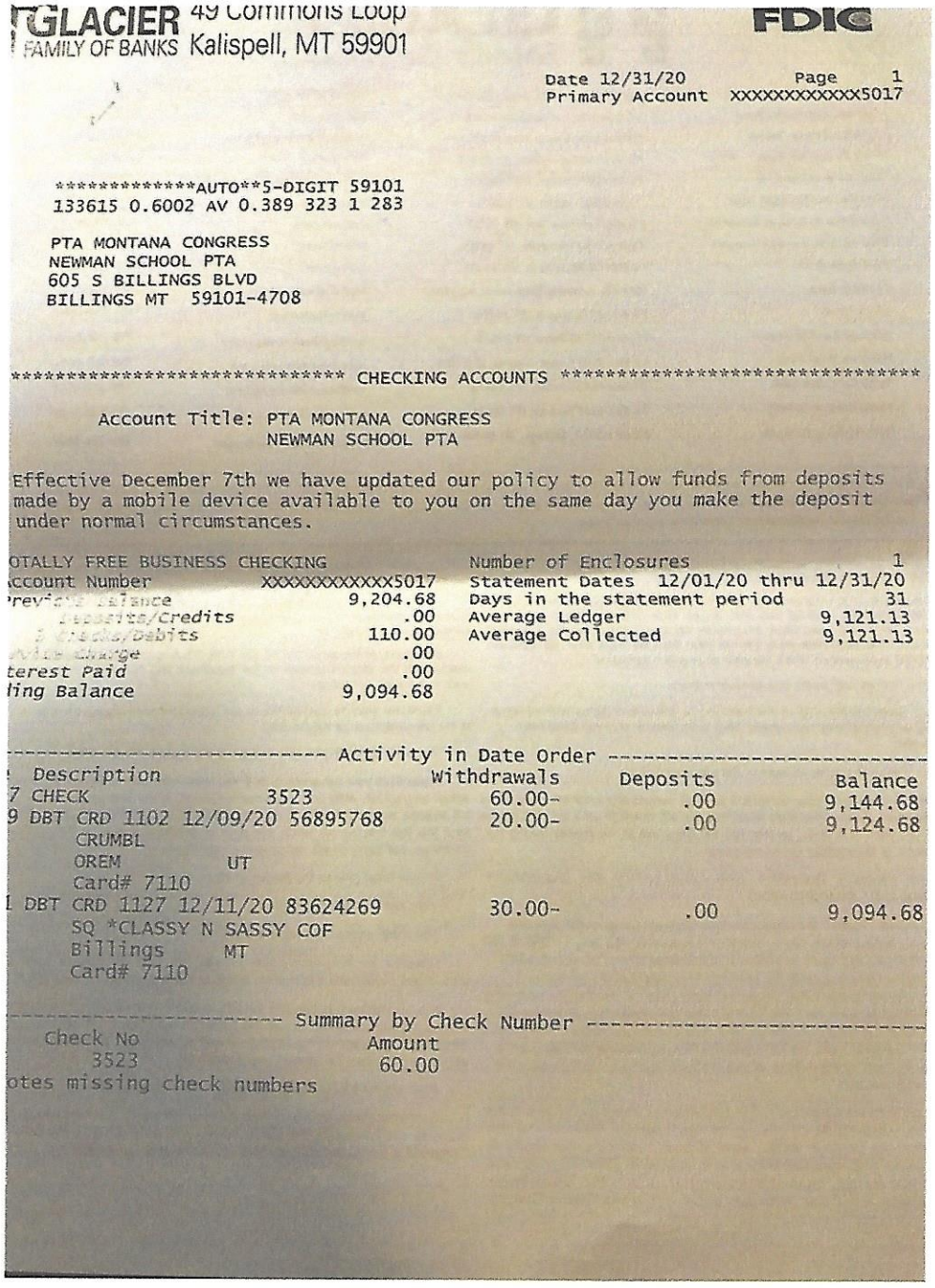
Title _____ Title _____

Address _____ Address _____

_____ _____

Date _____ Date _____

Attachment A



GLACIER FAMILY OF BANKS 49 Commons Loop Kalispell, MT 59901

FDIC

Date 12/31/20 Page 1
Primary Account XXXXXXXXXXXX5017

**********AUTO**5-DIGIT 59101
133615 0.6002 AV 0.389 323 1 283

PTA MONTANA CONGRESS
NEWMAN SCHOOL PTA
605 S BILLINGS BLVD
BILLINGS MT 59101-4708

********** CHECKING ACCOUNTS **********

Account Title: PTA MONTANA CONGRESS
NEWMAN SCHOOL PTA

Effective December 7th we have updated our policy to allow funds from deposits made by a mobile device available to you on the same day you make the deposit under normal circumstances.

OTALLY FREE BUSINESS CHECKING		Number of Enclosures	1
ccount Number	XXXXXXXXXXXX5017	Statement Dates 12/01/20 thru	12/31/20
revious Balance	9,204.68	Days in the statement period	31
Deposits/Credits	.00	Average Ledger	9,121.13
Checks/Debits	110.00	Average Collected	9,121.13
Service Charge	.00		
terest Paid	.00		
ding Balance	9,094.68		

Activity in Date Order

Description		Withdrawals	Deposits	Balance
7 CHECK	3523	60.00-	.00	9,144.68
9 DBT CRD 1102 12/09/20 56895768 CRUMBL OREM UT Card# 7110		20.00-	.00	9,124.68
1 DBT CRD 1127 12/11/20 83624269 SQ *CLASSY N SASSY COF Billings MT Card# 7110		30.00-	.00	9,094.68

Summary by Check Number

Check No	Amount
3523	60.00

otes missing check numbers

Newman Lane Community Unification Project
Newman Elementary School
2020-2021

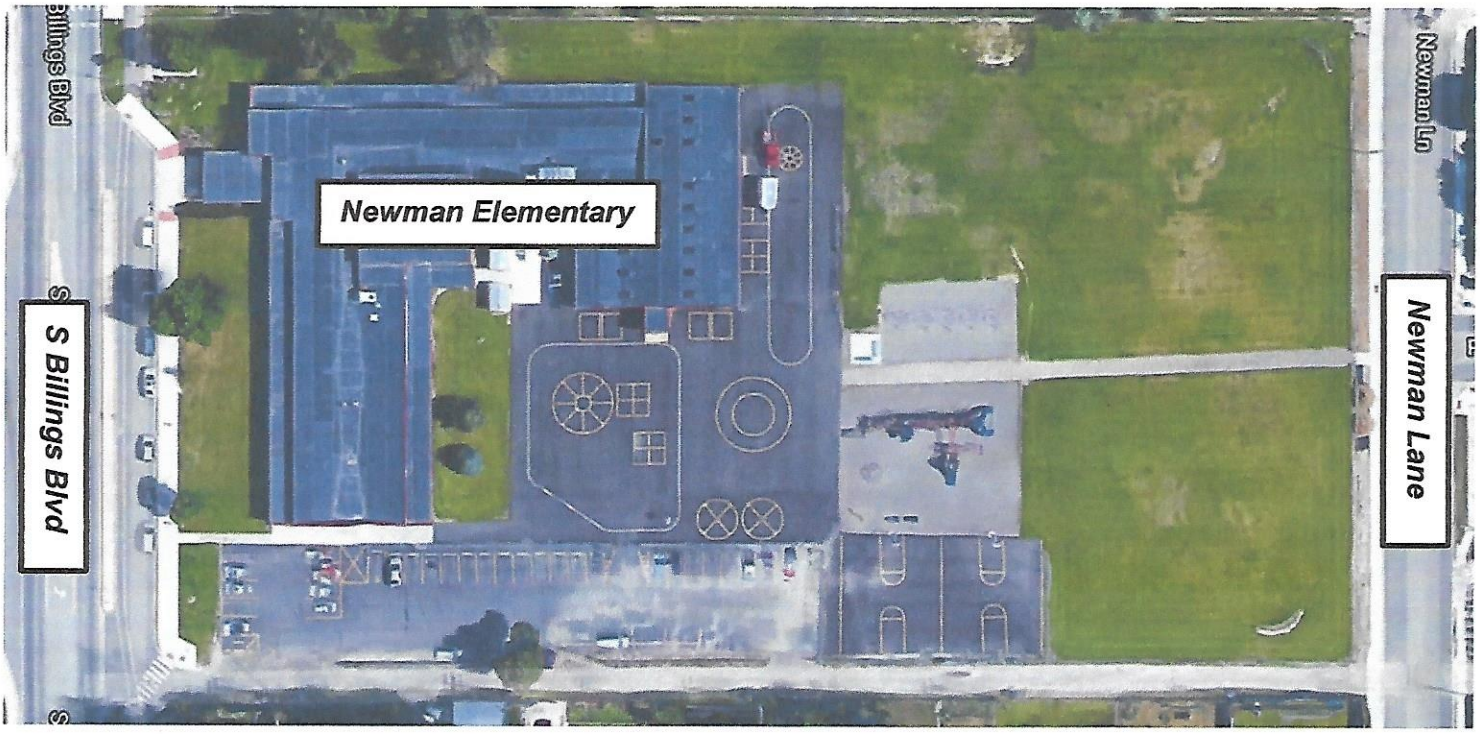
Attachment B

Project:
Born from the desire to support our entire community and nourished through the commitment and dedication of caring individuals, our Newman Lane Community Unification Project has been developed to enhance our entire neighborhood. The initial catalyst that sparked this drive came from the desire to provide parents and families at Newman Elementary with a more comfortable and practical area in which to safely drop off and pick up their students after school. As highlighted in the description below, this project has matured into a vision that will both assist our Newman students and families as well as creating a platform for neighborhood/community unification.

Safety:
With our school located on South Billings Blvd, which is heavily trafficked and a major truck route, maintaining the safety of our students and families is always a top priority. In addition, there is no parent parking on the west side of the school building. Given this geographic challenge, parents drop off and pick up their children along the east boundary of our school on Newman Lane. While this is a safer option, the area creates a variety of other challenges that we plan to address through this project.

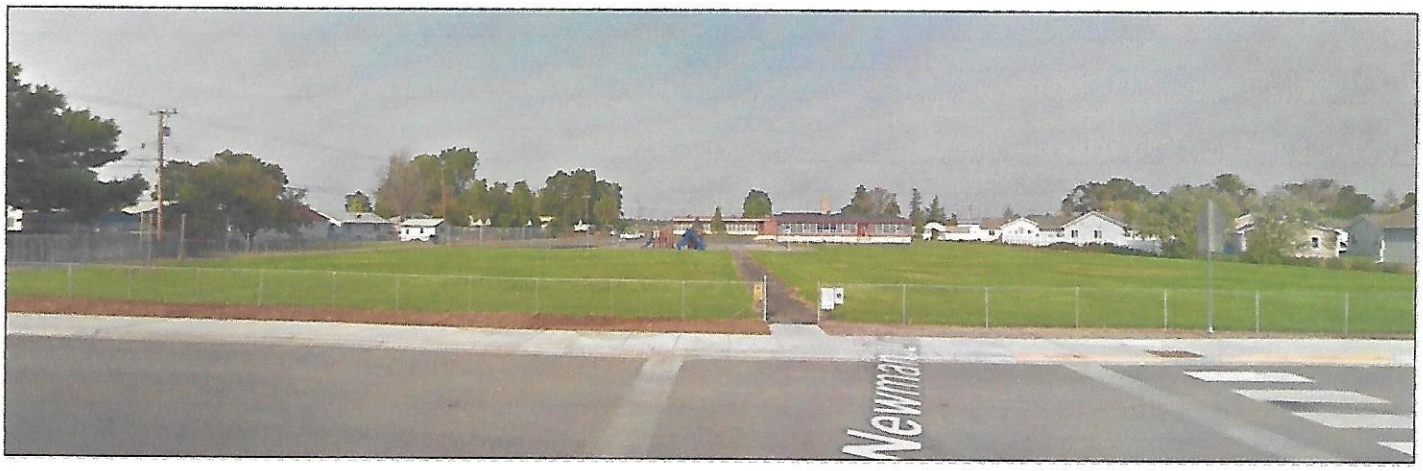
Plan:
As discussed above, our Newman Lane Community Unification Project will address a variety of different needs while improving our surrounding community. Our plan is to work collaboratively with our PTA, a variety of community groups, the City of Billings, and local businesses to raise the resources necessary to complete this project. Through these generous contributions, we will be able to upgrade our sidewalks, provide benches and space for families to safely gather, construct a community sign to welcome all, and plant mature trees for shade and curb appeal.

Overhead View



Project Area





Newman Lane Current Conditions





Newman Lane Traffic & Safety Concerns







As discussed above, our Newman Lane Community Unification Project will address a variety of different needs while improving our surrounding community. Please see the table below that highlights our plans, purpose and rough cost estimates for this project.

Newman Lane Community Unification Project

Plan	Purpose	Rough Cost Estimate
New concrete between the fence and the sidewalk	To provide a maintenance free, clean, and safe surface.	$10,000
New fencing	To match the other upgrades and to provide a clearly marked perimeter for safety.	$6,000
Six large and mature trees, three spaced on each side of the walkway	To provide natural shade for parents waiting to pick-up students and for families / friends who are viewing practices, events, or casual play in the grass field or on the playground.	$8,000
Bench seating	Seating for parents, families, students and others utilizing the space.	$6,000
Permanent garbage receptacles	To assist in keeping the space clean	$1,200
Landscaping	Bushes, shrubbery and other landscaping to beautify the space.	$5,000
Customized welcome archway	Archway located at the entry to the space will welcome all, promote community pride, and provide a space to thank donors and contributors to the project.	$5,000
Welcome Pavilion and Community gathering space	Provide an outdoor area for the community to gather.	$20,000

Total Cost of Project	$61,200

SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT (EBURD)

South Billings Boulevard Urban Renewal District Recommended Assistance

Project: Enhancements to Newman Elementary School Pick-up/Drop-Off Area
Entity: Newman Elementary School PTA

Eligible Public Improvements	**Requested**		**Recommended**	**MCA Statute**
New concrete between fence and sidewalk	$10,000		$10,000	7-15-4288 (4)
New fencing	$6,000		$6,000	7-15-4288 (4)
Six large and mature trees	$8,000		$8.000	7-15-4288 (4)
Bench seating	$6,000		$6,000	7-15-4288 (4)
Permanent garbage receptacles	$1,200		$1,200	7-15-4288 (4)
Landscaping	$5,000		$5,000	7-15-4288 (4)
Customized welcome archway	$5,000		$5,000	7-15-4288 (4)
Welcome pavilion & community gathering space	$20,000		$20,000	7-15-4288 (4)
TOTAL	**$61,200**		**$61,200**	

Current taxable value	N/A
Projected taxable value on completion	N/A
Estimated annual increment generated	N/A

Public Benefit:

This project correlates with the SBBURD Master Plan by promoting the development of community amenities. This area creates a safe and pleasant place for parents to pick-up and drop-off their children from Newman Elementary School. Additionally, the grassy areas immediately adjacent to the pick-up and drop-off areas represent a de facto public park used by many residents for a variety of outdoor activities.

Urban Renewal Plan for the South Billings Boulevard Urban Renewal Area



Prepared by the Planning & Community Services Department
Adopted by the Billings City Council on December 8, 2008
Amended by the Billings City Council on July 22, 2019

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Acknowledgements

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- Floyd Martin, Vice Chair
- Alan Pomick, Treasurer
- Debbie Rowe, Secretary

Big Sky Economic Development Authority

Downtown Billings Paiinership

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Section 1 - Introduction

On May 12, 2008 the City of Billings adopted an ordinance creating the South Billings Boulevard Urban Renewal District (SBBURD) and established a Tax Increment Finance District. As part of this ordinance, an urban renewal plan and the boundaries of the tax increment finance district were adopted. Public participation for preparing the urban renewal plan involved public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority.

In October of 2008, the City began a modification of the SBBURD to include three additional properties. Two of these properties were recently annexed and contiguous to the existing SBBURD; therefore, the properties are now eligible to be included within the SBBURD. The third property is contiguous and requested an expansion of the district boundary. The modification of the urban renewal plan will reflect the addition of those properties.

The December 2008 modification of the urban renewal plan:

- Served as a framework for the official urban renewal plan
- Fulfilled Montana state law
- Updated and define district boundaries
- Classified blight
- Set forth the protocol for its authorization, execution, and management
- Illustrated the development opportunities
- Documented baseline taxable property values and potential areas for redevelopment

The July 2019 amendment of the urban renewal plan will:

- Identify future projects and programs
- Ensure the City has the option to bond future projects
- Update to the 2008 Plan to reflect the 2019 amendment process

Section 2 - Definitions

The following terms have the following meanings unless a different meaning is clearly indicated by the context:

1. "Agency" or "urban renewal agency" means a public agency created by Section 7-15-4232 of the Montana Code Annotated.
2. "Blighted area" means an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:
    a. The substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
    b. Inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

c. Inappropriate or mixed uses of land or buildings;
d. High density of population and overcrowding;
e. Defective or inadequate street layout;
f. Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
g. Excessive land coverage
h. Unsanitary or unsafe conditions;
1. Deterioration of site;
J. Diversity of ownership;
k. Tax or special assessment delinquency exceeding the fair value of the land;
I. Defective or unusual conditions of title;
m. Improper subdivision or obsolete platting;
n. The existence of conditions that endanger life or property by fire or other causes; or
o. Any combination of the factors listed in the subsection (2).

3. "Bonds" means any bonds, notes, or debentures (including refunding obligations) authorized to be issued pursuant to Section 7-15-4300 MCA.
4. "Clerk" means the clerk or other official of the municipality who is the custodian of the official records of the municipality.
5. "Local governing body" means the council or other legislative body charged with governing the municipality.
6. "Mayor" means the chief executive of a city or town.
7. "Municipality" means any incorporated city or town in the state.
8. "Redevelopment" may include:
   a. acquisition of a blighted area or portion of the area;
   b. demolition and removal of buildings and improvements;
   c. installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions in accordance with the urban renewal plan; and
   d. making the land available for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself, at its fair value for uses in accordance with the urban renewal plan. If the property is condemned pursuant to Title 70, chapter 30, the private enterprise or public agencies may not develop the condemned area in a way that is not for a public use.
9. "Urban renewal area" means a blighted area that the local governing body designates as appropriate for an urban renewal project or projects.
10. "Urban renewal plan" means a plan for one or more urban renewal areas or for an urban renewal project. The plan:
    a. must conform to the growth policy if one has been adopted pursuant to Title 76, chapter 1; and;
    b. must be sufficiently complete to indicate, on a yearly basis or otherwise:
       i. any land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation that is proposed to be carried out in the urban renewal area;
       ii. zoning and planning changes, if any, including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1;
       iii. land uses, maximum densities, building requirements; and
       iv. the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transp01iation, public utilities, recreational and community facilities, and other public improvements.

Section 3 - Background

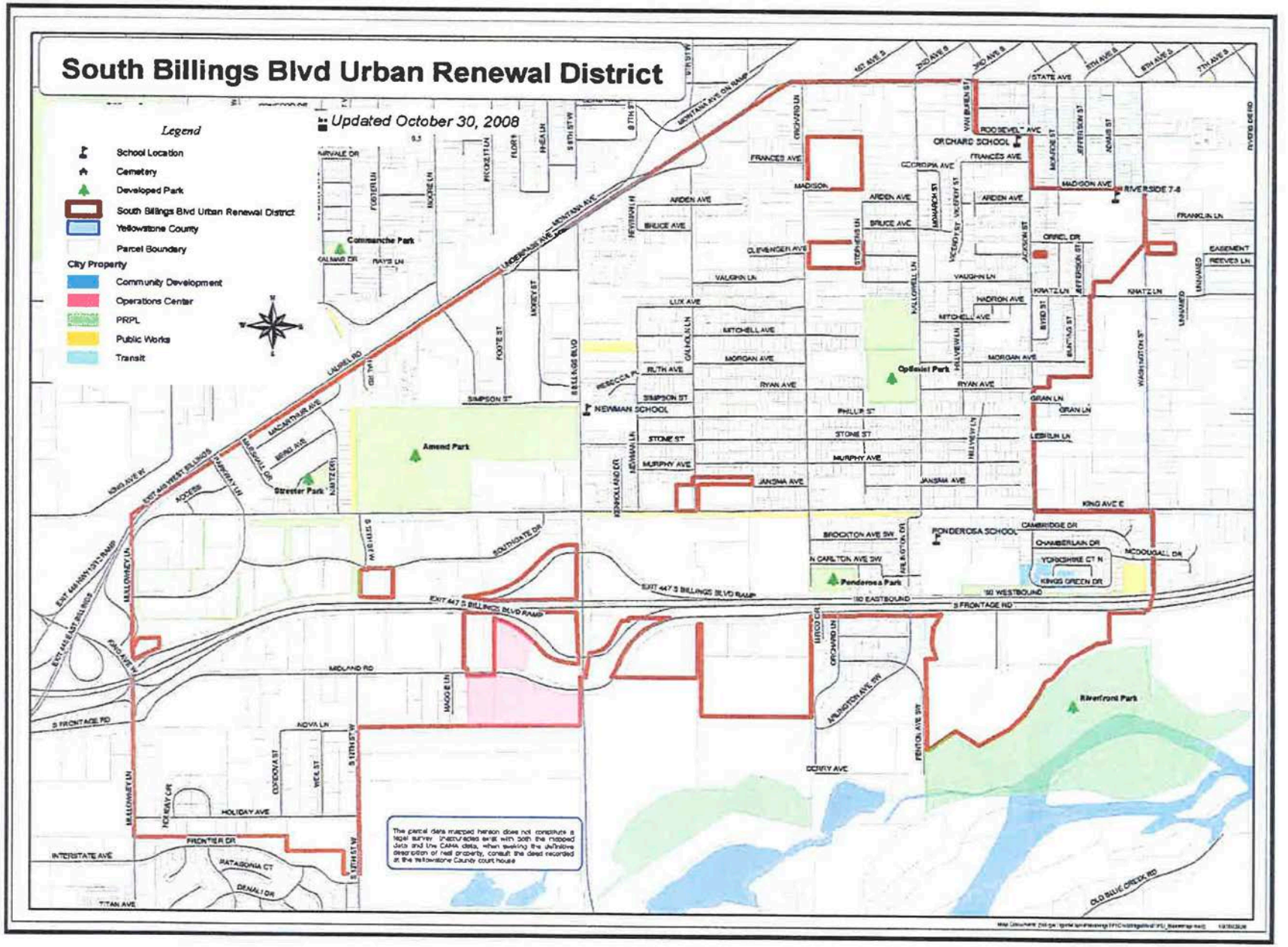
The South Billings Boulevard Urban Renewal District lies within city boundaries, is situated between major transportation routes, and stretches from the east side of the King Avenue Overpass east to Washington Street and from State Avenue South to the city limit boundaries. Located within the district is the I-90/94 Interstate and adjacent north is the major railway line through the city. Map 1 shows the boundaries of the SBBURD.

This district lies within the Southwest Corridor Neighborhood Task Force. The task force was created in the early 1990's in response to the growing problem with the roadway interchanges and associated issues. Since that time, the Task Force has become a more diverse body that handles many issues for the Southwest Billings community. Recent neighborhood issues include the re-opening of the Southgate Cop Shop and the development of Amend Park. Existing land uses and current zoning are shown on Maps 2 and 3.

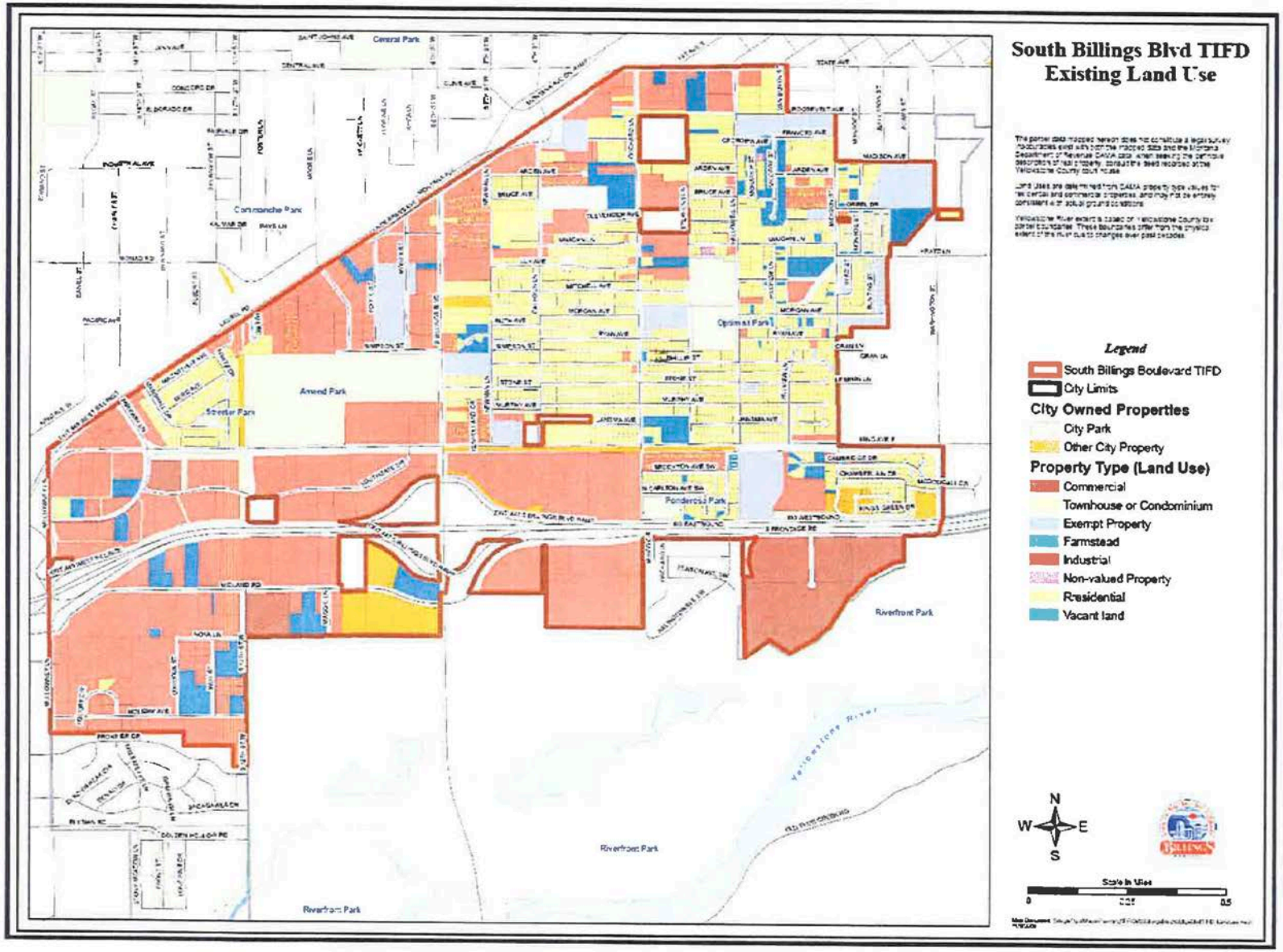
A closer look at this neighborhood shows an established area of mixed residential and commercial uses. This area also includes four schools. Some areas include unimproved streets, no sidewalk, curbs or gutters. In addition, many areas are not served by municipal water and sewer or there is old, inadequate water and sewer infrastructure. Many of the concerns raised by residents within the district center around routes for children to get to school, including bus routes that run on unimproved streets and children walking down the street instead of sidewalks to get to school.

Due to the location, the South Billings Boulevard Urban Renewal District has a tremendous amount of potential to become a major economic force. With the interstate corridor located in this district, the potential exists for this area to become a major destination place for retail, goods and services, manufacturing, and entertainment.

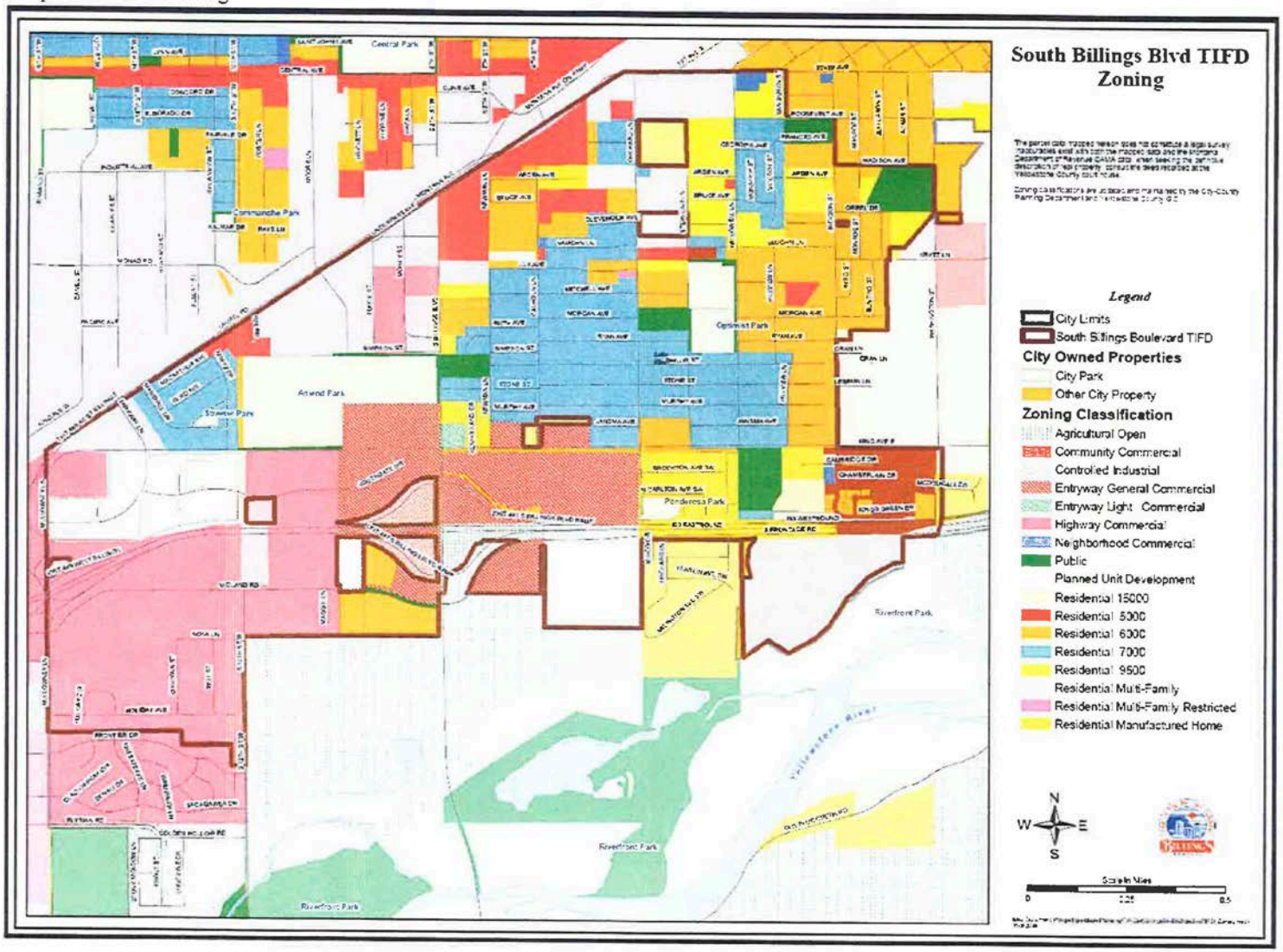
Map 1 – Proposed Boundaries of the District



Map 2 – Existing Land Uses



Map 3 – Current Zoning



Section 4 - Description of Blight

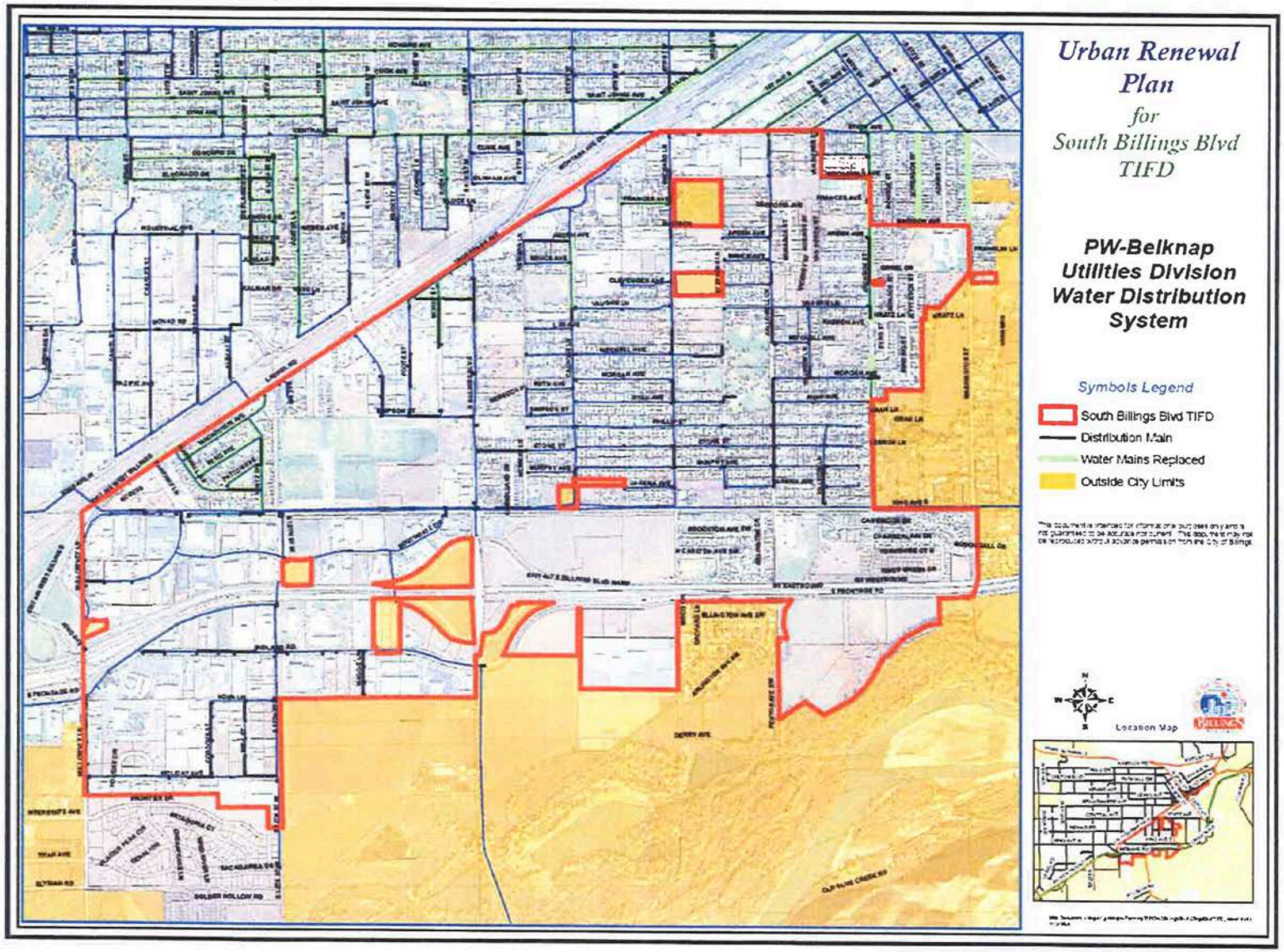
A requirement of Montana Annotated Code 2005 is to justify an urban renewal plan supported through a tax increment finance district through the determination of *blight.* Blight is defined as an area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs the sound growth of the city or its environs; retards the provision of housing accommodation; or constitutes an economic or social liability or is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

- the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; or age obsolescence of buildings or improvements, whether residential or nonresidential;
- inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;
- inappropriate or mixed uses of land or buildings;
- high density of population and overcrowding;
- defective or inadequate street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- excessive landcoverage;
- unsanitary or unsafe conditions;
- deterioration of site;
- diversity ofownership
- tax or special assessment delinquency exceeding the fair value of the land;
- defective or unusual conditions of title;
- improper subdivision or obsolete platting;
- the existence of conditions that endanger life or property by fire or other causes;
- any combination of the factors listed

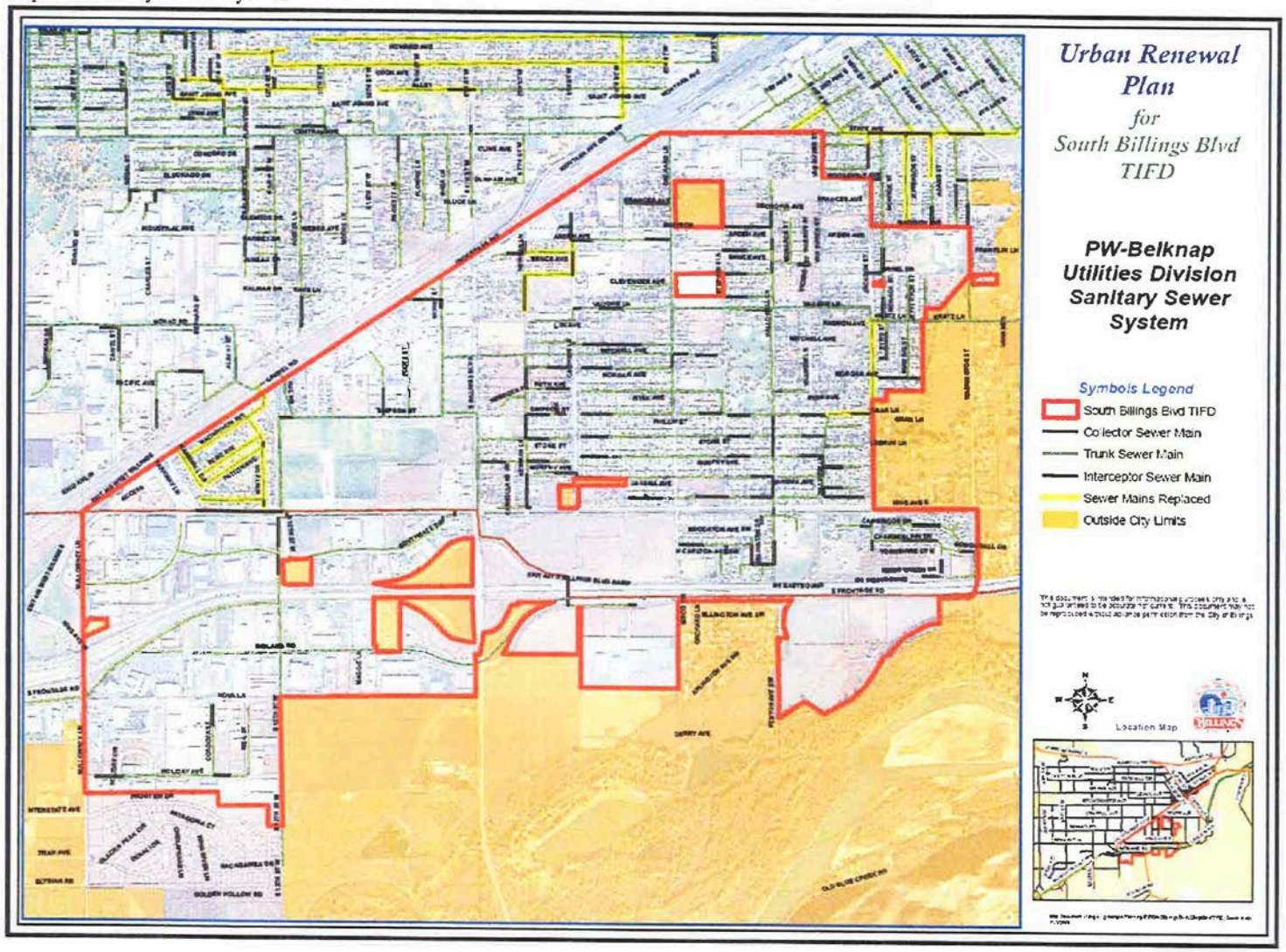
Section 5- Summary of Blight

The area in the proposed district contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, and significant infrastructure needs. Several of the commercial buildings in the district are vacant or deteriorated and need demolition. Many of the sidewalks are cracked or nonexistent, alleys are deteriorated, and, in general, much of the area is below city standards. In contrast to the above, there are certain properties within the district in good repair but included in the district to allow for a contiguous block of land within the district; and because pockets of revitalization cannot be sustained if areas of neglect and blight surround them. Over time, without continued managed urban renewal, even these success stories will once again decline in taxable value. Portions of the district fall into the blighted, neglected and under-utilized categories. Maps 4 and 5 show the current infrastructure conditions within the district.

Map 4 – Water Distribution System



Map 5 – Sanitary Sewer System



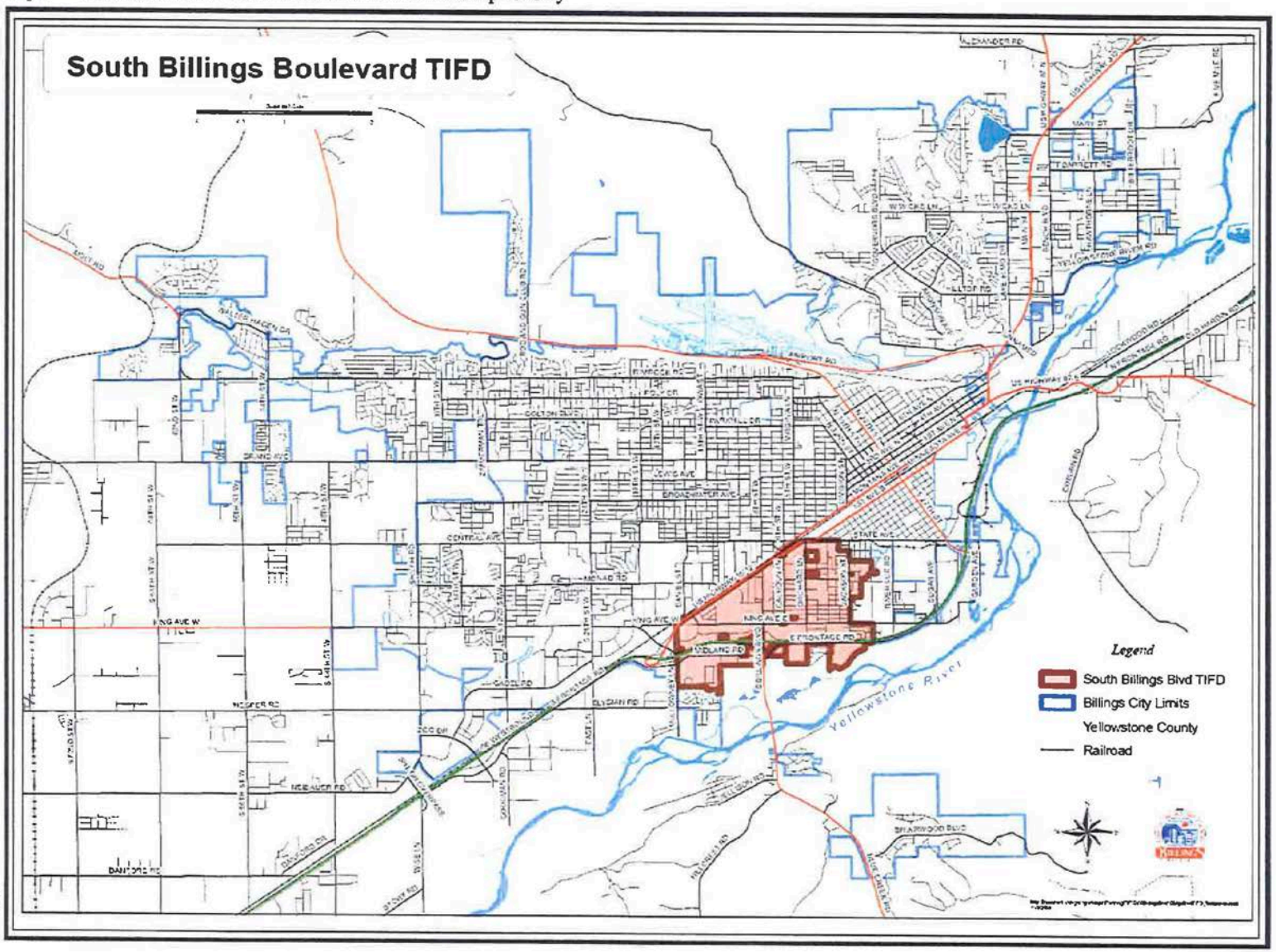
Section 6 - The Site and Its Relationship to the City

The South Billings Boulevard TIFD and Urban Renewal District is located in the south center region of the City of Billings. Bordered by the Interstate Corridor, the main railroad line and principal transportation routes, it is an area where economic development opportunities are numerous. In addition, numerous service, commercial, industrial, parks and recreation and housing choices are located within the district. Map 6 shows the TIFD boundary in relationship to the rest of the city.

Section 7 - Description of the District Boundary

Starting at the intersection of State Avenue and Van Buren Street, extending south down the centerline of Van Buren Street to the intersection of Van Buren Street and Roosevelt Avenue, extending east down the centerline of Roosevelt Avenue to the intersection of Roosevelt Avenue and Jackson Street, extending south down the centerline of Jackson Street to the intersection of Jackson Street and Madison Avenue, extending east down the centerline of Madison Avenue to the intersection of Madison Avenue and Washington Street, extending south down the centerline of Washington Street to the intersection of the centerline of Washington Street and the extension of the northern boundary of Lot 7, Willis Subdivision, extending east along said boundary to the eastern boundary of said lot, extending south along said boundary to the southern boundary of said lot, extending westerly along said boundary and its extension to the centerline of Washington Street, extending north to the existing City of Billings city limit boundary, extending southerly and westerly along the existing city limit boundary to the intersection of Jackson Street and King Avenue East, extending east along the centerline of King Avenue East to the intersection of King Avenue East and Washington Street, extending south along the centerline of Washington Street and its projection across the Interstate 90 right-of-way, to its intersection with South Frontage Road, thence in a westerly direction following the south right-of-way boundary of the South Frontage Road to the intersection of an extension of the east boundary of Riverfront Business Park Subdivision, extending south along eastern boundary of said subdivision to the south boundary of said subdivision, extending southerly and westerly along said boundary to the west boundary of said subdivision, extending northerly and easterly along said boundary and its extension to the south right-of-way boundary of South Frontage Road, extending westerly to the northeast comer of Lot 1, Block 1, Willowbrook Subdivision, thence in a southerly and westerly direction following the existing city limit boundary to a point which intersects with the extension of the southern boundary of Tract 1, C/S 2834, then west along said southern boundary of Tract 1, C/S 2834 and southern boundary of Block 4 of Weil Subdivision to the intersection with the centerline of Mullowney Lane, extending north along the centerline of Mullowney Lane and its projection to the centerline of Laurel Road, extending northeast along the centerline of Laurel Road to its intersection with State Avenue, extending northeast and east along the centerline of State Avenue to the ending point at the intersection of State Avenue and Van Buren Street. Excluding all unincorporated land within the boundary.

Map 6 – Tax Increment Finance District in Relationship to City



Section 8 - Planning Process

Stakeholder and Community Participation

The initial concept of developing a Tax Increment Finance District and an Urban Renewal Plan in the South Billings Boulevard area was brought forward by the City of Billings, Big Sky Economic Development Authority and the Downtown Billings Partnership. After discussions and meetings with the Southwest Corridor Task Force, it was determined that a steering committee would be established to move forward with the development of an Urban Renewal Plan for the creation of the South Billings Boulevard TIF District. After discussions with the participating members, it was apparent that direct communication with business owners, landowners and public participation was critical for the project to be a success. Two public meetings were scheduled to open dialogue on the proposed Urban Renewal Plan and TIF District process, and to set goals and objectives of the project. It also became clear that a grass-roots effort conducted and led by the property owners themselves was needed.

In October of 2008, the city began an urban renewal plan modification process to include 3 additional properties to the district pursuant to Montana Code section 7-15-4221. All property owners affected by the urban renewal plan modification were notified by mail of the public hearing on the Urban Renewal Plan held November 24, 2008.

In May 2019 the City in coordination with the South Billings Urban Renewal Association began the process to amend the South Billings Urban Renewal Plan. All property owners affected by the urban renewal plan amendment were notified by mail of a public meeting to discuss and receive public comment on the Plan amendment on May 30, 2019. All property owners affected by the urban renewal plan amendment were also notified of the public hearing on the Urban Renewal Plan held July 8, 2019.

Urban Renewal Plan

The Urban Renewal Plan is the tool that governs what public improvements are needed and desired within the district. Through public meetings and meetings at the Southwest Corridor Task Force, neighborhood needs and projects were identified.

With input from property owners and the identification of goals and objectives, the City of Billings moved forward with the completion of the Urban Renewal Plan. A draft was reviewed with the property owners and the Southwest Corridor Task Force prior to review by the City of Billings City Council.

The high level of transparency and frequency of meetings has ensured that a large local constituency has been involved, and as many stakeholders as possible participate and approve of the plan.

Eminent Domain

In no case shall eminent domain be used as a tool in the redevelopment of the South Billings Boulevard Urban Renewal District except as a last resort in the case of needed public infrastructure improvements and/or rights-of way.

Residential Relocation Plan

If a residential structure requires relocation as a result of right-of-way acquisition and/or a public infrastructure construction project, that is partially or fully funded with federal assistance (Housing and Urban Development, Federal Highway, etc), the City of Billings shall abide by the Uniform Relocation Assistance Act.

Planning, City Administration and Legal Review

During the many meetings with the local property owners and the Southwest Neighborhood Task Force, it was decided to begin the process of finalizing the urban renewal plan and take it to the city council before the end of 2007. The urban renewal plan was sent to the City Legal Department and City Administration for review and comments. Comments and recommendations from both City Legal and City Administration were taken into account and incorporated into this plan.

The plan was also sent to the Yellowstone County Board of Planning for its review and recommendations regarding the plan's confo1mity to the 2003 Growth Policy Plan. A recommendation of approval was passed by the Planning Board on October 23, 2007. The plan was then presented at a City Council Work Session on November 5, 2007. The public hearing and first reading of the Ordinance was held by the City Council on November 26, 2007 with the second reading and final adoption on December 10, 2007.

The modification to the SBBURD plan began in October of 2008. On November 10, 2008, the Billings City Council passed a Resolution Declaring Blight, Intent to Modify the District, and Setting a Public Hearing Date. The Yellowstone County Board of Planning reviewed the modified Urban Renewal Plan and made recommendations to the City Council with regard to the plan's conformity with the 2003 Growth Policy on November 12, 2008. The affected property owners were notified of the plan's modification and public hearing notices were published on November 6, 2008 and November 13, 2008 for the first reading and public hearing on the modification of the plan.

The City initiated an amendment to the SBBURD plan in May 2019 to ensure future projects contemplated by the City and also provided by public comments and recommendations would be possible if funded by bonding or directly through tax increment funds generated by the SBBURD. The process to amend the plan has followed the process described in Montana Code as follows: The Yellowstone County Board of Planning reviewed the modified Urban Renewal Plan and made recommendations to the City Council with regard to the plan's conformity with the 2016 Growth Policy on June 25, 2019. The affected property owners were notified by mailed postcard of the plan's modification, and public hearing notices were published on June 28, 2019 and July 5, 2019 for the first reading and public hearing on the plan amendment.

Financial Programming

The City of Billings to ensure a sound and adequate financial program to fund projects has concluded the following: For every $1 million dollars of increased market value, assuming Class 4 (commercial) property @ 3.01 % taxable rate and a mill levy of$ .55, it is anticipated that an increment value of $14,500 will be generated yearly.

Modification of SBBURD Plan

The SBBURD may be modified at any time by the City Council as necessary to eliminate and prevent the development or spread of blighted areas, and encourage urban rehabilitation. The process for plan modification shall follow the procedures set forth in 7-15-4212 through 7-15-4219 MCA, with respect to initial adoption of this plan. For purposes of urban renewal district boundary changes only, the notice of public hearing, as described in 7-15-4215 MCA, may only be mailed to those owners whose properties are situated within the area of expansion or contraction of the Urban Renewal District boundaries. In cases where the boundaries are not modified, but the contents of the urban renewal plan are substantially modified, notification shall be mailed to all owners of property within the Urban Renewal District area.

Section 9 - Housing (Conservation of existing affordable housing)

Housing is an important element to the district. Providing the district with housing opportunities is vital to the sustainability of the district. With housing opportunities, individuals and families can live and work within the district. This provides a dual benefit, first the commute to work for individuals will be reduced and second the businesses within the district will have a local work force to draw from.

Current housing in the area consists of single-family, duplex, and multi-family units and include rental units and owner-occupied. Also, manufactured home parks are located within the district. The main concentration of housing is located in the central and eastern portion of the district. During the summer of 2007, the Planning Division developed a map of existing housing conditions within the City of Billings. The information was generated through the Yellowstone County CAMA (Computer Assisted Mass Appraisal) detail system. Properties were queried that were labeled as either unsound, poor, fair or incomplete. This resulted in approximately 2,390 properties within the city limits that met this query. Out of the 2,390, 562 or 24% were located in the SBBURD. Of the 562 residential structures, 7 were rated as unsound, 184 as poor and 371 as fair.

Future housing for the district is encouraged to be developed for the goal of ownership. When rental housing occurs, such facilities shall be developed in connection with mixed-uses and managed by a company that will provide active policy measures to eliminate crime and blight. Approval of multi-family housing will require either a Zone Change or Special Review request that requires approval by the City Council.

Housing in the area shall also be designed to cater to a variety of income demographics as well. All current affordable housing needs in the district shall be accounted for through the development of owned and rental housing that remain within the district. Housing for mid- and higher level income groups shall also be encouraged. To avoid creation of substandard housing or encourage future blight, mixed-use housing developments shall incorporate all income demographics within the same project in a safe and positive way.

Section 10 - Transportation and Pedestrian Circulation

The transportation and circulation situation in the TIF district should be a major focus during redevelopment of the area. Traffic patterns and access issues can affect the function and livability of a community or neighborhood.

During discussions and public meetings, it was apparent the current street conditions and lack of adequate transportation and pedestrian facilities was a high priority for property owners. The majority

of traffic that comes into the district is either pass-through or destination traffic to the major transportation routes located within the district. In addition, the lack of sidewalk and pedestrian routes is a concern with the number of schools and parks located in the district. Safe and attractive pedestrian amenities, such as sidewalks, boulevards, crosswalks, improved signage and shelters or benches would greatly enhance pedestrian experiences.

Section 11 - Public Services and Facilities

Currently there are four public schools located within the district; three elementary schools and one middle school. A concern mentioned many times by residents was the lack of sidewalks for school children to get to school. It was observed that many students are walking directly in the street due to a lack of sidewalks. The creation of a Safe Routes to School Plan should be created to address this concern. In addition to schools, there are several developed parks located in the district. Amend Park provides a multi-use facility for soccer and rugby as well as picnic sites and shelters. Optimist Park has a variety of amenities that include basketball courts, jogging trails, playground, softball and baseball fields and picnic areas. Ponderosa Park provides horseshoe courts, playground, softball and baseball fields and soccer and rugby fields. The City of Billings also provides services to the district with MET Transit and the Southgate Cop Shop. Currently two MET routes serve the neighborhood; the Central and the Southside Loop. Both of these routes travel to and from the Stewart Park and Downtown Transfer Centers. The Southgate Cop Shop was reopened in May of 2007 and operates on Monday, Wednesday and Friday from 4 - 7 p.m. The station is a neighborhood police contact center currently staffed by volunteers. Residents are encouraged to use the Cop Shop to report crimes, suspicious activities or obtain inf01mation and assistance.

Section 12 - Infrastructure and Utilities

The district has infrastructure and utilities deficiencies that need to be addressed prior to any large influx of redevelopment or new building construction. Water and sewer conditions need to be addressed due to out of date installations, inadequate lines, or increases in impacts to existing structures.
The storm water drainage situation is particularly troublesome as many areas either have inadequate storm water facilities or none at all.

By upgrading infrastructure and utilities, therein lies the opportunity for more attractive development opportunities.

Section 13 - Urban Renewal Projects and Programs

The Urban Renewal Projects were identified by property owners within the district during the public meetings at the time the Plan was first adopted in 2008 and also during the amendment process in 2019. Information for the 2008 Plan adoption process utilized the Southwest Corridor Task Force meetings and delivery through comments mailed to the Planning Division. For the 2019 amendment process, a public meeting was held at Orchard Elementary School on May 30, 2019 where projects ideas and comments were collected, as well as at the South Billings Urban Renewal Association meeting on June 4, 2019. It is the City's intent to use Tax Increment to finance public improvement projects. In addition to TIF financing, the City may also use Special Improvement District financing as well as grant funding through but not limited to, the Community Development Block Grant Program. By combining funding opportunities, more projects will be able to be completed.

The project and program list below encompasses both items included in the 2008 Plan as well as the new project recommendations for the 2019 Plan amendment. The items are identified by the year:

2008 Project and Program Recommendations:

Project: Traffic calming measures on Calhoun and Orchard Streets.

Project: Street improvements on Newman Drive between Simpson and Stone Streets, install curb and gutter.

Project: Pave, curb and gutter on Simpson from Calhoun to Newman.

Project: Widen, curb and gutter (where needed) and repave Calhoun the full

length. Project: Widen, curb and gutter (where needed) and repave Orchard the

full length. Project: Widen, curb and gutter (where needed) and repave

Hallowell the full length.

Project: Widen, curb and gutter and install bike path or sidewalk the full length of King Avenue East from Parkway to Riverside Drive.

Project: Safety to school plan.

Project: Crosswalks within the district (where needed).

Project: Sidewalks within the district (where needed).

Project: Street lights along King Avenue East.

Project: Street widening at Optimist Park.

Project: 4100 Block of Vaughn Street - sidewalk.

Project: 4100 Block of Vaughn - public sewer needed, drainfields

failing. Project: Bike/pedestrian routes along King Avenue.

Project: Sewer improvements on South Billings Boulevard from Mitchell north to Underpass Road. Sewer line currently runs east under adjoining residential development.

Project: Repave Morgan Avenue between Hallowell Lane and Jackson Street include sidewalks, street lights.

Project: Install public sewer along Morgan Avenue that includes storm water

improvements. Project: More bike trails throughout neighborhood.

Project: Park improvements for Little League and soccer leagues.

Project: Community Resource Officer within the neighborhood to steer kids away from drugs and promote a safe neighborhood.

Project: Pave Newman Lane behind Newman Elementary School.

Project: Storm water improvement at the Northeast comer of Phillip and

Hallowell. Project: Need school zone signage at Newman Elementary School.

Project: Installation and improvement of municipal water and sewer lines within the

district. Project: Installation of sidewalks on Jackson Street (where needed).

Project: Stop light at South Billings Boulevard and Midland Road.

Project: Neighborhood wide traffic study for traffic calming

strategies.

Project: Assess adequacy of fire hydrants throughout the neighborhood and add fire hydrants as needed.

Project: Traffic light at State Avenue and Hallowell Lane.

Project: Continuation of street lights on Jackson to King

Avenue.

In addition to property owner identification of projects for the district, the City of Billings Public Works Department has several ongoing or future infrastructure projects scheduled. These projects include the following:

- Orchard Lane - Replacement of a water main in Orchard Lane from just south of King Avenue East to Underpass Avenue. This project is scheduled for the spring or fall of 2009.
- Calhoun Lane – Replacement of water main in Calhoun Lane from King Avenue East to Underpass Avenue. This project could be scheduled for 2010 or 2011.
- Jackson Street - Jackson Street is split into two phases. The first phase will provide sidewalk and drive approaches on the west side of Jackson Street from King Avenue East to Ryan Avenue. The second phase will provide drive approaches, sidewalk, curb and gutter, and ADA ramps along both sides of Jackson Street from State Avenue to Kratz Lane. These

phases are programmed in the FY 2009 Budget

- Newman Lane and Bruce Avenue - Sanitary sewer rehabilitation work was completed in the TIF district in 2007 at Newman Lane and Bruce Avenue.

2019 Project and Program Recommendations:

Parks & Recreational Amenities – Construct and enhance public facilities that will increase the quality or quantity of parks and recreational activities within the District. This may include, but is not limited to, a recreation center, swimming pool, ice arena, indoor and outdoor park development, and other amenities.

Public Safety – Construction of Police or Fire facilities within the District, to include necessary furnishings for such facilities.

Railroad Infrastructure – Coordinate with BNSF Railway and Montana Rail Link on safety and long-term viability of railroad crossings and corridors in the District and cooperate on projects with the railroads and City of Billings.

Walking Paths and Trails – Construct sidewalks, trails and pathways throughout the District with landscaping to ensure the safety of children and all pedestrians, as well as provide access to neighborhoods and services.

Transportation Corridor Improvements – Construct and reconstruct transportation infrastructure in the District to include streets, sidewalks, lighting, traffic control, multi-purpose side paths, landscaping, water, sewer, stormwater, and transit access projects.

School and Community Services – Assist in funding projects and programs in the District to enhance school playgrounds and athletic fields, health and wellness programs, access to community meeting and activity spaces, and other efforts that improve access to school and community services.

Section 14 - Identified Projects and Programs in Relationship to the Goals and Objectives Respective to the 2016 City of Billings Growth Policy

One of the requirements of Montana's Urban Renewal Law (Title 7, Chapter 15, Parts 42 and 43, MCA) is that the urban renewal plan must conform to the community's growth policy. The 2016 City of Billings Growth Policy ("Growth Policy") refers to and promotes economic development and urban renewal in a variety of ways. The preceding list of urban renewal goals listed in Section 13 are relevant to the Growth Guidelines identified in the Growth Policy in the following areas:

Growth Guidelines

Essential Investments (relating public and private expenditures to public values)

- The safety of all users and the connectivity of the transportation system are important criteria to consider in roadway designs and transportation plans
- Public transit and commercial air service are critical to ensure access to and around the City

- Planning and construction of safe and affordable interconnected sidewalks and trails are important to the economy and livability of Billings.
- Developed parks that provide recreation, special amenities (community gardens, dog parks, viewing areas), and active living opportunities are desirable for an attractive and healthy community
- Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors
- Public health and safety and emergency service response are critical to the well-being of Billings' residents, businesses, and visitors
- Infill development and development near existing City infrastructure may be the most cost effective
- The history and heritage of Billings are cornerstones of our community
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable
- A supportive school system that inspires, motivates, and prepares students for meaningful employment is important for ensuring a high quality, competitive community

Place Making (Enhance, maintain, preserve, and improve existing public places)

- A multi-use community recreation facility is desirable
- Enhancement and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community
- Park master plans and transportation plans are important to facilitate the preservation and improved public access to the Yellowstone River and the Rims
- Public and private partnerships are valuable for creating enhanced entryways into Billings
- Enhancing public buildings and spaces to be more efficient in their uses of energy, money, and space is important to having a vibrant and livable City

Community Fabric (attractive, aesthetically pleasing, uniquely Billings)

- 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
- Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors

Strong Neighborhoods (livable, safe, sociable and resilient 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
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces
- Implementation of the Infill Policy is important to encourage development of underutilized properties

Home Base (healthy, safe and diverse housing options)

- A mix of housing types that meet the needs of a diverse population is important
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Homes that are safe and sound support a healthy community

Mobility and Access (transportation choices in places where goods and services are accessible to all)

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life
- Affordable public transit is much desired
- Development oriented to transit routes will provide more transportation choices and is preferred
- "Safe Routes to Schools" promotes physical health and reduces vehicle trips, earning parents more time and less costs for transportation
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- On-street bike facilities promote predictability for all users
- Technology can reduce congestion and facilitate emergency vehicle travel at railroad crossings

Prosperity (promoting equal opportunity and economic advancement)

- Predictable, reasonable City taxes and assessments are important to Billings' taxpayers
- Successful businesses that provide local jobs benefit the community
- Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses
- Retaining and supporting existing businesses helps sustain a healthy economy

Section 15 - Neighborhood Planning

Another tool that is expected to be used in the future to address current conditions within the district and the identification of neighborhood needs will be accomplished through the creation of a Neighborhood Plan. A neighborhood plan may be drafted for this area of Billings in the next three or four years based on available funding. The purpose of the neighborhood plan is to assist residents, governing agencies, planners and developers in making the right choices when determining future growth patterns and development within the neighborhood. The plan also encourages local government, developers and businesses to discuss future land use decisions with neighborhood residents and business owners prior to the proposed land use change. The neighborhood plan is not a regulatory document; instead, it is adopted by the City Council and the Board of County Commissioners as an implementation strategy and is part of the City of Billings and Yellowstone County Growth Policy as an advisory document. The neighborhood plan would be implemented through the City's Capital Improvement Program Planning and by the Southwest Corridor Neighborhood Task Force.

The plan would include general and specific recommendations that reflect the values of the community, encourage sound decision-making, and empower people to take action. The plan also includes realistic implementation strategies that involve both private and public actions, as well as regulatory decisions.

Section 16- Conclusion

The South Billings Boulevard Urban Renewal District has a tremendous amount of potential to become a viable and reliable economic engine. The district has a great potential to become a destination place where Billings residents, business owners, and visitors will purposefully go to conduct business, have goods and services manufactured and enjoy recreation and leisure activities. At the end of the life of this TIFD program it is the hope of all involved that this area of Billings will be a wonderful place to live, work and play far into the future.

ORDINANCE 19-5725

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL PLAN FOR THE SOUTH BILLINGS BOULEVARD URBAN RENEWAL DISTRICT (SBBURD), FORMED BY THE CITY IN NOVEMBER 2007 AND EXPANDED IN NOVEMBER 2008, BE AMENDED BY REVISING SECTIONS 1, 8, 13 AND 14, PROVIDING FOR ADDITIONAL PROJECTS TO BE FUNDED AND CONSTRUCTED IN THE FUTURE IN THE SBBURD, AS WELL AS UPDATING THE PLAN TO REFLECT THE AMENDMENT PROCESS.

WHEREAS, this Council on May 12, 2008, established the South Billings Boulevard Urban Renewal District and adopted the South Billings Boulevard Urban Renewal Plan under Ordinance 08-5462,

WHEREAS, this Council on December 8, 2008, modified the South Billings Boulevard Urban Renewal District and modified the South Billings Boulevard Urban Renewal Plan under Ordinance 08-5484,

WHEREAS, opportunities have been presented to the City that make it desirable for the City to amend the South Billings Boulevard Urban Renewal Plan to enable further development and redevelopment of properties, demolishing blighted structures, improving such properties with, landscaping, utilities, and other similar improvements, assembling such properties, and making the properties so improved available for private redevelopment.

WHEREAS, the City Council has made amendments to the South Billings Boulevard Urban Renewal Plan as outlined in this Ordinance and as attached as Exhibit A.

WHEREAS, the South Billings Boulevard Urban Renewal Plan has been reviewed and approved by the Yellowstone County Board of Planning, as evidenced by the Board's letter provided to the City Council and the meeting minutes of June 25, 2019.

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

Section 1. That Section 1 of the South Billings Boulevard Urban Renewal Plan be amended so that such section shall read as follows:

On May 12, 2008 the City of Billings adopted an ordinance creating the South Billings Boulevard Urban Renewal District (SBBURD) and established a Tax Increment Finance District. As part of this ordinance, an urban renewal plan and the boundaries of the tax increment finance district were adopted.

Public participation for preparing the urban renewal plan involved public meetings and participation with the City of Billings, the Southwest Corridor Neighborhood

Task Force, residents and property owners, Downtown Billings Partnership, and Big Sky Economic Development Authority.

In October of 2008, the City began a modification of the SBBURD to include three additional properties. Two of these properties were recently annexed and contiguous to the existing SBBURD; therefore, the properties are now eligible to be included within the SBBURD. The third property is contiguous and requested an expansion of the district boundary. The modification of the urban renewal plan will reflect the addition of those properties.

The December 2008 modification of the urban renewal plan ~~will~~:

- Served as a framework for the official urban renewal plan
- Fulfilled Montana state law
- Updated and define district boundaries
- Classifiedy blight
- Set forth the protocol for its authorization, execution, and management
- Illustrated the development opportunities
- Documented baseline taxable property values and potential areas for redevelopment

The July 2019 amendment of the urban renewal plan will:

- Identify future projects and programs
- Ensure the City has the option to bond future projects
- Update to the 2008 Plan to reflect the 2019 amendment process

Section 8. That Section 8 of the South Billings Boulevard Urban Renewal Plan be amended so that such section shall read as follows:

Stakeholder and Community Participation

The initial concept of developing a Tax Increment Finance District and an Urban Renewal Plan in the South Billings Boulevard area was brought forward by the City of Billings, Big Sky Economic Development Authority and the Downtown Billings Partnership. After discussions and meetings with the Southwest Corridor Task Force, it was determined that a steering committee would be established to move forward with the development of an Urban Renewal Plan for the creation of the South Billings Boulevard TIF District. After discussions with the participating members, it was apparent that direct communication with business owners, landowners and public participation was critical for the project to be a success. Two public meetings were scheduled to open dialogue on the proposed Urban Renewal Plan and TIF District

process, and to set goals and objectives of the project. It also became clear that a grass-roots effort conducted and led by the property owners themselves was needed.

In October of 2008, the city began an urban renewal plan modification process to include 3 additional properties to the district pursuant to Montana Code section 7-15-4221. All property owners affected by the urban renewal plan modification were notified by mail of the public hearing on the Urban Renewal Plan held November 24, 2008.

In May 2019 the City in coordination with the South Billings Urban Renewal Association began the process to amend the South Billings Urban Renewal Plan. All property owners affected by the urban renewal plan amendment were notified by mail of a public meeting to discuss and receive public comment on the Plan amendment on May 30, 2019. All property owners affected by the urban renewal plan amendment were also notified of the public hearing on the Urban Renewal Plan held July 8, 2019.

Planning, City Administration and Legal Review

During the many meetings with the local property owners and the Southwest Neighborhood Task Force, it was decided to begin the process of finalizing the urban renewal plan and take it to the city council before the end of 2007. The urban renewal plan was sent to the City Legal Department and City Administration for review and comments. Comments and recommendations from both City Legal and City Administration were taken into account and incorporated into this plan.

The plan was also sent to the Yellowstone County Board of Planning for its review and recommendations regarding the plan's confo1mity to the 2003 Growth Policy Plan. A recommendation of approval was passed by the Planning Board on October 23, 2007. The plan was then presented at a City Council Work Session on November 5, 2007. The public hearing and first reading of the Ordinance was held by the City Council on November 26, 2007 with the second reading and final adoption on December 10, 2007.

The modification to the SBBURD plan began in October of 2008. On November 10, 2008, the Billings City Council passed a Resolution Declaring Blight, Intent to Modify the District, and Setting a Public Hearing Date. The Yellowstone County Board of Planning reviewed the modified Urban Renewal Plan and made recommendations to the City Council with regard to the plan's conformity with the 2003 Growth Policy on November 12, 2008. The affected property owners were notified of the plan's modification and public hearing notices were published on November 6, 2008 and November 13, 2008 for the first reading and public hearing on the modification of the plan.

The City initiated an amendment to the SBBURD plan in May 2019 to ensure future projects contemplated by the City and also provided by public comments and recommendations would be possible if funded by bonding or directly through tax

increment funds generated by the SBBURD. The process to amend the plan has followed the process described in Montana Code as follows: The Yellowstone County Board of Planning reviewed the modified Urban Renewal Plan and made recommendations to the City Council with regard to the plan's conformity with the 2016 Growth Policy on June 25, 2019. The affected property owners were notified by mailed postcard of the plan's modification, and public hearing notices were published on June 28, 2019 and July 5, 2019 for the first reading and public hearing on the plan amendment.

Section 13. That Section 13 of the South Billings Boulevard Urban Renewal Plan be amended so that such section shall read as follows:

Section 13 - Urban Renewal Projects and Programs

The Urban Renewal Projects were identified by property owners within the district during the public meetings at the time the Plan was first adopted in 2008 and also during the amendment process in 2019. Information for the 2008 Plan adoption process utilized the Southwest Corridor Task Force meetings and delivery through comments mailed to the Planning Division. For the 2019 amendment process, a public meeting was held at Orchard Elementary School on May 30, 2019 where projects ideas and comments were collected, as well as at the South Billings Urban Renewal Association meeting on June 4, 2019. It is the City's intent to use Tax Increment to finance public improvement projects. In addition to TIF financing, the City may also use Special Improvement District financing as well as grant funding through but not limited to, the Community Development Block Grant Program. By combining funding opportunities, more projects will be able to be completed.

The project and program list below encompasses both items included in the 2008 Plan as well as the new recommendations for the 2019 Plan amendment. The items are identified by the year:

2008 Project and Program Recommendations:

Project: Traffic calming measures on Calhoun and Orchard Streets.

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Project: Pave, curb and gutter on Simpson from Calhoun to Newman.

Project: Widen, curb and gutter (where needed) and repave

Calhoun the full length. Project: Widen, curb and gutter (where

needed) and repave Orchard the full length. Project: Widen, curb

and gutter (where needed) and repave Hallowell the full length.

Project: Widen, curb and gutter and install bike path or sidewalk the full length of King Avenue East from Parkway to Riverside Drive.

Project: Safety to school plan.

Project: Crosswalks within the district (where

needed). Project: Sidewalks within the district

(where needed).

Project: Street lights along King

Avenue East. Project: Street

widening at Optimist Park.

Project: 4100 Block of Vaughn Street - sidewalk.

Project: 4100 Block of Vaughn - public sewer needed,

drainfields failing. Project: Bike/pedestrian routes along

King Avenue.

Project: Sewer improvements on South Billings Boulevard from Mitchell north to Underpass Road. Sewer line currently runs east under adjoining residential development.

Project: Repave Morgan Avenue between Hallowell Lane and Jackson Street include sidewalks, street lights.

Project: Install public sewer along Morgan Avenue that includes storm

water improvements. Project: More bike trails throughout neighborhood.

Project: Park improvements for Little League and soccer leagues.

Project: Community Resource Officer within the neighborhood to steer kids away from drugs and promote a safe neighborhood.

Project: Pave Newman Lane behind Newman Elementary School.

Project: Storm water improvement at the Northeast comer of Phillip

and Hallowell. Project: Need school zone signage at Newman

Elementary School.

Project: Installation and improvement of municipal water and sewer lines

within the district. Project: Installation of sidewalks on Jackson Street

(where needed).

Project: Stop light at South Billings Boulevard and

Midland Road. Project: Neighborhood wide traffic study

for traffic calming strategies.

Project: Assess adequacy of fire hydrants throughout the neighborhood and add fire hydrants as needed.

Project: Traffic light at State Avenue and

Hallowell Lane. Project: Continuation of street

lights on Jackson to King Avenue.

In addition to property ~~1iy~~ owner identification of projects for the district, the City of Billings Public Works Department has several ongoing or future infrastructure projects scheduled. These projects include the following:

- Orchard Lane - Replacement of a water main in Orchard Lane from just south of King Avenue East to Underpass Avenue. This project is scheduled for the spring or fall of 2009.
- Calhoun Lane – Replacement of water main in Calhoun Lane from King Avenue East to Underpass Avenue. This project could be scheduled for 2010 or 2011.
- Jackson Street - Jackson Street is split into two phases. The first phase will provide sidewalk and drive approaches on the west side of Jackson Street from King Avenue East to Ryan Avenue. The second phase will provide drive approaches, sidewalk, curb and gutter, and ADA ramps along both sides

of Jackson Street from State Avenue to Kratz Lane. These phases are programmed in the FY 2009 Budget

- Newman Lane and Bruce Avenue - Sanitary sewer rehabilitation work was completed in the TIF district in 2007 at Newman Lane and Bruce Avenue.

2019 Project and Program Recommendations:

Parks & Recreational Amenities – Construct and enhance public facilities that will increase the quality or quantity of parks and recreational activities within the District. This may include, but is not limited to, a recreation center, swimming pool, ice arena, indoor and outdoor park development, and other amenities.

Public Safety – Construction of Police or Fire facilities within the District, to include necessary furnishings for such facilities.

Railroad Infrastructure – Coordinate with BNSF Railway and Montana Rail Link on safety and long-term viability of railroad crossings and corridors in the District and cooperate on projects with the railroads and City of Billings.

Walking Paths and Trails – Construct sidewalks, trails and pathways throughout the District with landscaping to ensure the safety of children and all pedestrians, as well as provide access to neighborhoods and services.

Transportation Corridor Improvements – Construct and reconstruct transportation infrastructure in the District to include streets, sidewalks, lighting, traffic control, multi-purpose side paths, landscaping, water, sewer, stormwater, and transit access projects.

School and Community Services – Assist in funding projects and programs in the District to enhance school playgrounds and athletic fields, health and wellness programs, access to community meeting and activity spaces, and other efforts that improve access to school and community services.

Section 14. That Section 14 of the South Billings Boulevard Urban Renewal Plan be amended so that such section shall read as follows:

Section 14 - Identified Projects and Programs in Relationship to the Goals and Objectives Respective to the 2016 City of Billings ~~County~~ Growth Policy ~~Plan~~

One of the requirements of Montana's Urban Renewal Law (Title 7, Chapter 15, Parts 42 and 43, MCA) is that the urban renewal plan must conform to the community's growth policy. The ~~Yellowstone County and~~ 2016 City of Billings ~~2003~~ Growth Policy ~~Plan~~ ("Growth Policy") refers to and promotes economic

development and urban renewal in a variety of ways. The preceding list of urban renewal goals listed in Section 13 are relevant to the ~~goals~~ Growth Guidelines identified in the Growth Policy in the following ~~elements~~areas:

Growth Guidelines

Essential Investments (relating public and private expenditures to public values)

- The safety of all users and the connectivity of the transportation system are important criteria to consider in roadway designs and transportation plans
- Public transit and commercial air service are critical to ensure access to and around the City
- Planning and construction of safe and affordable interconnected sidewalks and trails are important to the economy and livability of Billings.
- Developed parks that provide recreation, special amenities (community gardens, dog parks, viewing areas), and active living opportunities are desirable for an attractive and healthy community
- Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors
- Public health and safety and emergency service response are critical to the well-being of Billings' residents, businesses, and visitors
- Infill development and development near existing City infrastructure may be the most cost effective
- The history and heritage of Billings are cornerstones of our community
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable
- A supportive school system that inspires, motivates, and prepares students for meaningful employment is important for ensuring a high quality, competitive community

Place Making (Enhance, maintain, preserve, and improve existing public places)

- A multi-use community recreation facility is desirable
- Enhancement and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community
- Park master plans and transportation plans are important to facilitate the preservation and improved public access to the Yellowstone River and the Rims
- Public and private partnerships are valuable for creating enhanced entryways into Billings

- Enhancing public buildings and spaces to be more efficient in their uses of energy, money, and space is important to having a vibrant and livable City

Community Fabric (attractive, aesthetically pleasing, uniquely Billings)

- 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
- Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors

Strong Neighborhoods (livable, safe, sociable and resilient 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
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces
- Implementation of the Infill Policy is important to encourage development of underutilized properties

Home Base (healthy, safe and diverse housing options)

- A mix of housing types that meet the needs of a diverse population is important
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Homes that are safe and sound support a healthy community

Mobility and Access (transportation choices in places where goods and services are accessible to all)

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life
- Affordable public transit is much desired
- Development oriented to transit routes will provide more transportation choices and is preferred
- "Safe Routes to Schools" promotes physical health and reduces vehicle trips, earning parents more time and less costs for transportation

- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
- On-street bike facilities promote predictability for all users
- Technology can reduce congestion and facilitate emergency vehicle travel at railroad crossings

Prosperity (promoting equal opportunity and economic advancement)

- Predictable, reasonable City taxes and assessments are important to Billings' taxpayers
- Successful businesses that provide local jobs benefit the community
- Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses
- Retaining and supporting existing businesses helps sustain a healthy economy

PASSED by the City Council on first reading this 8th day of July, 2019.

PASSED, ADOPTED and APPROVED on second reading this 22nd day of July, 2019.

CITY OF BILLINGS:

CITY OF BILLINGS • SEAL • YELLOWSTONE COUNTY, MONTANA

By: William A. Cole
William A. Cole, Mayor

ATTEST:

By: Denise R. Bohlman
Denise R. Bohlman, City Clerk

RESOLUTION NO. 18-10750

A RESOLUTION OF THE CITY OF BILLINGS FORMING A POLICY FOR THE ADMINISTRATION OF URBAN RENEWAL AREAS OR DISTRICTS (URD) IN THE CITY.

WHEREAS, MCA, Title 7, Chapter 15, Part 42, Section 51 declares: General powers of municipalities in connection with urban renewal. Every municipality shall have all the power necessary or convenient:

(1) To carry out and effectuate the purposes and provisions of this part and part 43;

(2) To undertake and carry out urban renewal projects within the municipality, to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this part and part 43, and to disseminate blight clearance and urban renewal information;

(3) To organize, coordinate, and direct, within the municipality, the administration of the provisions of this part and part 43 as they apply to such municipality in order that the objective of remedying blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such purpose most effectively;

(4) To exercise all or any part or combination of powers granted in this part or part 43; and

WHEREAS, the City of Billings reviews and adopts Urban Renewal Plans for each of its Urban Renewal Districts, and those Plans specify goals for each Urban Renewal District; and

WHEREAS, the City of Billings may establish local policies that guide the establishment, operations, funding and governance of urban renewal districts; and

WHEREAS, development of TIF (Tax Increment Financing) Policies would be in the best interest of the City.

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

That the City Council now makes and adopts the following TIF Policy:

CITY OF BILLINGS TAX INCREMENT FINANCE POLICY

1. PERMITTED USES OF TIF FUNDS. TIF funds may be used for costs outlined in MCA, Title 7, Chapter 15, Part 42, Section 88. Urban Renewal Plans adopted by the City may limit what TIF funds may be spent on in any Urban Renewal District. Eligible costs may include, but are not limited to:
   a. Land acquisition and assemblage, demolition and removal of structures, relocation of occupants, analysis to determine needs of an urban renewal area, administrative cost for redevelopment activities.
   b. Public infrastructure, including, but not limited to: streets, storm drains, parking, public buildings, water and sewer lines, sidewalks, utility connections.
   c. Private infrastructure with public benefit, including, but not limited to, building façades, windows, doors, fire suppression or alarm systems, storm drainage, environmental remediation, parking, and ADA access.

2. FINANCIAL ASSISTANCE THROUGH TIF. All financial assistance must be approved by the City Council prior to any activity receiving funding. Financial assistance should be requested prior to beginning construction. All activity (design and construction) must be completed prior to issuance of TIF funds from the City Finance Department. Financial thresholds and assistance tools are as follows:
   a. A minimum of $\geq$ $5 of private investment for every $1 of public investment is the preferred threshold to be met for each TIF application. The City Council reserves the right to approve any application that does not meet this minimum. The City Council also may make exceptions for projects of less than $100,000, and for publicly owned projects, properties or facilities.
   b. Grants may be made for uses listed in Part 1 above benefitting any government owned-land or buildings and for profit and non-profit businesses.
   c. Bonding may be available at the discretion of the City Council.
   d. All TIF grants will be formalized by a development agreement that must be signed by the grantee before the City will reimburse eligible expenses.

3. URD MANAGEMENT. Each URD in the City of Billings will be managed as follows:
   a. Each URD should maintain a non-profit advisory board to make recommendations to the City Council regarding TIF expenditures. Unless specifically authorized by a Memorandum of Understanding (MOU) referenced in 3(b) below, a majority of board members must own or lease property within the district, or must represent such owner or lessee, and may include representation from residential or commercial property owners or lessees. Advisory Boards must carry insurance for their members and provide proof of insurance to the City.
   b. A MOU must be executed between the advisory board and the City Council that defines the board's roles, responsibilities, authority, and processes, including for hiring and maintaining board support staff. The MOU must

contain language addressing conflict of interest situations for board members whose property may directly benefit from a TIF expenditure and for board support staff. The MOU also must include language that if there is the appearance of a conflict of interest the issue will be reviewed by City legal staff before moving forward.

c. Training for all URD advisory boards will be conducted biannually in coordination with City staff and URD support staff. The training must include, but is not limited to: review of URD and TIF laws, Administrative Rules, ethics, conflicts of interest, meeting management, and maintenance of minutes and records.

d. URD financial reporting will be consistent across all URDs and be set by coordination between the City Finance Director and the Planning and Community Services Director, and URD support staff.

e. TIF application review and City Council staff report preparation will be conducted by the Planning and Community Services Department Director, in coordination with the Assistant City Administrator, Finance Director, and URD support staff.

PASSED by the City Council and APPROVED this 9th day of July, 2018.

CITY OF BILLINGS

BY: William A Cole
William A. Cole, Mayor

CITY OF BILLINGS SEAL YELLOWSTONE COUNTY, MONTANA

ATTEST

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk