

**\*\*ATTENTION\*\***

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend the meeting in person in Council Chambers, second floor of City Hall, 220 N. 27th Street. 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](http://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.com7tv.com](http://www.com7tv.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](http://www.billingsmt.gov) and click on "Watch Meetings Online" on the homepage.
  - . In-Person.
  - . Virtually via Zoom (see the link below).

Citizens may submit public comment via the following methods:

- . Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- . Email: [Council@billingsmt.gov](mailto: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.
- . Attend the meeting virtually through Zoom by entering the Webinar ID and Passcode indicated below. Click on *Zoom Meeting Instructions* and *Zoom Hybrid Meeting Details* below for more information. 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.
  - o **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 [Zoom Meeting IDs and Passcodes](#)
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**Webinar ID: 844 5702 0917**

**Passcode: 186494**

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

Please contact Denise Bohlman, City Clerk, at [bohlmand@billingsmt.gov](mailto:bohlmand@billingsmt.gov), or at 406.657.8210, with any questions.



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

**REVISED 7.20.2022**  
**Regular Agenda Item No. 3 was added**  
**CITY COUNCIL**  
**REGULAR BUSINESS MEETING**

**COUNCIL CHAMBERS**

**AGENDA**  
**JULY 25, 2022**

**5:30 P.M.**

**CALL TO ORDER:** Mayor Cole

**PLEDGE OF ALLEGIANCE:** Mayor Cole

**INVOCATION:** Councilmember Gulick

**ROLL CALL:** Councilmembers present on roll call were:  Shaw,  Gulick,  Neese,  Owen,  Joy,  
 Choriki,  Tidswell,  Purinton,  Boyett,  Rupsis

**MINUTES:**

- June 27, 2022
- July 11, 2022

**COURTESIES:**

- Police Chief St. John - Officers

**PROCLAMATIONS:**

- August 7-13, 2022 - National Health Center Week

**COUNCIL REPORTS:**

**ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2 and 3 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:

A. **Bid Awards:**

1. **Landfill Household Hazardous Waste.** (Opened 6/21/22) Recommend rejecting all bids.

B. **Professional Services Contract** for W.O. 22-47: Landfill Slope Stability Improvements with Pioneer Technical Services, Inc.

C. **Construction Contract** for W.O. 19-12: West End Raw Water Pipeline Project with COP Construction, LLC.

D. **Donation** to the Billings Public Library from the Billings Library Foundation.

- E. **Donations** to the Billings Public Library from various donors.
- F. **2022 Justice Assistance Grant (JAG) Application**, Memorandum of Understanding (MOU) with Yellowstone County, and award to the City of Billings Police Department.
- G. **Community Development Block Grant (CDBG) Planning Grant Application** for the West Billings Neighborhood Plan Update.
- H. **Acknowledge Receipt of Petition to Vacate** a portion of Marillac Street and set a public hearing for August 22, 2022.
- I. **Acknowledge Receipt of Petition to Vacate** a portion of 12th Avenue North and North Side Addition, 3rd Filing, Block 9 alley and set a public hearing for August 22, 2022.
- J. **Subdivision Improvement Agreement (SIA) Amendment Request** for The Timbers Subdivision, 1st Filing.
- K. **Preliminary Major Plat** for Wild Rose Subdivision, 1st Filing.
- L. **Preliminary Major Plat** for Legacy Subdivision, 2nd Filing.
- M. **Second/Final Reading Ordinance** amending Ordinance 22- 5811 to correct the legal description in Zone Change 1015.
- N. **Second/Final Reading Ordinance** expanding Ward III (Annexation 22-06).
- O. **Bills for the Weeks of:**
  - 1. June 20, 2022

**Recommended Motion:** I move to approve the items of the Consent Agenda as submitted, with the exception of items moved for separation.

**REGULAR AGENDA:**

- 2. **TAX INCREMENT FINANCING ASSISTANCE** from Downtown Urban Renewal tax increment finance district to Big Sky Economic Development Authority (BSEDA) for façade improvements to its property, located at 201 North Broadway. DPB Board recommends approval. (Action: approval or disapproval of DBP Board recommendation.)
  - *Presented by:* Wyeth Friday, Planning Director and Mehmet Casey, DBP Development Director
- 3. **RESOLUTION** to establish landfill reserve for future capital expenses. Staff recommends Council NOT approve the Resolution. (Action: approval or disapproval of staff recommendation.)
  - *Presented by:* Debi Meling, Public Works Director

**Recommended Motion:** I move to approve the Tax Increment Financing Assistance from Downtown Urban Renewal tax increment finance district to Big Sky Economic Development Authority (BSEDA) for reimbursement of identified building facade improvements to its property, located at 201 North Broadway; up to a maximum of \$50,000, as recommended by the DBP Board.

**Recommended Motion:** I move to disapprove a resolution to establish a separate landfill reserve for future capital expenses, as recommended by staff.

**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:**

**ADJOURN:**

*Council Chambers are 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](mailto:bohlmand@billingsmt.gov), 72 hours prior to the meeting date.*

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**\* 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.*

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Landfill Household Hazardous Waste Contract  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review** Not Applicable

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**RECOMMENDATION**

Staff recommends Council reject the bid for the Landfill Household Hazardous Waste collection.

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

The City of Billings Landfill operates a Household Hazardous Waste facility to accommodate disposal of certain items from residents inside city limits. Items accepted for disposal are paint, oil, pesticides, car batteries, antifreeze, etc. This operation and contract ensure that these items are not disposed of in the landfill. The bid was advertised on June 10, 2022, and June 17, 2022, in the Yellowstone County News and on the City's Website. Bids were opened bids on June 21, 2022, and one bid was received. Staff has determined that there are additional vendors that could bid the project and would therefore like to re-bid the project to encourage a more competitive process. Thus, staff is recommending that Council reject the bid so staff can rebid the contract.

**ALTERNATIVES**

City Council may:

- Reject the bid for Household Hazardous Waste. There is no viable alternative.

**FISCAL EFFECTS**

There is no significant financial effect to reject this bid.

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**City Council Regular**

**Date:** 07/25/2022  
**Title:** W.O. 22-47: Landfill Slope Stability Improvements, Professional Services Contract  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review** Not Applicable

**RECOMMENDATION**

Staff recommends that the City Council approve the Professional Services Contract with Pioneer Technical Services, Inc. for W.O. 22-47: Landfill Slope Stability Improvements, in the amount of \$89,000.

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

The north slope of the Billings Regional Landfill above Jellison Road experienced failures in 2018, causing property damage north of Jellison Road. The City subsequently had a hazard assessment and alternatives analysis performed, which led to a mitigation project that commenced in July 2020. The mitigation primarily involved removing the majority of overburden material, regrading to more gradual slopes, and re-vegetating the affected areas. The project also included armoring the north storm ditch at the bottom of the slope. The project was completed with final seeding in November 2020. This project mitigated a portion of the slope instability, due to limited budget and prioritizing the highest risk repair area. More recently, there has been additional slope movement adjacent to the 2020 project.

The slopes immediately west of the project from 2020 show signs of past sloughing and potential failure. The Landfill's primary storm water collection facility is located below these slopes. Furthermore, the slope east of the main landfill entrance showed signs of sloughing in December 2021, and again in May 2022. The material that fell east of the landfill entrance did not cause any damage, but there is private property below this slope that could be affected if a larger portion of the slope were to fail.

This project consists of performing professional engineering evaluation, design, and construction contract administration services to mitigate the two slope failure risks depicted above. The area to mitigate will be maximized to the extent possible given the construction budget available. The scope of work includes Safety and Project Management, Geotechnical Evaluations and Materials Testing, Mitigation Recommendations, Slope Stability Design, Access Road Design, Bidding Services, and Construction Contract Administration (CA)--including final survey and part-time observation. A contract amendment will be presented later, after design is complete, the extent of construction is determined, and the construction engineering scope and fee can be better defined.

The City requested proposals for professional engineering services from a prequalified list derived from the established Statement of Qualifications. Three proposals were received from Pioneer Technical Services, Inc., Tetra Tech, and Stahley Engineering and Associates. Pioneer Technical Services, Inc. was selected for the project using the proposal process. The consultant selection was based on Project Team and Availability, Project Approach, and Firm Qualifications and Experience related to the project needs.

**ALTERNATIVES**

City Council may:

- Approve award of a Professional Services Contract to Pioneer Technical Services, Inc.; or,
- Not approve a contract with Pioneer Technical Services, Inc. If this agreement is not approved, this work will be delayed, which could result in City and/or private property damage if the slopes experience further failure.

**FISCAL EFFECTS**

The contract is in the amount of \$89,000 and is being funded with Solid Waste funds as approved and budgeted in FY23 in the amount of \$100,000. There are adequate funds available for this contract amount.

**City Council Regular**

**Date:** 07/25/2022  
**Title:** W.O. 19-12: West End Raw Water Pipeline Project, GC/CM Standard Agreement & General Conditions  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review** Yes

**RECOMMENDATION**

Staff recommends that the City Council approve a General Contractor/Construction Manager (GC/CM) Standard Agreement and General Conditions contract with COP Construction, LLC for W.O. 19-12: West End Raw Water Pipeline Project.

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

Identifying and securing an alternate and additional source of treated water for the City of Billings is a priority to the City. Through FY23, the City has \$126 million in funding budgeted to design and build the projects needed for the new water system. Over the next year, design and start of construction is planned for a new water treatment plant, river water intake and associated pump station, reservoir, and approximately 5 miles of transmission pipeline.

On February 8, 2021, Council approved Resolution 21-10925 allowing the use of an alternative project delivery method as authorized by MCA 18-2-502 for construction of water system projects on Billings' West End, including the raw water pipeline under current consideration. The City has elected to move forward with the General Contractor / Construction Manager (GC/CM) contract format, since the contracting structure is more conducive to ensuring integral City staff involvement in project direction and decisions as developed by the project Team consisting of City staff, the Engineer, and GC/CM Contractor. Some major benefits of GC/CM contracts are that they bring the contractor, procured through an open public process, onto the project team as early as possible in order to take advantage of the expert contributions the contractor can bring to the project design and early cost development. GC/CM contractors are often able to identify opportunities to reduce overall project costs by introducing concepts for the team that are potentially more cost-effective to build. Information is gained quickly about actual construction means, methods and materials, which leads to improved design accuracy and completeness. During the pre-construction phase, the GC/CM contractor brings a level of cost certainty to the project before the design is complete, which informs overall budgets and the scope of current and future projects.

On August 23, 2021, City Council approved a Pre-Construction Services Contract with COP Construction in the amount of \$98,987 for the raw water pipeline. The project Team consisting of City staff, HDR Engineering and COP Construction, are working through the project design that HDR has advanced to approximately 60% completion. The Team is working on a project management plan, reviewing major project risks and refining the project cost model. A number of field reviews have been conducted and opportunities identified to reduce project costs, primarily through pipe size and material selection (36-inch ductile iron) and alignment decisions to minimize the number of large pipe fittings and construct outside the road section to minimize pavement restoration. COP's early (January 2022) cost estimate was approximately \$14 million; however, the Team will develop progressively more detailed and accurate cost estimates as the design advances and current materials quotes are collected. All pricing information is "open-book" and reviewed by the project Team.

Council is asked to approve the foundational or base Standard Agreement and General Conditions construction contract between COP (GC/CM) and the City of Billings. This base agreement outlines the contract details including, but not limited to, general provisions, responsibilities of the parties, compensation, changes to the work, payment, indemnity, insurance, bonds, termination, and dispute resolution. This base agreement does not include a contract value or construction duration. The contract value will be assigned with subsequent contract amendments.

Due to the long lead-times of materials in the current economy, the Team plans to develop and present to City Council the first amendment to this base agreement to secure pipe and valves as soon as possible. This strategy will bring greater cost certainty to the project and enable COP to begin working as soon as possible. At the end of the pre-construction phase, COP will present an overall Guaranteed Maximum Price (GMP) to construct the entire project for Team review, which City Council may or may not approve at that time. If Council does not approve the GMP, the Contract allows for the City's relationship with COP Construction to be terminated, with the City then proceeding with other options to construct the project. If Council approves the GMP, another amendment to this agreement will be

presented for City Council approval.

## **ALTERNATIVES**

City Council may:

- Approve a General Contractor/Construction Manager (GC/CM) Standard Agreement and General Conditions contract with COP Construction; or,
- Not Approve a contract. If this project is not completed, the City will be unable to proceed with the plans needed to provide for the present and future drinking water redundancy and capacity needs of City of Billings residents.

## **FISCAL EFFECTS**

Execution of the GC/CM agreement has no fiscal effect, but future amendments to the agreement for material procurement and construction will have fiscal effects. These amendments will require Council action. The W.O. 19-12: West End Raw Water Pipeline Project was budgeted in FY23 using water funds. The amount budgeted was \$21 million to include the raw water intake, pump station and pipeline projects. The early cost estimate for the pipeline project is \$14 million.

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## **Attachments**

WO1912 WE RW Pipeline Project, GC/CM Contract

**W.O. 19-12, West End Raw Water Pipeline Project**  
**Standard Agreement and General Conditions**  
**Between Owner and General Contractor/Construction Manager (GC/CM)**

**TABLE OF ARTICLES**

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8. COST OF THE WORK
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15. CONTRACT DOCUMENTS

**ARTICLE 1 AGREEMENT**

This Agreement is made this [\_\_\_\_] day of [\_\_\_\_] in the year [\_\_\_\_], by and between the

OWNER: City of Billings

and the

GENERAL CONTRACTOR/CONSTRUCTION MANAGER (GC/CM): COP Construction LLC

for construction and services in connection with the following

PROJECT: W.O. 22-19, West End Raw Water Pipeline Project

Engineer is HDR Engineering Company, Inc.

**ARTICLE 2 GENERAL PROVISIONS**

2.1 PARTIES' RELATIONSHIP Each Party agrees to act on the basis of mutual trust, good faith, and fair dealing, and perform in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.

2.1.1 GC/CM represents that it is an independent contractor and that it is familiar with the type of Work it is undertaking.

2.1.2 Neither GC/CM nor any of its agents or employees shall act on behalf of or in the name of Owner except as provided in this Agreement unless authorized in writing by Owner's Representative.



2.2 ETHICS Each Party shall perform with integrity. Each shall: (a) avoid conflicts of interest, and (b) promptly disclose to the other Party any conflicts that may arise. Each Party warrants that it has not and shall not pay or receive any contingent fees or gratuities to or from the other Party, including its agents, officers, employees, Subcontractors, Suppliers, or Others to secure preferential treatment.

2.3 ENGINEER Owner, through its Engineer, shall provide all engineering design and construction administration services necessary for the completion of the Work excluding, however, (a) design services delegated to GC/CM in accordance with §3.17, and (b) services within the construction means, methods, techniques, sequences, and procedures employed by GC/CM, its Subcontractors, and Subcontractors in connection with their construction operations.

2.4 Owner shall obtain from Engineer either a license for GC/CM and Subcontractors to use the design documents prepared by Engineer or ownership of the copyrights for such design documents, and shall indemnify and hold harmless GC/CM against any suits or claims of infringement of any copyrights or licenses arising out of the use of the design documents for the Project.

2.5 Execution of this agreement does not guarantee work will be performed outside of the GC/GM Preconstruction Services Contract: W.O. 19-12, West End Raw Water Pipeline Project. At a minimum, the Parties must agree to a GMP for portions of or the entire project as executed through an Amendment to this Project. No work beyond the Preconstruction Services Contract shall commence without an Amendment to this Contract.

## 2.6 DEFINITIONS

2.6.1 "Agreement" means this ConsensusDocs 500 Standard Agreement and General Conditions Between Owner and GC/CM, as modified, and exhibits and attachments made part of this agreement upon its execution.

2.6.1.1 The following exhibits and attachments are a part of this Agreement:

Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021, 74 pages.

2.6.1.2 References made within this Agreement to the following are a part of this Agreement:

Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010

City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021

2.6.2 "Business Day" means all Days, except weekends and official holidays where the Project is located.

2.6.3 A "Change Order" is a written order signed by the Parties after execution of this Agreement, indicating changes in the scope of the Work, the GMP and Date of Substantial Completion or Date of Final Completion, including substitutions proposed by GC/CM and accepted by Owner.

2.6.4 The "Contract Documents" consist of (a) this Agreement; (b) documents listed in §15.1 as existing contract documents; (c) drawings, specifications, addenda issued and acknowledged before execution of this Agreement; (d) information furnished by Owner pursuant to §3.15.4, and (e) Change Orders, Interim Directives, and amendments issued in accordance with this Agreement.



2.6.5 "Contract Time" is the period between the Date of Commencement and the total time authorized to achieve Final Completion.

2.6.6 "Cost of the Work" means the costs and discounts specified in ARTICLE 8.

2.6.7 The "General Contractor/Construction Manager (GC/CM) is the person or entity identified in ARTICLE 1 and includes GC/CM's Representative.

2.6.8 "Date of Commencement" is as set forth in §6.1.

2.6.9 "Day" means a calendar day.

2.6.10 "Defective Work" is any portion of the Work that that does not conform with the requirements of the Contract Documents.

2.6.11 "Engineer" means the licensed engineer, and its consultants, retained by Owner to perform design and construction administration services for the Project.

2.6.12 "Final Completion" occurs on the date when GC/CM's obligations under this Agreement are complete and accepted by the Engineer and Owner and final payment becomes due and payable. This date shall be confirmed by a Certificate of Final Completion signed by the Parties.

2.6.13 "Hazardous Material" is any substance or material identified now or in the future as hazardous under the Law, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or cleanup.

2.6.14 "Interim Directive" is a written order containing change to the Work directed by the Engineer and Owner pursuant to §9.2 and that is signed by the Engineer and Owner after execution of this Agreement and before Substantial Completion.

2.6.15 "Law" means federal, state, or local laws, ordinances, codes, rules, and regulations applicable to the Work with which GC/CM must comply that are enacted as of the Agreement date.

2.6.16 "Others" means Owner's other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.

2.6.17 "Owner" is the person or entity identified in ARTICLE 1.

2.6.18 The "Owner's Program" is an initial description of Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, site requirements, and any requirements for phased occupancy.

2.6.19 The "Parties" are collectively Owner and GC/CM.

2.6.20 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which GC/CM is to perform Work under this Agreement. It may also include construction by Owner or Others.

2.6.21 "Subcontractor" is a person or entity retained by GC/CM as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include Engineer or Others.



2.6.22 "Substantial Completion" of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Owner may occupy or utilize the Work, or a designated portion, for the use for which it is intended, without unapproved disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond GC/CM's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Engineer and Parties.

2.6.23 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.6.24 "Work" means the construction and administrative and management services necessary or incidental to fulfill GC/CM's obligations for the Project in accordance with and reasonably inferable from the Contract Documents. The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.

2.6.25 "Worksite" means the area of the Project location as identified in ARTICLE 1 where the Work is to be performed.

2.6.26 "Written Approval" includes hard copy letters, electronic letters submitted by email, or emails including the approval in the body of the email.

### **ARTICLE 3 GC/CM'S RESPONSIBILITIES**

#### **3.1 GENERAL RESPONSIBILITIES**

3.1.1 GC/CM shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and reasonably inferable from the Contract Documents.

3.1.2 GC/CM represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, GC/CM shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, GC/CM is not liable to Owner for damages resulting from compliance with such instructions, unless (a) GC/CM recognized and (b) failed to timely report to Engineer and Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 GC/CM shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

#### **3.2 CONSTRUCTION PERSONNEL AND SUPERVISION**

3.2.1 GC/CM shall provide competent supervision for the performance of the Work. Before commencing the Work, GC/CM shall notify Engineer and Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager, so Engineer and Owner may



review the individual's qualifications. If, for reasonable cause, Engineer and Owner refuses to approve the individual, or withdraws its approval after once giving it, GC/CM shall name a different superintendent for Engineer's and Owner's review.

3.2.2 GC/CM shall be responsible to Owner for acts or omissions of Parties or entities performing portions of the Work for or on behalf of GC/CM or any of its Subcontractors.

3.2.3 GC/CM shall permit only fit and skilled persons to perform the Work. GC/CM shall enforce safety procedures, strict discipline and good order among persons performing the Work. If Engineer and Owner determine that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, GC/CM shall immediately reassign the person on receipt of Engineer and Owner's written notice to do so.

3.2.4 GC/CM'S REPRESENTATIVE GC/CM's authorized representative is Jason Fenhaus for Preconstruction services and Eric Smith for Construction services. GC/CM's Representative shall possess full authority to receive instructions from Engineer and Owner and to act on those instructions. If GC/CM changes its representative or their authority, GC/CM shall immediately notify Engineer and Owner in writing.

3.3 PRECONSTRUCTION SERVICES The Preconstruction Services under this section are included in GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

3.4 GUARANTEED MAXIMUM PRICE (GMP) Requirements for the GMP under this section are included in the GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

### 3.5 WORKMANSHIP

3.5.1 The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except as otherwise provided in the Contract Documents.

### 3.6 COOPERATION WITH WORK OF OWNER AND OTHERS

3.6.1 Owner may perform work at the Worksite directly or by Others. Any agreements with Others to perform construction or operations related to the Project shall include provisions pertaining to insurance, indemnification, waiver of subrogation, consequential damages, coordination, interference, cleanup, and safety that are substantively the same as the corresponding provisions of this Agreement.

3.6.2 If Owner elects to perform work at the Worksite directly or by Others, the Parties shall coordinate the activities of all forces at the Worksite and agree upon fair and reasonable schedules and operational procedures for Worksite activities. Owner shall require each separate contractor to cooperate with GC/CM and assist with the coordination of activities and the review of construction schedules and operations. The GMP or the Date of Substantial Completion or the Date of Final Completion may be equitably adjusted in accordance with this Agreement, for changes resulting from the coordination of construction activities, and the Schedule of the Work shall be revised accordingly.

3.6.3 With regard to the work of Owner and Others, GC/CM shall (a) proceed with the Work in a manner that does not hinder, delay, or interfere with the work of Owner or Others or cause the work



of Owner or Others to become defective; (b) afford Owner or Others reasonable access for introduction and storage of their materials and equipment and performance of their activities; and (c) coordinate GC/CM's Work with theirs.

3.6.4 Before proceeding with any portion of the Work affected by the construction or operations of Owner or Others, GC/CM shall give Engineer and Owner prompt, written notification of any defects GC/CM discovers in their work which will prevent the proper execution of the Work. GC/CM's obligations in this subsection do not create a responsibility for the work of Owner or Others but are for the purpose of facilitating the Work. If GC/CM does not notify Engineer and Owner of defects interfering with the performance of the Work, GC/CM acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly issue an Interim Directive informing GC/CM what action, if any, GC/CM shall take with regard to the defects.

### 3.7 CONTRACT DOCUMENT REVIEW AND ADMINISTRATION

3.7.1 Before commencing the Work, GC/CM shall examine and compare the drawings and specifications with information furnished by Engineer and Owner that are considered Contract Documents, relevant field measurements made by GC/CM, and any visible conditions at the Worksite affecting the Work.

3.7.2 Should GC/CM discover any errors, omissions, or inconsistencies in the Contract Documents, GC/CM shall promptly report them to Engineer and Owner. It is recognized, however, that GC/CM is not acting in the capacity of a licensed Engineer, and that GC/CM's examination is to facilitate construction and does not create an affirmative responsibility to detect defects or to ascertain compliance with a Law. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly inform GC/CM what action, if any, GC/CM shall take with regard to the defect.

3.7.3 GC/CM shall have no liability for errors, omissions, or inconsistencies discovered under this section, unless GC/CM knowingly fails to report a recognized problem to Engineer and Owner.

3.7.4 GC/CM may be entitled to additional costs or time because of clarifications or instructions growing out of GC/CM's reports described in this §3.7.

3.7.5 Nothing in §3.7 shall relieve GC/CM of responsibility for its own errors, inconsistencies, or omissions.

3.7.6 COST REPORTING GC/CM shall maintain complete, accurate, and current records that comply with generally accepted accounting principles and calculate the proper financial management under this Agreement. GC/CM shall maintain a complete set of all books and records prepared or used by GC/CM with respect to the Project. Engineer and Owner shall be afforded access to all of GC/CM's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. GC/CM shall preserve all such records for a period of three years after the final payment or longer where required by Law.

3.7.6.1 GC/CM agrees to use reasonable skill and judgment in the preparation of cost estimates and Schedule of the Work, but does not warrant or guarantee their accuracy.

### 3.8 MATERIALS FURNISHED BY OWNER OR OTHERS

3.8.1 If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be the responsibility of GC/CM to examine the items so provided and thereupon handle, store, and



install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of GC/CM shall be the responsibility of GC/CM and may be deducted from any amounts due or to become due GC/CM. Any defects discovered in such materials or equipment shall be reported at once to Engineer and Owner. Following receipt of written notice from GC/CM of defects, Engineer and Owner shall promptly inform GC/CM what action, if any, GC/CM shall take with regard to the defects.

### 3.9 TESTS AND INSPECTIONS

3.9.1 GC/CM shall schedule all required tests, approvals, and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. GC/CM shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Engineer, Owner and Others may timely observe the tests at the normal place of testing. Except as provided in §3.9.3, Owner shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Owner. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by GC/CM and promptly delivered to Engineer and Owner.

3.9.2 If Engineer, Owner or appropriate authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, GC/CM shall arrange for the procedures and give timely notice to Engineer, Owner and Others who may observe the procedures. Costs of the additional tests, inspections, or approvals are at Owner's expense except as provided in the subsection below.

3.9.3 If the procedures described in the two subsections immediately above indicate that portions of the Work fail to comply with the Contract Documents due to the negligence of GC/CM, GC/CM shall be responsible for costs of correction and retesting.

### 3.10 WARRANTY

3.10.1 GC/CM warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Engineer's and Owner's request, GC/CM shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. GC/CM further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. GC/CM's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. GC/CM's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.10.2 With respect to any portion of Work first performed after Substantial Completion, GC/CM's warranty obligation shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.

3.10.3 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED**



3.10.4 GC/CM shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. GC/CM's liability for such warranties shall be limited to the two-year correction period referred to in the section immediately below. After that period GC/CM shall provide reasonable assistance to Engineer and Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

### 3.11 CORRECTION OF WORK WITHIN TWO YEARS

3.11.1 If before Substantial Completion or within two years after the date of Substantial Completion of the Work any Defective Work is found, Engineer and Owner shall promptly notify GC/CM in writing. Unless Engineer and Owner provide written acceptance of the condition, GC/CM shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the two-year correction period Engineer and Owner discovers and does not promptly notify GC/CM or give GC/CM an opportunity to test or correct Defective Work as reasonably requested by GC/CM, Owner waives GC/CM's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.11.2 With respect to any portion of Work first performed after Substantial Completion, the two-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by GC/CM.

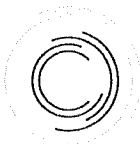
3.11.3 If GC/CM fails to correct Defective Work within a reasonable time after receipt of written notice from Engineer and Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due GC/CM. If payments then or thereafter due GC/CM are not sufficient to cover such amounts, GC/CM shall pay the difference to Owner.

3.11.4 GC/CM's obligations and liability, if any, with respect to any Defective Work discovered after the two-year correction period shall be determined by the Law. If, after the two-year correction period but before the applicable limitation period has expired, Engineer and Owner discovers any Work which Owner considers Defective Work, Engineer and Owner shall, unless the Defective Work requires emergency correction, promptly notify GC/CM and allow GC/CM an opportunity to correct the Work if GC/CM elects to do so. If GC/CM elects to correct the Work it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Engineer and Owner and shall complete the correction of Work within a mutually agreed timeframe. If GC/CM does not elect to correct the Work, Owner may have the Work corrected by itself or Others, and, if Owner intends to seek recovery of those costs from GC/CM, Engineer and Owner shall promptly provide GC/CM with an accounting of the actual correction costs.

3.11.5 If GC/CM's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing building, GC/CM shall be responsible for the cost of correcting the destroyed or damaged property.

3.11.6 The two-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of GC/CM's other obligations under the Contract Documents.

3.11.7 Before final payment, at Owner's option and with GC/CM's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such cases the GMP shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.



### 3.12 CORRECTION OF COVERED WORK

3.12.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered may be uncovered for Engineer's and Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, GC/CM shall pay the costs of uncovering and replacement.

3.12.2 If any Work is covered contrary to requirements in the Contract Documents, Engineer and Owner may issue an Interim Directive to uncover the Work for Engineer's and Owner's observation and recover the Work all at GC/CM's expense. In this circumstance the Work shall be replaced at GC/CM's expense and with no adjustment to the Dates of Substantial or Final Completion.

### 3.13 SAFETY OF PERSONS AND PROPERTY

3.13.1 SAFETY PROGRAMS GC/CM holds overall responsibility for safety programs. However, such obligation does not relieve Subcontractors of their safety responsibilities and to comply with the Law. GC/CM shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect: (a) its employees and other persons at the Worksite; (b) materials and equipment stored at onsite or offsite locations for use in performing the Work; and (c) property located at the Worksite and adjacent to work areas, whether or not the property is part of the Worksite.

3.13.2 GC/CM'S SAFETY REPRESENTATIVE GC/CM shall designate an individual at the Worksite in its employ as its safety representative. Unless otherwise identified by GC/CM in writing to Engineer and Owner, GC/CM's project superintendent shall serve as its safety representative. GC/CM shall report promptly in writing all recordable accidents and injuries occurring at the Worksite. When GC/CM is required to file an accident report with a public authority, GC/CM shall furnish a copy of the report to Engineer and Owner.

3.13.3 GC/CM shall provide Engineer and Owner with copies of all notices required of GC/CM by the Law. GC/CM's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction.

Damage or loss not insured under property insurance that may arise from the Work, to the extent caused by negligent or intentionally wrongful acts or omissions of GC/CM, or anyone for whose acts GC/CM may be liable, shall be promptly remedied by GC/CM.

3.13.4 If Engineer and Owner deems any part of the Work or Worksite unsafe, Engineer and Owner, without assuming responsibility for GC/CM's safety program, may require by Interim Directive GC/CM to stop performance of the Work, take corrective measures satisfactory to Engineer and Owner, or both. If GC/CM does not adopt corrective measures, Owner may perform them and deduct their cost from the GMP. GC/CM agrees to make no claim for damages, or an increase in the GMP, or for a change in the Dates of Substantial or Final Completion based on GC/CM's compliance with Engineer's and Owner's reasonable request.

3.14 EMERGENCIES In an emergency affecting the safety of persons or property, GC/CM shall act in a reasonable manner to prevent threatened damage, injury, or loss. If appropriate, an equitable adjustment in GMP or Date of Substantial Completion or Date of Final Completion shall be determined as provided for in ARTICLE 9.

### 3.15 HAZARDOUS MATERIALS



3.15.1 GC/CM shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Worksite has been removed, rendered or determined to be harmless by Engineer and Owner as certified by an independent testing laboratory, and approved by the appropriate governmental agency.

3.15.2 If after commencing the Work, Hazardous Material is discovered at the Worksite, GC/CM shall be entitled to immediately stop Work in the affected area. GC/CM shall promptly report the condition to Owner, Engineer, and, if required, the governmental agency with jurisdiction.

3.15.3 GC/CM shall not resume nor be required to continue any Work affected by any Hazardous Material without written mutual agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.15.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effect upon the Work.

3.15.5 If GC/CM incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, GC/CM may be entitled to an equitable adjustment in the GMP or the Dates of Substantial or Final Completion in accordance with this Agreement.

3.15.6 To the extent permitted by §6.7 and to the extent not caused by the negligent or intentionally wrongful acts or omissions of GC/CM, its Subcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless GC/CM, its Subcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

### 3.15.7 MATERIALS BROUGHT TO THE WORKSITE

3.15.7.1 Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by GC/CM, Subcontractors, Owner or Others, shall be maintained at the Worksite by GC/CM and made available to Owner, Subcontractors, and Others.

3.15.7.2 GC/CM shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by GC/CM in accordance with the Contract Documents and used or consumed in the performance of the Work. Upon the issuance of the Certificate of Substantial Completion, Owner shall be responsible for materials and substances brought to the Worksite by GC/CM if such materials or substances are required by the Contract Documents.

3.15.7.3 To the extent permitted under §6.7 and to the extent caused by the negligent or intentionally wrongful acts or omissions of GC/CM, its agents, officers, directors, and employees, the indemnity requirements of §11.1 shall apply in connection with any dispute resolution procedure, arising out of or relating to delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by GC/CM



3.15.7.4 §3.15 shall survive the completion of the Work or Agreement termination.

### 3.16 SUBMITTALS

3.16.1 GC/CM shall submit to Owner and Engineer all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form. GC/CM shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, GC/CM shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. GC/CM's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any GC/CM submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless a Change Order or Interim Directive specifically authorizes such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be memorialized in a Change Order no later than seven (7) Days following approval by Engineer and Owner. Neither Engineer nor Owner shall make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to GC/CM. If the Contract Documents do not contain submittal requirements pertaining to the Work, GC/CM agrees upon request to submit in a timely fashion to Engineer and Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by Engineer and Owner.

3.16.2 Engineer shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. GC/CM shall identify to the Engineer any submittals requiring quick turnaround to meet Schedule.

3.16.3 GC/CM shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 9 are followed. Approval does not relieve GC/CM from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.16.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Engineer and Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.

3.16.5 GC/CM shall prepare and submit to Engineer and Owner

- Final marked-up as-built drawings prior to release of retainage;
- Updated electronic data, in accordance with §4.6.1;
- Other documentation required by the Contract Documents that specifies how various elements of the Work were actually constructed or installed.

3.17 DESIGN DELEGATION If the Contract Documents require GC/CM to specify that GC/CM is responsible for the design of a particular system or component to be incorporated into the Project, then Engineer and Owner shall specify all required performance and design criteria. GC/CM shall not be responsible for the adequacy of such performance and design criteria. As required by the Law, GC/CM shall procure design services and certifications necessary to satisfactorily complete the Work from a licensed Engineer. The signature and seal of GC/CM's Engineer shall appear on all drawings, calculations, specifications, certifications, shop drawings, and other submittals related to the Work designed or certified by GC/CM's Engineer.



### 3.18 WORKSITE CONDITIONS

3.18.1 WORKSITE VISIT GC/CM acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.18.2 CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite is (a) a subsurface or other physical condition materially different from those indicated in the Contract Documents, or (b) an unusual and unknown physical condition materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, GC/CM shall stop affected Work after the condition is first observed and give prompt written notice of the condition to Owner and Engineer. Engineer and Owner shall investigate and then issue an Interim Directive specifying the extent to which Engineer and Owner agrees that a concealed or unknown condition exists and directing how GC/CM is to proceed. GC/CM shall not be required to perform any Work relating to the condition without the written mutual agreement of the Engineer and Parties. Any change in the GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services as a result of the condition, including any dispute about its existence or nature shall be determined as provided in ARTICLE 9.

### 3.19 PERMITS AND TAXES

3.19.1 GC/CM shall give public authorities all notices required by law and, except for permits and fees that are the responsibility of Owner pursuant to §4.4, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. GC/CM shall provide to Engineer and Owner copies of all notices, permits, licenses, and renewals required under this Agreement.

3.19.2 GC/CM shall pay applicable taxes for the Work provided by GC/CM.

3.19.3 If, in accordance with Owner's direction, GC/CM claims an exemption for taxes, the indemnity requirements of §11.1 shall apply in connection with any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by GC/CM as a result of any such claim.

### 3.20 CUTTING, FITTING, AND PATCHING

3.20.1 GC/CM shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

3.20.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Engineer or Owner. Such approval shall not be unreasonably withheld.

### 3.21 CLEAN UP

3.21.1 GC/CM shall regularly remove debris and waste materials at the Worksite including sweeping pavement resulting from the Work. Before discontinuing Work in an area, GC/CM shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. GC/CM shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, GC/CM shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.



3.21.2 If GC/CM fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Engineer and Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due to GC/CM in the next payment period.

3.22 ACCESS TO WORK GC/CM shall facilitate the access of Owner, its Engineer, and Others to Work in progress.

3.23 COMPLIANCE WITH LAWS GC/CM shall comply with all the Law at its own cost. GC/CM shall be liable to Owner for all loss, cost, or expense attributable to any acts or omissions by GC/CM, its employees, subcontractors, suppliers, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if prior approval by appropriate authorities and Engineer and Owner is received.

3.23.1 CHANGES IN THE LAW The GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services shall be equitably adjusted in accordance with ARTICLE 9 for additional costs or time needed resulting from Laws enacted after the date of this Agreement, including taxes.

3.24 CONFIDENTIALITY GC/CM shall treat as confidential and not disclose to third persons, nor use for its own benefit ("Treat as Confidential"), any of Owner's confidential information, know-how, discoveries, production methods, and the like disclosed to GC/CM or which GC/CM may acquire in performing the Work. To the extent necessary to perform the Work, GC/CM's confidentiality obligations do not apply to disclosures to Subcontractors, and Suppliers. Owner and Engineer shall Treat as Confidential information all of GC/CM's estimating systems and historical and parameter cost data disclosed to Owner in performing the Work. Each Party shall specify and mark confidential items as "Confidential." Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

4.1 INFORMATION AND SERVICES Owner's responsibilities under this Article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencement of the Work and thereafter at the written request of GC/CM, Owner shall provide GC/CM with evidence of Project financing. Evidence of such financing shall be a condition precedent to GC/CM's commencing or continuing the Work. GC/CM shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide GC/CM the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and



4.3.4 any other information or services requested in writing by GC/CM which are required for GC/CM's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of GC/CM pursuant to §3.19.1, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

4.5 MECHANICS AND CONSTRUCTION LIEN INFORMATION Within seven (7) Days after receiving GC/CM's written request, Owner shall provide GC/CM with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's real property interests in the Worksite and the record legal title.

4.6 CONTRACT DOCUMENTS Unless otherwise specified, Engineer and Owner shall provide a reasonable number of hard copies and an electronic copy of the Contract Documents to GC/CM without cost.

4.6.1 ELECTRONIC DOCUMENTS If Engineer and Owner requires that Owner, Engineer, and GC/CM exchange documents and data in electronic or digital form, before any such exchange, Owner, Engineer, and GC/CM shall agree on and follow a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. Except as otherwise agreed upon by the Parties in writing, each Party shall each bear its own costs as identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

4.7 OWNER'S REPRESENTATIVE Owner's project representative is Randy Straus. Owner's project representative shall be fully acquainted with the Project and shall receive required notices pertaining to the subject matter of this contract. This Contract shall only be amended, modified or changed in writing and executed by Authorized representatives of the Parties and with the same formality as this Contract was executed. Billings City Council or another Authorized designee are the only Authorized representatives of the Owner. If Owner changes its Authorized representative or the representative's Authority, Owner shall immediately notify GC/CM in writing. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means shall be void.

4.8 OWNER'S CUTTING AND PATCHING Cutting, patching, or altering the Work by Owner or Others shall be done with the prior written approval of GC/CM, which approval shall not be unreasonably withheld.

4.9 OWNER'S RIGHT TO CLEAN UP In case of a dispute between GC/CM and Others with regard to respective responsibilities for cleanup at the Worksite, Owner may implement appropriate cleanup measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to GC/CM, Owner may either (a) promptly remedy the damage or loss and assume affected warranty responsibilities, (b) accept the



damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If GC/CM incurs costs or is delayed due to such loss or damage, GC/CM may seek an equitable adjustment in the GMP, estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, and, if appropriate, the Compensation for Preconstruction Services under this Agreement.

## ARTICLE 5 SUBCONTRACTS

5.1 SUBCONTRACTORS Requirements for Subcontractors and Major Supplier Selection are included in the GC/CM's work and are part of this Agreement in accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021.

5.2 BINDING OF SUBCONTRACTORS AND SUPPLIERS GC/CM agrees to bind every Subcontractor and Supplier (and require every Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Documents as they apply to the Subcontractor's or Supplier's applicable provisions to that portion of the Work.

### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 If this Agreement is terminated, each subcontract and supply agreement shall be assigned by GC/CM to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to ARTICLE 12; (b) Owner accepts such assignment after termination by notifying the GC/CM and Subcontractor or GC/CM and Supplier in writing; and (c) Owner assumes all rights and obligations of GC/CM pursuant to each subcontract or supply agreement.

5.3.2 If Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, the Subcontractor's or Supplier's compensation shall be equitably adjusted as a result of the suspension.

## ARTICLE 6 TIME

6.1 DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth.

6.1.1 SUBSTANTIAL/FINAL COMPLETION Unless the Parties and Engineer agree otherwise, the Date of Substantial Completion or the Date of Final Completion shall be established in an Amendment to this Agreement subject to adjustments as provided for in the Contract Documents. Owner, Engineer and GC/CM may agree not to establish such dates, or in the alternative, to establish one but not the other of the two dates. If such dates are not established upon the execution of this Agreement, at such time as GMP is accepted a Date of Substantial Completion or Date of Final Completion of the Work shall be established in an Amendment. If a GMP is not established and the Parties and Engineer desire to establish a Date of Substantial Completion or Date of Final Completion, it shall be set forth in an Amendment. The dates for Substantial and Final Completion are subject to adjustments as provided for in the Contract Documents.

6.1.2 Time is of the essence with regard to the obligations of the Contract Documents.

6.1.3 Unless instructed by Engineer and Owner in writing, GC/CM shall not knowingly commence the Work before the effective date of GC/CM's required insurance.

### 6.2 SCHEDULE OF THE WORK



6.2.1 In accordance with Attachment 1: GC/CM Preconstruction Services Contract; W.O. 19-12, West End Raw Water Pipeline Project, August 25, 2021, GC/CM shall submit to Engineer and Owner a Schedule of the Work showing the dates on which GC/CM plans to begin and complete various parts of the Work, including dates on which information and approvals are required from Engineer and Owner. Except as otherwise directed by Engineer and Owner, GC/CM shall comply with the approved Schedule of the Work. Unless otherwise agreed, the Schedule of the Work shall be formatted in a detailed precedence-style critical path method that (a) provides a graphic representation of all activities and events, including float values that will affect the critical path of the Work, and (b) identifies dates that are critical to ensure timely and orderly completion of the Work. GC/CM shall update the Schedule of the Work on a monthly basis or as mutually agreed by the Engineer and Parties.

6.2.2 Engineer and Owner may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the approved project schedule. Engineer and Owner may require GC/CM to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Owner or Others. If GC/CM consequently incurs costs or is delayed, the GMP or the Dates of Substantial or Final Completion, or both, GC/CM may seek equitable adjustment under ARTICLE 9.

### 6.3 DELAYS AND EXTENSIONS OF TIME

6.3.1 If GC/CM is delayed at any time in the commencement or progress of the Work by any cause beyond the control of GC/CM, GC/CM shall be entitled to an equitable extension of the Date of Substantial Completion or Date of Final Completion. Examples of causes beyond the control of GC/CM include, but are not limited to, the following: (a) acts or omissions of Owner, Engineer, or Others; (b) changes in the Work or the sequencing of the Work ordered by Engineer and Owner, or arising from decisions of Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner under ARTICLE 12 and ARTICLE 13; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving GC/CM; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. GC/CM shall submit any requests for equitable extensions of Contract Time in accordance with the provisions of ARTICLE 9.

6.3.2 In addition, if GC/CM incurs additional costs as a result of a delay that is caused by items (a) through (m) immediately above, GC/CM, in consideration of all other terms of this contract, shall be entitled to an equitable adjustment in the GMP subject to §6.7.

6.3.3 NOTICE OF DELAYS If delays to the Work are encountered for any reason, GC/CM shall provide prompt written notice to Engineer and Owner of the cause of such delays after GC/CM first recognizes the delay. The Engineer and Parties each agree to take reasonable steps to mitigate the effect of such delays.

6.4 NOTICE OF DELAY CLAIMS If GC/CM requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay described in §6.3, GC/CM shall give Engineer and Owner written notice of the claim in accordance with §9.4. If GC/CM causes delay in the completion of the Work, Owner shall be entitled to recover its additional costs subject to §6.7. Engineer and Owner shall process any such claim against GC/CM in accordance with ARTICLE 9.

6.5 MONITORING PROGRESS AND COSTS Following acceptance by Owner of the GMP, GC/CM shall establish a process for monitoring actual costs against the GMP and actual progress against the



Schedule of Work. GC/CM will provide written reports to Engineer and Owner at intervals as agreed to by the Engineer and Parties on the status of the Work, showing variances between actual costs and the GMP and actual progress as compared to the Schedule of Work, including estimates of future costs and recovery programs if actual progress indicates that the Dates of Substantial Completion or Final Completion may not be met.

## 6.6 LIQUIDATED DAMAGES

6.6.1 SUBSTANTIAL COMPLETION Liquidated damages based on the Substantial Completion date shall apply.

6.6.1.1 Owner will suffer damages which are difficult to determine and accurately specify if the Substantial Completion date, which may be amended by Change Order, is not attained. GC/CM shall pay Owner One Thousand Five Hundred Dollars per Day (\$1,500.00) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Substantial Completion date. These liquidated damages are in lieu of all liability for all extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining the Substantial Completion date.

6.6.2 FINAL COMPLETION Liquidated damages based on the Final Completion date shall apply.

6.6.2.1 Owner will suffer damages which are difficult to determine and accurately specify if the Final Completion date, as may be amended by subsequent Change Order, is not attained. GC/CM shall pay Owner One Thousand Five Hundred Dollars per Day (\$1,500.00) as liquidated damages and not as a penalty for each Day that Final Completion extends beyond the Final Completion date. These liquidated damages are in lieu of all liability for any extra costs, losses, expenses, claims, penalties, and any other damages of any nature incurred by Owner resulting from not attaining Final Completion date.

6.6.3 Other applicable liquidated damages shall be included as Agreement exhibit.

6.7 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Engineer and Parties as liquidated damages in §6.6 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. GC/CM agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: [\_\_\_\_\_].

6.7.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

## ARTICLE 7 COMPENSATION AND GUARANTEED MAXIMUM PRICE

7.1 Owner shall compensate GC/CM for Work performed as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.



7.2 The compensation to be paid shall be limited to the GMP determined as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1 and as established in an Amendment, as the GMP may be adjusted under ARTICLE 9.

7.2.1 Payment for Work performed shall be as set forth in ARTICLE 10.

### 7.3 FEE ADJUSTMENTS:

7.3.1 except as provided for in §6.3, delays in the Work not caused by GC/CM shall adjust GMP to compensate for increased expenses as provided for in ARTICLE 9; and

7.3.2 managing the replacement of an insured or uninsured loss shall increase GMP in the same proportion that GMP bears to the estimated Cost of the Work for the replacement.

## ARTICLE 8 COST OF THE WORK

8.1 Owner agrees to pay GC/CM for the Cost of the Work as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.

## ARTICLE 9 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

### 9.1 CHANGE ORDER

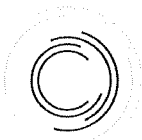
9.1.1 GC/CM may request or Engineer and Owner may order changes in the Work or the timing or sequencing of the Work that impacts the GMP or the estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion and, if appropriate, the Compensation for Preconstruction Services. All such changes in the Work shall be formalized in a Change Order. Any such requests for changes in the Work shall be processed in accordance with this article.

9.1.2 For changes in the Work, the Engineer and Parties shall negotiate an equitable adjustment to the GMP or the Date of Substantial Completion or Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any equitable adjustment in the GMP or Date of Substantial Completion or Date of Final Completion shall not be unreasonably withheld.

9.1.3 NO OBLIGATION TO PERFORM GC/CM shall not be obligated to perform changes in the Work that impact the GMP or the estimated Cost of the Work, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion without a Change Order or Interim Directive.

### 9.2 INTERIM DIRECTIVES

9.2.1 Engineer and Owner may issue an Interim Directive directing a change in the Work before reaching agreement with GC/CM on the adjustment, if any, in the GMP, GC/CM's Fee, Date of Substantial Completion or Date of Final Completion, or directing GC/CM to perform Work that Engineer and Owner believes is not a change. If the Engineer and Parties disagree that the Interim Directed work is within the scope of the Work, GC/CM shall perform the disputed Work and furnish Engineer and Owner with an estimate of the costs to perform the disputed work in accordance with Engineer's and Owner's interpretations.



9.2.2 The Engineer and Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the GMP or the Date of Substantial Completion or Date of Final Completion arising out of an Interim Directive. As the directed Work is performed, GC/CM shall submit its costs for such Work with its application for payment beginning with the next application for payment within thirty (30) Days of the issuance of the Interim Directive. If there is a dispute as to the cost to Owner, Owner shall pay GC/CM fifty percent (50%) of its actual (incurred or committed) cost to perform the Work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of ARTICLE 13. Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. GC/CM's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work. Undisputed amounts may be included in applications for payment and shall be paid by Owner in accordance with this Agreement.

9.2.3 When the Engineer and Parties agree upon the adjustments in the GMP or the Date of Substantial Completion or Date of Final Completion, for a change in the Work directed by an Interim Directive, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directives on which the Engineer and Parties have reached agreement on GMP or the Date of Substantial Completion or Date of Final Completion issued since the last Change Order.

### 9.3 DETERMINATION OF COST

9.3.1 An increase or decrease in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from a change in the Work shall be determined by one or more of the following methods:

9.3.1.1 unit prices set forth in this Agreement or as subsequently agreed;

9.3.1.2 a mutually accepted, itemized lump sum;

9.3.1.3 Cost of the Work as defined by ARTICLE 8.

9.3.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the Engineer and Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to either Party, such unit prices shall be equitably adjusted.

9.3.3 If the Engineer and Parties disagree as to whether work required by Owner is within the scope of the Work, GC/CM shall furnish Engineer and Owner with an estimate of the costs to perform the disputed work in accordance with Engineer and Owner's interpretations.

9.4 CHANGES NOTICE Except as provided in §6.3.2 and §6.4 for any claim for an increase in the GMP or the Date of Substantial Completion or Date of Final Completion, GC/CM shall give Engineer and Owner written notice of the claim within fourteen (14) Days after the occurrence giving rise to the claim or within fourteen (14) Days after GC/CM first recognizes the condition giving rise to the claim, whichever is later. Engineer's and Owner's failure to so respond shall be deemed a denial of GC/CM's claim. Except in an emergency, notice shall be given before proceeding with the Work. Thereafter, GC/CM shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Engineer and Parties mutually agree upon a longer period of time. No later than fourteen (14) Days after receipt, Engineer and Owner shall respond in writing denying or approving the claim. Engineer's and Owner's failure to so respond shall be deemed a denial of the claim.



Any change in the GMP or the Date of Substantial Completion or Date of Final Completion resulting from such claim shall be authorized by Change Order.

9.5 INCIDENTAL CHANGES Engineer and Owner may direct GC/CM to perform incidental changes in the Work, upon concurrence with GC/CM that such changes do not involve adjustments in the Contract Price or the Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Engineer and Owner shall initiate an incidental change in the Work by issuing a written Field Order to GC/CM. Such written notice shall be carried out promptly and is binding on the Parties.

## ARTICLE 10 PAYMENT

10.1 SCHEDULE OF VALUES GC/CM shall prepare and submit to Owner and Engineer a schedule of values apportioned to the various divisions or phases of the Work as outlined in the August 25, 2021 Preconstruction Services Agreement provided as Attachment 1.

### 10.2 PROGRESS PAYMENTS

10.2.1 APPLICATIONS GC/CM shall submit to Engineer and Owner a monthly application for payment for the preceding calendar month on the Owner's standard form. GC/CM's applications for payment shall be itemized and supported by GC/CM's schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Applications for payment shall include payment requests on account of properly authorized Change Orders or Interim Directives. Owner shall pay the amount otherwise due on any payment application, as certified by Engineer, no later than thirty-five (35) Days after accepting such application. Owner may deduct from any progress payment amounts that may be retained pursuant to §10.2.4.

10.2.2 STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by GC/CM of bills of sale and proof of required insurance, or such other documentation satisfactory to Engineer and Owner to establish the proper valuation of the stored materials and equipment, Owner's title to such materials and equipment, and to otherwise protect Owner's interests therein, including transportation to the Worksite.

### 10.2.3 LIEN WAIVERS AND LIENS

10.2.3.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by Engineer and Owner, as a prerequisite for payment, GC/CM shall provide a partial lien and claim waiver in the amount of the application for payment and affidavits from its Subcontractors and Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall GC/CM be required to sign an unconditional waiver of lien or claim, before receiving payment or in an amount in excess of what it has been paid.

10.2.3.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required by this article, GC/CM shall, within thirty (30) Days after filing, remove any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If GC/CM fails to take such action on a lien, Owner may cause the lien to be removed at GC/CM's expense, including bond costs and

reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 13 relating to the subject matter of the lien.

10.2.4 RETAINAGE From each progress payment made before Substantial Completion, Owner may retain five percent (5%), of the amount otherwise due after deduction of any amounts as provided in §10.3, provided such percentage doesn't exceed the Law. If Owner chooses to use this retainage provision:

10.2.4.1 Owner may, in its sole discretion, reduce the amount to be retained at any time;

10.2.4.2 Owner may release retainage on that portion of the Work a Subcontractor has completed in whole or in part, and which Owner has accepted. In lieu of retainage, GC/CM may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.

10.3 ADJUSTMENT OF GC/CM'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that GC/CM is responsible under this Agreement:

10.3.1 GC/CM's repeated failure to perform the Work as required by the Contract Documents;

10.3.2 except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage arising out of or relating to this Agreement and caused by GC/CM to Owner or others to whom Owner may be liable;

10.3.3 GC/CM's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner for that portion of the Work or for supplies, provided that Owner is making payments to GC/CM in accordance with this Agreement;

10.3.4 rejected or Defective Work not corrected in a timely fashion;

10.3.5 reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Dates of Substantial or Final Completion;

10.3.6 reasonable evidence demonstrating that the unpaid balance of the GMP is insufficient to fund the cost to complete the Work; and

10.3.7 uninsured third-party claims involving GC/CM or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until GC/CM furnishes Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, Engineer and Owner shall give written notice to GC/CM, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by GC/CM in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

10.4 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.



10.5 PAYMENT DELAY If for any reason not the fault of GC/CM, GC/CM does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then GC/CM, upon giving seven (7) Days' written notice to Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to GC/CM has been received, including interest for late payment. If GC/CM incurs costs or is delayed resulting from shutdown, delay, and start-up, GC/CM may seek an equitable adjustment in the GMP and Dates of Substantial or Final Completion may be equitably adjusted by a Change Order in accordance with ARTICLE 9.

## 10.6 SUBSTANTIAL COMPLETION

10.6.1 GC/CM shall notify Engineer and Owner when it considers Substantial Completion of the Work or a designated portion to have been achieved. Engineer and Owner shall promptly conduct an inspection to determine whether the Work or designated portion can be occupied or used for its intended use by Owner without excessive interference in completing any remaining unfinished Work. If Engineer and Owner determines that the Work or designated portion has not reached Substantial Completion, Engineer and Owner shall promptly compile a list of items to be completed or corrected so Owner may occupy or use the Work or designated portion for its intended use. GC/CM shall promptly complete all items on the list.

10.6.2 When Substantial Completion of the Work or a designated portion is achieved, GC/CM shall prepare a Certificate of Substantial Completion establishing the date of Substantial Completion and the respective responsibilities of each Party for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by GC/CM to Engineer and Owner for written acceptance of responsibilities assigned in the Certificate of Substantial Completion.

10.6.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

10.6.4 Upon Engineer's and Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to GC/CM the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Engineer and Parties as necessary to achieve Final Completion. Uncompleted items shall be completed by GC/CM in a mutually agreed upon timeframe. Owner shall pay GC/CM monthly the amount retained for unfinished items as each item is completed.

## 10.7 PARTIAL OCCUPANCY OR USE

10.7.1 Owner may occupy or use completed or partially completed portions of the Work when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) consent to the occupancy or use, and (c) public authorities authorize the occupancy or use. GC/CM shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

## 10.8 FINAL COMPLETION AND FINAL PAYMENT

10.8.1 Upon notification from GC/CM that the Work is complete and ready for final inspection and acceptance, Engineer and Owner shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.



10.8.2 When the Work is complete, GC/CM shall prepare for Engineer's and Owner's written acceptance a final application for payment stating that to the best of GC/CM's knowledge, and based on Engineer's and Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents.

10.8.3 Final payment of the balance of the GMP shall be made to GC/CM within thirty-five (35) Days after GC/CM has submitted an application for final payment, including submissions required under §10.8.4, and a Certificate of Final Completion has been executed by the Parties.

10.8.4 Final payment shall be due on GC/CM's submission of the following to Engineer and Owner:

10.8.4.1 an affidavit declaring any indebtedness connected with the Work, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Owner's property;

10.8.4.2 as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

10.8.4.3 release of any liens, conditioned on final payment being received;

10.8.4.4 consent of any surety; and

10.8.4.5 any outstanding known and unreported accidents or injuries experienced by GC/CM or its Subcontractors at the Worksite.

10.8.5 If, after Substantial Completion of the Work, the Final Completion of a portion of the Work is materially delayed through no fault of GC/CM, Owner shall pay the balance due for any portion of the Work fully completed and accepted. If the remaining contract balance for Work not fully completed and accepted is less than the retained amount before payment, GC/CM shall submit to Engineer and Owner the written consent of any surety to payment of the balance due for portions of the Work that are fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by this §10.8.

10.8.6 OWNER RESERVATION OF CLAIMS Owner's claims not reserved in writing with final payment are waived, except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects.

10.8.7 ACCEPTANCE OF FINAL PAYMENT Unless GC/CM provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

10.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

## ARTICLE 11 INDEMNITY, INSURANCE, AND BONDS

11.1 INDEMNITY Indemnity shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 6 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS,

Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.2 INSURANCE Insurance shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 5 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.3 BONDS Bonds shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 5 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

11.4 In Article 11.1, 11.2 and 11.3 of this Agreement (above), the MPWSS and City Standard Modifications provisions contain references to contract requirements that are beyond indemnity, insurance and bonds (e.g., correction period, defective work, partial utilization, etc.). These other referenced requirements shall be carried-out in accordance with the applicable provisions contained in this Standard Agreement and General Conditions between Owner and GC/CM.

#### **ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION**

12.1 Suspension, Notice to Cure, and Termination shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 15 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

#### **ARTICLE 13 DISPUTE MITIGATION AND RESOLUTION**

Dispute Mitigation and Resolution shall be in accordance with the Montana Public Works Standard Specifications (MPWSS), Sixth Edition, April 2010, and more specifically, Article 16 of the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition) contained therein; and, as amended or supplemented by MPWSS Section 00810 (Supplementary Conditions to the General Conditions); and, as amended or supplemented by the City of Billings Standard Modifications to MPWSS, Sixth Edition, January 2021, Section 00800 (City of Billings Supplementary Conditions) and Section 00810 (Supplementary Conditions).

#### **ARTICLE 14 MISCELLANEOUS**

14.1 EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Parties and not for the benefit of any third party.



14.2 ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign their interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified GC/CM or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to GC/CM than this Agreement. If such assignment occurs, GC/CM shall execute any consent reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Party.

14.3 GOVERNING LAW The law in effect at the location of the Project shall govern this Agreement.

14.4 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.5 NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

14.6 NO WAIVER OF PERFORMANCE Either Party's failure to insist upon any of its rights, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance or any other term, covenant, condition, or right.

14.7 TITLES The titles given to the articles are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.8 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

## ARTICLE 15 CONTRACT DOCUMENTS

15.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

- (a) Drawings: City of Billings W.O. 19-12: Raw Water Pipeline, West End Water Facility; Preliminary Design, HDR Project No. 10126753, June 2022
- (b) General Contractor/Construction Manager (GC/CM) Preconstruction Services Contract, City of Billings & COP Construction, W.O. 19-12: West End Raw Water Pipeline Project, August 25, 2021

### 15.2 INTERPRETATION OF CONTRACT DOCUMENTS

15.2.1 The drawings and specifications are complementary. If Work is shown only on one but not on the other, GC/CM shall perform the Work as though fully described on both.



15.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, GC/CM shall immediately submit the matter to Engineer and Owner for clarification. Subject to an equitable adjustment in the GMP, Dates of Substantial or Final Completion pursuant to ARTICLE 9 or a dispute mitigation and resolution, Engineer's and Owner's clarifications are final and binding.

15.2.3 Where figures are given, they shall be preferred to scaled dimensions.

15.2.4 Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.

15.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) the Agreement; (c) subject to §15.2.2 the drawings, specifications, and addenda issued before the execution of this Agreement; (d) approved submittals; (e) information furnished by Owner pursuant to §3.15.4 or designated as a Contract Document in §15.1; (f) other Contract Documents listed in this Agreement.

OWNER: [\_\_\_\_]

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

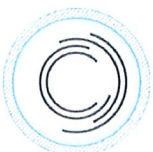
WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

CONSTRUCT MANAGER: [\_\_\_\_]

BY: *J. M.* NAME: JASON FENTHAUS TITLE: ESTIMATING MANAGER

WITNESS: *Richard Morrison* NAME: Richard Morrison TITLE: CFD

END OF DOCUMENT.



**City Council Regular**

**Date:** 07/25/2022  
**Title:** Donations to the Billings Public Library  
**Presented by:** Gavin Woltjer  
**Department:** Library  
**Presentation:** No  
**Legal Review** Not Applicable

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**RECOMMENDATION**

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

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

The Billings Public Library has received a \$61,629 donation from the Billings Library Foundation for the installation of Library Express Locker #2. This second express locker will be located on the campus of St. Vincent's Health Care (Intermountain Health) on Wicks Lane in the Billings' Heights.

**ALTERNATIVES**

City Council may:

- Approve the donations; or,
- Not Approve the donation

**FISCAL EFFECTS**

There is no budgetary impact.

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**City Council Regular**

**Date:** 07/25/2022  
**Title:** Donations to the Billings Public Library  
**Presented by:** Gavin Woltjer  
**Department:** Library  
**Presentation:** No  
**Legal Review** Not Applicable

---

**RECOMMENDATION**

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

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

The Billings Public Library has received donations/sponsorships as follows:

\$ 300 personal donation passed through the Library Foundation;  
\$1,000 from the Town Pump Charitable Foundation earmarked for the Teen Book Boxes program; and  
\$2,500 from the Library Foundation to be used for building an activity wall in the under 5 area of the Children's area;  
\$ 500 from the Library Foundation earmarked for free books for the bike library; and  
\$1,100 from the Montana Arts Council earmarked for a mural painting in the Teen Tech Lab.

**ALTERNATIVES**

City Council may:

- Approve the donations; or,
- Not Approve the donation

**FISCAL EFFECTS**

There is no budgetary impact.

---

**City Council Regular**

**Date:** 07/25/2022  
**Title:** 2022 JAG Application and Acceptance of Award in the Amount of \$123,669  
**Presented by:** Rich St. John, Police Chief  
**Department:** Police  
**Presentation:** No  
**Legal Review** Yes

---

**RECOMMENDATION**

Staff recommends that the City Council approve the 2022 JAG application submission in the amount of \$123,669; accept the grant award; approve the MOU with the Yellowstone County Sheriff's Office (YCSO) and authorize the Mayor to sign the award documents when they are received.

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

The City has been notified that funding is available for the 2022 Justice Assistance (JAG) Grant. This \$123,669 is a joint application between the Billings Police Department (BPD) and the Yellowstone County Sheriff's Office (YCSO), with the BPD acting as the grant administrator. The YCSO will use its \$19,076 allocation of grant funds to purchase equipment and supplies for their helicopter, as well as communication and lighting supplies for their search and rescue program. \$15,000 will be used to purchase cargo hooks, controls, and installation of items on the YCSO helicopter. Also planned for purchase are two Motorola AXP radio adapters with remote speakers and remote mic's and two Milwaukee battery LED tower lights. The BPD plans to use \$104,593 to purchase interior patrol SUV equipment, simulation ammunition, Point Blank vests, TASER training cartridges, uniforms, and promotional items.

The attached Memorandum of Understanding (MOU) is part of the application submittal.

**ALTERNATIVES**

City Council may:

- Approve the 2022 JAG application submission in the amount of \$123,669; accept the grant award; approve the MOU with Yellowstone County and authorize the Mayor to sign the award documents when they are received; or,
- Not Approve the 2022 JAG application submission in the amount of \$123,669 and provide further direction to staff.

**FISCAL EFFECTS**

There will be no cost to the City as no match is required.

---

**Attachments**

MOU

**THE STATE OF MONTANA, COUNTY OF YELLOWSTONE  
MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF BILLINGS, AND YELLOWSTONE COUNTY  
2022 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD  
\$123,669 O-BJA-2022-171368**

This Memorandum of Understanding (MOU) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, between the City of Billings (CITY) acting through its Mayor, and Yellowstone County (COUNTY) acting through its Chairman of the Board of County Commissioners.

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party, and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interest of both parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the City agrees to provide the County \$19,076.00 from the JAG award.

WHEREAS, the CITY and the COUNTY will file a joint application with the CITY serving as applicant/fiscal agent for the JAG funds.

WHEREAS, the CITY and the COUNTY believe it to be in their best interests and the best interests of both of them to reallocate the JAG funds in this matter so as to continue to qualify for future JAG awards and in order to maximize the benefit from this 2022 JAG award.

NOW THEREFORE, the CITY and COUNTY agree as follows:

1.The purpose of this MOU is to provide a binding promise by the City of Billings to share the proceeds of a \$123,669.00 JAG award with the County of Yellowstone.

2.This MOU shall commence on the date the Justice Assistance Grant (JAG) is funded by the U.S. Department of Justice, and the funds are received by the City, and it shall terminate on September 30, 2024 unless the parties mutually agree, in writing, to an earlier termination date. This cooperative undertaking shall be financed exclusively from the JAG proceeds. CITY agrees to pay the COUNTY a total of \$19,076.00 of JAG funds. The COUNTY agrees to use \$19,076.00 for the program between the date of this agreement and September 30, 2025, the last day on which these funds may be spent, according the terms of the JAG.

3.Nothing in the performance of this MOU shall impose any liability for claims against the CITY or COUNTY. Each party to this agreement will be responsible for its own actions in providing services under this MOU and will save the other party harmless from and defend and indemnify them for any claims that arise due to or on account of any activities that are funded in whole or in part by JAG proceeds, and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party. The parties to this MOU do not intend for any third party to obtain a right by virtue of this MOU. No separate legal entity shall be created by this contract. The accounting for funds received by each of the local governing bodies shall be done by the City of Billings Finance Department and the County of Yellowstone Sheriff's Office, respectively. The City of Billings Financial Services Manager shall administer the disbursement of JAG proceeds in cooperation with the County of Yellowstone Sheriff's Office. No personnel costs will be funded from these proceeds by either party so neither party will be required to file reports or make payments of retirement system contributions pursuant to §19-2-506, MCA.

4.In the event that any payment that is expected to be made pursuant to this JAG is not received by the City of Billings, or in the event that either party violates the terms of this MOU either party may terminate this agreement by giving written notice to the mayor (for notice to the City) or to the commission chair (for notice to

the County) of the manner in which the other party has violated the provisions hereof. If a party so notified does not remedy the default within fifteen (15) days of receipt of the notice of the violation, then the party giving notice of the violation is released and discharged from any further obligation under this MOU and the MOU is of no further legal effect.

By entering into the MOU, the parties do not intend to create any obligations express or implied other than those set out herein; further, this MOU shall not create any rights in any party not a signatory hereto.

City of Billings, Montana

County of Yellowstone

\_\_\_\_\_  
/s/ William A. Cole, Mayor

\_\_\_\_\_  
/s/ Denis Pitman, Chairman  
Yellowstone County Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
/s/ Gina Dahl  
City Attorney's Office

\_\_\_\_\_  
/s/ Scott Twito  
Yellowstone County Attorney's Office

**City Council Regular Business Meeting**

**Meeting Date:** 07/25/2022

**Title:** CDBG Planning Grant - Neighborhood Plan

**Presented by:** Monica Plecker

**Department:** Planning & Community Services      **Division:** Planning

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**RECOMMENDATION**

Staff recommends the City Council approve submitting a Community Development Block Grant (CDBG) Planning Grant to provide funding for the development and update of the West Billings Plan and authorize the Planning Division to submit the grant application due August 1, 2022. Staff further recommends City Council approve appointing City Administrator Chris Kukulski as the Environmental Certifying Official for CDBG grant purposes.

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

The City of Billings is seeking CDBG planning grant funding for the development of a neighborhood plan. CDBG Planning grants are available in amounts up to \$50,000 and applicants must provide financial match on a 1:3 basis; in other words, an applicant must provide a minimum of 25% of the amount of CDBG Planning grant funds requested. The City will apply for the full \$50,000 award and provide \$12,500 in matching funds. The CDBG Planning grant awarded through the current grant cycle may be used for the creation or update of plans, studies, training or research. The City of Billings Planning Division intends to use these funds to complete an update to the West Billings Neighborhood Plan. This plan was adopted in 2001 and has not been updated since. The City Council, City Administration and the Planning Division have recognized for quite some time that neighborhood planning is important. Planning Division staff is hard-pressed to find capacity internally to complete complex plans such as this, so grant opportunities are critical in being able to move neighborhood planning forward in a timely manner.

Additionally, to complete the grant application, the city must designate an Environmental Certifying Official. It has been past practice to appoint the City Administrator. Attached to this report is a letter for the Mayor to sign designating the City Administrator to this role. This letter will accompany the grant application at the time of submittal.

**ALTERNATIVES**

City Council may:

- Approve the submittal of a CDBG Planning Grant for the West Billings Plan Update, or;
- Disapprove the submittal of a CDBG Planning Grant for the West Billings Plan Update.

There is no disadvantage to the City in submitting this grant application. If the grant is not awarded, staff will continue to look for other options to fund neighborhood planning efforts.

**FISCAL EFFECTS**

The City of Billings will apply for \$50,000. Twenty-five percent of the total project cost must be provided as match. The City of Billings Planning Division will provide cash match of \$12,500. The match funds are available as part of the Division's FY23 adopted budget.

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**Attachments**

ECO Designation Letter

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July 25, 2022

P.O. Box 1178  
Billings, MT 59103  
P 406.657.8433  
F 406.657.8390

Montana Department of Commerce  
Attn: Liaison  
Community Development Division  
301 S. Park  
P.O. Box 200523  
Helena, MT 59620

Dear *Liaison*:

This is to notify you that Chris Kukulski, City Administrator, is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the 2022 CDBG grant awarded to the City of Billings, Montana.

Sincerely,

---

William A. Cole, Mayor

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Acknowledge Receipt of Petition to Vacate a Portion of Marillac Street and set a Public Hearing  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review** Not Applicable

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of a petition to vacate a portion of Marillac Street, located within St. Vincent Healthcare Subdivision and set a public hearing for August 22, 2022.

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

The Sisters of Charity of Leavenworth Health System, Inc. (SCL Health - Montana) has developed a portion of St. Vincent Healthcare Subdivision by installing street and utility infrastructure. SCL Health - Montana is proposing to re-plat the remaining portion of St. Vincent Healthcare Subdivision to be called St. Vincent Healthcare Subdivision, 2nd Filing. The proposed plat generally consists of commercial lots. The new subdivision plat includes relocated lots, added lots, and realigning the undeveloped street. In order to move forward with the new subdivision plat, it is necessary to vacate the existing right-of-way and a portion of the existing subdivision plat. St. Vincent Healthcare Subdivision, 2nd Filing will dedicate new right-of-way in place of the vacated right-of-way. There are no improvements constructed on the portions of right-of-way to be vacated. The petition includes a map showing the right-of-way to be vacated.

In order to complete this process, three items need to occur. These items include vacation of the right-of-way, approval of a plat vacating the existing subdivision, and approval of a new subdivision plat dedicating new right-of-way and new lots. The vacation of the right-of-way and the existing subdivision are executed at the same council meeting followed at a later date for the approval of a new subdivision plat. The preliminary plat, Amended Plat of St. Vincent Healthcare Subdivision, for the vacated portion of St. Vincent Healthcare Subdivision will be presented to City Council for approval on August 22, 2022, the same meeting for the public hearing for the right-of-way vacation. The preliminary plat for St. Vincent Healthcare Subdivision 2nd Filing will be presented to Council at a later date, which will dedicate the new right-of-way and new lots.

This Council action is to acknowledge the receipt of the petition to vacate right-of-way and set a public hearing for August 22, 2022.

**ALTERNATIVES**

The Council may:

- Acknowledge receipt of the petition to vacate the above-mentioned right-of-way and set a public hearing for August 22, 2022; or
- Do not acknowledge the petition to vacate the right-of-way. If the petition is not acknowledged, the right-of way-vacation cannot proceed.

**FISCAL EFFECTS**

There is no significant fiscal effect to acknowledge the petition and set a public hearing.

**Attachments**

Petition

**REQUEST TO VACATE PUBLIC RIGHT -OF-WAY  
CITY OF BILLINGS**

**Description of Right-of-Way to be vacated:**

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.

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**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

|                         |                    |                                  |
|-------------------------|--------------------|----------------------------------|
| <u>  X  </u> Street     | _____ Alley        | _____ Other R/W                  |
| <b><u>SIGNATURE</u></b> | <b><u>DATE</u></b> | <b><u>PROPERTY OWNERSHIP</u></b> |
| <u>See Exhibit C</u>    | _____              | _____                            |
| _____                   | _____              | _____                            |

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date     | Disapproved By/Date |
|--------------------------|----------------------|---------------------|
| City Public Works        | _____                | _____               |
| Heights Water            | <u>N/A</u>           | _____               |
| Montana Dakota Utilities | <u>See Exhibit D</u> | _____               |
| Northwestern Energy      | <u>See Exhibit E</u> | _____               |
| Charter                  | <u>See Exhibit F</u> | _____               |
| CenturyLink              | <u>See Exhibit G</u> | _____               |
| City/Co. Planning        | <u>See Exhibit H</u> | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-plating of adjacent lots.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- X   Title Report(s) See Exhibit B
- none Comments from all Utilities
- X   Map of R/W to be Vacated See Exhibit A
- n/a Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

Fee Received By: Chris Hertz Date: 6/25/22  
City Engineers Office

**A DEPOSIT FOR AN APPRAISAL MUST ALSO ACCOMPANY THIS REQUEST.**

Deposit Amount: \_\_\_\_\_

Received By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Clerk

Copies of City of Billings Ordinance No. 80-4269 and 90-4822, establishing the procedure and compensation to the City of Billings for Discontinuance and Vacation of City Streets, Alleys, and Rights-of-Way, are attached for reference.

The application fee, as stated in BMC 22-602, will be set by the City Administrator after review by the staff. The City Clerk will advertise the public hearing at least one week before the petition is acted upon by the City Council.

This petition is to be returned to the City Clerk, PO Box 1178, Billings, MT 59103. (First Floor, City Hall)

This petition must be accompanied by the statements and reports as listed in BMC 22-601 (a), (b), (c), (d), (e), and (f). (Copy attached)

**CONTACT PERSON FOR PETITION:**

Rick Leuthold

**Telephone No.:** (406) 656-5255

**Mailing Address:** 1300 N. Transtech Way  
Billings, MT 59102

**Date:** 7/5/22

**CITY COUNCIL ACTION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

# EXHIBIT A

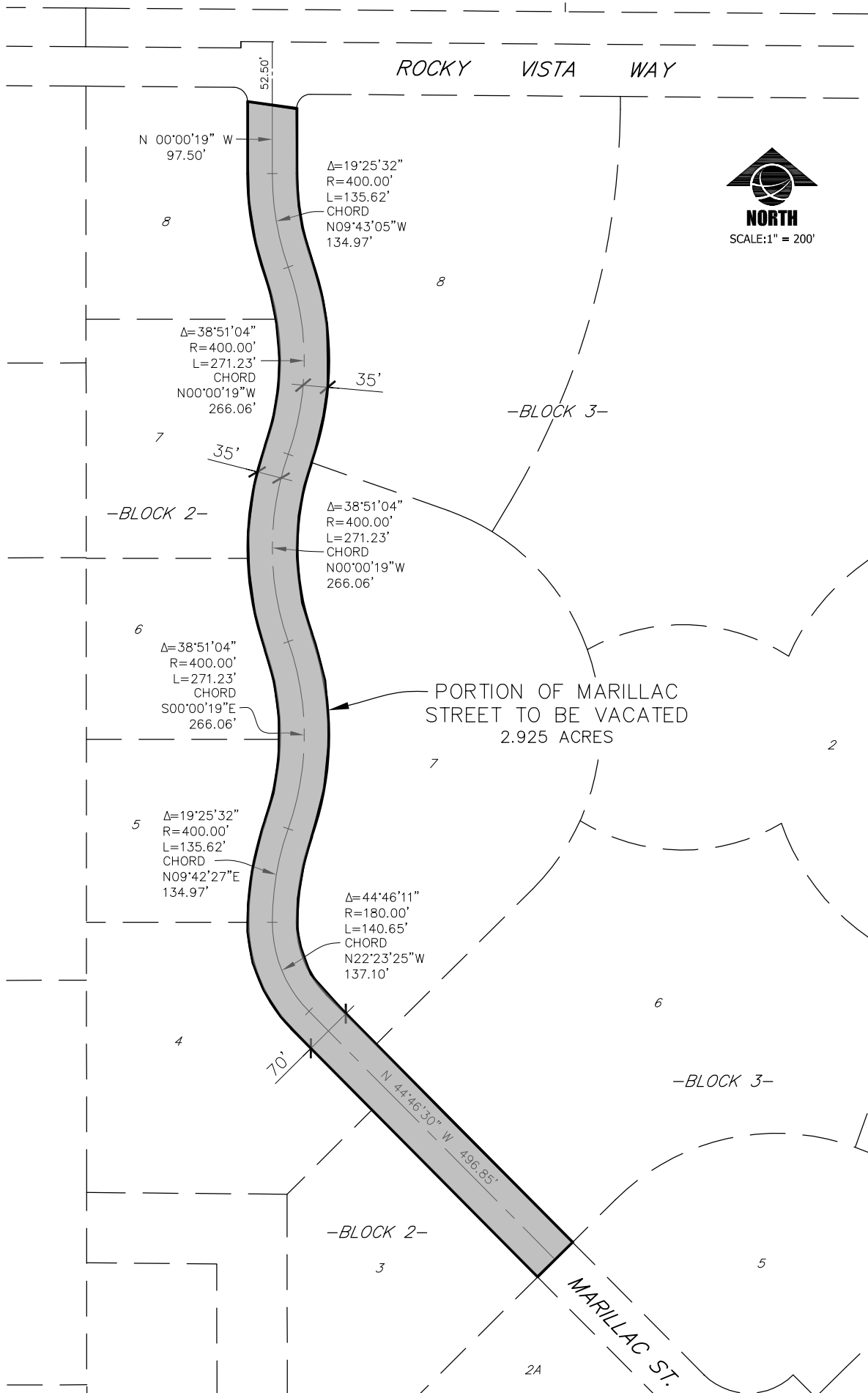
## VACATED PORTION OF PUBLIC RIGHT-OF-WAY FOR MARILLAC STREET WITHIN ST. VINCENT HEALTHCARE SUBDIVISION

PREPARED FOR : SCL HEALTH

JUNE, 2022

PREPARED BY : SANDERSON STEWART 

BILLINGS, MONTANA



# Exhibit B: Title

## SUBDIVISION

Issued By:



CHICAGO TITLE  
INSURANCE COMPANY

Guarantee/Certificate Number:

**3523220485**

**CHICAGO TITLE INSURANCE COMPANY**  
a corporation, herein called the Company

### GUARANTEES

Sanderson Stewart

herein called the Assured, against actual loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

### LIABILITY EXCLUSIONS AND LIMITATIONS

1. No guarantee is given nor liability assumed with respect to the identity of any party named or referred to in Schedule A or with respect to the validity, legal effect or priority of any matter shown therein.
2. The Company's liability hereunder shall be limited to the amount of actual loss sustained by the Assured because of reliance upon the assurance herein set forth, but in no event shall the Company's liability exceed the liability amount set forth in Schedule A.

Please note carefully the liability exclusions and limitations and the specific assurances afforded by this guarantee. If you wish additional liability, or assurances other than as contained herein, please contact the Company for further information as to the availability and cost.

**Chicago Title Company, LLC**  
1575 Shiloh Rd, Suite J  
Billings, MT 59106

Countersigned By:

Joyce Bondurant  
Authorized Officer or Agent



**Chicago Title Insurance Company**

By:

Michael J. Nolan, President

Attest:

Marjorie Nemzura, Secretary

## ISSUING OFFICE:

Title Officer: Joyce Bondurant  
 Chicago Title Company, LLC  
 1575 Shiloh Rd, Suite J  
 Billings, MT 59106  
 Phone: 406-869-3742 Fax: 406-245-5094  
 Main Phone: (406)245-3064  
 Email: Joyce.Bondurant@ctt.com

**SCHEDULE A**

| Liability   | Premium  | Tax    |
|-------------|----------|--------|
| \$10,000.00 | \$150.00 | \$0.00 |

Effective Date: May 27, 2022 at 08:00 AM

The assurances referred to on the face page are:

That, according to those public records which, under the recording laws, impart constructive notice of matter relative to the following described property:

Lots 3, 4, 5, 6, 7, 8, Block 2

and

Lots 2, 3, 4, 5, 6, 7, 8, Block 3

and

Lot 1, Block 4, of St. Vincent Healthcare Subdivision, in the City of Billings, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 3707746.

Lot 1A, Block 2, of Amended Plat of Lots 1 and 2, Block 2, St. Vincent Healthcare Subdivision in the City of Billings, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 3845745.

Lot 2A-1, Block 4 of Amended Plat of Lot 2A of Amended Plat of Lots 2 and 3, Block 4 of St. Vincent Healthcare Subdivision, in the City of Billings, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 4017536.

Title to said real property is vested in:

[The Sisters of Charity of Leavenworth Health System, Inc.](#)

subject to the matters shown below under Exceptions, which Exceptions are not necessarily shown in the order of their priority.

**END OF SCHEDULE A**

**SCHEDULE B**

- a. Rights or claims of parties in possession not shown by the Public Records.
- b. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the Land including, but not limited to, insufficient or impaired access and matters contradictory to any survey plat shown by the Public Records.
- c. Easements, or claims of easements, not shown by the Public Records.
- d. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
- e. (a) unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters accepted under (a), (b), (c) are shown by the Public Records.
- f. Taxes to special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- g. County road rights-of-way, not recorded and indexed as a conveyance of record in the office of the Clerk and Recorder pursuant to Title 70, Chapter 21 MCA, including, but not limited to any right of the public to use and occupy those certain roads and trails.
- h. Mineral rights, claims or title to minerals in or under said land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel, or stone, and geothermal energy rights, and easement or other rights or matters relating thereto, whether express or implied, recorded, or unrecorded.

**SPECIAL EXCEPTIONS:**

1. General County Taxes for the year 2022 and subsequent years, which are a lien but not yet due or payable.

## General Taxes for the year 2021

1st Half: \$5,362.08 PAID  
2nd Half: \$5,362.08 PAID  
Tax ID No.: [A31925](#)

## General Taxes for the year 2021

1st Half: \$5,691.38 PAID  
2nd Half: \$5,691.36 PAID  
Tax ID No.: [A31926](#)

## General Taxes for the year 2021

1st Half: \$3,198.76 PAID  
2nd Half: \$3,198.74 PAID  
Tax ID No.: [A31927](#)

**SCHEDULE B**

(continued)

## General Taxes for the year 2021

1st Half: \$3,196.60 PAID  
2nd Half: \$3,196.59 PAID  
Tax ID No.: [A31928](#)

## General Taxes for the year 2021

1st Half: \$4,206.24 PAID  
2nd Half: \$4,206.23 PAID  
Tax ID No.: [A31929](#)

## General Taxes for the year 2021

1st Half: \$3,853.76 PAID  
2nd Half: \$3,853.75 PAID  
Tax ID No.: [A35420](#)

## General Taxes for the year 2021

1st Half: \$19,947.20 PAID  
2nd Half: \$19,947.19 PAID  
Tax ID No.: [A31931](#)

## General Taxes for the year 2021

1st Half: \$6,463.56 PAID  
2nd Half: \$6,463.55 PAID  
Tax ID No.: [A31932](#)

## General Taxes for the year 2021

1st Half: \$9,280.41 PAID  
2nd Half: \$9,280.40 PAID  
Tax ID No.: [A31923](#)

## General Taxes for the year 2021

1st Half: \$9,025.05 PAID  
2nd Half: \$9,205.05 PAID  
Tax ID No.: [A31933](#)

## General Taxes for the year 2021

1st Half: \$6,867.77 PAID  
2nd Half: \$6,867.76 PAID  
Tax ID No.: [A31934](#)

**SCHEDULE B**

(continued)

## General Taxes for the year 2021

1st Half: \$11,527.38 PAID  
2nd Half: \$11,527.37 PAID  
Tax ID No.: [A31935](#)

## General Taxes for the year 2021

1st Half: \$10,623.14 PAID  
2nd Half: \$10,623.13 PAID  
Tax ID No.: [A31936](#)

## General Taxes for the year 2021

1st Half: \$9,749.38 PAID  
2nd Half: \$9,749.38 PAID  
Tax ID No.: [A31937](#)

## General Taxes for the year 2021

1st Half: \$2,348.97 PAID  
2nd Half: \$2,348.96 PAID  
Tax ID No.: [A31945](#)

## General Taxes for the year 2021

1st Half: \$6,259.21 PAID  
2nd Half: \$6,259.20 PAID  
Tax ID No.: [A31946](#)

## 2. Terms and Provisions included in the Resolution Designation of Controlled Access Highway and Facility

Recording Date: June 4, 2007  
Document No.: [3425016](#)

## 3. Annexation Agreement

Recording Date: January 14, 2004  
Document No.: [3271676](#)

## 4. Subdivision Improvements Agreement and Waiver

Recording Date: March 4, 2005  
Document No.: [3324331](#)

**SCHEDULE B**

(continued)

5. Easements reserved in State of Montana Department of Transportation Quit Claim Deed

Recording Date: March 20, 2009

Recording No.: [3499550](#)

6. Recitals, notes, dedications, easements, certificates and covenants as contained on the plat of St. Vincent Healthcare Subdivision. Reference is hereby made to the plat for more particulars.

Document No. [3707746](#)

7. Grant contained in the Certificate of Dedication of St. Vincent Healthcare Subdivision, which provides as follows:

"The undersigned hereby grants unto all public utility companies, as such are defined and established by Montana Law, and cable television companies, an easement for the location, maintenance, and repair and removal of their lines over, under and across the areas designated on this plat as "Utility Easement" to have and hold forever.

Document No. [3707746](#)

8. Recitals, notes, dedications, easements, certificates and covenants as contained on the plat of Amended Plat of Lots 1 and 2, Block 2 St. Vincent Healthcare Subdivision. Reference is hereby made to the plat for more particulars.

Recording No.: [3845745](#)

9. Recitals, notes, dedications, easements, certificates and covenants as contained on the plat of Amended Plat of Lot 2A of Amended Plat of Lots 2 and 3, Block 4, St. Vincent Healthcare Subdivision. Reference is hereby made to the plat for more particulars.

Recording No.: [4017536](#)

10. Planned Development Agreement for St. Vincent Healthcare Subdivision

By and Between: St. Vincent Healthcare Foundation, Inc. and The City of Billings.

Recording Date: June 12, 2014

Recording No.: [3707747](#)

Consent to Minor Modification of Planned Development Agreement

Recording Date: November 21, 2014

Recording No.: [3724597](#)

Second Consent to Minor Modification of Planned Development Agreement

Recording Date: February 27, 2015

Recording No.: [3732703](#)

**SCHEDULE B**

(continued)

## 11. Subdivision Improvements Agreement and Waiver

Recording Date: June 12, 2014

Recording No.: [3707749](#)

## 12. Declaration of Restrictions on Transfers and Conveyances

Recording Date: June 12, 2014

Recording No.: [3707750](#)

## 13. Covenants, conditions and restrictions and reciprocal easements but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: June 12, 2014

Recording No.: [3707751](#)

Modification(s) of said covenants, conditions and restrictions

Recording Date: June 4, 2015

Recording No.: [3742196](#)

Memorandum of Supplemental Agreement

Recording Date: August 7, 2019

Recording No.: [3891488](#)

## 14. Reciprocal Access Agreement and rights incidental thereto as set forth in a document:

In favor of: Owners of Tract 2A and Tract 6B of Certificate of Survey 3125 and owners of Amended Tract 6 of Certificate of Survey 2064 and Certificate of Survey 1400

Recording Date: June 12, 2014

Recording No.: [3707752](#)

## 15. Development and Maintenance Agreement

By and Between: Foundational Missions, LLC and The City of Billings

Recording Date: June 12, 2014

Recording No.: [3707756](#)

## 16. Declaration of Use Restrictions

Recording Date: June 4, 2021

Recording No.: [3974983](#)

**SCHEDULE B**

(continued)

17. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein as disclosed by the document

Entitled: Short Form of Ground Lease  
Lessor: Sisters of Charity of Leavenworth Health System, Inc., a Kansas non-profit corporation  
Lessee: PMB Billings, LLC, a Delaware limited liability company  
Recording Date: April 29, 2022  
Recording No: [4015530](#)

18. A deed of trust to secure an indebtedness in the amount shown below,

Amount: \$20,723,820.00  
Dated: April 29, 2022  
Trustor/Grantor: PMB Billings LLC, a Delaware limited liability company  
Trustee: Chicago Title Company, LLC  
Beneficiary: First Horizon Bank, a Tennessee state bank  
Recording Date: April 29, 2022  
Recording No.: [4015531](#)

19. Subordination, Non-Disturbance and Attornment Agreement

Recording Date: April 29, 2022  
Recording No.: [4015532](#)

20. Subordination, Non-Disturbance and Attornment Agreement

Recording Date: April 29, 2022  
Recording No.: [4015533](#)

Note: There are NO conveyances affecting said Land recorded within 24 months of the date of this report.

Note: The Company has searched the records of the Clerk and Recorder and the Clerk of Court for Yellowstone County, Montana and find no judgments or liens affecting the Land, other than as excepted in Schedule B.

**END OF SCHEDULE B**





# Exhibit C: abutting property owner signature

## REQUEST TO VACATE PUBLIC RIGHT -OF-WAY CITY OF BILLINGS

### Description of Right-of-Way to be vacated:

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

Street                       Alley                       Other R/W

SIGNATURE

DATE

PROPERTY OWNERSHIP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date | Disapproved By/Date |
|--------------------------|------------------|---------------------|
| City Public Works        | _____            | _____               |
| Heights Water            | _____            | _____               |
| Montana Dakota Utilities | _____            | _____               |
| Northwestern Energy      | _____            | _____               |
| Charter                  | _____            | _____               |
| CenturyLink              | _____            | _____               |
| City/Co. Planning        | _____            | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

Petitioner's interest in vacating the public right-of-way: \_\_\_\_\_  
Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-plating of adjacent lots.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

### ATTACHMENTS:

Title Report(s)  
 Comments from all Utilities  
 Map of R/W to be Vacated  
 Traffic Accessibility Study (When required by the City)

AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.

# Exhibit D: Montana Dakota Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

### Description of Right-of-Way to be vacated:

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

\_\_\_\_\_ Street

\_\_\_\_\_ Alley

\_\_\_\_\_ Other R/W

SIGNATURE

DATE

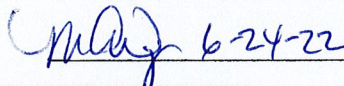
PROPERTY OWNERSHIP

Bruce Fong

Digitally signed by Bruce Fong  
Date: 2022.06.08 14:48:45 -06'00'

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date                                                                            | Disapproved By/Date |
|--------------------------|---------------------------------------------------------------------------------------------|---------------------|
| City Public Works        | _____                                                                                       | _____               |
| Heights Water            | _____                                                                                       | _____               |
| Montana Dakota Utilities |  6-24-22 | _____               |
| Northwestern Energy      | _____                                                                                       | _____               |
| Charter                  | _____                                                                                       | _____               |
| CenturyLink              | _____                                                                                       | _____               |
| City/Co. Planning        | _____                                                                                       | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

Petitioner's interest in vacating the public right-of-way: \_\_\_\_\_

Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-platting of adjacent lots.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

### ATTACHMENTS:

- \_\_\_\_\_ Title Report(s)
- \_\_\_\_\_ Comments from all Utilities
- \_\_\_\_\_ Map of R/W to be Vacated
- \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.

# Exhibit E: NorthWestern Energy Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

Description of Right-of-Way to be vacated:

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We, being all the abutting property owners, request of the City Council the vacation of the above described:

\_\_\_\_\_ Street

\_\_\_\_\_ Alley

\_\_\_\_\_ Other R/W

SIGNATURE

DATE

PROPERTY OWNERSHIP

Bruce Fong

Digitally signed by Bruce Fong  
Date: 2022.06.08 14:48:45 -06'00'

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(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date    | Disapproved By/Date |
|--------------------------|---------------------|---------------------|
| City Public Works        | _____               | _____               |
| Heights Water            | _____               | _____               |
| Montana Dakota Utilities | _____               | _____               |
| Northwestern Energy      | See Attached Letter | _____               |
| Charter                  | _____               | _____               |
| CenturyLink              | _____               | _____               |
| City/Co. Planning        | _____               | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

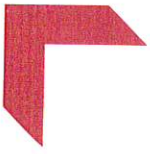
Petitioner's interest in vacating the public right-of-way: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

### ATTACHMENTS:

- \_\_\_\_\_ Title Report(s)
- \_\_\_\_\_ Comments from all Utilities
- \_\_\_\_\_ Map of R/W to be Vacated
- \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.



June 28, 2022

**Mr. John Halverson**  
**Sanderson Stewart**  
**Billings, MT**

**Dear Mr. Halverson,**

Tim Morton has recently send me this request to vacate a right-of-way along Marillac Street in the St. Vincent Healthcare Subdivision. I have reviewed it and will approve with one condition.

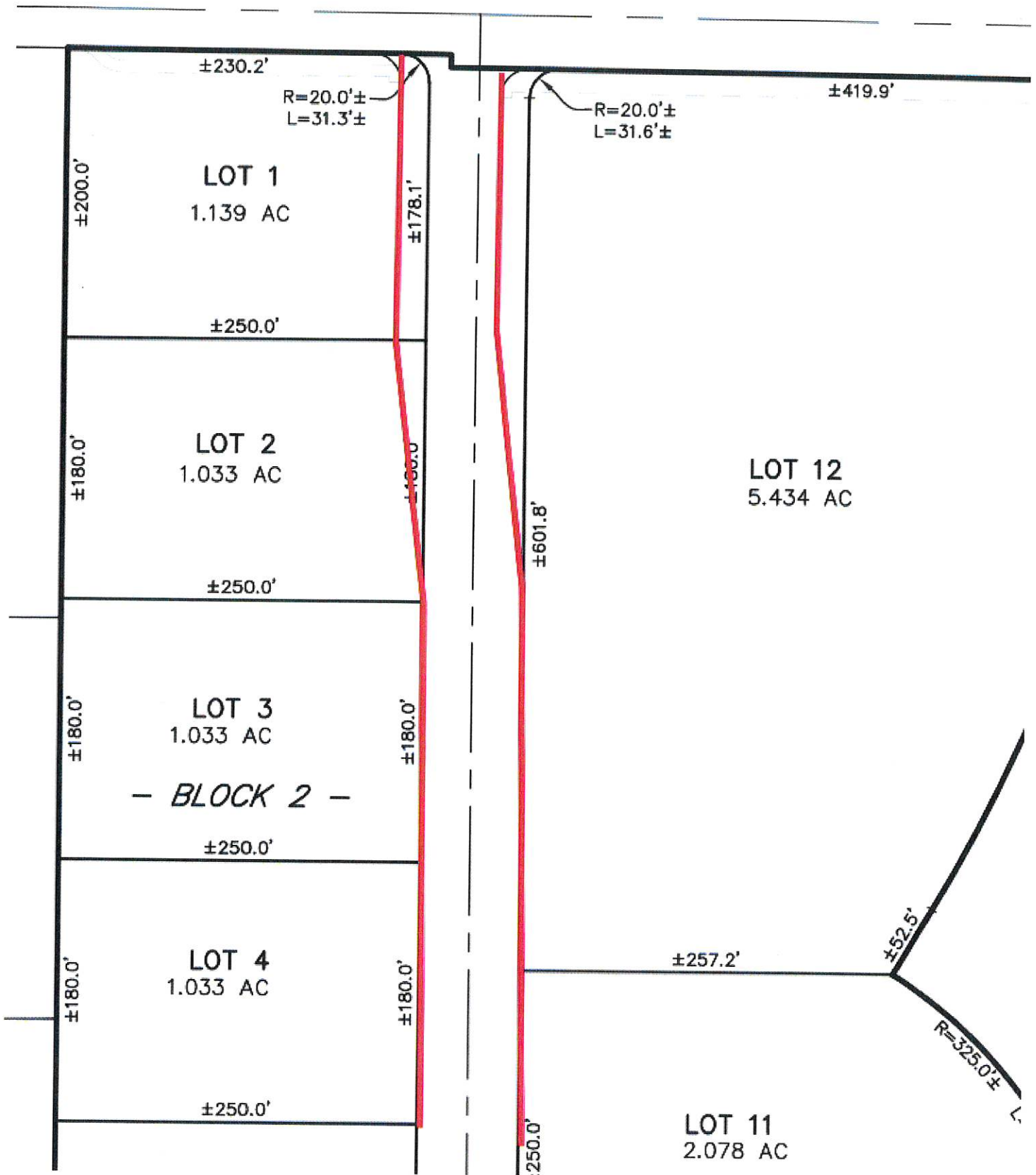
NorthWestern Energy has some junction cans on the south side of Monad Road right near the proposed Marillac St. With those junction cans there, that is how we are going to feed those southern lots. Those junction cans are also an essential tie that we have going east and west along Monad Rd. to tie two of our circuit feeders together. NorthWestern Energy does not want to relocate what was already placed there in the last couple of years. The drawing, labeled Exhibit A, is a drawing of a red line that would show Marillac St. making an alignment adjustment at the southern side of the intersection of Marillac St. and Monad Rd. to make the existing junction cans work.

So with that, I approve of this vacated portion of the public right-of-way for Marillac Street with the red line drawing that is attached labeled Exhibit A.

Please let me know if you are needing anything else on this request.

**Sincerely,**

**Cody Lux**  
Construction Superintendent  
**[cody.lux@northwestern.com](mailto:cody.lux@northwestern.com)**  
**O 406-655-2540**  
**C 406-570-8768**



John Halverson  
 Planner

# Exhibit F: Charter Signature

## REQUEST TO VACATE PUBLIC RIGHT -OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

Street                       Alley                       Other RW

SIGNATURE

DATE

PROPERTY OWNERSHIP

Bruce Fong

Digitally signed by Bruce Fong  
Date: 2022.06.08 14:48:45 -06'00'

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date           | Disapproved By/Date |
|--------------------------|----------------------------|---------------------|
| City Public Works        | _____                      | _____               |
| Heights Water            | _____                      | _____               |
| Montana Dakota Utilities | _____                      | _____               |
| Northwestern Energy      | _____                      | _____               |
| Charter                  | <i>[Signature]</i> 6/16/22 | _____               |
| CenturyLink              | _____                      | _____               |
| City/Co. Planning        | _____                      | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
 Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-platting of adjacent lots.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- \_\_\_\_\_ Title Report(s)
- \_\_\_\_\_ Comments from all Utilities
- \_\_\_\_\_ Map of R/W to be Vacated
- \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

# Exhibit G: CenturyLink Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.  
 \_\_\_\_\_  
 \_\_\_\_\_

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

| ____ Street      | ____ Alley                                                          | ____ Other R/W            |
|------------------|---------------------------------------------------------------------|---------------------------|
| <u>SIGNATURE</u> | <u>DATE</u>                                                         | <u>PROPERTY OWNERSHIP</u> |
| Bruce Fong       | Digitally signed by Bruce Fong<br>Date: 2022.06.08 14:48:45 -06'00' |                           |
| _____            | _____                                                               | _____                     |
| _____            | _____                                                               | _____                     |

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date                                                                            | Disapproved By/Date |
|--------------------------|---------------------------------------------------------------------------------------------|---------------------|
| City Public Works        | _____                                                                                       | _____               |
| Heights Water            | _____                                                                                       | _____               |
| Montana Dakota Utilities | _____                                                                                       | _____               |
| Northwestern Energy      | _____                                                                                       | _____               |
| Charter                  | _____                                                                                       | _____               |
| CenturyLink              |  7/5/22 | _____               |
| City/Co. Planning        | _____                                                                                       | _____               |

ABONDING IS CONTINGENT ON A NEW EASEMENT AND ALL ASSOCIATED COSTS WILL BE THE OWNERS

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-platting of adjacent lots.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

- ATTACHMENTS:**
- \_\_\_\_\_ Title Report(s)
  - \_\_\_\_\_ Comments from all Utilities
  - \_\_\_\_\_ Map of R/W to be Vacated
  - \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

# Exhibit H: City/County Planning Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

### Description of Right-of-Way to be vacated:

The portion of Marillac Street fronting Lots 3-8 of Block 2 and lots 6-8 of Block 3 within St. Vincent Healthcare Subdivision.  
\_\_\_\_\_  
\_\_\_\_\_

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

|                  |             |                           |
|------------------|-------------|---------------------------|
| ____ Street      | ____ Alley  | ____ Other R/W            |
| <u>SIGNATURE</u> | <u>DATE</u> | <u>PROPERTY OWNERSHIP</u> |

|                   |                                                                                     |       |
|-------------------|-------------------------------------------------------------------------------------|-------|
| <u>Bruce Fong</u> | <small>Digitally signed by Bruce Fong<br/>Date: 2022.06.08 14:48:45 -06'00'</small> |       |
| _____             | _____                                                                               | _____ |
| _____             | _____                                                                               | _____ |

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date                                         | Disapproved By/Date |
|--------------------------|----------------------------------------------------------|---------------------|
| City Public Works        | _____                                                    | _____               |
| Heights Water            | _____                                                    | _____               |
| Montana Dakota Utilities | _____                                                    | _____               |
| Northwestern Energy      | _____                                                    | _____               |
| Charter                  | _____                                                    | _____               |
| CenturyLink              | _____                                                    | _____               |
| City/Co. Planning        | <u>Marian Plecker 6/2/22</u><br><u>Planning Div. Mgr</u> | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
Petitioner requests vacation of Marillac right-of-way for the purpose of re-aligning of said right-of-way and re-platting of adjacent lots.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

- ATTACHMENTS:**
- \_\_\_\_\_ Title Report(s)
  - \_\_\_\_\_ Comments from all Utilities
  - \_\_\_\_\_ Map of R/W to be Vacated
  - \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Acknowledge Receipt of Petitions to Vacate a portion of 12th Avenue North and North Side Addition 3rd Filing Block 9 Alley and set a Public Hearing  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review** Not Applicable

**RECOMMENDATION**

Staff recommends that the City Council acknowledge receipt of petitions to vacate a portion of 12th Avenue North and North Side Addition 3rd Filing Block 9 alley and set a public hearing for August 22, 2022.

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

The Sisters of Charity of Leavenworth Health System, Inc. (SCL Health - Montana) is proposing to construct a replacement hospital. The new hospital will be located between 11th Avenue North and Poly Drive along North 27th Street. In order to construct the hospital in this location, SCL Health - Montana is requesting that the City vacate 12th Avenue North between North 27th Street and North Broadway and the alley within Block 9, North Side Addition 3rd Filing. SCL Health - Montana has submitted a traffic impact study (TIS) showing how the impacts of the new hospital will be mitigated along with the closure of 12th Avenue North. Staff has reviewed the TIS and determined that there are minimal impacts to the surrounding streets and intersections due to the closure of 12th Avenue North that cannot be mitigated. There are water, sanitary sewer and storm drain utilities located in 12th Avenue North and the Northside Addition 3rd Filing Block 9 alley. All of these utilities will be re-located prior to constructing the new hospital. The petitions include a map showing the right-of-way to be vacated.

Lumen (formerly Centurylink) has not commented on the vacation of 12th Avenue North or the alley. In place of the signature page, the applicant wrote a letter pertaining to Lumen. The applicant is still hoping to get comments from Lumen prior to the public hearing. Per State Code 7-14-4115, the vacation authorized shall not affect the right of any public utility to continue to maintain its plant and equipment in any such streets or alleys. The applicant has stated that they understand that they will have to pay for any utilities re-located.

This Council action is to acknowledge the receipt of the petitions to vacate public right-of-way.

**ALTERNATIVES**

The Council may:

- Acknowledge receipt of the petitions to vacate the above-mentioned right-of-way and set a public hearing for August 22, 2022; or
- Do not acknowledge the petitions to vacate the right-of-way. If the petitions are not acknowledged, the right-of-way-vacation cannot proceed.

**FISCAL EFFECTS**

There is no significant fiscal effect to acknowledge receipt of the petition and set a public hearing.

**Attachments**

12th Avenue North Petition  
 Block 9 Alley Petition

**REQUEST TO VACATE PUBLIC RIGHT -OF-WAY  
CITY OF BILLINGS**

**Description of Right-of-Way to be vacated:**

The portion of the 12th street right of way between the western boundary of the 27th street right of way to the eastern boundary of the 28th street right of way.

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

  X   Street                             Alley                             Other R/W

**SIGNATURE                      DATE                      PROPERTY OWNERSHIP**

See attached exhibit C

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | <b>Approved By/Date</b>       | <b>Disapproved By/Date</b> |
|--------------------------|-------------------------------|----------------------------|
| City Public Works        | _____                         | _____                      |
| Heights Water            | NA                            | _____                      |
| Montana Dakota Utilities | <u>See attached exhibit D</u> | _____                      |
| Northwestern Energy      | <u>See attached exhibit E</u> | _____                      |
| Charter                  | <u>See attached exhibit F</u> | _____                      |
| CenturyLink              | <u>See attached exhibit G</u> | _____                      |
| City/Co. Planning        | <u>See attached exhibit H</u> | _____                      |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:**

The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- X   Title Report(s)    See Exhibit B
- none Comments from all Utilities
- X   Map of R/W to be Vacated    See Exhibit A
- n/a Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

Fee Received By: Chris Hertz Date: 7/6/22  
City Engineers Office

**A DEPOSIT FOR AN APPRAISAL MUST ALSO ACCOMPANY THIS REQUEST.**

Deposit Amount: \_\_\_\_\_

Received By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Clerk

Copies of City of Billings Ordinance No. 80-4269 and 90-4822, establishing the procedure and compensation to the City of Billings for Discontinuance and Vacation of City Streets, Alleys, and Rights-of-Way, are attached for reference.

The application fee, as stated in BMC 22-602, will be set by the City Administrator after review by the staff. The City Clerk will advertise the public hearing at least one week before the petition is acted upon by the City Council.

This petition is to be returned to the City Clerk, PO Box 1178, Billings, MT 59103. (First Floor, City Hall)

This petition must be accompanied by the statements and reports as listed in BMC 22-601 (a), (b), (c), (d), (e), and (f). (Copy attached)

**CONTACT PERSON FOR PETITION:**

Rick Leuthold

Telephone No.: (406) 656-5255

Mailing Address: 1300 N. Transtech Way  
Billings, MT 59102

Date: 7/6/22

**CITY COUNCIL ACTION:** \_\_\_\_\_

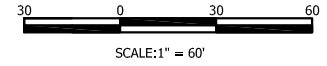
**DATE:** \_\_\_\_\_

**EXHIBIT A**  
**VACATED PORTION OF PUBLIC RIGHT-OF-WAY**  
**FOR 12TH AVE NORTH BETWEEN**  
**NORTH 27TH ST. AND NORTH 28TH ST.**

PREPARED FOR : SISTERS OF CHARITY OF LEAVENWORTH

PREPARED BY : **SANDERSON STEWART**

JUNE, YEAR  
 BILLINGS, MONTANA



# Exhibit B



**First American Title Company**  
1001 South 24th Street West Ste 200  
Billings, MT 59102  
Phone: (406)248-7877 / Fax: (406)248-7875

**PR:** AFFGRP

**Ofc:** 84 (14079)

## Invoice

**To:** Cushing Terrell  
13 N 23rd St  
Billings, MT

**Invoice No.:** 14079 - 841004586

**Date:** 07/01/2022

**Our File No.:** 1050576

**Title Officer:** Annette Nielsen

**Escrow Officer:**

**Customer ID:** AD1025702

**Attention:** George Bornemann

**Your Ref.:**

**Liability Amounts**

**RE: Property:**  
Multiple addresses, Billings, MT

**Buyers:** The Foundation of Montana State University-Billings

**Sellers:**

| Description of Charge | Invoice Amount       |
|-----------------------|----------------------|
|                       | <b>INVOICE TOTAL</b> |
|                       | <b>\$0.00</b>        |

### Comments:

**Thank you for your business!**

*To assure proper credit, please send a copy of this Invoice and Payment to:*

*Attention: Accounts Receivable Department*

*NOTE NEW REMITTANCE ADDRESS, LB# 1083, First American Title Company, PO Box 35146  
Seattle, WA 98124-5146*



# Guarantee

## SG

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN.

Old Republic National Title Insurance Company, a Florida corporation, herein called the Company  
GUARANTEES

the Assured named in Schedule A, against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

IN WITNESS WHEREOF, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Guarantee to become valid when countersigned on Schedule A by an authorized officer or agent of the Company.

Issued through the Office of:

First American Title Company

Authorized Signature

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By  *C. Monroe* President  
Attest  *David Wald* Secretary

## **GUARANTEE CONDITIONS AND STIPULATIONS**

### **1. Definition of Terms.**

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

### **2. Exclusions from Coverage of this Guarantee.**

The Company assumes no liability for loss or damage by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- (b) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water: whether or not the matters excluded by (1), (2) or (3) are shown by the public records.
- (c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A)(C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, alleys, lanes, ways or waterways in which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) (1) Defects, liens, encumbrances, or adverse claims against the title, if assurances are provided as to such title, and as limited by such assurances.  
(2) Defects, liens, encumbrances, adverse claims or other matters (a) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the Assureds; (b) which result in no loss to the Assured; or (c) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of assurances provided.

### **3. Notice of Claim to be Given by Assured Claimant.**

An Assured shall notify the Company promptly in writing in case any knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by such failure and then only to the extent of the prejudice.

### **4. No Duty to Defend or Prosecute.**

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### **5. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.**

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 4 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently
- (b) If the Company elects to exercise its options as stated in Paragraph 5(a) the Company shall have the rights to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured hereunder shall secure to the Company the right to prosecute or provide defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

#### **6. Proof of Loss or Damage.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within 90 days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

#### **7. Options to Pay or Otherwise Settle Claims: Termination of Liability.**

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase the indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5.

### **8. Determination and Extent of Liability.**

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to the defect, lien or encumbrance assured against by this Guarantee.

### **9. Limitation of Liability.**

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### **10. Reduction of Liability or Termination of Liability.**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 5 shall reduce the amount of liability pro tanto.

### **11. Payment of Loss.**

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### **12. Subrogation Upon Payment or Settlement.**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

### **13. Arbitration.**

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the Amount of Liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. Liability Limited to this Guarantee; Guarantee Entire Contract.**

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. Notices, Where Sent.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to: Old Republic National Title Insurance Company, 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.



**Subdivision Guarantee**  
SCHEDULE A

Order No.: **1050576**  
Fee: **\$1,500.00**

Liability: **\$1,000.00**  
Guarantee No.: **SG**  
Reference No.:

1. Name of Assured: City of Billings
2. Date of Guarantee: June 23, 2022 at 7:30 A.M.

The assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described land (but without examination of those Company records maintained and indexed by name):

**Parcel A:**

**Lots 12 and 13, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel B:**

**Lots 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel C:**

**Lot 25, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the westerly one-half of vacated alley and the easterly one-half of vacated N. 29th Street adjoining.**

**Parcel D:**

**Lots 1 and 2, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**EXCEPT that part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 11, 2018, under Document #3854221, records of Yellowstone County, Montana.**

**Parcel E:**

**Lots 3 and 4, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel F:**

**Lots 5 and 6, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel G:**

**Lots 7 and 8, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel H:**

**Lots 9 and 10, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel I:**

**Lots 11, 12, 13 and 14, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel J:**

**Lots 15 and 16, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**EXCEPT that part conveyed to the City of Billings by Quit Claim Deed recorded March 23, 1995, under Document #1777495, records of Yellowstone County, Montana.**

**Parcel K:**

**Lots 17 and 18, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel L:**

**Lots 19 and 20, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel M:**

**Lots 21 and 22, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel N:**

**Lots 23 and 24, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel O:**

**Lots 25 and 26, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel P:**

**Lots 27 and 28, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Q:**

**Lots 29 and 30, Block 9, of North Side Addition, Third Filing, in the City of Billings,**

**Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel R:**

**Lots 31 and 32, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel S:**

**Lots 33 and 34, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel T:**

**Lots 35 and 36, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel U:**

**Lots 37 and 38, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel V:**

**Lots 39 and 40, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel W:**

**Lots 41 and 42, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel X:**

**Lots 43 and 44, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Y:**

**Lots 45 and 46, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Z:**

**Lots 47 and 48, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel AA:**

**Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel BB:**

**Lots 13 and 14, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel CC:**

**Lots 15, 16, 17, 18, 19, 20, and 21, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel DD:**

**Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14 and 15, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel EE:**

**Lots 10A, 11A and 11B, Block 2, of Amended Plat of Lots 10 and 11 Block 2 of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #1441157.**

**Parcel FF:**

**Lots 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel GG:**

**Lots 28, 29, 30 and 31, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel HH:**

**Lots 31, 32, 33, 34, 35, 36, 37 and 38, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel II:**

**Lots 22, 23 and 24, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel JJ:**

**Lots 25, 26, 27, 28, 29, 30, 31, 32 and 33, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**EXCEPTING therefrom the following 3 Tracts of land:**

**1. That part conveyed to the City of Billings by Quit Claim Deed recorded March 23, 1995, under Document #1777494, records of Yellowstone County, Montana.**

**2. That part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 9, 2018, under Document #3854028, records of Yellowstone County, Montana.**

**3. That part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 11, 2018, under Document #3854130, records of Yellowstone County, Montana.**

**Parcel KK:**

**Lots 34, 35, 36, 37, 38, 39 and 40, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel LL:**

**Lot 1, Block 1, of Normal Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3424025.**

**Parcel MM:**

**Lot 2, Block 1, of Normal Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3424025.**

**Parcel NN:**

**That part of SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Certificate of Survey No. 708 on file in the office of the Clerk and Recorder of said County, under Document #547601.**

**Parcel OO:**

**That part of E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Tract 1, of Certificate of Survey No. 934 on file in the office of the Clerk and Recorder of said County, under Document #710874.**

**Parcel PP:**

**That part of E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Tract 2, of Certificate of Survey No. 934 on file in the office of the Clerk and Recorder of said County, under Document #710874.**

- A. Name of Proposed Subdivision Plat or Condominium Map:  
Unknown
- B. The Public records purport that only the hereafter names parties appear to have an interest affecting the land necessitating their execution of the names proposed plat or map:  
Sisters of Charity of Leavenworth, Health Service Corporation, a Kansas corporation, as to Lot 12 of Parcel A;  
  
Sisters of Charity of Leavenworth Health Service Corporation, a corporation, as to Lot 13 of Parcel A and Lot 14 of Parcel B;  
  
Sisters of Charity of Leavenworth, Health Services Corporation, as to Lots 15 and 16 of Parcel B, all of Parcel KK;  
  
Sisters of Charity of Leavenworth, Health Service Corporation, a corporation, as to Lots 17, 18, 19, 20, 21 and 22 of Parcel B;  
  
Sisters of Charity of Leavenworth Health System, Inc., a not for profit Kansas corporation, as to Lots 23 and 24 of Parcel B, all of Parcels D, E, L, M, N and O;  
  
Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcels C, K, P, Q, R, S, T, GG, JJ and MM;  
  
Sisters of Charity of Leavenworth Health Services Corporation, a Kansas non profit corporation, as to Parcels F, Z, BB and Z, North 20 feet of Lot 6, all of Lots 7, 8, 9, 10, 11 and 12 of Parcel AA and the N $\frac{1}{2}$  of Lot 5, all of Lot 6 and the S $\frac{1}{2}$  of Lot 7;

Sisters of Charity of Leavenworth Health Services Corporation, a not for profit Kansas corporation, as to Parcels G, H and I;

Sisters of Charity of Leavenworth Health Services Corporation, a Kansas corporation, as to Parcel J;

Sisters of Charity of Leavenworth Health System, Inc., as to Parcel U;

Sisters of Charity of Leavenworth Health Services Corporation, as to Parcels V, Y and Lots 1, 2, 3, 4, 5 and the South 5 feet of Lot 6 of Parcel AA;

Helen Kaufman for life, with the remainder in Sisters of Charity of Leavenworth Health Services Corporation, a not for profit Kansas corporation, as to Parcel W;

Ted Rowe, as Trustee of the Ted Rowe Trust dated February 24, 1992 for life, with the remainder in Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcel X;

The Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcels CC and PP;

Clinical Realty Company, a Montana corporation, as to the N $\frac{1}{2}$  of Lot 7, all of Lot 8 and the S $\frac{1}{2}$  of Lot 7, N $\frac{1}{2}$  of Lot 13, all of Lots 14 and 15 of Parcel DD;

William Lambrecht, as to Lots 1, 2 and the S $\frac{1}{2}$  of Lot 3 of Parcel DD;

Hazel J. Orchard, as to the N $\frac{1}{2}$  of Lot 3, all of Lot 4 and the S $\frac{1}{2}$  of Lot 5 of Parcel DD;

The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day-Saints, a Utah Corporation, at to N $\frac{1}{2}$  of Lot 11, all of Lot 12 and the S $\frac{1}{2}$  of Lot 13 of Parcel DD;

The Foundation of Montana State University-Billings, as to Parcels FF and LL;

The State of Montana, as to Parcel HH;

Edwin G. Osness and Hazel E. Osness, husband and wife as joint tenants, as to Parcel II;

Rimrock Foundation, a Montana non-profit corporation, as to Parcel NN;

Edwin G. Osness, as to Parcel OO.

C. According to the public records, the following documents purport to affect the described land:

1. 2022 taxes and special assessments are an accruing lien, amounts not yet determined or payable.

The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

| Year | First Half / Status | Second Half / Status | Parcel Number | Covers                    |
|------|---------------------|----------------------|---------------|---------------------------|
| 2021 | \$9,881.22 Paid     | \$9,881.21 Paid      | A12218        | Parcel A                  |
| 2021 | \$71,488.28 Paid    | \$71,488.26 Paid     | A12226        | Parcel B                  |
| 2021 | \$3,138.56 Paid     | \$3,138.55 Paid      | A12229        | Parcel C                  |
| 2021 | \$202.60 Paid       | \$202.60 Paid        | A12241        | Parcel D                  |
| 2021 | \$203.06 Paid       | \$203.06 Paid        | A12242        | Parcel E                  |
| 2021 | \$202.96 Paid       | \$202.96 Paid        | A12243        | Parcel F                  |
| 2021 | \$203.14 Paid       | \$203.14 Paid        | A12244        | Parcel G                  |
| 2021 | \$203.08 Paid       | \$203.08 Paid        | A12245        | Parcel H                  |
| 2021 | \$380.90 Paid       | \$380.90 Paid        | A12246        | Parcel I                  |
| 2021 | \$180.82 Paid       | \$180.82 Paid        | A12248        | Parcel J                  |
| 2021 | \$203.02 Paid       | \$203.02 Paid        | A12249        | Parcel K                  |
| 2021 | \$202.99 Paid       | \$202.99 Paid        | A12250        | Parcel L                  |
| 2021 | \$203.05 Paid       | \$203.05 Paid        | A12251        | Parcel M                  |
| 2021 | \$202.95 Paid       | \$202.95 Paid        | A12252        | Parcel N                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12253        | Parcel O                  |
| 2021 | \$180.35 Paid       | \$180.35 Paid        | A12254        | Parcel P                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12255        | Parcel Q                  |
| 2021 | \$180.35 Paid       | \$180.35 Paid        | A12256        | Parcel R                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12257        | Parcel S                  |
| 2021 | \$180.44 Paid       | \$180.44 Paid        | A12258        | Parcel T                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12259        | Parcel U                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12260        | Parcel V                  |
| 2021 | \$180.37 Paid       | \$180.37 Paid        | A12261        | Parcel W                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12262        | Parcel X                  |
| 2021 | \$180.37 Paid       | \$180.37 Paid        | A12263        | Parcel Y                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12264        | Parcel Z                  |
| 2021 | \$4,782.98 Paid     | \$4,782.98 Paid      | A33974        | Parcel AA, DD, EE, JJ, MM |
| 2021 | \$260.87 Paid       | \$260.87 Paid        | A11334        | Parcel BB                 |
| 2021 | \$4,571.20 Paid     | \$4,571.20 Paid      | A11335        | Parcel CC                 |
| 2021 | \$1,442.58 Paid     | \$1,442.58 Paid      | A11351        | Parcel FF                 |
| 2021 | \$353.27 Paid       | \$353.27 Paid        | A11353        | Parcel GG                 |
| 2021 | \$909.39 Paid       | \$909.39 Paid        | A11354        | Parcel HH                 |
| 2021 | \$339.45 Paid       | \$339.45 Paid        | A11336        | Parcel II                 |
| 2021 | \$608.63 Paid       | \$608.63 Paid        | A11341        | Parcel KK                 |
| 2021 | \$1,442.58 Paid     | \$1,442.58 Paid      | A11351        | Parcel LL                 |
| 2021 | \$560.10 Paid       | \$560.10 Paid        | D05764        | Parcel NN                 |
| 2021 | \$339.45 Paid       | \$339.45 Paid        | A11336        | Parcel OO                 |
| 2021 | \$4,571.20 Paid     | \$4,571.20 Paid      | A11335        | Parcel PP                 |

2. Unrecorded leaseholds; rights of parties in possession, rights of secured parties, vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.
3. Existing rights of way, easements and franchise rights of any lot owner or public utility in place at time of vacation. (Affects Parcels B,C,AA,BB,CC,DD,EE,FF, GG,HH,II,JJ,KK,LL,MM,NN,O

4. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded May 7, 1935, as instrument number 300610, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels A through Z)
5. Provisions in deed to B. M Sheehan and L.C. Babcock as sole surviving trustees of the Billings Realty Company, a Montana corporation that has resolved. , recorded May 8, 1935 in Book 180 of , page 156. (Affects Parcels A through Z)
6. Easement granted to Northwestern Energy, a division of NorthWestern Corporation, a Delaware corporation, Montana Dakota Utilities, a Delaware corporation; a division of MDU Resources Group, Inc.; Bresnan Communications, LLC and Qwest Corporation, recorded March 30, 1995, under Document No 1778247. (Affects Parcels A and B)
7. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: April 7, 1995  
Instrument No.: 1779354  
Type of lease: Ground and Parking  
Term: 40 years  
Date of Lease: April 6, 1995  
Lessor: Sisters of Charity of Leavenworth Health Services Corporation, c/o Saint Vincent Hospital and Health Center  
Lessee: Hilltop Inn Limited Partnership. (Affects Parcel A and B)

The effect of Landlord Estoppel Certificate recorded May 3, 1995, under Document #1782334.

The effect of Landlords Consent recorded May 3, 1995, under Document #1782335.

8. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: April 8, 2003 , in Book , Page  
Instrument No.: 3224106  
Type of lease: None stated  
Term: 120 months plus 2 additional 60 month extension periods, exercisable by Tenant  
Date of Lease: October 1, 2002  
Lessor: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation  
Lessee: Yellowstone Surgery Center, LLC, a Montana limited liability company. (Affects Parcel B)
9. Provisions in deed to M.V. Blix , recorded April 19, 1939 in Book 210, page 306, under Document #337595. (Affects Parcel B)
10. Provisions in deed to Florence M. Blix, recorded December 12, 1938 in Book 208 , page 155, under Document #333926.
11. Use and Maintenance Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation and MED-MAP, LLC, a Utah limited liability company  
Recorded: October 12, 1994, under Document #1760266 (Affects Parcels B and C)  
  
Amended Use and Maintenance Agreement recorded January 24, 1995, under Document #1771456.  
  
Assignment of Use and Maintenance Agreement recorded December 16, 2010, under Document #3573692.
12. Provisions in deed to L.C. Babcock and B. M. Sheehan, as sole surviving trustees of Billings Realty Company , recorded July 27, 1939 in Book 214 , page 212, under Document #340460. (Affects Parcel B)

13. Provisions in deed to Louis Melnick, recorded November 18, 1939 in Book 215 , page 281, under Document #343687. (Affects Parcel B)
14. Provisions in deed to Harry L. Neidemire, recorded August 29, 1939 in Book 214, page 395, under Document #341281. (Affects Parcel C)
15. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: October 12, 1996  
Instrument No.: 1760267  
Type of lease: Ground  
Term: 40 years with the option to extended another 35 years  
Date of Lease: October 1, 1994  
Lessor: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation  
Lessee: MED-MAP, LLC, a Utah limited liability company.
16. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: June 19, 1996 , in Book , Page  
Instrument No.: 1838297  
Type of lease:  
Term: May 20, 1996 to May 19, 2006, extended for another 2 successive option periods of 5 years  
Date of Lease: May 14, 1996  
Lessor: Med-Map, LLC a Montana limited liability company  
Lessee: McDonalds Corporation, a Delaware corporation. (Affects Parcel C)
17. Deed of Trust, to secure an original indebtedness of \$22,221,291.99, dated December 15, 2015 and any other amounts and/or obligations secured thereby  
Recorded: December 18, 2015, under Document #3764025  
Grantor: Med-Map L.L.C, a Utah limited liability company  
Trustee: William D. Lamdin III  
Beneficiary: First Interstate Bank (Affects Parcel C and Other Property)  
  
Abstract of Landlord's Consent and Agreement recorded December 18, 2015, under Document #3764027  
  
Modification Agreement recorded January 21, 2016, under Document #3767128.  
  
Modification Agreement recorded February 3, 2022, under Document #4006852.  
  
Mark C. Protherow was appointed successor trustee of said Trust Indenture by instrument recorded April 26, 2022 , under Document #4015210.
18. Assignment of rents to secure payment of the indebtedness shown as paragraph herein, and upon the terms and conditions therein.  
Recorded: December 18, 2015, under Document  
Assignor: Med-Map L.L.C., a Utah limited liability company  
Assignee: First Interstate Bank.  
  
First Amendment to Assignment of Rents recorded January 21, 2016, under Document #3767129
19. Financing Statement covering Fixtures  
Recorded: December 23, 2015, under Document #3764384  
Debtor: Med-Map L.L.C.  
Secured Party: First Interstate Bank. (Affects Parcel C and Other Property)
20. Easement for easement of light and air without obstruction granted to Stewart-Griffin, Inc. a Montana corporation, recorded May 1, 1954 in Book/Roll 481, Page 430, under Document #523354.

21. Financing Statement covering Fixtures  
Recorded: August 23, 2021, under Document #3986756  
Debtor: Med-Map L.L.C  
Secured Party: CSC. (Affects Parcel C and Other Property)
22. Right-of-way granted to Montana Power Company, recorded August 31, 1999, under Document #3064293. (Affects Parcels D through Z)
23. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded December 14, 2016, as instrument number 3799200, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcels D through Z, II, JJ and KK)
24. Provisions in deed to Josephine Tipolt, recorded February 23, 1940 in Book 217 , page 207, under Document #346693. (Affects Parcel E)
25. Provisions in deed to M. S. Sprague, recorded August 20, 1938 in Book 206 of , page 113, under Document #330810.
26. Provisions in deed to M.L.E. Brown , recorded December 2, 1939 in Book 213 of 401, page, under Document #344222. (Affects Parcel G)
27. Provisions in deed to Dorothy Sorensen, recorded July 17, 19741 in Book 231 of , page 604, under Document #362855.
28. Financing Statement covering Fixtures  
Recorded: March 30, 1988, 121818  
Debtor: American Pizza Partners  
Secured Party: Intrust Bank NA.  
  
Continuation Statement recorded Septmber 2, 1998 , 1909570.  
  
Continuation Statement recorded March 30, 2003 , 3217838.  
  
Continuation Statement recorded November 5, 2007 , 3444678.  
  
Continuation Statement recorded November 23, 2012 , 3647129.  
  
Continuation Statement recorded January 17, 2018 , 3838896.
29. Provisions in deed to L. C. Babcock and B. M. Sheehan, as sole surviving trustees of Billings Realty Company, recorded September 26, 1938 in Book 206 , page 322, under Document #331710. (Affects Parcel J)
30. Provisions in deed to Francis Theodore Thomson or Lena Marie Thomson, recorded May 15, 1939 in Book 210 , page 461, under Document #338295. (Affects Parcel K)
31. Provisions in deed to Pete P. Friedt, recorded August 20, 1938 in Book 206 , page 105, under Document #330791. (Affects Parcel N)
32. Provisions in deed to Wm. Lohoff and Nellie Lohof, recorded October 5, 1949, in Book/Roll 352, Page 186 as Instrument No. 455051. (Affects Parcel O)

33. Provisions in deed to Max W. Dudley, recorded April 3, 1940, in Book/Roll 217, Page 487 as Instrument No. 348106. (Affects Parcel P)
34. Provisions in deed to H.M. Sampson and Sanna Sampson, recorded May 28, 1940, in Book/Roll 220, Page 297 as Instrument No. 350158. (Affects Parcel Q)
35. Provisions in deed to Max W. Dudley, recorded August 6, 1940, in Book/Roll 229, Page 54 as Instrument No. 352512. (Affects Parcel R)
36. Provisions in deed to Chancey D. Croman and Laura Croman, recorded October 24, 1939, in Book/Roll 215, Page 95 as Instrument No. 342866. (Affects Parcel S)
37. Provisions in deed to Chancey D. Croman, recorded December 11, 1939, in Book/Roll 215, Page 463 as Instrument No. 344581. (Affects Parcel T)
38. Provisions in deed to Billings Realty Company, a Montana corporation, recorded May 8, 1935, in Book/Roll 180, Page 156 as Instrument No. 300662. (Affects Parcel U)
39. Provisions in deed to Chancey D. Croman, recorded July 22, 1939, in Book/Roll 214, Page 180 as Instrument No. 340308. (Affects Parcel U)
40. Provisions in deed to Elizabeth Besinque, recorded August 17, 1940, in Book/Roll 229, Page 128 as Instrument No. 352841. (Affects Parcel V)
41. Provisions in deed to James Thorpe, recorded August 19, 1940, in Book/Roll 229, Page 133 as Instrument No. 352868. (Affects Parcel W)
42. Easement granted to The Montana Power Company, recorded August 31, 1999 as Instrument No. 3064293.
43. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded December 14, 2016, as instrument number 3799200, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
44. Provisions in deed to Katherine E. Barnard, recorded October 27, 1939, in Book/Roll 215, Page 124 as Instrument No. 343006. (Affects Parcel X)
45. Provisions in deed to Florence M. Blix, recorded January 27, 1940, in Book/Roll 217, Page 56 as Instrument No. 345934. (Affects Parcel Y)
46. Provisions in deed to Stella Fulmer, recorded April 21, 1939, in Book/Roll 210, Page 314 as Instrument No. 337656. (Affects Parcel Z)
47. Easement for storm drain lines granted to The City of Billings, recorded September 7, 2000 under Document #3102093. (Affects Parcels AA, BB, CC, DD, EE, FF, GG and HH)
48. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded December 23, 1940, as instrument number 356842, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels AA, BB, CC, DD, EE, FF, GG, HH, OO)
49. Easement for storm drain lines granted to The City of Billings, recorded September 7, 2000 under Document #3102094. (Affects Parcels BB and CC)

50. Easement for right of way granted to The City of Billings, recorded February 1, 2001, under Document #3116727. (Affects Parcels AA, BB and CC)
51. Development Agreement upon the terms, conditions and provisions contained therein:  
Parties: The City of Billings, Montana; The Sisters of Charity of Leavenworth Health Services Corporation; Montana State University-Billings  
Recorded: September 7, 2000, under Document #3102096 (Affects Parcel AA, BB, CC, DD, EE, FF, GG, HH and OO)
52. Easement for iron water pipe line granted to Dave A. Wigodsky and Dena Ruth Wigodsky, recorded July 13, 1950 in Book/Roll 371, Page 328, under Document #465829. (Affects Parcel DD)
53. Rental Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Lavenworth Health Services Corporation and Midland Empire Professional Building Association  
Recorded: September 15, 1982, in Book/Roll 1239, Page 3264, under Document #1240279 (Affects Parcel DD)
54. Easement granted to The Mountain States Telephone and Telegraph Company, a Colorado corporation, recorded June 13, 1988, in Book/Roll 1292, Page 393 as Instrument No. 1397367. (Affects Parcels DD and EE)
55. Easement granted to The Montana Power Company, a corporation, recorded June 13, 1986, in Book/Roll 1292, Page 395 as Instrument No. 1397368. (Affects Parcels DD and EE)
56. Easement granted to The Montana Power Company; Montana Dakota Utilities, a division of MDU Resources Group, Inc; U S West Communications, Inc.; TCI Cablevision of Montana, Inc., recorded March 30, 1995 as Instrument No. 1778248. (Affects Parcels DD and EE)
57. Easement for right of way granted to The City of Billings, a municipal corporation, recorded February 1, 2001 under Document #3116726. (Affects Parcel DD)
58. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded May 13, 1987, as instrument number 1441157, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcel EE)
59. Easement for storm drains, sanitary sewers and/or water lines granted to The City of Billings, a Municipal Corporation, recorded September 7, 2000 under Document #3102095. (Affects Parcel FF)
60. Terms, covenants, conditions and easement contained in Water Deed from Billings Land And Irrigation Company, to The Billings Realty Company, a Montana corporation; recorded March 23, 1904, in Book/Roll D, Page 285. (Affects Parcels II, JJ and KK)
61. Easement for right of way granted to The City of Billings, recorded September 25, 1929 in Book/Roll 149, Page 31, under Document #241814. (Affects Parcels II, JJ and KK)
62. Easement for highway granted to the State of Montana, recorded June 7, 1934 in Book/Roll 173, Page 189, under Document #293114. (Affects Parcel II, JJ and KK)

63. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded August 9, 1945, as instrument number 403078, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels II, JJ and KK)
64. Unrecorded Contract of sale upon the terms, conditions and provisions contained therein, constructive notice of which was given by Contract for Deed:  
Recorded: July 14, 1983, in Book/Roll 1250, Page 569, under Document #1272537  
Seller: Edwin G. Osness and Hazel E. Osnell  
Buyer: Walton & Frankel, a partnership comprised of William H. Walton and S. Arthur Frankel  
Escrowed at: unknown (Affects II and OO)
- Warranty Deed from Walton & Frankel, a partnership comprised of William H. Walton and S. Arthur Frankel to Poly Realty, a Montana General partnership, recorded January 6, 1978, in Book/Roll 1186, Page 769, under Document #1075807.
- Warranty Deed from Poly Realty, a Montana general partnership to Sisters of Charity of Lavenworth, a Health Services Corporation, a not for profit Kansas corporation, recorded July 14, 1983, in Book/Roll 1250, Page 578, under Document #1272539.
- Assignment of Contract for Deed from Poly Realty, a Montana general partnership to Sisters of Charity of Lavenworth, a Health Services Corporation, a not for profit Kansas corporation, recorded November 8, 1983, in Book/Roll 1254, Page 3572, under Document #1286084.
65. Easement for ingress and egress granted to Herman Henrickson, Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded March 4, 1950 in Book 363, Page 142, under Document #460473. (Affects Parcel JJ)
- Various instruments appear of record affecting the interests of the parties to said easement, but neither this Commitment or the forthcoming Policy covers an examination of or insurance as to the effect thereof, or the present ownership, encumbrances on, or condition of said easement.
66. Easement for right of way and easements granted to Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded December 26, 1961 in Book/Roll 734, Page 478, under Document #674955. (Affects Parcel JJ)
67. Provisions in deed to Herman Henrickson, Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded March 4, 1950 in Book 363, page 142, under Document #460473. (Affects Parcel JJ)
68. Easement for ingress and egress of vehicles and otherwise granted to John S. Nicolson and Elizabeth C. Nicolson, recorded August 15, 1950 in Book/Roll 375, Page 356, under Document #467066. (Affects Parcel JJ)
69. Easement for right of way and easements granted to Howard H. Hendrickson and Robert L. Hendrickson, co-partners in business under the firm name and style of H.H. Hendrickson & Sons, recorded December 26, 1961 in Book/Roll 734, Page 478, under Document #674955. (Affects Parcel JJ)
70. Easement for right of way granted to Robert L. Hendrickson, recorded November 15, 1977 in Book/Roll 1178, Page 146, under Document #1070445. (Affects Parcel JJ)
71. Agreement upon the terms, conditions and provisions contained therein:  
Parties: John S. Nicholson  
Recorded: November 15, 1977, in Book/Roll 1178, Page 149, under Document #1070446 (Affects Parcel JJ)

72. Conditions contained in Resoulution No. 99-17476 recorded August 18, 2000, under Document #3100036. (Affects Parcel MM)
73. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipal corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102093. (Affects Parcel MM)
74. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipal corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102094. (Affects Parcel MM)
75. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipiapl corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102095. (Affects Parcel MM)
76. Development Agreement upon the terms, conditions and provisions contained therein:  
Parties: The City of Billings, Montana, a municipal corporation and Sisters of Charity of Leavenworth Health Services Corporation, a Not For Profit Kansas Corporation and Montana State University-Billings  
Recorded: September 7, 2000, under Document #3102096  
(Affects Parcel MM)
77. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, filed May 25, 2007, as Instrument #3424025, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 ©. (Affects Parcel MM)
78. The effect of Subdivision Improvement Agreement and Waiver filed May 25, 2007, under Document #3424026. (Affects Parcel MM)
79. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded August 16, 1955, as instrument number 547601, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcel NN)
80. Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Leavenworth Health Services Corporation, a not-for-profit Kansas Corporation and Rimrock Foundation, a Montana non-profit corporation  
Recorded: December 21, 1981, in Book/Roll 1232, Page 4839, under Document #1216992 (Affects Parcel NN)
81. Mortgage, to secure an original indebtedness of \$1,693,008.83, dated August 13, 208 and any other amounts and/or obligations secured thereby.  
Recorded: November 19, 2008, under Document #3486991  
Mortgagor: Rimrock Foundation  
Mortgagee: Montana Facility Finance Authority

Re-recorded August 14, 2009, under Document #3520258.

Coverage: Said instrument covers Parcel NN only.

82. Mortgage, to secure an original indebtedness of \$610,000.00, dated August 19, 2009 and any other amounts and/or obligations secured thereby.  
Recorded: August 19, 2009, under Document #3520926  
Mortgagor: Rimrock Foundation, a Montana non-profit corporation  
Mortgagee: Montana Facility Finance Authority

Assigned to First Interstate Bank, by instrument recorded August 19, 2009, 3520928.

Coverage: Said Instrument Covers Parcel NN only.

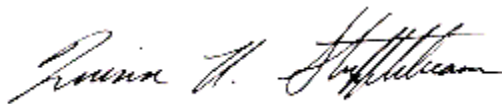
83. Assignment of Rents to secure payment of the indebtedness shown in paragraph 90 herein, and upon the terms and conditions therein.  
Recorded: August 19, 2009, under Document #3520927.  
Assignor: Rimrock Foundation, a Montana non-profit corporation  
Assignee: Montana Facility Finance Authority

Assigned to First Interstate Bank, by instrument recorded August 19, 2009, under Document #3520928.

Coverage: Said Instrument Covers Parcel NN only.

84. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded July 17, 1963, as instrument number 710874, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcels OO and PP)

No guarantee is made regarding any liens, claims of liens, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said land is the same as said address.



Authorized Officer or Agent

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By  President  
Attest  Secretary



| FACTS |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION? |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Why?  | Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.                                                                                                                                                                                              |                                                                 |
| What? | <p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and employment information</li> <li>• Mortgage rates and payments and account balances</li> <li>• Checking account information and wire transfer instructions</li> </ul> <p>When you are <b>no longer</b> our customer, we continue to share your information as described in this notice.</p> |                                                                 |
| How?  | All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.                                                                                                                                                                                                 |                                                                 |

| Reasons we can share your personal information                                                                                                                                                | Does Old Republic Title Share? | Can you limit this sharing? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------------------------|
| <b>For our everyday business purposes</b> – such as to process your transactions, maintain your accounts(s), or respond to court orders and legal investigations, or report to credit bureaus | <b>Yes</b>                     | <b>No</b>                   |
| <b>For our marketing purposes</b> – to offer our products and services to you                                                                                                                 | <b>No</b>                      | <b>We don't share</b>       |
| <b>For joint marketing with other financial companies</b>                                                                                                                                     | <b>No</b>                      | <b>We don't share</b>       |
| <b>For our affiliates' everyday business purposes</b> – information about your transactions and experiences                                                                                   | <b>Yes</b>                     | <b>No</b>                   |
| <b>For our affiliates' everyday business purposes</b> – information about your creditworthiness                                                                                               | <b>No</b>                      | <b>We don't share</b>       |
| <b>For our affiliates to market to you</b>                                                                                                                                                    | <b>No</b>                      | <b>We don't share</b>       |
| <b>For non-affiliates to market to you</b>                                                                                                                                                    | <b>No</b>                      | <b>We don't share</b>       |

|           |                                                                                           |
|-----------|-------------------------------------------------------------------------------------------|
| Questions | Go to <a href="http://www.oldrepublictitle.com">www.oldrepublictitle.com</a> (Contact Us) |
|-----------|-------------------------------------------------------------------------------------------|

| Who we are                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Who is providing this notice?                                       | Companies with an Old Republic Title names and other affiliates. Please see below for a list of affiliates.                                                                                                                                                                                                                                                                                                                 |
| What we do                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>How does Old Republic Title protect my personal information?</b> | To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit <a href="http://www.OldRepublicTitle.com/newnational/Contact/privacy">http://www.OldRepublicTitle.com/newnational/Contact/privacy</a> .                                               |
| <b>How does Old Republic Title collect my personal information?</b> | <p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Give us your contact information or show your driver's license</li> <li>• Show your government-issued ID or provide your mortgage information</li> <li>• Make a wire transfer</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p> |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Why can't I limit all sharing?</b> | <p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes - information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• Sharing for non-affiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.</p> |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Definitions

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Affiliates</b>      | <p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.</i></li> </ul> |
| <b>Non-affiliates</b>  | <p>Companies not related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title does not share with non-affiliates so they can market to you</i></li> </ul>                                                                                                                                                                                 |
| <b>Joint marketing</b> | <p>A formal agreement between non-affiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title doesn't jointly market.</i></li> </ul>                                                                                                                                                                                                     |

## Affiliates Who May Be Delivering This Notice

|                                                |                                         |                                           |                                               |                                               |
|------------------------------------------------|-----------------------------------------|-------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| American First Abstract, LLC                   | American First Title & Trust Company    | American Guaranty Title Insurance Company | Attorneys' Title Fund Services, LLC           | Compass Abstract, Inc.                        |
| eRecording Partners Network, LLC               | Genesis Abstract, LLC                   | Kansas City Management Group, LLC         | L.T. Service Corp.                            | Lenders Inspection Company                    |
| Lex Terrae National Title Services, Inc.       | Lex Terrae, Ltd.                        | Mara Escrow Company                       | Mississippi Valley Title Services Company     | National Title Agent's Services Company       |
| Old Republic Branch Information Services, Inc. | Old Republic Diversified Services, Inc. | Old Republic Exchange Company             | Old Republic National Title Insurance Company | Old Republic Title and Escrow of Hawaii, Ltd. |
| Old Republic Title Co.                         | Old Republic Title Company of Conroe    | Old Republic Title Company of Indiana     | Old Republic Title Company of Nevada          | Old Republic Title Company of Oklahoma        |
| Old Republic Title Company of Oregon           | Old Republic Title Company of St. Louis | Old Republic Title Company of Tennessee   | Old Republic Title Information Concepts       | Old Republic Title Insurance Agency, Inc.     |
| Old Republic Title, Ltd.                       | Republic Abstract & Settlement, LLC     | Sentry Abstract Company                   | The Title Company of North Carolina           | Title Services, LLC                           |
| Trident Land Transfer Company, LLC             |                                         |                                           |                                               |                                               |

# Exhibit C: abutting property owner signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

### Description of Right-of-Way to be vacated:

The portion of the 12th street right of way between the western boundary of the 27th street right of way to the eastern boundary of the 28th street right of way.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

Street

Alley

Other RW

SIGNATURE

DATE

PROPERTY OWNERSHIP

*Bruno Fay*

8.30.22

SCL Health

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date | Disapproved By/Date |
|--------------------------|------------------|---------------------|
| City Public Works        | _____            | _____               |
| Heights Water            | _____            | _____               |
| Montana Dakota Utilities | _____            | _____               |
| Northwestern Energy      | _____            | _____               |
| Charter                  | _____            | _____               |
| CenturyLink              | _____            | _____               |
| City/Co. Planning        | _____            | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

### Petitioner's interest in vacating the public right-of-way:

The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

### ATTACHMENTS:

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.

# Exhibit D: Montana Dakota Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of the 12th street right of way between the western boundary of the 27th street right of way to the eastern boundary of the 28th street right of way.

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

|                     |                     |                           |
|---------------------|---------------------|---------------------------|
| <u>  X  </u> Street | <u>      </u> Alley | <u>      </u> Other R/W   |
| <u>SIGNATURE</u>    | <u>DATE</u>         | <u>PROPERTY OWNERSHIP</u> |

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date   | Disapproved By/Date |
|--------------------------|--------------------|---------------------|
| City Public Works        |                    |                     |
| Heights Water            |                    |                     |
| Montana Dakota Utilities | <i>MAJ 6-30-22</i> |                     |
| Northwestern Energy      |                    |                     |
| Charter                  |                    |                     |
| CenturyLink              |                    |                     |
| City/Co. Planning        |                    |                     |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

# Exhibit E

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of the 12th street right of way between the western boundary of the 27th street right of way to the eastern boundary of the 28th street right of way.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

X  Street                            Alley                            Other R/W

SIGNATURE

DATE

PROPERTY OWNERSHIP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date             | Disapproved By/Date |
|--------------------------|------------------------------|---------------------|
| City Public Works        | _____                        | _____               |
| Heights Water            | _____                        | _____               |
| Montana Dakota Utilities | _____                        | _____               |
| Northwestern Energy      | See Attached Letter 7/5/2022 | _____               |
| Charter                  | _____                        | _____               |
| CenturyLink              | _____                        | _____               |
| City/Co. Planning        | _____                        | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:**

The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**



**July 5, 2022**

**Mr. Rick Leuthold  
Sanderson Stewart  
Billings, MT**

**Dear Mr. Leuthold,**

Tim Morton has recently send me this request to vacate a right-of-way along 12<sup>th</sup> Avenue North in Billings, MT between western boundary of the 27<sup>th</sup> Street right of way to the eastern boundary of the 28<sup>th</sup> St right of way. I have reviewed it and will approve with one condition.

NorthWestern Energy has a guy wire and pole that are in this right of way. NorthWestern Energy will need a new easement to make sure the existing facilities are within an easement. If the existing facilities will need to be relocated entirely out of this right of way, then it will be at the owner's expense.

So with that, I approve of this vacated portion of the public right-of-way for 12<sup>th</sup> Avenue North in Billings, MT with the new easements in place before the right of way is vacated.

Please let me know if you are needing anything else on this request.

**Sincerely,**

**Cody Lux**

Construction Superintendent  
**[cody.lux@northwestern.com](mailto:cody.lux@northwestern.com)**  
**O 406-655-2540**  
**C 406-570-8768**

# Exhibit F: Charter Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of the 12th street right of way between the western boundary of the 27th street right of way to the eastern boundary of the 28th street right of way.

We, being all the abutting property owners, request of the City Council the vacation of the above described:

|                     |                     |                           |
|---------------------|---------------------|---------------------------|
| <u>  X  </u> Street | <u>      </u> Alley | <u>      </u> Other R/W   |
| <u>SIGNATURE</u>    | <u>DATE</u>         | <u>PROPERTY OWNERSHIP</u> |

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date          | Disapproved By/Date |
|--------------------------|---------------------------|---------------------|
| City Public Works        |                           |                     |
| Heights Water            |                           |                     |
| Montana Dakota Utilities |                           |                     |
| Northwestern Energy      |                           |                     |
| Charter                  | <i>[Signature]</i> 7-1-22 |                     |
| CenturyLink              |                           |                     |
| City/Co. Planning        |                           |                     |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

- ATTACHMENTS:**
- Title Report(s)
  - Comments from all Utilities
  - Map of R/W to be Vacated
  - Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

July 12, 2022

Mr. Chris Hertz  
Public Works Department  
2224 Montana Ave  
Billings, MT 59101

Reference: Saint Vincent Replacement Hospital  
Right-of-Way Vacation Petition Signature for Lumens (CenturyLink)

Dear Mr. Hertz:

Per our discussions earlier today, I am providing this letter regarding the status of the signatures from Lumens on the Right-of-way Vacation Petitions. There are two in question. One is for 12th Avenue North and the other is for the alley in Block 9 lying between 12th Avenue North and 11th Avenue North.

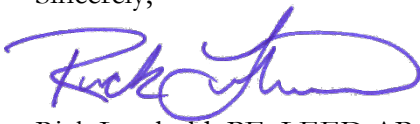
Petitions have been circulated amongst all private utilities as well as the planning department and your department. It is now approaching thirty days since these were originally distributed. All other signatures were obtained, with the exception of Lumens, approximately a week and a half ago.

I have spoken to the local contact on numerous occasions, and it appears that these are held up in corporate legal review with no estimate of when they might be returned. I have made it clear that all we are asking for is an acknowledgement of the vacation of these parcels for the hospital to proceed on their schedule. I fully expect that they would condition their acknowledgement on an alternate easement being issued or their facilities being relocated at the owner's expense. This understanding has been noted by some of the other utilities and I have specifically conveyed this to the representatives of Lumens.

I will continue to stay in contact with Lumens and will also continue to convey the understanding and expectation that we will fully accommodate their existing facilities as we get deeper into schematic and design development on this project.

Thank you for your time and consideration on this matter and please let me know if I can provide any other information for you.

Sincerely,



Rick Leuthold, PE, LEED AP  
Chairman/Director of Business Development

# Exhibit H: City/County Planning Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The portion of the 12th street right of way between the western boundary of the  
27th street right of way to the eastern boundary of the 28th street right of way.  
 \_\_\_\_\_  
 \_\_\_\_\_

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

|                     |                     |                           |
|---------------------|---------------------|---------------------------|
| <u>  X  </u> Street | <u>      </u> Alley | <u>      </u> Other R/W   |
| <u>SIGNATURE</u>    | <u>DATE</u>         | <u>PROPERTY OWNERSHIP</u> |

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |
|  |  |  |

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date | Disapproved By/Date |
|--------------------------|------------------|---------------------|
| City Public Works        |                  |                     |
| Heights Water            |                  |                     |
| Montana Dakota Utilities |                  |                     |
| Northwestern Energy      |                  |                     |
| Charter                  |                  |                     |
| CenturyLink              |                  |                     |
| City/Co. Planning        |                  |                     |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
The petitioner seeks to vacate the public right of way for the purpose of developing  
a replacement facility for the existing hospital.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

**REQUEST TO VACATE PUBLIC RIGHT -OF-WAY  
CITY OF BILLINGS**

**Description of Right-of-Way to be vacated:**

The entirety of the alley on NORTHSIDE ADD 3RD FILING, S32, T01 N, R26 E, BLOCK 9

**We, being all the abutting property owners, request of the City Council the vacation of the above described:**

         Street                        X   Alley                               Other R/W

         **SIGNATURE**                               **DATE**                               **PROPERTY OWNERSHIP**

         See attached exhibit C

(Additional signatures, if needed, can be on additional sheets.)

**WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.**

|                          | Approved By/Date                                       | Disapproved By/Date |
|--------------------------|--------------------------------------------------------|---------------------|
| City Public Works        | <u>        </u>                                        | <u>        </u>     |
| Heights Water            | <u>        </u> NA <u>        </u>                     | <u>        </u>     |
| Montana Dakota Utilities | <u>        </u> See attached exhibit D <u>        </u> | <u>        </u>     |
| Northwestern Energy      | <u>        </u> See attached exhibit E <u>        </u> | <u>        </u>     |
| Charter                  | <u>        </u> See attached exhibit F <u>        </u> | <u>        </u>     |
| CenturyLink              | <u>        </u> See attached exhibit G <u>        </u> | <u>        </u>     |
| City/Co. Planning        | <u>        </u> See attached exhibit H <u>        </u> | <u>        </u>     |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:**           
The petitioner seeks to vacate the public right of way for the purpose of developing a replacement facility for the existing hospital.

**The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).**

**ATTACHMENTS:**

- X   Title Report(s)    See Exhibit A
- none  Comments from all Utilities
- X   Map of R/W to be Vacated    See Exhibit B
- n/a  Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

Fee Received By: Chris Hertz  
City Engineers Office

Date: 7/6/22

**A DEPOSIT FOR AN APPRAISAL MUST ALSO ACCOMPANY THIS REQUEST.**

Deposit Amount: \_\_\_\_\_

Received By: \_\_\_\_\_  
City Clerk

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

**Copies of City of Billings Ordinance No. 80-4269 and 90-4822, establishing the procedure and compensation to the City of Billings for Discontinuance and Vacation of City Streets, Alleys, and Rights-of-Way, are attached for reference.**

**The application fee, as stated in BMC 22-602, will be set by the City Administrator after review by the staff. The City Clerk will advertise the public hearing at least one week before the petition is acted upon by the City Council.**

**This petition is to be returned to the City Clerk, PO Box 1178, Billings, MT 59103. (First Floor, City Hall)**

**This petition must be accompanied by the statements and reports as listed in BMC 22-601 (a), (b), (c), (d), (e), and (f). (Copy attached)**

**CONTACT PERSON FOR PETITION:**

Rick Leuthold

Telephone No.: (406) 656-5255

Mailing Address: 1300 N. Transtech Way  
Billings, MT 59102

Date: 7/6/22

**CITY COUNCIL ACTION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

# Exhibit A



**First American Title Company**  
1001 South 24th Street West Ste 200  
Billings, MT 59102  
Phone: (406)248-7877 / Fax: (406)248-7875

**PR:** AFFGRP

**Ofc:** 84 (14079)

## Invoice

**To:** Cushing Terrell  
13 N 23rd St  
Billings, MT

**Invoice No.:** 14079 - 841004586

**Date:** 07/01/2022

**Our File No.:** 1050576

**Title Officer:** Annette Nielsen

**Escrow Officer:**

**Customer ID:** AD1025702

**Attention:** George Bornemann

**Your Ref.:**

**Liability Amounts**

**RE: Property:**  
Multiple addresses, Billings, MT

**Buyers:** The Foundation of Montana State University-Billings

**Sellers:**

| Description of Charge | Invoice Amount |
|-----------------------|----------------|
| <b>INVOICE TOTAL</b>  | <b>\$0.00</b>  |

### Comments:

**Thank you for your business!**

*To assure proper credit, please send a copy of this Invoice and Payment to:*

*Attention: Accounts Receivable Department*

*NOTE NEW REMITTANCE ADDRESS, LB# 1083, First American Title Company, PO Box 35146  
Seattle, WA 98124-5146*



# Guarantee

## SG

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN.

Old Republic National Title Insurance Company, a Florida corporation, herein called the Company  
GUARANTEES

the Assured named in Schedule A, against actual monetary loss or damage not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurances set forth in Schedule A.

IN WITNESS WHEREOF, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Guarantee to become valid when countersigned on Schedule A by an authorized officer or agent of the Company.

Issued through the Office of:

First American Title Company

Authorized Signature

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By  *C. Monroe* President  
Attest  *David Wald* Secretary

## **GUARANTEE CONDITIONS AND STIPULATIONS**

### **1. Definition of Terms.**

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A)(C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A)(C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

### **2. Exclusions from Coverage of this Guarantee.**

The Company assumes no liability for loss or damage by reason of the following:

- (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
- (b) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water: whether or not the matters excluded by (1), (2) or (3) are shown by the public records.
- (c) Assurances to title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A)(C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, alleys, lanes, ways or waterways in which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any other structure or improvement; or any rights or easements therein unless such property, rights or easements are expressly and specifically set forth in said description.
- (d) (1) Defects, liens, encumbrances, or adverse claims against the title, if assurances are provided as to such title, and as limited by such assurances.  
(2) Defects, liens, encumbrances, adverse claims or other matters (a) whether or not shown by the public records, and which are created, suffered, assumed or agreed to by one or more of the Assureds; (b) which result in no loss to the Assured; or (c) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of assurances provided.

### **3. Notice of Claim to be Given by Assured Claimant.**

An Assured shall notify the Company promptly in writing in case any knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by such failure and then only to the extent of the prejudice.

### **4. No Duty to Defend or Prosecute.**

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

### **5. Company's Option to Defend or Prosecute Actions; Duty of Assured Claimant to Cooperate.**

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 4 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in (b), or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured, or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently
- (b) If the Company elects to exercise its options as stated in Paragraph 5(a) the Company shall have the rights to select counsel of its choice (subject to the right of such Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.

- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured hereunder shall secure to the Company the right to prosecute or provide defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such Assured for this purpose. Whenever requested by the Company, an Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as stated herein, or to establish the lien rights of the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

#### **6. Proof of Loss or Damage.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within 90 days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

#### **7. Options to Pay or Otherwise Settle Claims: Termination of Liability.**

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase the indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 5.

### **8. Determination and Extent of Liability.**

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the exclusions stated in Paragraph 2.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 7 of these Conditions and Stipulations or as reduced under Section 10 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to the defect, lien or encumbrance assured against by this Guarantee.

### **9. Limitation of Liability.**

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

### **10. Reduction of Liability or Termination of Liability.**

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 5 shall reduce the amount of liability pro tanto.

### **11. Payment of Loss.**

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

### **12. Subrogation Upon Payment or Settlement.**

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

### **13. Arbitration.**

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is \$1,000,000 or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the Amount of Liability is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**14. Liability Limited to this Guarantee; Guarantee Entire Contract.**

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

**15. Notices, Where Sent.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to: Old Republic National Title Insurance Company, 400 Second Avenue South, Minneapolis, Minnesota 55401, (612) 371-1111.



**Subdivision Guarantee**  
SCHEDULE A

Order No.: **1050576**

Fee: **\$1,500.00**

Liability: **\$1,000.00**

Guarantee No.: **SG**

Reference No.:

1. Name of Assured: City of Billings
2. Date of Guarantee: June 23, 2022 at 7:30 A.M.

The assurances referred to on the face page hereof are:

That, according to the Company's property records relative to the following described land (but without examination of those Company records maintained and indexed by name):

**Parcel A:**

**Lots 12 and 13, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel B:**

**Lots 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel C:**

**Lot 25, Block 8, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**TOGETHER with the westerly one-half of vacated alley and the easterly one-half of vacated N. 29th Street adjoining.**

**Parcel D:**

**Lots 1 and 2, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**EXCEPT that part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 11, 2018, under Document #3854221, records of Yellowstone County, Montana.**

**Parcel E:**

**Lots 3 and 4, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel F:**

**Lots 5 and 6, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel G:**

**Lots 7 and 8, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel H:**

**Lots 9 and 10, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel I:**

**Lots 11, 12, 13 and 14, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel J:**

**Lots 15 and 16, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**EXCEPT that part conveyed to the City of Billings by Quit Claim Deed recorded March 23, 1995, under Document #1777495, records of Yellowstone County, Montana.**

**Parcel K:**

**Lots 17 and 18, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel L:**

**Lots 19 and 20, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel M:**

**Lots 21 and 22, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel N:**

**Lots 23 and 24, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel O:**

**Lots 25 and 26, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel P:**

**Lots 27 and 28, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Q:**

**Lots 29 and 30, Block 9, of North Side Addition, Third Filing, in the City of Billings,**

**Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel R:**

**Lots 31 and 32, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel S:**

**Lots 33 and 34, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel T:**

**Lots 35 and 36, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel U:**

**Lots 37 and 38, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel V:**

**Lots 39 and 40, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel W:**

**Lots 41 and 42, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel X:**

**Lots 43 and 44, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Y:**

**Lots 45 and 46, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel Z:**

**Lots 47 and 48, Block 9, of North Side Addition, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #300610.**

**Parcel AA:**

**Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel BB:**

**Lots 13 and 14, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel CC:**

**Lots 15, 16, 17, 18, 19, 20, and 21, Block 1, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**TOGETHER with the westerly one-half of vacated alley adjoining.**

**Parcel DD:**

**Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 14 and 15, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel EE:**

**Lots 10A, 11A and 11B, Block 2, of Amended Plat of Lots 10 and 11 Block 2 of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #1441157.**

**Parcel FF:**

**Lots 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel GG:**

**Lots 28, 29, 30 and 31, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel HH:**

**Lots 31, 32, 33, 34, 35, 36, 37 and 38, Block 2, of Normal Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #356842.**

**Parcel II:**

**Lots 22, 23 and 24, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel JJ:**

**Lots 25, 26, 27, 28, 29, 30, 31, 32 and 33, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**EXCEPTING therefrom the following 3 Tracts of land:**

**1. That part conveyed to the City of Billings by Quit Claim Deed recorded March 23, 1995, under Document #1777494, records of Yellowstone County, Montana.**

**2. That part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 9, 2018, under Document #3854028, records of Yellowstone County, Montana.**

**3. That part conveyed to the Montana Department of Transportation for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded July 11, 2018, under Document #3854130, records of Yellowstone County, Montana.**

**Parcel KK:**

**Lots 34, 35, 36, 37, 38, 39 and 40, Block 1, of Normal Subdivision, Second Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #403078.**

**TOGETHER with the easterly one-half of vacated alley adjoining.**

**Parcel LL:**

**Lot 1, Block 1, of Normal Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3424025.**

**Parcel MM:**

**Lot 2, Block 1, of Normal Subdivision, Third Filing, in the City of Billings, Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document #3424025.**

**Parcel NN:**

**That part of SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Certificate of Survey No. 708 on file in the office of the Clerk and Recorder of said County, under Document #547601.**

**Parcel OO:**

**That part of E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Tract 1, of Certificate of Survey No. 934 on file in the office of the Clerk and Recorder of said County, under Document #710874.**

**Parcel PP:**

**That part of E $\frac{1}{2}$ NW $\frac{1}{4}$  of Section 32, Township 1 North, Range 26 East, of the Principal Montana Meridian, in the City of Billings, Yellowstone County, Montana, described as Tract 2, of Certificate of Survey No. 934 on file in the office of the Clerk and Recorder of said County, under Document #710874.**

- A. Name of Proposed Subdivision Plat or Condominium Map:  
Unknown
- B. The Public records purport that only the hereafter names parties appear to have an interest affecting the land necessitating their execution of the names proposed plat or map:  
Sisters of Charity of Leavenworth, Health Service Corporation, a Kansas corporation, as to Lot 12 of Parcel A;  
  
Sisters of Charity of Leavenworth Health Service Corporation, a corporation, as to Lot 13 of Parcel A and Lot 14 of Parcel B;  
  
Sisters of Charity of Leavenworth, Health Services Corporation, as to Lots 15 and 16 of Parcel B, all of Parcel KK;  
  
Sisters of Charity of Leavenworth, Health Service Corporation, a corporation, as to Lots 17, 18, 19, 20, 21 and 22 of Parcel B;  
  
Sisters of Charity of Leavenworth Health System, Inc., a not for profit Kansas corporation, as to Lots 23 and 24 of Parcel B, all of Parcels D, E, L, M, N and O;  
  
Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcels C, K, P, Q, R, S, T, GG, JJ and MM;  
  
Sisters of Charity of Leavenworth Health Services Corporation, a Kansas non profit corporation, as to Parcels F, Z, BB and Z, North 20 feet of Lot 6, all of Lots 7, 8, 9, 10, 11 and 12 of Parcel AA and the N $\frac{1}{2}$  of Lot 5, all of Lot 6 and the S $\frac{1}{2}$  of Lot 7;

Sisters of Charity of Leavenworth Health Services Corporation, a not for profit Kansas corporation, as to Parcels G, H and I;

Sisters of Charity of Leavenworth Health Services Corporation, a Kansas corporation, as to Parcel J;

Sisters of Charity of Leavenworth Health System, Inc., as to Parcel U;

Sisters of Charity of Leavenworth Health Services Corporation, as to Parcels V, Y and Lots 1, 2, 3, 4, 5 and the South 5 feet of Lot 6 of Parcel AA;

Helen Kaufman for life, with the remainder in Sisters of Charity of Leavenworth Health Services Corporation, a not for profit Kansas corporation, as to Parcel W;

Ted Rowe, as Trustee of the Ted Rowe Trust dated February 24, 1992 for life, with the remainder in Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcel X;

The Sisters of Charity of Leavenworth Health Services Corporation, a Kansas not for profit corporation, as to Parcels CC and PP;

Clinical Realty Company, a Montana corporation, as to the N $\frac{1}{2}$  of Lot 7, all of Lot 8 and the S $\frac{1}{2}$  of Lot 7, N $\frac{1}{2}$  of Lot 13, all of Lots 14 and 15 of Parcel DD;

William Lambrecht, as to Lots 1, 2 and the S $\frac{1}{2}$  of Lot 3 of Parcel DD;

Hazel J. Orchard, as to the N $\frac{1}{2}$  of Lot 3, all of Lot 4 and the S $\frac{1}{2}$  of Lot 5 of Parcel DD;

The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day-Saints, a Utah Corporation, at to N $\frac{1}{2}$  of Lot 11, all of Lot 12 and the S $\frac{1}{2}$  of Lot 13 of Parcel DD;

The Foundation of Montana State University-Billings, as to Parcels FF and LL;

The State of Montana, as to Parcel HH;

Edwin G. Osness and Hazel E. Osness, husband and wife as joint tenants, as to Parcel II;

Rimrock Foundation, a Montana non-profit corporation, as to Parcel NN;

Edwin G. Osness, as to Parcel OO.

C. According to the public records, the following documents purport to affect the described land:

1. 2022 taxes and special assessments are an accruing lien, amounts not yet determined or payable.

The first one-half becomes delinquent after November 30th of the current year, the second one-half becomes delinquent after May 31st of the following year.

General taxes as set forth below. Any amounts not paid when due will accrue penalties and interest in addition to the amount stated herein:

| Year | First Half / Status | Second Half / Status | Parcel Number | Covers                    |
|------|---------------------|----------------------|---------------|---------------------------|
| 2021 | \$9,881.22 Paid     | \$9,881.21 Paid      | A12218        | Parcel A                  |
| 2021 | \$71,488.28Paid     | \$71,488.26 Paid     | A12226        | Parcel B                  |
| 2021 | \$3,138.56 Paid     | \$3,138.55 Paid      | A12229        | Parcel C                  |
| 2021 | \$202.60 Paid       | \$202.60 Paid        | A12241        | Parcel D                  |
| 2021 | \$203.06 Paid       | \$203.06 Paid        | A12242        | Parcel E                  |
| 2021 | \$202.96 Paid       | \$202.96 Paid        | A12243        | Parcel F                  |
| 2021 | \$203.14 Paid       | \$203.14 Paid        | A12244        | Parcel G                  |
| 2021 | \$203.08 Paid       | \$203.08 Paid        | A12245        | Parcel H                  |
| 2021 | \$380.90 Paid       | \$380.90 Paid        | A12246        | Parcel I                  |
| 2021 | \$180.82 Paid       | \$180.82 Paid        | A12248        | Parcel J                  |
| 2021 | \$203.02 Paid       | \$203.02 Paid        | A12249        | Parcel K                  |
| 2021 | \$202.99 Paid       | \$202.99 Paid        | A12250        | Parcel L                  |
| 2021 | \$203.05 Paid       | \$203.05 Paid        | A12251        | Parcel M                  |
| 2021 | \$202.95 Paid       | \$202.95 Paid        | A12252        | Parcel N                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12253        | Parcel O                  |
| 2021 | \$180.35 Paid       | \$180.35 Paid        | A12254        | Parcel P                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12255        | Parcel Q                  |
| 2021 | \$180.35 Paid       | \$180.35 Paid        | A12256        | Parcel R                  |
| 2021 | \$180.31 Paid       | \$180.31 Paid        | A12257        | Parcel S                  |
| 2021 | \$180.44 Paid       | \$180.44 Paid        | A12258        | Parcel T                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12259        | Parcel U                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12260        | Parcel V                  |
| 2021 | \$180.37 Paid       | \$180.37 Paid        | A12261        | Parcel W                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12262        | Parcel X                  |
| 2021 | \$180.37 Paid       | \$180.37 Paid        | A12263        | Parcel Y                  |
| 2021 | \$180.34 Paid       | \$180.34 Paid        | A12264        | Parcel Z                  |
| 2021 | \$4,782.98 Paid     | \$4,782.98 Paid      | A33974        | Parcel AA, DD, EE, JJ, MM |
| 2021 | \$260.87 Paid       | \$260.87 Paid        | A11334        | Parcel BB                 |
| 2021 | \$4,571.20 Paid     | \$4,571.20 Paid      | A11335        | Parcel CC                 |
| 2021 | \$1,442.58 Paid     | \$1,442.58 Paid      | A11351        | Parcel FF                 |
| 2021 | \$353.27 Paid       | \$353.27 Paid        | A11353        | Parcel GG                 |
| 2021 | \$909.39 Paid       | \$909.39 Paid        | A11354        | Parcel HH                 |
| 2021 | \$339.45 Paid       | \$339.45 Paid        | A11336        | Parcel II                 |
| 2021 | \$608.63 Paid       | \$608.63 Paid        | A11341        | Parcel KK                 |
| 2021 | \$1,442.58 Paid     | \$1,442.58 Paid      | A11351        | Parcel LL                 |
| 2021 | \$560.10 Paid       | \$560.10 Paid        | D05764        | Parcel NN                 |
| 2021 | \$339.45 Paid       | \$339.45 Paid        | A11336        | Parcel OO                 |
| 2021 | \$4,571.20 Paid     | \$4,571.20 Paid      | A11335        | Parcel PP                 |

2. Unrecorded leaseholds; rights of parties in possession, rights of secured parties, vendors and vendees under conditional sales contracts of personal property installed on the premises herein, and rights of tenants to remove trade fixtures.
3. Existing rights of way, easements and franchise rights of any lot owner or public utility in place at time of vacation. (Affects Parcels B,C,AA,BB,CC,DD,EE,FF, GG,HH,II,JJ,KK,LL,MM,NN,O

4. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded May 7, 1935, as instrument number 300610, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels A through Z)
5. Provisions in deed to B. M Sheehan and L.C. Babcock as sole surviving trustees of the Billings Realty Company, a Montana corporation that has resolved. , recorded May 8, 1935 in Book 180 of , page 156. (Affects Parcels A through Z)
6. Easement granted to Northwestern Energy, a division of NorthWestern Corporation, a Delaware corporation, Montana Dakota Utilities, a Delaware corporation; a division of MDU Resources Group, Inc.; Bresnan Communications, LLC and Qwest Corporation, recorded March 30, 1995, under Document No 1778247. (Affects Parcels A and B)
7. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: April 7, 1995  
Instrument No.: 1779354  
Type of lease: Ground and Parking  
Term: 40 years  
Date of Lease: April 6, 1995  
Lessor: Sisters of Charity of Leavenworth Health Services Corporation, c/o Saint Vincent Hospital and Health Center  
Lessee: Hilltop Inn Limited Partnership. (Affects Parcel A and B)

The effect of Landlord Estoppel Certificate recorded May 3, 1995, under Document #1782334.

The effect of Landlords Consent recorded May 3, 1995, under Document #1782335.

8. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: April 8, 2003 , in Book , Page  
Instrument No.: 3224106  
Type of lease: None stated  
Term: 120 months plus 2 additional 60 month extension periods, exercisable by Tenant  
Date of Lease: October 1, 2002  
Lessor: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation  
Lessee: Yellowstone Surgery Center, LLC, a Montana limited liability company. (Affects Parcel B)
9. Provisions in deed to M.V. Blix , recorded April 19, 1939 in Book 210, page 306, under Document #337595. (Affects Parcel B)
10. Provisions in deed to Florence M. Blix, recorded December 12, 1938 in Book 208 , page 155, under Document #333926.
11. Use and Maintenance Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation and MED-MAP, LLC, a Utah limited liability company  
Recorded: October 12, 1994, under Document #1760266 (Affects Parcels B and C)  
  
Amended Use and Maintenance Agreement recorded January 24, 1995, under Document #1771456.  
  
Assignment of Use and Maintenance Agreement recorded December 16, 2010, under Document #3573692.
12. Provisions in deed to L.C. Babcock and B. M. Sheehan, as sole surviving trustees of Billings Realty Company , recorded July 27, 1939 in Book 214 , page 212, under Document #340460. (Affects Parcel B)

13. Provisions in deed to Louis Melnick, recorded November 18, 1939 in Book 215 , page 281, under Document #343687. (Affects Parcel B)
14. Provisions in deed to Harry L. Neidemire, recorded August 29, 1939 in Book 214, page 395, under Document #341281. (Affects Parcel C)
15. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: October 12, 1996  
Instrument No.: 1760267  
Type of lease: Ground  
Term: 40 years with the option to extended another 35 years  
Date of Lease: October 1, 1994  
Lessor: Sisters of Charity of Leavenworth Health Systems, Inc., a Kansas not-for-profit corporation  
Lessee: MED-MAP, LLC, a Utah limited liability company.
16. Memorandum of Lease upon the terms, conditions and covenants contained in the lease:  
Recorded: June 19, 1996 , in Book , Page  
Instrument No.: 1838297  
Type of lease:  
Term: May 20, 1996 to May 19, 2006, extended for another 2 successive option periods of 5 years  
Date of Lease: May 14, 1996  
Lessor: Med-Map, LLC a Montana limited liability company  
Lessee: McDonalds Corporation, a Delaware corporation. (Affects Parcel C)
17. Deed of Trust, to secure an original indebtedness of \$22,221,291.99, dated December 15, 2015 and any other amounts and/or obligations secured thereby  
Recorded: December 18, 2015, under Document #3764025  
Grantor: Med-Map L.L.C, a Utah limited liability company  
Trustee: William D. Lamdin III  
Beneficiary: First Interstate Bank (Affects Parcel C and Other Property)  
  
Abstract of Landlord's Consent and Agreement recorded December 18, 2015, under Document #3764027  
  
Modification Agreement recorded January 21, 2016, under Document #3767128.  
  
Modification Agreement recorded February 3, 2022, under Document #4006852.  
  
Mark C. Protherow was appointed successor trustee of said Trust Indenture by instrument recorded April 26, 2022 , under Document #4015210.
18. Assignment of rents to secure payment of the indebtedness shown as paragraph herein, and upon the terms and conditions therein.  
Recorded: December 18, 2015, under Document  
Assignor: Med-Map L.L.C., a Utah limited liability company  
Assignee: First Interstate Bank.  
  
First Amendment to Assignment of Rents recorded January 21, 2016, under Document #3767129
19. Financing Statement covering Fixtures  
Recorded: December 23, 2015, under Document #3764384  
Debtor: Med-Map L.L.C.  
Secured Party: First Interstate Bank. (Affects Parcel C and Other Property)
20. Easement for easement of light and air without obstruction granted to Stewart-Griffin, Inc. a Montana corporation, recorded May 1, 1954 in Book/Roll 481, Page 430, under Document #523354.

21. Financing Statement covering Fixtures  
Recorded: August 23, 2021, under Document #3986756  
Debtor: Med-Map L.L.C  
Secured Party: CSC. (Affects Parcel C and Other Property)
22. Right-of-way granted to Montana Power Company, recorded August 31, 1999, under Document #3064293. (Affects Parcels D through Z)
23. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded December 14, 2016, as instrument number 3799200, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcels D through Z, II, JJ and KK)
24. Provisions in deed to Josephine Tipolt, recorded February 23, 1940 in Book 217 , page 207, under Document #346693. (Affects Parcel E)
25. Provisions in deed to M. S. Sprague, recorded August 20, 1938 in Book 206 of , page 113, under Document #330810.
26. Provisions in deed to M.L.E. Brown , recorded December 2, 1939 in Book 213 of 401, page, under Document #344222. (Affects Parcel G)
27. Provisions in deed to Dorothy Sorensen, recorded July 17, 19741 in Book 231 of , page 604, under Document #362855.
28. Financing Statement covering Fixtures  
Recorded: March 30, 1988, 121818  
Debtor: American Pizza Partners  
Secured Party: Intrust Bank NA.  
  
Continuation Statement recorded Septmber 2, 1998 , 1909570.  
  
Continuation Statement recorded March 30, 2003 , 3217838.  
  
Continuation Statement recorded November 5, 2007 , 3444678.  
  
Continuation Statement recorded November 23, 2012 , 3647129.  
  
Continuation Statement recorded January 17, 2018 , 3838896.
29. Provisions in deed to L. C. Babcock and B. M. Sheehan, as sole surviving trustees of Billings Realty Company, recorded September 26, 1938 in Book 206 , page 322, under Document #331710. (Affects Parcel J)
30. Provisions in deed to Francis Theodore Thomson or Lena Marie Thomson, recorded May 15, 1939 in Book 210 , page 461, under Document #338295. (Affects Parcel K)
31. Provisions in deed to Pete P. Friedt, recorded August 20, 1938 in Book 206 , page 105, under Document #330791. (Affects Parcel N)
32. Provisions in deed to Wm. Lohoff and Nellie Lohof, recorded October 5, 1949, in Book/Roll 352, Page 186 as Instrument No. 455051. (Affects Parcel O)

33. Provisions in deed to Max W. Dudley, recorded April 3, 1940, in Book/Roll 217, Page 487 as Instrument No. 348106. (Affects Parcel P)
34. Provisions in deed to H.M. Sampson and Sanna Sampson, recorded May 28, 1940, in Book/Roll 220, Page 297 as Instrument No. 350158. (Affects Parcel Q)
35. Provisions in deed to Max W. Dudley, recorded August 6, 1940, in Book/Roll 229, Page 54 as Instrument No. 352512. (Affects Parcel R)
36. Provisions in deed to Chancey D. Croman and Laura Croman, recorded October 24, 1939, in Book/Roll 215, Page 95 as Instrument No. 342866. (Affects Parcel S)
37. Provisions in deed to Chancey D. Croman, recorded December 11, 1939, in Book/Roll 215, Page 463 as Instrument No. 344581. (Affects Parcel T)
38. Provisions in deed to Billings Realty Company, a Montana corporation, recorded May 8, 1935, in Book/Roll 180, Page 156 as Instrument No. 300662. (Affects Parcel U)
39. Provisions in deed to Chancey D. Croman, recorded July 22, 1939, in Book/Roll 214, Page 180 as Instrument No. 340308. (Affects Parcel U)
40. Provisions in deed to Elizabeth Besinque, recorded August 17, 1940, in Book/Roll 229, Page 128 as Instrument No. 352841. (Affects Parcel V)
41. Provisions in deed to James Thorpe, recorded August 19, 1940, in Book/Roll 229, Page 133 as Instrument No. 352868. (Affects Parcel W)
42. Easement granted to The Montana Power Company, recorded August 31, 1999 as Instrument No. 3064293.
43. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded December 14, 2016, as instrument number 3799200, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
44. Provisions in deed to Katherine E. Barnard, recorded October 27, 1939, in Book/Roll 215, Page 124 as Instrument No. 343006. (Affects Parcel X)
45. Provisions in deed to Florence M. Blix, recorded January 27, 1940, in Book/Roll 217, Page 56 as Instrument No. 345934. (Affects Parcel Y)
46. Provisions in deed to Stella Fulmer, recorded April 21, 1939, in Book/Roll 210, Page 314 as Instrument No. 337656. (Affects Parcel Z)
47. Easement for storm drain lines granted to The City of Billings, recorded September 7, 2000 under Document #3102093. (Affects Parcels AA, BB, CC, DD, EE, FF, GG and HH)
48. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded December 23, 1940, as instrument number 356842, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels AA, BB, CC, DD, EE, FF, GG, HH, OO)
49. Easement for storm drain lines granted to The City of Billings, recorded September 7, 2000 under Document #3102094. (Affects Parcels BB and CC)

50. Easement for right of way granted to The City of Billings, recorded February 1, 2001, under Document #3116727. (Affects Parcels AA, BB and CC)
51. Development Agreement upon the terms, conditions and provisions contained therein:  
Parties: The City of Billings, Montana; The Sisters of Charity of Leavenworth Health Services Corporation; Montana State University-Billings  
Recorded: September 7, 2000, under Document #3102096 (Affects Parcel AA, BB, CC, DD, EE, FF, GG, HH and OO)
52. Easement for iron water pipe line granted to Dave A. Wigodsky and Dena Ruth Wigodsky, recorded July 13, 1950 in Book/Roll 371, Page 328, under Document #465829. (Affects Parcel DD)
53. Rental Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Lavenworth Health Services Corporation and Midland Empire Professional Building Association  
Recorded: September 15, 1982, in Book/Roll 1239, Page 3264, under Document #1240279 (Affects Parcel DD)
54. Easement granted to The Mountain States Telephone and Telegraph Company, a Colorado corporation, recorded June 13, 1988, in Book/Roll 1292, Page 393 as Instrument No. 1397367. (Affects Parcels DD and EE)
55. Easement granted to The Montana Power Company, a corporation, recorded June 13, 1986, in Book/Roll 1292, Page 395 as Instrument No. 1397368. (Affects Parcels DD and EE)
56. Easement granted to The Montana Power Company; Montana Dakota Utilities, a division of MDU Resources Group, Inc; U S West Communications, Inc.; TCI Cablevision of Montana, Inc., recorded March 30, 1995 as Instrument No. 1778248. (Affects Parcels DD and EE)
57. Easement for right of way granted to The City of Billings, a municipal corporation, recorded February 1, 2001 under Document #3116726. (Affects Parcel DD)
58. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded May 13, 1987, as instrument number 1441157, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcel EE)
59. Easement for storm drains, sanitary sewers and/or water lines granted to The City of Billings, a Municipal Corporation, recorded September 7, 2000 under Document #3102095. (Affects Parcel FF)
60. Terms, covenants, conditions and easement contained in Water Deed from Billings Land And Irrigation Company, to The Billings Realty Company, a Montana corporation; recorded March 23, 1904, in Book/Roll D, Page 285. (Affects Parcels II, JJ and KK)
61. Easement for right of way granted to The City of Billings, recorded September 25, 1929 in Book/Roll 149, Page 31, under Document #241814. (Affects Parcels II, JJ and KK)
62. Easement for highway granted to the State of Montana, recorded June 7, 1934 in Book/Roll 173, Page 189, under Document #293114. (Affects Parcel II, JJ and KK)

63. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded August 9, 1945, as instrument number 403078, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(C). (Affects Parcels II, JJ and KK)
64. Unrecorded Contract of sale upon the terms, conditions and provisions contained therein, constructive notice of which was given by Contract for Deed:  
Recorded: July 14, 1983, in Book/Roll 1250, Page 569, under Document #1272537  
Seller: Edwin G. Osness and Hazel E. Osnell  
Buyer: Walton & Frankel, a partnership comprised of William H. Walton and S. Arthur Frankel  
Escrowed at: unknown (Affects II and OO)
- Warranty Deed from Walton & Frankel, a partnership comprised of William H. Walton and S. Arthur Frankel to Poly Realty, a Montana General partnership, recorded January 6, 1978, in Book/Roll 1186, Page 769, under Document #1075807.
- Warranty Deed from Poly Realty, a Montana general partnership to Sisters of Charity of Lavenworth, a Health Services Corporation, a not for profit Kansas corporation, recorded July 14, 1983, in Book/Roll 1250, Page 578, under Document #1272539.
- Assignment of Contract for Deed from Poly Realty, a Montana general partnership to Sisters of Charity of Lavenworth, a Health Services Corporation, a not for profit Kansas corporation, recorded November 8, 1983, in Book/Roll 1254, Page 3572, under Document #1286084.
65. Easement for ingress and egress granted to Herman Henrickson, Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded March 4, 1950 in Book 363, Page 142, under Document #460473. (Affects Parcel JJ)
- Various instruments appear of record affecting the interests of the parties to said easement, but neither this Commitment or the forthcoming Policy covers an examination of or insurance as to the effect thereof, or the present ownership, encumbrances on, or condition of said easement.
66. Easement for right of way and easements granted to Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded December 26, 1961 in Book/Roll 734, Page 478, under Document #674955. (Affects Parcel JJ)
67. Provisions in deed to Herman Henrickson, Howard H Henrickson & Robert L Henrickson, co-partners in business under the firm name & style of H.H. Henrickson & Sons, recorded March 4, 1950 in Book 363, page 142, under Document #460473. (Affects Parcel JJ)
68. Easement for ingress and egress of vehicles and otherwise granted to John S. Nicolson and Elizabeth C. Nicolson, recorded August 15, 1950 in Book/Roll 375, Page 356, under Document #467066. (Affects Parcel JJ)
69. Easement for right of way and easements granted to Howard H. Hendrickson and Robert L. Hendrickson, co-partners in business under the firm name and style of H.H. Hendrickson & Sons, recorded December 26, 1961 in Book/Roll 734, Page 478, under Document #674955. (Affects Parcel JJ)
70. Easement for right of way granted to Robert L. Hendrickson, recorded November 15, 1977 in Book/Roll 1178, Page 146, under Document #1070445. (Affects Parcel JJ)
71. Agreement upon the terms, conditions and provisions contained therein:  
Parties: John S. Nicholson  
Recorded: November 15, 1977, in Book/Roll 1178, Page 149, under Document #1070446 (Affects Parcel JJ)

72. Conditions contained in Resoulution No. 99-17476 recorded August 18, 2000, under Document #3100036. (Affects Parcel MM)
73. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipal corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102093. (Affects Parcel MM)
74. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipal corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102094. (Affects Parcel MM)
75. Easement for constructing, maintaining and servicing storm drains, sanitary sewers, water lines and matters incidental thereto granted to The City of Billings, a municipiapl corporation and political subdivision of the State of Montana, recorded September 7, 2000, under Document #3102095. (Affects Parcel MM)
76. Development Agreement upon the terms, conditions and provisions contained therein:  
Parties: The City of Billings, Montana, a municipal corporation and Sisters of Charity of Leavenworth Health Services Corporation, a Not For Profit Kansas Corporation and Montana State University-Billings  
Recorded: September 7, 2000, under Document #3102096  
(Affects Parcel MM)
77. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, filed May 25, 2007, as Instrument #3424025, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604 ©. (Affects Parcel MM)
78. The effect of Subdivision Improvement Agreement and Waiver filed May 25, 2007, under Document #3424026. (Affects Parcel MM)
79. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded August 16, 1955, as instrument number 547601, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcel NN)
80. Agreement upon the terms, conditions and provisions contained therein:  
Parties: Sisters of Charity of Leavenworth Health Services Corporation, a not-for-profit Kansas Corporation and Rimrock Foundation, a Montana non-profit corporation  
Recorded: December 21, 1981, in Book/Roll 1232, Page 4839, under Document #1216992 (Affects Parcel NN)
81. Mortgage, to secure an original indebtedness of \$1,693,008.83, dated August 13, 208 and any other amounts and/or obligations secured thereby.  
Recorded: November 19, 2008, under Document #3486991  
Mortgagor: Rimrock Foundation  
Mortgagee: Montana Facility Finance Authority

Re-recorded August 14, 2009, under Document #3520258.

Coverage: Said instrument covers Parcel NN only.

82. Mortgage, to secure an original indebtedness of \$610,000.00, dated August 19, 2009 and any other amounts and/or obligations secured thereby.  
Recorded: August 19, 2009, under Document #3520926  
Mortgagor: Rimrock Foundation, a Montana non-profit corporation  
Mortgagee: Montana Facility Finance Authority

Assigned to First Interstate Bank, by instrument recorded August 19, 2009, 3520928.

Coverage: Said Instrument Covers Parcel NN only.

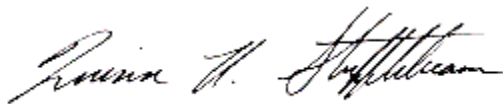
83. Assignment of Rents to secure payment of the indebtedness shown in paragraph 90 herein, and upon the terms and conditions therein.  
Recorded: August 19, 2009, under Document #3520927.  
Assignor: Rimrock Foundation, a Montana non-profit corporation  
Assignee: Montana Facility Finance Authority

Assigned to First Interstate Bank, by instrument recorded August 19, 2009, under Document #3520928.

Coverage: Said Instrument Covers Parcel NN only.

84. All matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by Record of Survey recorded July 17, 1963, as instrument number 710874, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c). (Affects Parcels OO and PP)

No guarantee is made regarding any liens, claims of liens, defects or encumbrances other than those specifically provided for above, and, if information was requested by reference to a street address, no guarantee is made that said land is the same as said address.



Authorized Officer or Agent

**OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**  
A Stock Company  
400 Second Avenue South, Minneapolis, Minnesota 55401  
(612) 371-1111

By  President  
Attest  Secretary



| FACTS |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION? |
|-------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| Why?  | Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.                                                                                                                                                                                              |                                                                 |
| What? | <p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> <li>• Social Security number and employment information</li> <li>• Mortgage rates and payments and account balances</li> <li>• Checking account information and wire transfer instructions</li> </ul> <p>When you are <b>no longer</b> our customer, we continue to share your information as described in this notice.</p> |                                                                 |
| How?  | All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.                                                                                                                                                                                                 |                                                                 |

| Reasons we can share your personal information                                                                                                                                                | Does Old Republic Title Share? | Can you limit this sharing? |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|-----------------------------|
| <b>For our everyday business purposes</b> – such as to process your transactions, maintain your accounts(s), or respond to court orders and legal investigations, or report to credit bureaus | <b>Yes</b>                     | <b>No</b>                   |
| <b>For our marketing purposes</b> – to offer our products and services to you                                                                                                                 | <b>No</b>                      | <b>We don't share</b>       |
| <b>For joint marketing with other financial companies</b>                                                                                                                                     | <b>No</b>                      | <b>We don't share</b>       |
| <b>For our affiliates' everyday business purposes</b> – information about your transactions and experiences                                                                                   | <b>Yes</b>                     | <b>No</b>                   |
| <b>For our affiliates' everyday business purposes</b> – information about your creditworthiness                                                                                               | <b>No</b>                      | <b>We don't share</b>       |
| <b>For our affiliates to market to you</b>                                                                                                                                                    | <b>No</b>                      | <b>We don't share</b>       |
| <b>For non-affiliates to market to you</b>                                                                                                                                                    | <b>No</b>                      | <b>We don't share</b>       |

|           |                                                                                           |
|-----------|-------------------------------------------------------------------------------------------|
| Questions | Go to <a href="http://www.oldrepublictitle.com">www.oldrepublictitle.com</a> (Contact Us) |
|-----------|-------------------------------------------------------------------------------------------|

| Who we are                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Who is providing this notice?                                       | Companies with an Old Republic Title names and other affiliates. Please see below for a list of affiliates.                                                                                                                                                                                                                                                                                                                 |
| What we do                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>How does Old Republic Title protect my personal information?</b> | To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit <a href="http://www.OldRepublicTitle.com/newnational/Contact/privacy">http://www.OldRepublicTitle.com/newnational/Contact/privacy</a> .                                               |
| <b>How does Old Republic Title collect my personal information?</b> | <p>We collect your personal information, for example, when you:</p> <ul style="list-style-type: none"> <li>• Give us your contact information or show your driver's license</li> <li>• Show your government-issued ID or provide your mortgage information</li> <li>• Make a wire transfer</li> </ul> <p>We also collect your personal information from others, such as credit bureaus, affiliates, or other companies.</p> |

|                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Why can't I limit all sharing?</b> | <p>Federal law gives you the right to limit only:</p> <ul style="list-style-type: none"> <li>• Sharing for affiliates' everyday business purposes - information about your creditworthiness</li> <li>• Affiliates from using your information to market to you</li> <li>• Sharing for non-affiliates to market to you</li> </ul> <p>State laws and individual companies may give you additional rights to limit sharing. See the "Other important information" section below for your rights under state law.</p> |
|---------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Definitions

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Affiliates</b>      | <p>Companies related by common ownership or control. They can be financial and nonfinancial companies.</p> <ul style="list-style-type: none"> <li>• <i>Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., Mississippi Valley Title Services Company, and The Title Company of North Carolina.</i></li> </ul> |
| <b>Non-affiliates</b>  | <p>Companies not related by common ownership or control. They can be financial and non-financial companies.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title does not share with non-affiliates so they can market to you</i></li> </ul>                                                                                                                                                                                 |
| <b>Joint marketing</b> | <p>A formal agreement between non-affiliated financial companies that together market financial products or services to you.</p> <ul style="list-style-type: none"> <li>• <i>Old Republic Title doesn't jointly market.</i></li> </ul>                                                                                                                                                                                                     |

## Affiliates Who May Be Delivering This Notice

|                                                |                                         |                                           |                                               |                                               |
|------------------------------------------------|-----------------------------------------|-------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| American First Abstract, LLC                   | American First Title & Trust Company    | American Guaranty Title Insurance Company | Attorneys' Title Fund Services, LLC           | Compass Abstract, Inc.                        |
| eRecording Partners Network, LLC               | Genesis Abstract, LLC                   | Kansas City Management Group, LLC         | L.T. Service Corp.                            | Lenders Inspection Company                    |
| Lex Terrae National Title Services, Inc.       | Lex Terrae, Ltd.                        | Mara Escrow Company                       | Mississippi Valley Title Services Company     | National Title Agent's Services Company       |
| Old Republic Branch Information Services, Inc. | Old Republic Diversified Services, Inc. | Old Republic Exchange Company             | Old Republic National Title Insurance Company | Old Republic Title and Escrow of Hawaii, Ltd. |
| Old Republic Title Co.                         | Old Republic Title Company of Conroe    | Old Republic Title Company of Indiana     | Old Republic Title Company of Nevada          | Old Republic Title Company of Oklahoma        |
| Old Republic Title Company of Oregon           | Old Republic Title Company of St. Louis | Old Republic Title Company of Tennessee   | Old Republic Title Information Concepts       | Old Republic Title Insurance Agency, Inc.     |
| Old Republic Title, Ltd.                       | Republic Abstract & Settlement, LLC     | Sentry Abstract Company                   | The Title Company of North Carolina           | Title Services, LLC                           |
| Trident Land Transfer Company, LLC             |                                         |                                           |                                               |                                               |

# EXHIBIT B

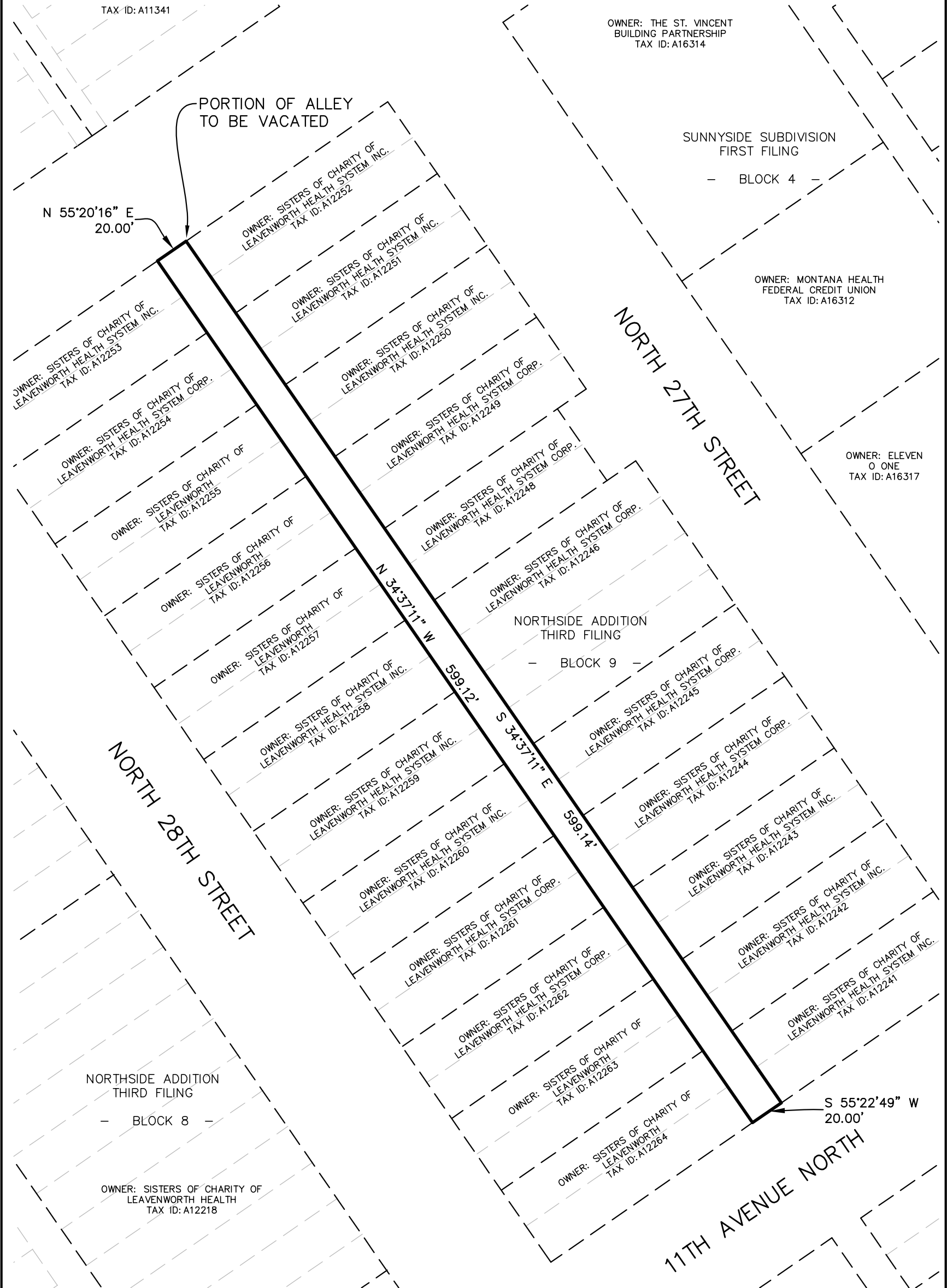
## VACATED PORTION OF PUBLIC RIGHT-OF-WAY FOR THE ALLEY LOCATED IN BLOCK 9 OF THE NORTHSIDE ADDITION THIRD FILING

PREPARED FOR : SISTERS OF CHARITY OF LEAVENWORTH

PREPARED BY : **SANDERSON STEWART** 

JUNE, 2022

BILLINGS, MONTANA



# Exhibit C: abutting property owner signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The entirety of the alley on NORTHSIDE ADD 3RD FILING, S32, T01 N, R26 E,  
BLOCK 9

We, being all the abutting property owners, request of the City Council the vacation of the above described:

       Street                        X   Alley                             Other RW

| <u>SIGNATURE</u>  | <u>DATE</u>    | <u>PROPERTY OWNERSHIP</u> |
|-------------------|----------------|---------------------------|
| <u>Benny Fong</u> | <u>6.30.22</u> | <u>SCU Health</u>         |
| _____             | _____          | _____                     |
| _____             | _____          | _____                     |

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | <u>Approved By/Date</u> | <u>Disapproved By/Date</u> |
|--------------------------|-------------------------|----------------------------|
| City Public Works        | _____                   | _____                      |
| Heights Water            | _____                   | _____                      |
| Montana Dakota Utilities | _____                   | _____                      |
| Northwestern Energy      | _____                   | _____                      |
| Charter                  | _____                   | _____                      |
| CenturyLink              | _____                   | _____                      |
| City/Co. Planning        | _____                   | _____                      |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:**  
The petitioner seeks to vacate the public right of way for the purpose of developing  
a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

# Exhibit D: Montana Dakota Utilities Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The entirety of the alley on NORTHSIDE ADD 3RD FILING, S32, T01 N, R26 E,  
BLOCK 9

---



---



---

We, being all the abutting property owners, request of the City Council the vacation of the above described:

Street                       Alley                       Other R/W

SIGNATURE

DATE

PROPERTY OWNERSHIP

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date   | Disapproved By/Date |
|--------------------------|--------------------|---------------------|
| City Public Works        |                    |                     |
| Heights Water            |                    |                     |
| Montana Dakota Utilities | <i>MADJ 7-1-22</i> |                     |
| Northwestern Energy      |                    |                     |
| Charter                  |                    |                     |
| CenturyLink              |                    |                     |
| City/Co. Planning        |                    |                     |

Easement will be granted for existing facilities or relocated at owner's expense.  
NW  
7-1-22

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
The petitioner seeks to vacate the public right of way for the purpose of developing  
a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

**ATTACHMENTS:**

- Title Report(s)
- Comments from all Utilities
- Map of R/W to be Vacated
- Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

# Exhibit E

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The entirety of the alley on NORTHSIDE ADD 3RD FILING, S32, T01 N, R26 E,  
BLOCK 9

We, being all the abutting property owners, request of the City Council the vacation of the above described:

|                  |                |                           |
|------------------|----------------|---------------------------|
| ____ Street      | <u>X</u> Alley | ____ Other R/W            |
| <u>SIGNATURE</u> | <u>DATE</u>    | <u>PROPERTY OWNERSHIP</u> |
| _____            | _____          | _____                     |
| _____            | _____          | _____                     |
| _____            | _____          | _____                     |

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date                    | Disapproved By/Date |
|--------------------------|-------------------------------------|---------------------|
| City Public Works        | _____                               | _____               |
| Heights Water            | _____                               | _____               |
| Montana Dakota Utilities | _____                               | _____               |
| Northwestern Energy      | <i>See Attached Letter 7/5/2022</i> | _____               |
| Charter                  | _____                               | _____               |
| CenturyLink              | _____                               | _____               |
| City/Co. Planning        | _____                               | _____               |

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:**

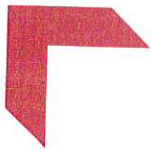
The petitioner seeks to vacate the public right of way for the purpose of developing  
a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

**ATTACHMENTS:**

- \_\_\_\_\_ Title Report(s)
- \_\_\_\_\_ Comments from all Utilities
- \_\_\_\_\_ Map of R/W to be Vacated
- \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**



July 5, 2022

**Mr. Rick Leuthold**  
**Sanderson Stewart**  
**Billings, MT**

**Dear Mr. Leuthold,**

Tim Morton has recently send me this request to vacate a right-of-way in the alley on Block 9 between North 27<sup>th</sup>, North 28<sup>th</sup>, 12<sup>th</sup> Avenue North, and 11<sup>th</sup> Avenue North. I have reviewed it and will approve with one condition.

NorthWestern Energy has some above ground equipment and some underground electrical lines that are potentially within this alley. NorthWestern Energy will need a new easement to make sure the existing facilities are within an easement. If the existing facilities will need to be relocated entirely out of this right of way, then it will be at the owner's expense.

So with that, I approve of this vacated portion of the public right-of-way for the alley on Block 9 between North 27<sup>th</sup>, North 28<sup>th</sup>, 12<sup>th</sup> Avenue North, and 11<sup>th</sup> Avenue North with the new easements in place before the right of way is vacated.

Please let me know if you are needing anything else on this request.

**Sincerely,**

**Cody Lux**

Construction Superintendent  
**cody.lux@northwestern.com**  
**O 406-655-2540**  
**C 406-570-8768**

# Exhibit F: Charter Signature

## REQUEST TO VACATE PUBLIC RIGHT-OF-WAY CITY OF BILLINGS

**Description of Right-of-Way to be vacated:**

The entirety of the alley on NORTHSIDE ADD 3RD FILING, S32, T01 N, R26 E,  
BLOCK 9

We, being all the abutting property owners, request of the City Council the vacation of the above described:

Street                       Alley                       Other R/W  
SIGNATURE                      DATE                      PROPERTY OWNERSHIP

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Additional signatures, if needed, can be on additional sheets.)

WE, the utility companies and governmental departments, listed below, approve, or disapprove this request as noted by our signatures.

|                          | Approved By/Date | Disapproved By/Date |
|--------------------------|------------------|---------------------|
| City Public Works        | _____            | _____               |
| Heights Water            | _____            | _____               |
| Montana Dakota Utilities | _____            | _____               |
| Northwestern Energy      | _____            | _____               |
| Charter                  | _____            | _____               |
| CenturyLink              | _____            | _____               |
| City/Co. Planning        | _____            | _____               |

Signing off for project flow.  
 Existing Charter Fiber is in  
 11th AVE N. ROW. Request  
 to move will fall on  
 builder owner expense  
 July 1. 2 7-1-22

(A letter of explanation may be attached with "See Attached Letter" entered in the appropriate signature slot.)

**Petitioner's interest in vacating the public right-of-way:** \_\_\_\_\_  
The petitioner seeks to vacate the public right of way for the purpose of developing  
a replacement facility for the existing hospital.

The petitioner acknowledges and understands that the City will appoint an appraiser to estimate the value of the real property being vacated, and the petitioner agrees that the fee for the appraiser will be borne by the petitioner(s).

- ATTACHMENTS:**
- \_\_\_\_\_ Title Report(s)
  - \_\_\_\_\_ Comments from all Utilities
  - \_\_\_\_\_ Map of R/W to be Vacated
  - \_\_\_\_\_ Traffic Accessibility Study (When required by the City)

**AN APPLICATION FEE OF \$200 MUST ACCOMPANY THIS PETITION.**

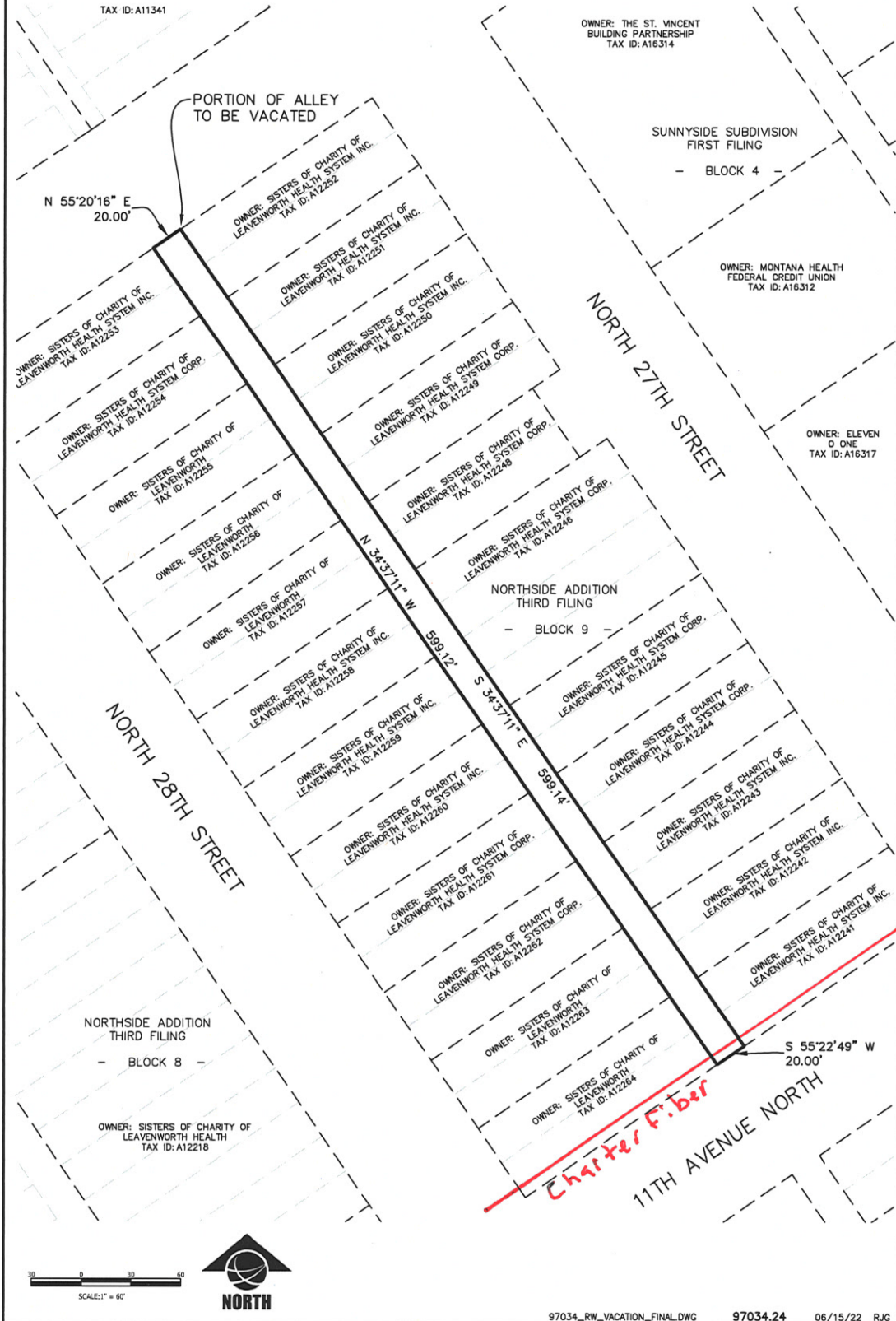
# EXHIBIT B

## VACATED PORTION OF PUBLIC RIGHT-OF-WAY FOR THE ALLEY LOCATED IN BLOCK 9 OF THE NORTHSIDE ADDITION THIRD FILING

PREPARED FOR : SISTERS OF CHARITY OF LEAVENWORTH

PREPARED BY : **SANDERSON STEWART** 

JUNE, 2022  
BILLINGS, MONTANA



July 12, 2022

Mr. Chris Hertz  
Public Works Department  
2224 Montana Ave  
Billings, MT 59101

Reference: Saint Vincent Replacement Hospital  
Right-of-Way Vacation Petition Signature for Lumens (CenturyLink)

Dear Mr. Hertz:

Per our discussions earlier today, I am providing this letter regarding the status of the signatures from Lumens on the Right-of-way Vacation Petitions. There are two in question. One is for 12th Avenue North and the other is for the alley in Block 9 lying between 12th Avenue North and 11th Avenue North.

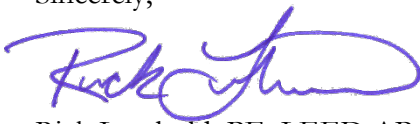
Petitions have been circulated amongst all private utilities as well as the planning department and your department. It is now approaching thirty days since these were originally distributed. All other signatures were obtained, with the exception of Lumens, approximately a week and a half ago.

I have spoken to the local contact on numerous occasions, and it appears that these are held up in corporate legal review with no estimate of when they might be returned. I have made it clear that all we are asking for is an acknowledgement of the vacation of these parcels for the hospital to proceed on their schedule. I fully expect that they would condition their acknowledgement on an alternate easement being issued or their facilities being relocated at the owner's expense. This understanding has been noted by some of the other utilities and I have specifically conveyed this to the representatives of Lumens.

I will continue to stay in contact with Lumens and will also continue to convey the understanding and expectation that we will fully accommodate their existing facilities as we get deeper into schematic and design development on this project.

Thank you for your time and consideration on this matter and please let me know if I can provide any other information for you.

Sincerely,



Rick Leuthold, PE, LEED AP  
Chairman/Director of Business Development



**City Council Regular**

**Date:** 07/25/2022  
**Title:** The Timbers Subdivision, 1st Filing - SIA Amendment Request  
**Presented by:** Monica Plecker  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review** Not Applicable

**RECOMMENDATION**

Planning staff in coordination with Engineering Division staff recommends to the City Council approval of this request to amend The Timbers Subdivision, 1st Filing, Subdivision Improvement Agreement (SIA). The SIA language amendment will allow for the phasing of improvements for Sugar Pine Road, Olive Lane and Georgia Pine Road.

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

David Mitchell, developer, applied for an amendment to the Subdivision Improvement Agreement (SIA) to include language which would allow the phasing of construction and creation of a Special Improvement Districts (SID) in relation to the construction of Sugar Pine Road, Olive Lane and Georgia Pine Road in the preliminarily approved The Timbers Subdivision, 1st Filing. The applicant has indicated there are significant costs associated with this connection therefore they would like to propose completing the roads by phasing the improvement and utilizing an SID to finance the improvements. This means the construction of the phased improvements will still occur, just not immediately and the applicant will be able to reach final plat approval without the construction being complete. Other notable information includes the requirement that the developer contribute to the SID(s) financially at an amount not less than 50% of the costs associated with the improvement. The remaining costs will be allocated to lots benefiting from the improvements. In addition, the lots proposed to be encumbered by the phasing requires a Restriction of Transfers and Conveyances of those lots which prevents the sale of those lots until the District is created. This will be filed with the Clerk and Recorder with final plat. Upon completion of the improvements or creation of the district(s), the restriction on transfers and conveyances will be lifted, and the lots can be sold.

While an SID method is allowable, there are some cons as opposed to when the developer builds the improvement without this tool. In regard to the SIDs, these can happen one of two ways. The developer may create the SIDs while holding all of the lots, however, most lending institutions want the SID's paid off before the lot is conveyed, therefore, the developer would still bear this cost which they are trying to avoid. Additionally, if the construction didn't occur until lots were sold, even though waivers of protest are collected for the creation of SID's at the time of subdivision, the reality is it makes all of the property owners pay for the cost of the connection instead of the developer and it creates a significant amount of angst by the property owners. Lastly, when roads are not constructed at the time of development, adjacent property owners tend to utilize the space for storage or other uses which also creates difficulty when constructing right of way improvements after the fact.

Fortunately, the proposed SIA amendments creates a situation where many of these cons should be avoided. In this case, the Developer is required to create the district and financially participate. In addition, the lots will be encumbered and unable to be sold until the district(s) are created. This solution does not prevent or slow down the ability to obtain final plat approval which is a benefit to the developer. Since the SIA is binding there is contractual agreement between the City and Developer which elevates the ability to enforce construction of the improvement, so the development will continue to be in accordance with the City of Billings Subdivision Regulations.

Staff is recommending approval of this request. Phasing improvements does not create any conflicts with the City of Billings adopted Subdivision Regulations or the existing preliminary plat approval, nor does it put the City in a position where the roads would not be constructed. For these reasons, City staff is forwarding a recommendation of approval of the SIA wording change to the City Council.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve the requested amendments to the Subdivision Improvement Agreement.

Not approving the amendment will require the developer to construct all roads or financially guarantee them through a

bond or letter of credit prior to obtaining final plat approval for The Timbers Subdivision, 1st Filing in accordance with its existing preliminary plat approvals.

**FISCAL EFFECTS**

This SIA amendment will not have any fiscal effect on the Planning Division.

---

**Attachments**

Proposed SIA with New Text Underlined  
SIA Clean Version

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS**

***The Timbers Subdivision***

***First Filing***

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**(City of Billings)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

***The Timbers Subdivision  
First Filing***

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Ali Mitchell* and *David Mitchell*, whose address for the purpose of this agreement is **1655 Valley Heights Rd., Billings, MT 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 \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of *The Timbers Subdivision, First Filing*; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *The Timbers Subdivision, First 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 *The Timbers Subdivision, First 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):

A variance has been submitted regarding the construction of Timbers Boulevard North. This variance requests to install Timbers Boulevard North using a 20’ foot

wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

## **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 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 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. The Timbers Subdivision, First Filing had an overview geotechnical study completed by Rimrock Engineering. Below is the summary of the findings of this study. Individual lot owners are encouraged to complete their own geotechnical study to find lot specific information.
- The subsurface profile generally consists of variably stiff to very soft lean clay soils. Groundwater was encountered at approximately 6.5 feet below existing grades while drilling or for the short duration the boring was allowed to remain open.
  - Due to site conditions and concerns, we recommend support for the proposed structure using a deep foundation system such as rammed aggregate piers or helical piers extending into the more competent soils in order to bypass the compressible soil and alleviate concerns regarding foundation construction below or near the groundwater elevation.
  - Another viable foundation alternative, yet lower level of assurance against potential movements, would be to support the structure using a shallow

spread footing foundation system or thickened edge monolithic slab bearing on a zone of geotextile-reinforced structural fill.

- A structural floor on grade beams over a crawlspace should be considered for interior slabs. If a structural floor is not desired, in order to reduce the potential for movement related distress to concrete slabs, we recommend a minimum of 12 inches of structural fill reinforced with a layer of Mirafi RS580i be used for slab support.

- 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 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. The City of Billings is not liable for any damage to lots encompassing or near floodplain that would result from flooding.
- I.** Future installation of public (or common) improvements shall be constructed through one (1) or more SID(s) created or through a Private Contract as part of the SIA for this subdivision.

### **III. TRANSPORTATION**

#### **A. Streets**

The following roads exist surrounding the subdivision:

- Alkali Creek Road is designated as a Principal Arterial and is located within a 60' wide right-of-way. An addition of 30' of ½ right-of-way is being dedicated as part of this subdivision to conform with city requirements. It is required that Alkali Creek Road be constructed with a minimum standard width of 42 feet, back of curb to back of curb. That portion adjacent to the subdivision has been partially constructed. The existing street includes approximately 26 feet of asphalt. The subdivider will provide cash-in-lieu contribution for the construction of approximately an additional 6 feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter. The cash-in-lieu contribution will also include engineering design and construction administration.

The Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

- Timbers Boulevard South, Sugar Pine Road, Angel Oak Lane, Georgia Pine Lane, Olive Lane, and Black Fig Court will be constructed within a 60' foot right-of-way using curb and gutter and full-width pavement (34 feet back of curb to back of curb). Curb and Gutter will be installed per the City of Billings Standards in place at time of construction.
- Timbers Boulevard North will be installed using a 20' foot wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

#### **B. Sidewalks**

- All roads within the subdivision will have a 5' wide boulevard sidewalk with a 5' minimum boulevard. The sidewalk will be composed of concrete and be completed within the road's right-of-way.

#### **C. Street Lighting**

- There is no proposed street lighting, but it is included as an item in the waiver of right to protest.

#### **D. Traffic Control Devices**

- One stop sign will be installed on Timbers Boulevard South at the intersection with Alkali Creek Road.
- One stop sign will be installed on Timbers Boulevard North at the intersection with Alkali Creek Road.
- Two stop signs will be installed at the intersection of Angel Oak Lane and Timbers Boulevard South. The stop signs will be on both sides of Timbers Boulevard South.
- One stop sign will be installed at the intersection of Sugar Pine Road and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Black Fig Court and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Olive Lane.
- One stop sign will be installed at the intersection of Olive Lane and Black Fig Court.

#### **E. Access**

- All of the lots will access off of the internal subdivision road network.
- The subdivision will connect to Alkali Creek Road.

#### **F. Billings Area Bikeway and Trail Master Plan**

- There is a proposed short-range bike and pedestrian trail proposed within the parkland adjacent to Alkali Creek Road. This trail will be 10' wide and paved to the standard for pedestrian facilities within the City of Billings.

### **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. Lot 21 of the Timbers, First Filing must have its entire structure within 600 feet of the nearest fire hydrant.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire 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 complete stormwater management plan shall be submitted to the Engineering Division for review and acceptance at the time of development.

Storm Drainage for The Timbers Filing One will be provided by a combination of surface drainage swales, curb and gutter, and underground piping. Off-site Stormwater will be routed through surface swales/ditches and will discharge directly to Alkali Creek. On-site stormwater will be routed through swales, curb and gutter, and underground piping to on-site detention ponds that are sized to only allow pre-development flow rate to be discharged from the site as required by the Stormwater Management Manual. The stormwater improvements will be constructed per the submitted Stormwater Management Design report as reviewed and accepted by the City Engineering Division.

All of the on-site stormwater infrastructure will be located within public easement or public right-of-way. Stormwater pipes located in the public right of way will be maintained by the City and all facilities including swales, piping, and ponds not in the right of way will be maintained by The Timbers HOA.

Due to the large quantity of stormwater passing through the development and the severe slopes located in some areas, minimum finish floor elevations for all lots within the development will be established by the Stormwater Management Plan and will be incorporated in the final version of the recorded SIA.

**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 extension applications and the conditions of approval. Water Main and Sanitary Sewer extension applications shall be submitted for processing prior to the start of any construction for 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**

Each lot is to be served by City of Billings water through a water main extension. As required by City Engineering, a 12” Water Main will be extended along Timbers Boulevard South which will serve as the future City Trunk Line through the development. All additional water lines within Filing 1 will be 8” water mains and are located in Angel Oak Lane, Sugar Pine Road, Georgia Pine Lane, Olive Lane, and Black Fig Court. Compensation for required water main upsize can be requested by the developer.

**B. Sanitary Sewer**

Each lot is to be served by City of Billings sewer through a sewer main extension. As required by City Engineering, a 21” Sewer Main will be extended along Timbers Boulevard South which will serve as the future City Trunk Line through the development. All additional sewer lines within Filing 1 will be 8” sewer mains and are located in Angel Oak Lane, Sugar Pine Road, Georgia Pine Lane, Olive Lane, and Black Fig Court. All sewer infrastructure is proposed to be gravity. Compensation for required sewer main upsize can be requested by the developer.

**C. Power, Telephone, Gas, and Cable Television**

These utilities will be provided within the 60-foot Public Road Easement, or the Utility Easements created as part of this subdivision.

**VII. PARKS/OPEN SPACE**

The Timbers Subdivision, First Filing proposes parkland dedication to satisfy parkland requirements. The Park will be maintained by City of Billings Parks, Recreation and Public Lands. Operation and maintenance of the public park areas shall be by a park maintenance district (PMD) created and/or expanded for this and all subsequent filings of the Timbers Subdivision by the Subdivider as approved by the Parks and Recreation Department and administered by the City of Billings.

The parks and trail within the park(s) will be constructed or bonded for by the Developer prior to final plat filing. A park master plan for the 4.64 acres of parkland within the Timbers Subdivision, First Filing may be submitted and approved by the City of Billings Parks, Recreation and Public Lands. A park master plan for the public parkland within the Timbers Subdivision will be funded

by the Subdivider in Consultation with the Parks and Recreation Department. This plan will meet the requirements and specifications of the Parks and Recreation Department.

Plans and Specifications for the development of the 10' wide trail will be reviewed and approved by the Parks and Recreation Department. During construction, the Department will make periodic inspections to assure the parkland is developed according to the plans and specifications. When construction is complete, the Parks and Recreation Department will conduct a final inspection to assure all aspects of the park development meets the plans and specifications. Once verified, the Parks and Recreation Department will issue a letter of acceptance and only then will they take over maintenance operations. The parkland may be developed at any time prior to the final filing at the discretion of the Subdivider

Required parkland for The Timbers Filing One is 3.45 acres per the City of Billings Subdivision Regulation guidelines. As part of The Timbers Filing One 4.64 acres of parkland are being provided.

**VIII. IRRIGATION**

Irrigation rights for the subdivision will not be utilized for irrigation within the subdivision. No surrounding irrigation ditches exist.

**IX. FLOODPLAIN**

Floodplain boundaries are shown on the subdivision plat. Any work proposed in the floodplain will require a floodplain permit. All homesites are to be constructed outside of the floodplain boundary. The City of Billings is not liable for any damages within the floodplain.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study was completed by Rimrock Engineering, Inc. Due to the Geotechnical Study it is suggested that individual geotechnical reports be completed prior to construction of homes within the subdivision.

**XI. PHASING OF IMPROVEMENTS**

A. Improvements for the subdivision are to be developed in three (3) phases. The phases are defined as follows:

- a. Phase I
  - i. Lots 1-31, 51-54
  - ii. Completed roads: Timbers Boulevard South, Angel Oak Lane, and Black Fig Court
- b. Phase II
  - i. Lots 32-50
  - ii. Completed roads: Olive Lane, Georgia Pine Road
- c. Phase III
  - i. Lots 55-56

- ii. Completed roads: Sugar Pine Road
- B. The Subdivider does not desire to commence development of phase 2 and 3 improvements within the subdivision at this time, but does desire to file the approved final plat for The Timbers Subdivision, 1<sup>st</sup> Filing. In accordance with the foregoing, the Subdivider and the City agree as follows:
  - a. Improvements for Phase 2 and Phase 3 shall be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey lots encumbered by Phase 2 or Phase 3 without the improvements being completed.
  - b. If any adjacent property to or in the Timbers Subdivision requests access to Olive Lane, Georgia Pine Lane, or Sugar Pine Road, Subdivider shall immediately construct the improvements to requested road (either Olive Lane, Georgia Pine, or Sugar Pine Road) through a Special Improvement District or Private Contract.
  - c. At any time, the Developer may choose to secure or complete Phase 2 or Phase 3 through any of the following alternatives:
    - i. Petition for the creation of a Special Improvement District to complete the road and utility improvements to Olive Lane, George Pine Road, and Sugar Pine Road. All lots within Phase 1 and Phase 2 and Phase 3 will be included in the Special Improvement District.
    - ii. Financially guarantee the improvements in accordance with the City of Billings Subdivision Regulations through a letter of credit;
    - iii. Enter into a private contract with the City for the Phase 2 or Phase 3 improvements.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, lots in Phase 1 or to sell and convey, as one unit, all lots in the Subdivision, however, the sale and transfer of individual lots in Phase 2 and Phase 3 will be restricted until the conditions within this agreement have been met. Pursuant to this agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for said lots identified in Phase 2 and Phase 3. Said declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred (except as provided above)

iv.

**XII. 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.

### **XIII. 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”

By: \_\_\_\_\_  
Ali Mitchell

\_\_\_\_\_   
David Mitchell

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Ali Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared David Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

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.

SS \_\_\_\_\_

# 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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned is more particularly described as follows:

*The Timbers Subdivision, First Filing*

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subdivider/Owner

By: \_\_\_\_\_  
Ali Mitchell David Mitchell

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 Ali Mitchell 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.

SS \_\_\_\_\_

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 David Mitchell 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.

SS \_\_\_\_\_

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS**

***The Timbers Subdivision***

***First Filing***

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**(City of Billings)**

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

***The Timbers Subdivision  
First Filing***

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between *Ali Mitchell* and *David Mitchell*, whose address for the purpose of this agreement is **1655 Valley Heights Rd., Billings, MT 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 \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of *The Timbers Subdivision, First Filing*; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of *The Timbers Subdivision, First 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 *The Timbers Subdivision, First 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):

A variance has been submitted regarding the construction of Timbers Boulevard North. This variance requests to install Timbers Boulevard North using a 20’ foot

wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

## **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 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 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. The Timbers Subdivision, First Filing had an overview geotechnical study completed by Rimrock Engineering. Below is the summary of the findings of this study. Individual lot owners are encouraged to complete their own geotechnical study to find lot specific information.
- The subsurface profile generally consists of variably stiff to very soft lean clay soils. Groundwater was encountered at approximately 6.5 feet below existing grades while drilling or for the short duration the boring was allowed to remain open.
  - Due to site conditions and concerns, we recommend support for the proposed structure using a deep foundation system such as rammed aggregate piers or helical piers extending into the more competent soils in order to bypass the compressible soil and alleviate concerns regarding foundation construction below or near the groundwater elevation.
  - Another viable foundation alternative, yet lower level of assurance against potential movements, would be to support the structure using a shallow

spread footing foundation system or thickened edge monolithic slab bearing on a zone of geotextile-reinforced structural fill.

- A structural floor on grade beams over a crawlspace should be considered for interior slabs. If a structural floor is not desired, in order to reduce the potential for movement related distress to concrete slabs, we recommend a minimum of 12 inches of structural fill reinforced with a layer of Mirafi RS580i be used for slab support.

- 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 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. The City of Billings is not liable for any damage to lots encompassing or near floodplain that would result from flooding.
- I.** Future installation of public (or common) improvements shall be constructed through one (1) or more SID(s) created or through a Private Contract as part of the SIA for this subdivision.

### **III. TRANSPORTATION**

#### **A. Streets**

The following roads exist surrounding the subdivision:

- Alkali Creek Road is designated as a Principal Arterial and is located within a 60' wide right-of-way. An addition of 30' of ½ right-of-way is being dedicated as part of this subdivision to conform with city requirements. It is required that Alkali Creek Road be constructed with a minimum standard width of 42 feet, back of curb to back of curb. That portion adjacent to the subdivision has been partially constructed. The existing street includes approximately 26 feet of asphalt. The subdivider will provide cash-in-lieu contribution for the construction of approximately an additional 6 feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter. The cash-in-lieu contribution will also include engineering design and construction administration.

The Subdivider will enter into a private contract for the construction of all required improvements for those streets within the subdivision, as follows:

- Timbers Boulevard South, Sugar Pine Road, Angel Oak Lane, Georgia Pine Lane, Olive Lane, and Black Fig Court will be constructed within a 60' foot right-of-way using curb and gutter and full-width pavement (34 feet back of curb to back of curb). Curb and Gutter will be installed per the City of Billings Standards in place at time of construction.
- Timbers Boulevard North will be installed using a 20' foot wide gravel surface within a 60' foot right-of-way. This road shall be marked a secondary access and built to withstand 40 tons in all weather conditions. The construction of the road, including curb and gutter and utility construction, will be monetarily secured for 50% of an engineer's estimate as reviewed by the City. The construction of the remainder of Timbers Boulevard North will be completed with a future filing. This includes construction of curb and gutter, street paving, water, sanitary sewer, and storm drain. If Timbers Boulevard North is not constructed within two years of final plat, the City reserves the right to create a Special Improvement District to construct the remaining portion of Timbers Boulevard North back to Alkali Creek Road.

#### **B. Sidewalks**

- All roads within the subdivision will have a 5' wide boulevard sidewalk with a 5' minimum boulevard. The sidewalk will be composed of concrete and be completed within the road's right-of-way.

#### **C. Street Lighting**

- There is no proposed street lighting, but it is included as an item in the waiver of right to protest.

#### **D. Traffic Control Devices**

- One stop sign will be installed on Timbers Boulevard South at the intersection with Alkali Creek Road.
- One stop sign will be installed on Timbers Boulevard North at the intersection with Alkali Creek Road.
- Two stop signs will be installed at the intersection of Angel Oak Lane and Timbers Boulevard South. The stop signs will be on both sides of Timbers Boulevard South.
- One stop sign will be installed at the intersection of Sugar Pine Road and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Black Fig Court and Timbers Boulevard South.
- One stop sign will be installed at the intersection of Georgia Pine Lane and Olive Lane.
- One stop sign will be installed at the intersection of Olive Lane and Black Fig Court.

#### **E. Access**

- All of the lots will access off of the internal subdivision road network.
- The subdivision will connect to Alkali Creek Road.

#### **F. Billings Area Bikeway and Trail Master Plan**

- There is a proposed short-range bike and pedestrian trail proposed within the parkland adjacent to Alkali Creek Road. This trail will be 10' wide and paved to the standard for pedestrian facilities within the City of Billings.

### **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. Lot 21 of the Timbers, First Filing must have its entire structure within 600 feet of the nearest fire hydrant.
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**V. STORM DRAINAGE**

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All of the on-site stormwater infrastructure will be located within public easement or public right-of-way. Stormwater pipes located in the public right of way will be maintained by the City and all facilities including swales, piping, and ponds not in the right of way will be maintained by The Timbers HOA.

Due to the large quantity of stormwater passing through the development and the severe slopes located in some areas, minimum finish floor elevations for all lots within the development will be established by the Stormwater Management Plan and will be incorporated in the final version of the recorded SIA.

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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.

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The Timbers Subdivision, First Filing proposes parkland dedication to satisfy parkland requirements. The Park will be maintained by City of Billings Parks, Recreation and Public Lands. Operation and maintenance of the public park areas shall be by a park maintenance district (PMD) created and/or expanded for this and all subsequent filings of the Timbers Subdivision by the Subdivider as approved by the Parks and Recreation Department and administered by the City of Billings.

The parks and trail within the park(s) will be constructed or bonded for by the Developer prior to final plat filing. A park master plan for the 4.64 acres of parkland within the Timbers Subdivision, First Filing may be submitted and approved by the City of Billings Parks, Recreation and Public Lands. A park master plan for the public parkland within the Timbers Subdivision will be funded

by the Subdivider in Consultation with the Parks and Recreation Department. This plan will meet the requirements and specifications of the Parks and Recreation Department.

Plans and Specifications for the development of the 10' wide trail will be reviewed and approved by the Parks and Recreation Department. During construction, the Department will make periodic inspections to assure the parkland is developed according to the plans and specifications. When construction is complete, the Parks and Recreation Department will conduct a final inspection to assure all aspects of the park development meets the plans and specifications. Once verified, the Parks and Recreation Department will issue a letter of acceptance and only then will they take over maintenance operations. The parkland may be developed at any time prior to the final filing at the discretion of the Subdivider

Required parkland for The Timbers Filing One is 3.45 acres per the City of Billings Subdivision Regulation guidelines. As part of The Timbers Filing One 4.64 acres of parkland are being provided.

**VIII. IRRIGATION**

Irrigation rights for the subdivision will not be utilized for irrigation within the subdivision. No surrounding irrigation ditches exist.

**IX. FLOODPLAIN**

Floodplain boundaries are shown on the subdivision plat. Any work proposed in the floodplain will require a floodplain permit. All homesites are to be constructed outside of the floodplain boundary. The City of Billings is not liable for any damages within the floodplain.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study was completed by Rimrock Engineering, Inc. Due to the Geotechnical Study it is suggested that individual geotechnical reports be completed prior to construction of homes within the subdivision.

**XI. PHASING OF IMPROVEMENTS**

A. Improvements for the subdivision are to be developed in three (3) phases. The phases are defined as follows:

- a. Phase I
  - i. Lots 1-31, 51-54
  - ii. Completed roads: Timbers Boulevard South, Angel Oak Lane, and Black Fig Court
- b. Phase II
  - i. Lots 32-50
  - ii. Completed roads: Olive Lane, Georgia Pine Road
- c. Phase III
  - i. Lots 55-56

- ii. Completed roads: Sugar Pine Road
- B. The Subdivider does not desire to commence development of phase 2 and 3 improvements within the subdivision at this time, but does desire to file the approved final plat for The Timbers Subdivision, 1<sup>st</sup> Filing. In accordance with the foregoing, the Subdivider and the City agree as follows:
  - a. Improvements for Phase 2 and Phase 3 shall be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey lots encumbered by Phase 2 or Phase 3 without the improvements being completed.
  - b. If any adjacent property to or in the Timbers Subdivision requests access to Olive Lane, Georgia Pine Lane, or Sugar Pine Road, Subdivider shall immediately construct the improvements to requested road (either Olive Lane, Georgia Pine, or Sugar Pine Road) through a Special Improvement District or Private Contract.
  - c. At any time, the Developer may choose to secure or complete Phase 2 or Phase 3 through any of the following alternatives:
    - i. Petition for the creation of a Special Improvement District to complete the road and utility improvements to Olive Lane, George Pine Road, and Sugar Pine Road. All lots within Phase 1 and Phase 2 and Phase 3 will be included in the Special Improvement District.
    - ii. Financially guarantee the improvements in accordance with the City of Billings Subdivision Regulations through a letter of credit;
    - iii. Enter into a private contract with the City for the Phase 2 or Phase 3 improvements.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, lots in Phase 1 or to sell and convey, as one unit, all lots in the Subdivision, however, the sale and transfer of individual lots in Phase 2 and Phase 3 will be restricted until the conditions within this agreement have been met. Pursuant to this agreement, the Subdivider shall execute and record a Declaration of Restrictions on Transfers and Conveyances for said lots identified in Phase 2 and Phase 3. Said declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred (except as provided above)

iv.

**XII. 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.

### **XIII. 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”

By: \_\_\_\_\_  
Ali Mitchell

\_\_\_\_\_   
David Mitchell

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared Ali Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss  
County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, a Notary Public in and for the State of \_\_\_\_\_, personally appeared David Mitchell, who executed the foregoing instrument and acknowledged to me that she executed the same.

SS \_\_\_\_\_

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.

SS \_\_\_\_\_

# 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.

This Waiver is in addition to any other recorded waiver related to the property described herein and is not intended to replace, supersede, or invalidate any such waiver.

The real property hereinabove mentioned is more particularly described as follows:

*The Timbers Subdivision, First Filing*

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Subdivider/Owner

By: \_\_\_\_\_  
Ali Mitchell David Mitchell

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 Ali Mitchell 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.

SS \_\_\_\_\_



## City Council Regular

**Date:** 07/25/2022  
**Title:** Wild Rose Subdivision, 1st Filing - Preliminary Major Plat  
**Presented by:** Monica Plecker  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review** Not Applicable

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### RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of Wild Rose Subdivision, 1st Filing and adoption of the Findings of Fact as presented in the staff report.

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

On May 2, 2022, In Site Engineering and Performance Engineering, agents for Regal Land Development, applied for preliminary major plat approval for Wild Rose Subdivision, 1st Filing. The proposed subdivision creates 64 new lots for residential development. The subject property is generally located south of Sweetgrass Creek Drive and west of 54th Street West. The property is a mix of zones and recently received approval of a planned neighborhood development, required for new properties greater than 10 acres annexing into the City limits. The property where this subdivision is located is zoned Neighborhood 1 (N1), Neighborhood 2 (N2), Neighborhood 3 (N3), Mixed Residential 1 (NX1) and Public 1 (P1).

### VARIANCES REQUESTED

No variances from the City Subdivision Regulations have been requested.

### 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 and ensure correct road construction, prior to final plat approval the applicant will receive approval for all street construction from City of Billings Engineering prior to street construction.
2. To protect public health and safety, prior to final plat approval the applicant will add the following language to the SIA under the heading III Transportation Streets: No obstructions may be placed in any public right of way such as subdivision entry signs, signs, planter beds or any other obstruction that would be a hazard to traffic in the public right-of-way.
3. To ensure correct additional road width construction on 54th Street West, prior to final plat approval, the applicant will add the following wording to the SIA under the heading III Transportation Streets: The subdivider will provide cash-in-lieu contribution for the construction of approximately 3 feet of asphalt surface with satisfactory sub-base, base course, standard curb and gutter along 54th Street West. The cash-in-lieu contribution will also include engineering design and construction administration.
4. To ensure public health and safety and to ensure safe pedestrian access to the south (Cottonwood Park), the developer shall construct a pedestrian crossing over the storm drainage area located along the southern property boundary. Further, the developer shall amend the SIA to include specific information regarding the construction of the crossing.
5. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
6. 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.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

### PROCEDURAL HISTORY

- Pre-application meeting February 4, 2022
- Preliminary plat application submitted to Planning Division May 2, 2022
- Departmental review meeting May 19, 2022
- Preliminary plat re-submittal May 26, 2022
- Planning Board plat review June 14, 2022

- Planning Board public hearing June 28, 2022
- Preliminary plat to City Council July 25, 2022
- 60 working-day preliminary plat review period ends July 26, 2022

## PLAT INFORMATION

|                          |                                                              |
|--------------------------|--------------------------------------------------------------|
| General location:        | South of Sweetgrass Creek Drive and west of 54th Street West |
| Legal Description:       | R.L. Subdivision Lot 1                                       |
| Owner/Subdivider:        | Regal Land Development, Inc.                                 |
| Engineer and Surveyor:   | In Site Engineering and Performance Engineering              |
| Existing Zoning:         | PD                                                           |
| Existing land use:       | Vacant / Farmland                                            |
| Proposed land use:       | Residential                                                  |
| Gross and Net area:      | 53.452 acres; 47.84 acres                                    |
| Proposed number of lots: | 76                                                           |
| Lot size:                | Max: 36.71 acres<br>Min: 4,680 square feet                   |

Parkland requirements: Parkland dedication requirements for this proposed plat is 1.224 acres. The applicant is proposing to provide 0.782 acres of land for private parks. The remaining amount will be a cash in lieu contribution to the future Cottonwood Park.

## STAKEHOLDERS

Staff provided an overview presentation of the subdivision. President Cook called for questions and discussion. Board member Woods asked for an explanation of the parkland. Staff pointed out two private parks located at the entry and the remainder of the parkland contribution will be cash-in-lieu to Cottonwood Park.

Scott Worthington, agent for the applicant and project manager. Mr Worthington gave a brief background of the steps that have been taken to this point with the proposed subdivision with the zoning and annexation. He stated this parcel is compliant with all subdivision regulations and the applicant is in agreement with staff's conditions of approval.

Dan Wells, developer, commented this first filing will be a needed price point for young families looking for a smaller home with less yard to maintain. He also stated he would be happy to answer any questions the board may have concerning this proposed subdivision.

There were no other comments or questions for staff, agent or applicant.

President Cook opened the public hearing and asked if there is anyone wishing to speak in favor or against Wild Rose Subdivision. There were none. President Cook closed the public hearing and called for a motion.

A motion was made to forward a recommendation to the City Council to conditionally approve the proposed Wild Rose Subdivision with the conditions of approval and the findings of fact, the motion was seconded. The motion passed with a unanimous 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 July 26, 2022. 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, there were found to be minimal impacts from this proposed subdivision.

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#### **Attachments**

Findings of Fact  
Proposed Plat  
SIA Draft  
Mayors Letter

## **FINDINGS OF FACT**

The Planning staff has prepared the Findings of Fact for the preliminary plat of Wild Rose Subdivision, 1<sup>st</sup> Filing. These findings are based on the preliminary plat application and supplemental documents and address 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**

Portions of the subject property are currently used for agricultural purposes, about 15.743 acres of land would be used for this proposed development. Perimeter 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, but it will take a small portion of the total land out of agricultural production.

### **2. Effect on local services**

- a. **Utilities** – Water service will be provided by the City of Billings. The developer will install new water mains in all the new local streets, new individual services to all the lots, and new fire hydrants in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality (MDEQ). The water service will be provided by an existing 12-inch water line located in 54<sup>th</sup> Street West and connection to an existing 8-inch water line in Trail Creek Drive. New streets in this subdivision will have 8-inch water line installed. The subdivider will install all new water lines in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Engineering/Public Works Department and MDEQ. This information is within the SIA under the heading VI, Utilities A.

Sanitary sewer service will be provided by connecting to the existing City of Billings sewer mains. This proposed subdivision will connect to an existing 15-inch sanitary sewer located in 54<sup>th</sup> Street West. The subdivider will install new 8-inch sewer mains in the proposed streets within the subdivision and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ. This information is within the SIA under the heading VI, Utilities B.

Private utility companies will provide services to the subdivision. Eight-foot-wide easements on the lot frontage have been requested and will be provided by the subdivider for the private utility companies to install the needed infrastructure.

**Stormwater** – Stormwater drainage for the public streets is proposed to be provided by curb and gutters that discharge into storm water pipes and eventually to retention ponds located on HOA owned lots. These and all other drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the City Engineering Department. This information is within the SIA under the heading V, Storm Drainage.

- b. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- c. **Streets** – The lots within the subdivision will be served by the continuation of Trail Creek Drive and new streets proposed for this subdivision. They shall all be 34 feet back of curb to back of curb within a 56-foot-wide right of way and shall be built to City of Billings street standards. They shall be built to grade with a satisfactory subbase, base course, curb and gutter with asphalt surface. **(Condition #1)** No obstructions may be placed in any public right of way such as subdivision entry signs, signs, planter beds or any other obstruction that would be a hazard to traffic in the public right-of-way. **(Condition #2)**

The subdivider is responsible for the widening of the section of 54<sup>th</sup> Street West. This would be approximately 3 feet of additional asphalt and curb and gutter to complete the needed width of paved surface for 54<sup>th</sup> Street West. The applicant will add language to the SIA under the heading III Transportation Streets that outlines this requirement. **(Condition #3)**

The sidewalks will be installed by the home builder on a lot-by-lot basis, as lots develop. The developer will install all ADA required ramps at the intersections within the proposed subdivision and in front of the parkland. This is outlined in the SIA under the heading III Transportation B Sidewalks.

A Traffic Impact Study (TIS) update was completed with this filing to evaluate the subdivision’s impact on the street network in the surrounding area. Cash contributions will be made for future intersection and road improvements as identified in the SIA under Transportation D. Traffic Control Devices. A proportionate contribution will be made for this 1<sup>st</sup> filing as described in the SIA.

- d. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station is located at 54<sup>th</sup> St. West and Grand Ave. (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- e. **Schools** –School District #2 provides educational services to elementary through high school students. Schools serving these students are Boulder Elementary, Ben Steele Middle School, and West High School. At the time of the writing of this staff report all schools are shown as being over capacity.

**Parks and Recreation** – Residential subdivisions are required by City of Billings Subdivision Regulations to provide parkland for the residents of the subdivision. This subdivision is creating 64 residential lots with this filing. The required parkland acreage is 1.224 acres. The applicant is proposing to provide 0.782 acres of private parkland. With the remaining amount being a cash-in-lieu contribution to Cottonwood Park. The future Cottonwood park is directly south of the proposed subdivision. To ensure pedestrian access to this public park the developer, through conditions of approval, will be required to construct a pedestrian crossing over the proposed storm drainage area (**Condition #4**) The HOA will be responsible for the maintenance of the private parkland. This is outlined in the SIA under the heading VII Parks/Open Space.

- f. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has indicated that centralized mailbox units will be required. The developer will need to coordinate mailbox locations with the postal service. (**Condition #5**)

### **3. Effect on the natural environment**

The subject property is currently mainly used for farmland. The natural environment has been changed with the use of the land for farming purposes. During development, storm water pollution prevention best management practices are required to be used and monitored to prevent erosion on exposed ground. Overall, the effect on the natural environment should be minimal.

### **4. Effect on wildlife and wildlife habitat**

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

### **5. Effect on the public health, safety and welfare**

There will be minimal impacts to public health, safety and welfare because of this subdivision.

## **B. Was an Environmental Assessment required? [(MCA 76-3-616 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 2014 Transportation Plan, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]**

### **1. City of Billings 2016 Growth Policy**

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

**Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):**

Neighborhoods that are safe and attractive and provide essential services are much desired (p.8). Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels. (p.8)

**Home Base (healthy, safe and diverse housing options)** A mix of housing types that meet the needs of a diverse population is important. (p.9) Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings.

**2. 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.

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

There is a Proposed Short-range bike Lane identified on Rimrock Road to the north, and one on 54<sup>th</sup> Street West. There is also the possibility of a future trail to the south of the subject property along the High Ditch.

**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 Planned Neighborhood (PD) zoning. The lot frontages conform to the requirements of this zone. Other building setbacks and structure specific requirements will be reviewed for compliance at the time of building permit review.

**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 utility easements as requested by private utility companies and show those 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 54<sup>th</sup> Street West, and Trail Creek Drive. New internal streets will provide access to individual lots.

**CONCLUSIONS OF FINDINGS OF FACT**

- The preliminary plat of Wild Rose Subdivision, 1<sup>st</sup> Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several of the goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway/Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

**RECOMMENDATION**

It is recommended to City Council that the preliminary plat of Wild Rose Subdivision, 1<sup>st</sup> Filing be conditionally approved and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, July 25, 2022

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William A. Cole, Mayor

# WILD ROSE SUBDIVISION FIRST FILING - PRELIMINARY PLAT

A Resubdivision of R.L. Subdivision Lot 1  
 Located in the NE 1/4 of Section 31, T1N, R25E, PMM,  
 City of Billings, Yellowstone County, Montana

**BASIS OF BEARINGS**  
 Bearings shown on this survey are derived from a low distortion Lambert  
 Conformal Conic single parallel projection with parameters as follows:

Latitude of Origin: 45°47'00" N  
 Longitude of Origin: 108°25'00" W  
 Mapping Scale Factor: 1.0001518

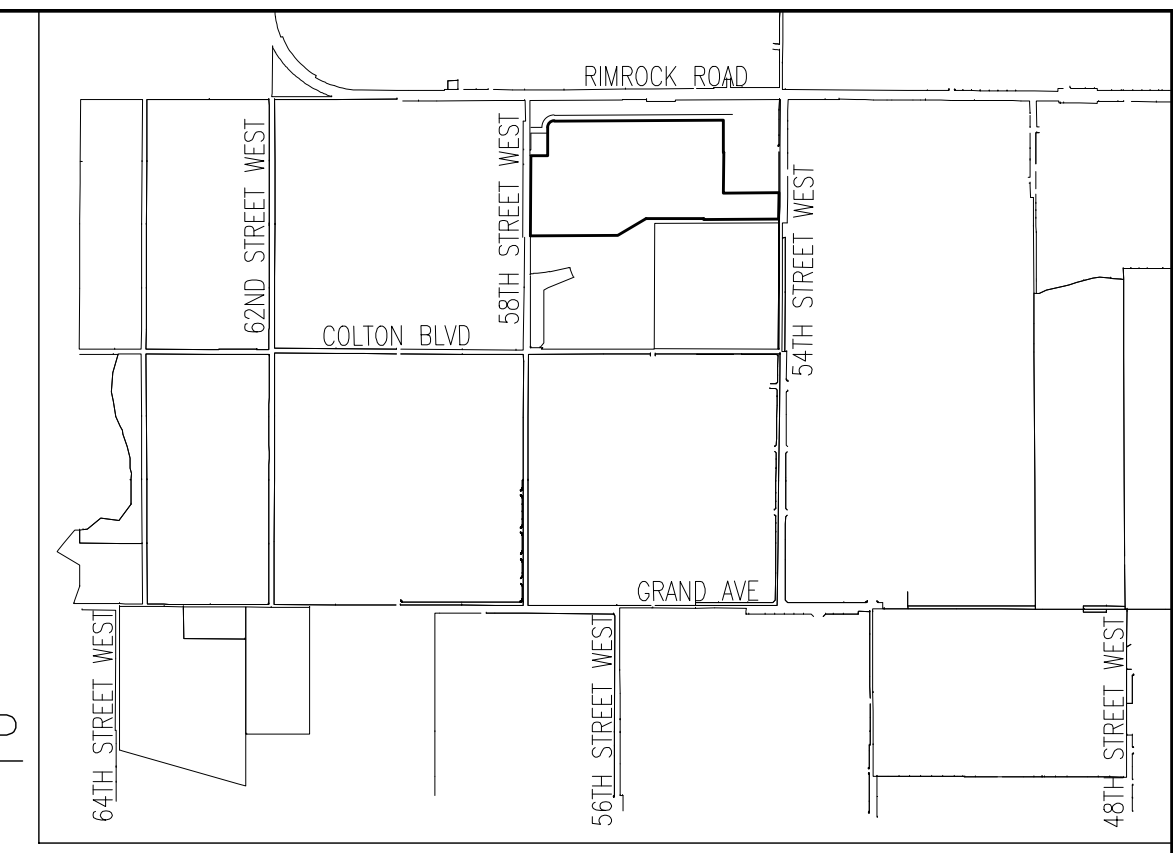
Distances shown hereon are ground distances.

**SURVEYOR'S NOTE**  
 Unless otherwise noted, record distances between found monuments  
 shown hereon are within local accepted practice.

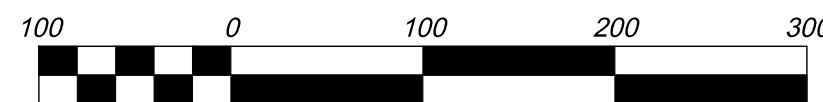
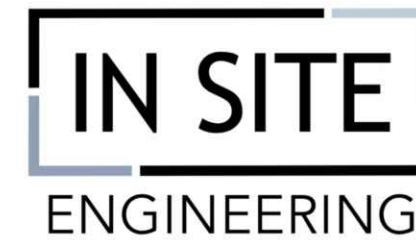
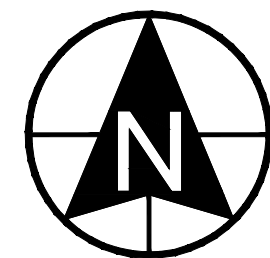
DATE: APRIL 2022  
 PREPARED FOR: REGAL LAND DEVELOPMENT, INC.

PREPARED BY: IN SITE ENGINEERING, P.C. &  
 PERFORMANCE ENGINEERING, LLC

**LEGAL DESCRIPTION**  
 R.L. Subdivision, Lot 1. Located in the NE 1/4 of Section 31, T1N, R25E,  
 PMM, Yellowstone County, Montana. Containing 53.452 Acres.



VICINITY MAP  
 NOT TO SCALE



SCALE 1"=100'

RIMROCK ROAD

SWEETGRASS CREEK DRIVE

N 89°46'22" E 1762.80'

58TH STREET WEST

S 89°44'38" E 175.15'

N 00°15'22" E 295.00'

$\Delta=89^{\circ}31'00''$   
 $R=66.97'$   
 $L=104.63'$   
 CHORD  
 N45°00'52"E  
 94.31'

80'

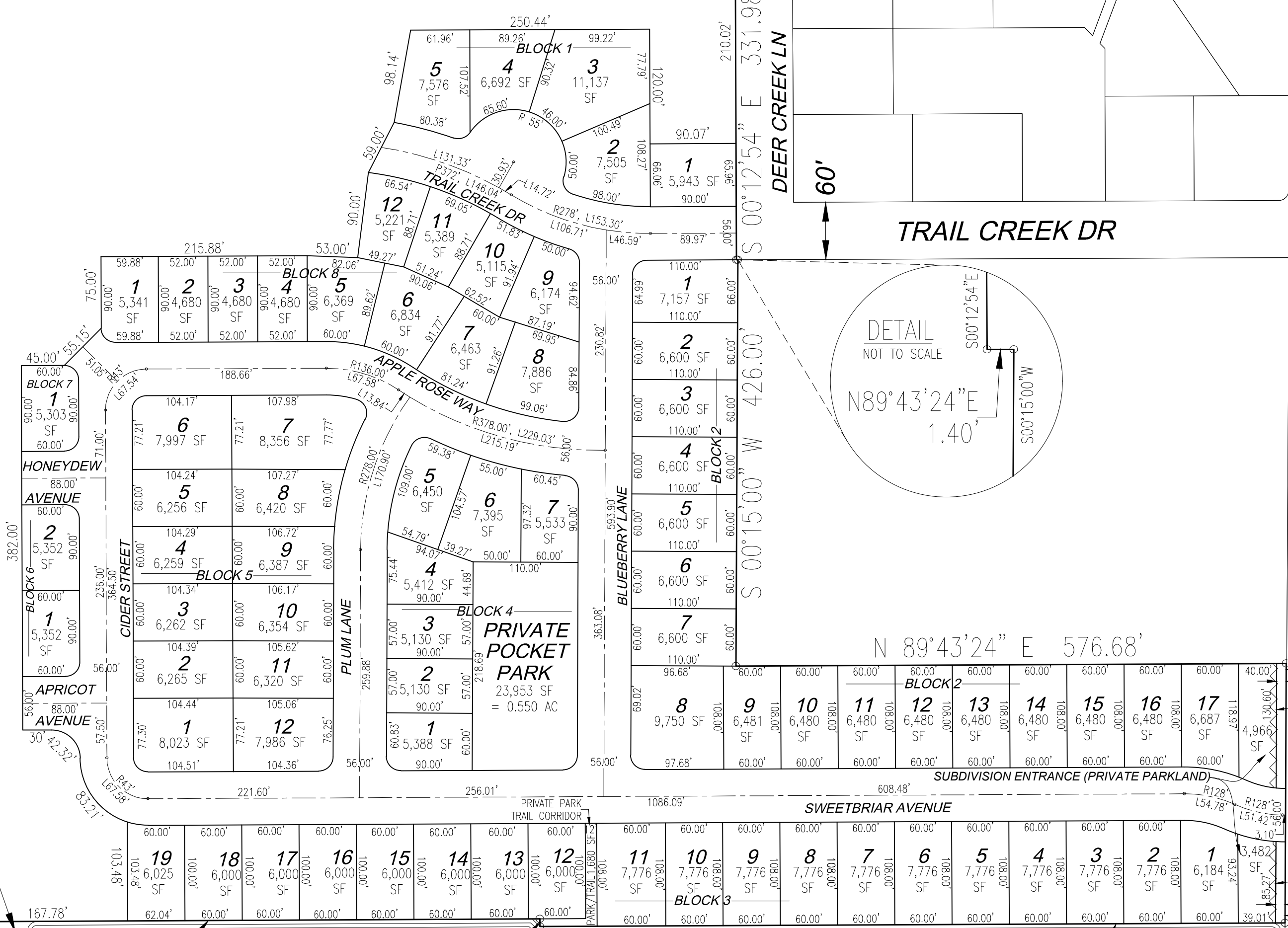
N 00°17'16" E 834.12'

| TABULATIONS                 |                                                                            |
|-----------------------------|----------------------------------------------------------------------------|
| ZONE                        | ALL LOTS EXCEPT LOT 6, BLOCK 1 ARE IN THE N2 ZONE (SEE ZONING MASTER PLAN) |
| GROSS AREA:                 | 53.452 AC                                                                  |
| ROAD AREA:                  | 4.831 AC                                                                   |
| PARK AREA PROVIDED:         | 0.782 AC                                                                   |
| NET AREA:                   | 47.84 AC (INCLUDING LOT 6, BLOCK 1)                                        |
| NET AREA:                   | 11.13 AC (EXCLUDING LOT 6, BLOCK 1)                                        |
| REQUIRED PARK AREA:         | 1.224 AC (PARK LAND FOR LOT 6, BLOCK 1 TO BE MET W/ FUTURE FILINGS)        |
| CASH IN LIEU OF PARK BASIS: | 0.442 AC (1.224 AC - 0.782 AC)                                             |
| MAX LOT SIZE:               | 36,709 AC                                                                  |
| MIN LOT SIZE:               | 4,680 SF (0.11 AC)                                                         |
| NUMBER OF LOTS              | 76 LOTS                                                                    |

BLOCK 1  
 LOT 6  
 1,599,061 SF  
 =36,709 AC

WILD ROSE SUB  
 FUTURE FILINGS

PERPETUAL STORM  
 DRAIN EASEMENT  
 IN FAVOR OF  
 WILD ROSE HOA  
 FOR STORM DRAINAGE  
 RETENTION FACILITY



TRAIL CREEK DR

DETAIL  
 NOT TO SCALE  
 N89°43'24"E  
 1.40'

N 89°43'24" E 576.68'

54TH STREET WEST

EX 80' ROW -  
 10' DEDICATION  
 2' NO ACCESS  
 EASEMENT

EX 80' ROW -  
 10' DEDICATION  
 2' NO ACCESS  
 EASEMENT

S 89°46'22" W 909.53'

R.L. SUBDIVISION  
 LOT 2

S 59°46'22" W 342.68'  
 S 89°43'24" W 599.78'

N 00°16'36" W 8.00'

N 89°50'14" E 1294'24" (SOUTH BOUNDARY OF STORM DRAIN EASEMENT)  
 STORM DRAIN RETENTION BASIN  
 VOLUME REQUIRED = 43.99 CUBIC FEET  
 VOLUME PROVIDED = 57.81 CUBIC FEET  
 OWNED & OPERATED BY WILD ROSE HOA

S 89°43'24" W 781.01'

N 00°15'00" E 41.73'  
 (EAST BOUNDARY OF STORM DRAIN EASEMENT)

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT  
DISTRICTS**

**Wild Rose Subdivision First Filing**

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(City of Billings)

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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

**Wild Rose Subdivision First Filing**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *Regal Land Development, Inc.*, whose address for the purpose of this agreement is **P.O. Box 80445, Billings, MT 59108**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of *Wild Rose Subdivision First Filing*, 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 Board of Planning recommended conditional approval of a preliminary plat of *Wild Rose Subdivision First Filing*; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the City Council conditionally approved a preliminary plat of *Wild Rose Subdivision First 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 *Wild Rose Subdivision First 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 are requested.

## **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 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 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. Lot owners shall follow the recommendations from the geotechnical study prepared by Rimrock Engineering, Project No. G20085, August 19, 2020.
- D.** 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.
- 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.

### **III. TRANSPORTATION**

#### **A. Streets**

54<sup>th</sup> Street West is classified as a minor arterial street and has an existing 90-foot right-of-way width. Subdivider is required to dedicate an additional 10 feet of right-of-way along 54<sup>th</sup> Street West. A cash contribution for 2' curb and gutter for this subdivision's 272' frontage along 54<sup>th</sup> Street West shall be made to the City.

Trail Creek Drive, Sweetbriar Avenue, Blueberry Lane, Plum Lane, Cider Street, Apple Rose Way, Honeydew Avenue, and Apricot Avenue shall have a 56-foot right of way width with 30 feet of asphalt and 2' curb and gutter on each side (34' back-to-back). Improvements to Deer Creek Lane are required along Lot 1, Block 1 including curb and gutter and 30 feet of asphalt. Street Improvements on Deer Creek Lane, Sweetgrass Creek Drive, and 58<sup>th</sup> Street West shall be done with future filings of Wild Rose Subdivision that abut each of those streets' frontages (re-subdivision of Lot 6, Block 1 of this plat) and will be set forth in the Subdivision Improvements Agreements for each of those future filings.

#### **B. Sidewalks**

Individual lot owners will be responsible for the construction of the sidewalks within public right-of-way or easements adjacent to or through 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.

Subdivider will install, within the private contract, corner intersection ADA ramps and aprons.

Subdivider will install, within the private contract, 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**

A traffic impact study (TIS) has been completed for Wild Rose Subdivision. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. The percent of traffic contributions to the following intersections shall be in accordance with the traffic accessibility study:

- 46<sup>th</sup> Street West and Rimrock Road (1.86% contribution)
- Shiloh Road and Rimrock Road (1.77% contribution)
- 54<sup>th</sup> Street West and Rimrock Road (1.49% contribution)
- 58<sup>th</sup> Street West and Rimrock Road (1.13% contribution)
- 54<sup>th</sup> Street West and Grand Avenue (0.83% contribution)
- 48<sup>th</sup> Street West and Grand Avenue (0.79% contribution)

The cash contributions shall be based on the percent of traffic contributions to the intersections based on the total cost of an intersection as determined by Engineering for the year in which the contribution is made.

The cash contribution shall be made prior to final plat approval.

**E. Access**

One access to this subdivision shall be provided by way of Trail Creek Drive with a new right-of-way width of 56 feet.

A second access to this subdivision shall be provided by way of Sweetbriar Avenue with a right-of-way width of 56 feet.

A 2-foot No Access Easement shall be dedicated along 54<sup>th</sup> Street West with this development, which will include the east line of the private parks fronting 54<sup>th</sup> Street West.

Access to the lots will be from drive approaches installed at the time of the lot development.

**F. Billings Area Bikeway and Trail Master Plan**

This subdivision is adjacent to the Billings Area Bikeway and Trail Master Plan.

There is an existing shared use trail along this subdivision's frontage on 54<sup>th</sup> Street West

**G. Public Transit**

The nearest Met Transit Route to this subdivision is on Shiloh Road from Rimrock Road to Grand Avenue.

**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

- Emergency vehicles shall access this subdivision by way of the two permanent accesses described in Section III.E above.
- This subdivision is not situated in or adjacent to an Urban Wildland Interface.

**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.

- A retention pond shall be built on the land adjacent to this subdivision to the south, which is also owned by the Subdivider.
- The retention facility is located on Home Owner’s Association (HOA) owned lot(s) and shall be operated and maintained by the HOA.
- No storm drainage facilities exist in this area; therefore, this subdivision’s discharge shall be limited to 1 cfs per 10 acres.

**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 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**

- A connection to the existing 12” PVC water main in 54<sup>th</sup> Street West shall be made to provide water for this subdivision.
- A reimbursement fee shall be paid to the city for connection to the existing water main in 54<sup>th</sup> Street West as stipulated in the Annexation Development Agreement.
- A connection to the existing 8” PVC water main stub in Trail Creek Drive shall be made to provide water for this subdivision.

- 8” PVC water mains shall be constructed throughout all streets within this filing with a 1” water service provided to each lot.
- All water lines shall be installed to City of Billings Public Works Standards.

**B. Sanitary Sewer**

- A connection to the existing 15” PVC sanitary sewer main in 54<sup>th</sup> Street West shall be made to provide for the sanitary sewer for this subdivision.
- A reimbursement fee shall be paid to the city for connection to the existing sanitary sewer main in 54<sup>th</sup> Street West as stipulated in the Annexation Development Agreement.
- 8” PVC sanitary sewer mains shall be constructed throughout all streets within this filing with a 6” sanitary sewer service stubbed to each lot.
- All Sanitary Sewer lines shall be installed to City of Billings Public Works Standards.

**C. Power, Telephone, Gas, and Cable Television**

- Services to be provided within the public right-of-way, existing or to be installed
- 8’ public utility easements shall be provided along the street frontages of all lots.

**VII. PARKS/OPEN SPACE**

- The parkland requirement shall be met with a combination of private parks and cash-in-lieu.
- Required park land = 1.224 acre
- 0.782 acre of private parkland is a part of this plat. The basis for cash in lieu of park land is 0.442 acre, which shall be earmarked for Cottonwood Park.
- Parks are privately owned and maintained by HOA.

**VIII. IRRIGATION**

- No Irrigation ditches exist within this subdivision filing.

**IX. SOILS/GEOTECHNICAL STUDY**

1. A geotechnical study was done for this subdivision by Rimrock Engineering, Project No. G20085, August 2020. A copy may be obtained from the Subdivider and Rimrock Engineering.
  - Recommendations of this study shall apply to construction within this subdivision including home construction.

**X. PHASING OF IMPROVEMENTS**

- This is the first filing of Wild Rose Subdivision. Public improvements for this Filing shall be secured by a letter of credit and executed through a private contract. Future filings will be re-subdivisions of Lot 1, Block 6, and future public improvements will be set forth with the review of those future filings.

**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”

*Regal Land Development, Inc.*



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: \_\_\_\_\_





July 25, 2022

Regal Land Development  
P.O. Box 80445  
Billings, MT 59108



Dear Applicant:

On July 25, 2022, the Billings City Council conditionally approved the preliminary plat of Wild Rose Subdivision, 1<sup>st</sup> Filing, subject to the following conditions of approval:

Bill Cole, Mayor  
P.O. Box 1178  
Billings, MT 59103  
P 406.657.8296  
F 406.657.8390

1. To protect public health and safety and ensure correct road construction, prior to final plat approval the applicant will receive approval for all street construction from City of Billings Engineering prior to street construction.
2. To protect public health and safety, prior to final plat approval the applicant will add the following language to the SIA under the heading III Transportation Streets: No obstructions may be placed in any public right of way such as subdivision entry signs, signs, planter beds or any other obstruction that would be a hazard to traffic in the public right-of-way.
3. To ensure correct additional road width construction on 54th Street West, prior to final plat approval, the applicant will add the following wording to the SIA under the heading III Transportation Streets: The subdivider will provide cash-in-lieu contribution for the construction of approximately 3 feet of asphalt surface with satisfactory sub-base, base course, standard curb and gutter along 54th Street West. The cash-in-lieu contribution will also include engineering design and construction administration.
4. To ensure public health and safety and to ensure safe pedestrian access to the south (Cottonwood Park) the developer shall construct a pedestrian crossing over the storm drainage area located along the southern property boundary. Further, the developer shall amend the SIA to include specific information regarding the construction of the crossing.
5. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
6. 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.
7. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, 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](mailto:greend@billingsmt.gov)

Sincerely,

---

William A. Cole, Mayor

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Legacy Subdivision, 2nd Filing - Preliminary Major Plat  
**Presented by:** Monica Plecker  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review** Not Applicable

**RECOMMENDATION**

The Planning Board recommends the City Council conditionally approve the preliminary plat of Legacy Subdivision, 2nd Filing and adopt the Findings of Fact as presented in the staff report.

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

On April 1, 2022, WWC Engineering, applied for preliminary major plat approval for Amended Lot 1, Block 1, Legacy Subdivision, 2nd Filing. The proposed subdivision creates 26 lots for residential development. The subject property is generally located south of Grand Avenue and west of 52nd Street West, below Vintage Estates Subdivision. The property is zoned Neighborhood 3 (N3). Due to delays from a need for additional information, and coordination with City Engineering, the application submittal date moved to May 2, 2022.

**VARIANCES REQUESTED**

No variances from the City Subdivision Regulations have been requested.

**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 and ensure a temporary turn around or other road connection is defined, prior to final plat approval the applicant will provide easement or appropriate agreement documents for a temporary turn around at the north end of 52nd Street West on the south side of the Big Ditch, or other means of continued connection as approve by City Fire and Engineering. This will also be defined in the SIA under the heading III Transportation.
2. To protect public health and safety and to ensure sidewalk continuity, prior to final plat approval the applicant will add paragraph language in the SIA under the heading III Transportation 3: The developer will install all required ADA ramps at the intersections within the proposed subdivision and in front of any lots with public infrastructure on them.
3. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
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, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

**PROCEDURAL HISTORY**

- Pre-application meeting December 16, 2021
- Preliminary plat application submitted to Planning Division on April 1, 2022
- Departmental review meeting April 21, 2022
- Preliminary plat re-submittal April 28, 2022
- Preliminary plat application submitted to Planning Division April 1, 2022, delays from need for additional information, application submittal moved to May 2, 2022.
- Planning Board plat review June 14, 2022
- Planning Board public hearing June 28, 2022
- Preliminary plat to City Council July 25, 2022
- 60 working-day preliminary plat review period ends July 26, 2021

**PLAT INFORMATION**

General location: South of Grand Avenue and west of 52nd Street West, below Vintage Estates Subdivision

Legal Description: Lot 1, Block 1 Legacy Subdivision

Owner/Subdivider: Doug Wild

Engineer and Surveyor: WWC Engineering

Existing Zoning: N3

Existing land use: Vacant

Proposed land use: Residential

Gross and Net area: 8.51 acres; 8.51 acres

Proposed number of lots: 26

Lot size: Max: 17,951 square feet  
Min: 9,181 square feet

Parkland requirements: Parkland dedication is not required with filing as the requirement was met with the Legacy Subdivision, 1st filing.

## **STAKEHOLDERS**

Staff provided an overview presentation of the proposed subdivision. Board President Cook called for questions and discussion. There were none.

Greg Reid, with WWC Engineering, the agent representing the developer, Doug Wild. He clarified and said the original northeast lot was a large lot with three homes proposed on it. This new filing will create three lots from the original one lot with the same number of houses as before, three (3), all on their own lot.

President Cook opened the public hearing and asked if there is anyone wishing to speak in favor or against Legacy Subdivision, 2nd Filing. There were none. President Cook closed the public hearing and called for a motion.

A motion was made to forward a recommendation to City Council to conditionally approve the proposed Legacy Subdivision, 2nd Filing with the proposed conditions of approval and adopt the Finding of Fact as presented in the staff report. The motion was seconded. There was no further discussion on the motion. 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 July 26, 2022. 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, there were found to be minimal impacts from this proposed subdivision.

Findings of Fact

Proposed Plat

SIA Draft

Mayors Letter

## FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Legacy Subdivision, 2<sup>nd</sup> Filing. These findings are based on the preliminary plat application and supplemental documents and address 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 not currently used for agricultural purposes. This subdivision was originally platted March 2006. This filing replats a portion of the original subdivision. Perimeter 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** – Water service will be provided by the City of Billings. The developer will install new water mains as part of private contract number P-752. An existing 8-inch water main is in Beringer Way. The subdivider will connect to that water line with an 8-inch water main. There is a 12-inch water main in 52<sup>nd</sup> Street West from north from Dovetail Avenue to the east. The subdivider will install 8-inch water mains in all the new local streets, new individual services to all the lots, and new fire hydrants. The subdivider will extend the 12-inch water main to the north in 52<sup>nd</sup> Street West along this subdivisions border to the Big Ditch. The subdivider will install all new water lines in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Engineering/Public Works Department and MDEQ. This information is within the SIA under the heading VI, Utilities.

Sanitary sewer service will be provided by connecting to the existing City of Billings sewer mains. There are existing 8-inch sanitary sewer located in Beringer Way. The subdivider will extend the sanitary sewer to the north in 52<sup>nd</sup> Street West along this subdivisions border to the Big Ditch. The subdivider will install new sewer mains in the local streets and individual services for each lot in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ. This information is within the SIA under the heading VI, Utilities.

Private utility companies will provide services to the subdivision. Eight-foot-wide easements on the lot frontage have been requested and will be provided by the subdivider for the private utility companies to install the needed infrastructure.

**Stormwater** – Stormwater drainage for the public streets is proposed to be provided by curb and gutters that discharge into storm water pipes and eventually

to a stormwater detention basin constructed on Lot 1, Block 1 of Legacy Subdivision. This pond shall be extended to provide additional volume for Legacy Subdivision, 2<sup>nd</sup> Filing. This will ultimately take in Lots 1 and 2, Block 1 of Legacy Subdivision. Or it may be on other subdivision lots provided the required detention volume is provided and the stormwater plan is approved by the City of Billings Engineering Department. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual* and will be subject to review and approval by the City Engineering Department. The detention basin facility/facilities, including piping, inlets, structures, detention lores and vegetation shall be maintained by the HOA. Construction of detention ponds and all appurtenances along with a Stormwater Report will be submitted for review and approval by City Engineering before final plat. This information is within the SIA under the heading V, Storm Drainage.

- b. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City’s landfill has adequate capacity for this waste.
- c. **Streets** – The lots within the subdivision will be served by Camp Lane and Rich Lane with Beringer on the west and 52<sup>nd</sup> Street West on the east. Camp Lane and Rich Lane will both be 56-foot-wide rights-of-way. With the original Legacy Subdivision filing 40 feet of right-of-way was dedicated for 52<sup>nd</sup> Street West along the west edge of Oak Ridge Estates subdivision. Oak Ridge Estates Subdivision also provide 40 feet for right-of-way for a total of 80 feet of right-of-way. From Rich Lane going north to the Big Ditch Legacy Subdivision dedicated 40 feet of right-of-way, Certificate of Survey 2990 will provide the additional 40 feet when it is developed. Internal streets shall all be 34 feet back of curb to back of curb within a 56-foot-wide right of way and shall be built to City of Billings street standards. They shall be built to grade with a satisfactory subbase, base course, curb and gutter with asphalt surface.

A temporary turn around will be provided at the north end of 52<sup>nd</sup> Street West on the south side of the Big Ditch. Easement documents will be provided for that turn around. **(Condition #1)**

The sidewalks will be installed by the home builder on a lot-by-lot basis, as lots develop. The developer will install all ADA required ramps at the intersections within the proposed subdivision and in front of lots with detention basins. The developer will add language in the SIA under the heading III Transportation B Sidewalks stating they will install sidewalks on the lots where detention basins will be located. **(Condition #2)**

A Traffic Impact Study (TIS) update was completed with this filing to evaluate the subdivision’s impact on the street network in the surrounding area. The subdivision layout does not change the number of lots enough to alter the outcome of the TIS. Cash contributions for surrounding roads and intersection

will be made at the time of final plat as defined in the SIA under the heading III Transportation.

- d. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station serving this area is located at 54<sup>th</sup> St. West and Grand Ave. (Station #7). The subdivision is located within the ambulance service area of American Medical Response (AMR).
- e. **Schools** – School District #2 provides educational services to elementary through high school students. Schools serving these students are Meadowlark Elementary, Ben Steele Middle School, and West High School. At the time of the writing of this staff report all schools are shown as being over capacity.
- f. **Parks and Recreation** – Residential subdivisions are required by City of Billings Subdivision Regulations to provide parkland for the residents of the subdivision. This subdivision provided a cash in lieu contribution with the original subdivision platting. With that contribution this subdivision is not required to provide any further land or cash contribution.
- g. **Mail Delivery** - The United States Postal Service will provide postal service to the subdivision and has indicated that centralized mailbox units will be required as were installed in developed areas of this subdivision. The developer will need to coordinate mailbox locations with the postal service. (**Condition #3**)

### **3. Effect on the natural environment**

The subject property is not currently farmland. This land was platted in March of 2006 as Legacy Subdivision and has not developed completely. This re-subdivision of the Legacy Subdivision overall will have little effect on the natural environment.

### **4. Effect on wildlife and wildlife habitat**

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

### **5. Effect on the public health, safety and welfare**

There will be minimal impacts to public health, safety and welfare because of this subdivision.

## **B. Was an Environmental Assessment required? [(MCA 76-3-616 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 2014 Transportation Plan, and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-302.H.4.]**

**1. City of Billings 2016 Growth Policy**

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

**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.

**2. 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.

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

There is a proposed trail along the Big Ditch on the north edge of this subdivision. With the original platting of Legacy Subdivision, a 60-foot-wide right-of-way was platted over the Big Ditch for a trail. This trail will eventually connect the subdivision to future trails identified in the BABTMP.

**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 Suburban Neighborhood (N3) zoning. The lot frontages conform to the requirements of this zone. Other building setbacks and structure specific requirements will be reviewed for compliance at the time of building permit review.

**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 provide utility easements as requested by private utility companies 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 Beringer Way. New internal streets will provide access to individual lots.

**CONCLUSIONS OF FINDINGS OF FACT**

- The preliminary plat of Legacy Subdivision, 2<sup>nd</sup> Filing does not create any adverse impacts that warrant denial of the subdivision.
- The proposed subdivision conforms to several of the goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway/Trail Plans.
- The proposed subdivision complies with state and local subdivision regulations, local zoning, and sanitary requirements and provides legal and physical access to each lot.
- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

**RECOMMENDATION**

It is recommended to City Council that the preliminary plat of Legacy Subdivision, 2<sup>nd</sup> Filing be conditionally approved and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, July 25, 2022

---

William A. Cole, Mayor

# PLAT OF LEGACY SUBDIVISION, 2ND FILING

BEING LOT 1, OF BLOCK 1 AMENDED PLAT OF LEGACY SUBDIVISION, DOCUMENT NO. \_\_\_\_\_  
 WITHIN NW1/4 OF SECTION 4, T01S, R25E, P.M.M.  
 CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: LEGACY, LLC  
 DATE SURVEYED: FEBRUARY 2022  
 PREPARED BY: WWC ENGINEERING

- LEGEND**
- ▣ FOUND REBAR
  - FOUND PURPLE PLASTIC CAP (BRUCKNER 6302LS)
  - SET 5/8" REBAR W/ PURPLE PLASTIC CAP (BRUCKNER 6302LS)
  - FOUND CENTRELINE MONUMENT
- SUBDIVISION BOUNDARY
- UTILITY EASEMENT DEDICATED THIS PLAT
- PREVIOUS LOT LINE
- 2' NO ACCESS EASEMENT DEDICATED THIS PLAT
- DEDICATED PUBLIC RIGHT-OF-WAY



## LEGAL DESCRIPTION AND PROPERTY OWNER CERTIFICATE OF DEDICATION

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 the plat hereunto recorded, the following described tract of land to wit:

The parcel situated in the NW1/4 of Section 4, T01S, R25E, P.M.M., City of Billings, Yellowstone County, Montana, and more particularly, described as Lot 1, of Block 1, Amended Plat of Legacy Subdivision Document No. \_\_\_\_\_ said tract containing 6.51 acres, more or less.

The above described tract of land is to be known and designated as LEGACY SUBDIVISION, 2ND FILING, City of Billings, Yellowstone County, Montana. The undersigned owners do hereby grant unto said City of Billings, Yellowstone County, Montana, Law and Order and Public Safety, the right to use and enjoy the easement to have and hold forever. The lands designated as public right-of-way and hereby granted and dedicated to the use of the public forever shall include the portions of Rich Lane and Camp Lane as shown on the plat.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2022.

LEGACY LLC

## ACKNOWLEDGMENTS

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned a notary public for the State of \_\_\_\_\_, personally appeared \_\_\_\_\_ of Legacy, LLC, 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 them.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

## ERRORS AND OMISSIONS REVIEW

Reviewed by \_\_\_\_\_ day of \_\_\_\_\_, 2022, pursuant to section 76-5-411(2)(a), M.C.A. Reviewed for errors and omissions in calculation and drafting this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Examining Land Surveyor \_\_\_\_\_ Reg. No. \_\_\_\_\_

## CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-5-411(1)(b), M.C.A., that all real and personal 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 \_\_\_\_\_, 2022.

DEPUTY 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, 2022, a survey was performed under the supervision of a tract of land to be known and designated as LEGACY SUBDIVISION, 2ND FILING, City of Billings, Yellowstone County, Montana. The survey was performed 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.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

John Bruckner  
 Registration Number 63022 LS

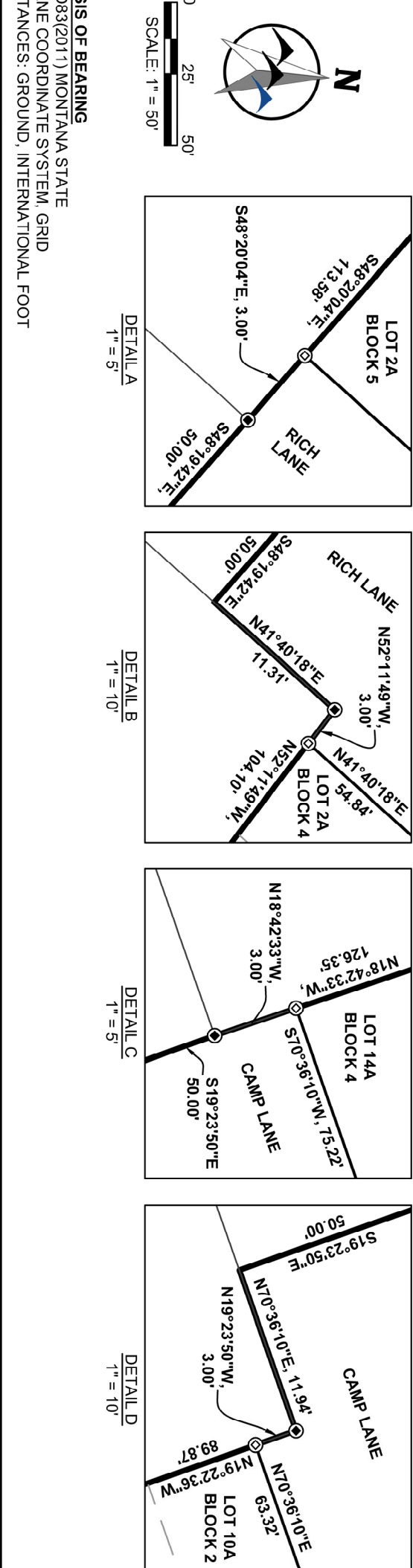
## SUBDIVISION IMPROVEMENTS AGREEMENT

## CERTIFICATE OF CITY ENGINEERS OFFICE

I hereby certify that I have examined the original plat and find that it conforms with Section 76-4-125(1)(d), M.C.A., regarding sanitary restrictions since the plat is being recorded. I have also examined the original plat and find that it conforms with the City of Billings, Yellowstone County, Montana, Ordinance 10-2017 regarding sanitary restrictions since the plat is being recorded.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY ENGINEERS OFFICE



## NOTICE OF APPROVAL

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

Date \_\_\_\_\_

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 LEGACY SUBDIVISION, 2ND FILING has been duly examined and have found the same to conform to the laws and hereby approve it.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

CITY OF BILLINGS, MONTANA

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

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

## CERTIFICATE OF FILING BY CLERK AND RECORDER

| Curve No. | Radius  | Length  | Chord Bearing | Chord Length |
|-----------|---------|---------|---------------|--------------|
| C1        | 428.00' | 216.12' | N65°08'14"E   | 213.83'      |
| C2        | 428.00' | 137.09' | N79°46'43"E   | 136.51'      |
| C3        | 10.00'  | 15.71'  | N43°57'14"E   | 14.15'       |
| C4        | 10.00'  | 15.71'  | S46°02'46"E   | 14.15'       |
| C5        | 372.00' | 118.15' | N18°21'08"    | 118.65'      |
| C6        | 372.00' | 187.84' | N65°08'14"E   | 185.65'      |
| C7        | 372.00' | 21.72'  | S68°55'48"W   | 21.72'       |
| C8        | 428.00' | 150.37' | S71°19'21"W   | 146.61'      |
| C9        | 10.00'  | 15.43'  | S43°10'13"W   | 13.95'       |
| C10       | 10.00'  | 16.64'  | N46°59'38"W   | 14.39'       |
| C11       | 372.00' | 128.56' | S77°09'29"W   | 127.65'      |
| C12       | 428.00' | 24.69'  | S88°55'48"W   | 24.99'       |
| C13       | 400.00' | 201.38' | N65°08'14"E   | 199.84'      |
| C14       | 400.00' | 128.12' | N79°46'43"E   | 127.58'      |
| C15       | 400.00' | 23.36'  | S88°55'48"W   | 23.36'       |
| C16       | 400.00' | 151.47' | S79°06'21"W   | 150.56'      |

**LEGACY SUBDIVISION, 2ND FILING**  
 YELLOWSTONE COUNTY, MONTANA

PREPARED BY: LEGACY, LLC  
 350 OLD MANS ROAD  
 BILLINGS, MT 59102

DESIGNED BY: WWC ENGINEERING  
 500 WEST 21ST AVENUE  
 BILLINGS, MT 59102

PROJECT NO. 2122

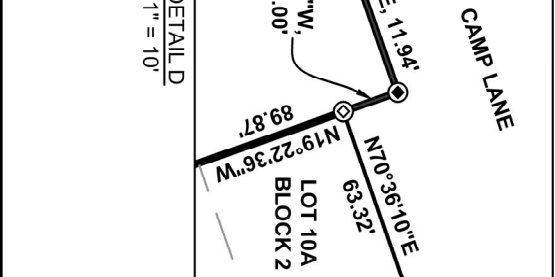
NO. 1 REVISION

DATE: 2/28/22

CHECKED BY: JWB

DATE: 2/28/22

SCALE: 1" = 5'



LEGACY, LLC  
 350 OLD MANS ROAD  
 BILLINGS, MT 59102

WWC ENGINEERING  
 500 WEST 21ST AVENUE  
 BILLINGS, MT 59102

**SUBDIVISION IMPROVEMENTS AGREEMENT  
 & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
 IMPROVEMENT DISTRICTS  
 LEGACY SUBDIVISION, 2<sup>nd</sup> FILING  
 CITY OF BILLINGS  
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**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS**

**LEGACY SUBDIVISION, 2<sup>ND</sup> FILING**

**This agreement** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **LEGACY LLC**, whose address for the purpose of this agreement is **353 Old Hays Road, POB 470, Hays, MT 59527**, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of Legacy Subdivision, 2<sup>nd</sup> Filing, 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 Board of Planning recommended conditional approval of a preliminary plat of Legacy Subdivision, 2<sup>nd</sup> Filing; and

**WHEREAS**, at a regular meeting conducted on \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of Legacy Subdivision, 2<sup>nd</sup> 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 Legacy Subdivision, 2<sup>nd</sup> 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**

There are no variances requested by the Subdivider from the City's Subdivision Regulations.

**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 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 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. It is recommended that a lot specific geotechnical report be obtained prior to home construction.
- D. 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.
- 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. Due to the potential flood waters from the Cove Creek Drainage, the main finish floor of each house is recommended to be a minimum of 18 inches above the top of curb elevation in the front of each lot.

### **III. TRANSPORTATION**

#### **A. Streets**

- A 56-foot right-of-way for Rich Lane and Camp Lane will be dedicated with this subdivision. 40-feet of right-of-way for 52nd Street West was dedicated in the previous filing, and an additional 40-feet of right-of-way was dedicated by Oak Ridge Estates Subdivision, for a total of 80-feet of right-of-way. Only 40-feet of right-of-way is dedicated from the previous filing adjacent to Parcel 2C of Certificate of Survey 2990 as no right-of-way has been dedicated from said Parcel.
- Private Contract P-788 shall construct public streets and curb and gutter with the subdivision. All roads shall be 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 improvement ordinance and shall be reviewed and approved by the City Engineer prior to construction.
- A traffic accessibility study has been completed for the subdivision as part of the original SIA. As general layout of the improvements did not change enough to alter traffic analysis, prior SIA conclusions shall be utilized. All required improvements and permits identified therein shall be completed by the Developer at the Developer's expense. These are more specifically identified as follows:
  - i. 52nd Street West shall be constructed with curb and gutter with a 30-foot half street asphalt section along the property frontage where 80-feet of right-of-way is dedicated. A 28-foot half street asphalt section shall be constructed where 40-feet of right-of-way is dedicated, including transition areas where the road deviates from the platted centerline. A "ROAD CLOSED" sign shall be

installed on 52nd Street West at a location approved by the City Engineering Department. A culvert will be installed by the developer for a future road crossing of Big Ditch on 52nd Street West, as approved by the City Engineering Department.

## **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 5-foot wide boulevard along Rich Lane and Camp Lane.
- Sidewalks shall be 5-foot wide with 10-foot wide boulevard along 52<sup>nd</sup> Street West where 80-feet of right-of-way is dedicated.
- Sidewalks shall be 5-foot wide with 5-foot wide boulevard along 52<sup>nd</sup> Street West where 40-feet of right-of-way is dedicated, if applicable, including transition areas where the road deviates from the platted centerline.

## **C. Street Lighting**

- No street lighting is proposed for this development. However, street lighting is included in the Waiver of Right to Protest.

## **D. Traffic Control Devices**

- No traffic signals are anticipated within this development but are included in the Waiver of Right to Protest.

## **E. Access**

- Access to the lots will be from drive approaches installed at the time of the lot development.
- A 2-foot No Access Easement is dedicated along 52<sup>nd</sup> Street West with this development includes the east line of the following lots:
  - Lot 9A, Block 5
  - Lot 8A and 9A, Block 4
  - Lot 6A, Block 2

#### **F. Billings Area Bikeway and Trail Master Plan (BABTMP)**

- This development is located within the jurisdiction of the BABTMP but there are no trails proposed with this development.

#### **G. Public Transit**

- This development does not require improvements to ensure public transit service. The nearest public transit stop is at the intersection of Shiloh Road and Broadwater and Shiloh Road and Grand Avenue.

### **IV. EMERGENCY SERVICES**

- Emergency service access to the Subdivision will be provided via Beringer Way, Dovetail Avenue, and a small portion of 52<sup>nd</sup> Street West, all of which were constructed as part of Private Contract Number P-752 improvements.
- 52<sup>nd</sup> Street West is a dead-end route along the northern edge of the property. The Developer will provide proper signage and blockades approved by the City of Billings Engineering Department. All roads as part of the Legacy Subdivision, 2<sup>nd</sup> Filing improvements will have signage and blockades reviewed and approved by the City of Billings Engineering Department.
- At the time of future lot development 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.

## V. STORM DRAINAGE

- Storm drainage shall be provided by a combination of surface drainage, curb and gutters, and underground storm pipe. Stormwater detention, constructed under Private Contract Number P-752, is provided on Lot 1 of Block 1 of Legacy Subdivision. Said pond shall be extended to provide additional volume for Legacy Subdivision, 2<sup>nd</sup> Filing. Stormwater for Private Contract Number P-752 and Legacy Subdivision, 2<sup>nd</sup> Filing will ultimately be provided on Lots 1 and 2 of Block 1 of Legacy Subdivision and storm easements shall be provided over said lots, or on other Subdivision lots provided the requisite detention volume is provided and the stormwater plan is approved by the engineering department. All drainage improvements, including the sizing of storage, will be subject to review and approval by the engineering department and in conformance with the *Stormwater Management Manual* in place at the time of platting and Section 23-706, BMCC.
- Stormwater detention facilities, including internal pond piping, inlets, structures, pond slopes and vegetation, shall be maintained through the Legacy Subdivision HOA as outlined in the HOA Stormwater Maintenance Agreement.

## 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.

- 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 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**

- As part of Private Contract Number P-752, an 8-inch water main is installed in Beringer Way and stubbed to the Legacy Subdivision, 2<sup>nd</sup> Filing boundary along Rich Lane and Camp Lane. A 12-inch main is stubbed north from Dovetail Avenue along 52<sup>nd</sup> Street West to the Legacy Subdivision, 2<sup>nd</sup> Filing boundary. This 12-inch main shall extend under Big Ditch to the north edge of the Big Ditch right-of-way with design approved by the City of Billings and Montana DEQ. An 8-inch water main will tie into the 8-inch water main in Rich Lane and Camp Lane. Provisions shall be made for the looping of the interior Legacy Subdivision, 2<sup>nd</sup> Filing water mains to connect to the main in Beringer Way. Interior mains will be 8-inch along Rich Lane and Camp Lane, and a 12-inch along 52<sup>nd</sup> Street West. Private Contract Number P-752 and Legacy Subdivision ,2<sup>nd</sup> Filing will be looped to the 8-inch main feeding the entire subdivision at the south edge of Vintage Estates. Water services will be installed for all lots within the subdivision.

#### **B. Sanitary Sewer**

- Currently, an 8-inch sanitary sewer main runs in Beringer Way to a lift station located near the southern boundary of Private Contract Number P-752. Existing mains are extended from the Beringer Way main into Legacy Subdivision, 2<sup>nd</sup> Filing along Rich Lane and Camp Lane. The Subdivider will extend 8-inch lateral sanitary sewer lines from the existing mains in Rich Lane and Camp Lane to the east, and Rich Lane will continue north in 52<sup>nd</sup> Street West. Subdivider and City also agree provisions shall be made to the sewer main in 52<sup>nd</sup> Street West to allow for future flows from Parcel 2C of C.O.S. 2990. Sewer services will be installed for all lots within the subdivision.

### **C. 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 dedication with this subdivision. The parkland requirements were previously met by Legacy Subdivision.

### **VIII. IRRIGATION**

- The lateral supply ditch running north-south through the property is piped as part of Private Contract Number P-752 and no additional improvements are required. All irrigation rights associated with this property shall be terminated and no longer transferred to any properties undergoing residential development.
- An existing 60-foot right-of-way granted to Big Ditch is located along the northern edge of Legacy Subdivision, 2<sup>nd</sup> Filing.

### **IX. SOILS/GEOTECHNICAL STUDY**

- A preliminary geotechnical analysis was performed for this property by Rimrock Engineering in 2019. This preliminary investigation does not include testing for foundations design and settlement analysis.
- According to the International Building Code, most of the soils classified on this site would require foundation drainage. This issue would be addressed at the time the foundation elevation is determined for each specific site. Because of these potential soil and foundation issues, the lot owner, prior to constructing structures on this site, will complete a design level geotechnical investigation.

### **X. PHASING OF IMPROVEMENTS**

- There will be no phasing for the improvements.

### **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.

**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.



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: \_\_\_\_\_





Bill Cole, Mayor  
P.O. Box 1178  
Billings, MT 59103  
P 406.657.8296  
F 406.657.8390

July 25, 2022

Doug Wild  
C/O WWC Engineering  
550 S. 24<sup>th</sup> ST W. Ste 201  
Billings, MT 59102

Dear Applicant:

On July 25, 2022, the Billings City Council conditionally approved the preliminary plat of Legacy Subdivision, 2<sup>nd</sup> Filing, subject to the following conditions of approval:

1. To protect public health and safety and ensure a temporary turn around or other road connection is defined, prior to final plat approval the applicant will provide easement or appropriate agreement documents for a temporary turn around at the north end of 52nd Street West on the south side of the Big Ditch, or other means of continued connection as approved by City Fire and Engineering. This will also be defined in the SIA under the heading III Transportation.
2. To protect public health and safety and to ensure sidewalk continuity, prior to final plat approval the applicant will add paragraph language in the SIA under the heading III Transportation 3, The developer will install all required ADA ramps at the intersections within the proposed subdivision and in front of any lots with public infrastructure on them.
3. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS to determine what type of deliver system is preferred and to locate and provide the correct amount of space for safely delivering the mail to the residents.
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, 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](mailto:greend@billingsmt.gov)

Sincerely,

---

William A. Cole, Mayor

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Second / Final Reading - Ordinance 22- 5811 - Correction of Legal Description  
**Presented by:** Karen Husman  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review** Not Applicable

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**RECOMMENDATION**

Staff recommends approval of the second reading to amend Ordinance 22-5811.

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

City Zone Change 1015 - City Council approved Zone Change 1015 on first reading on May 25, 2022, and on second reading on June 13, 2022, under City Ordinance 22-5811. Zone Change 1015 was a zone change request from Mid-Century Neighborhood (N-2) to Suburban Neighborhood (N3) approved with an incorrect legal description on the ordinance. This action is to amend the legal description cited in the ordinance to read as follows: "Block 11, Lot 2, Emma Jean Heights Sub., 2nd Filing". The property was properly represented in the zone change process, but the legal description read 1st Filing instead of 2nd Filing.

**STAKEHOLDERS**

The City Council must hold a public hearing to amend the ordinance. The hearing is not on the zone change, but rather the amendment of the legal description. The Council held a public hearing and approved the ordinance on first reading at its meeting on July 11, 2022, and did not receive any public comment on this item. Amendments to the ordinance were offered by the Mayor for Section 5. Repealer. Council voted to unanimously amend the ordinance and the changes are reflected in the ordinance attached. This is the final reading of this ordinance.

**ALTERNATIVES**

City Council should:

- Approve the corrected ordinance. The correction to the legal description needs to be approved to properly map and record the change in zoning for the property that was approved by the Council.

**FISCAL EFFECTS**

This item has no impact on the Planning Division budget.

**SUMMARY**

The original ordinance (copy) and the corrected ordinance are attached.

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**Attachments**

Corrected Ordinance  
Ordinance to be corrected

ORDINANCE 22-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THE ZONE CLASSIFICATION ON  
BLOCK 11, LOT 2, EMMA JEAN HEIGHTS SUB., 2<sup>ND</sup> FILING  
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.** **Block 11, Lot 2, Emma Jean Heights Sub., 2<sup>nd</sup> FILING** is presently zoned **Mid-Century Neighborhood Residential (N2)** and is shown on the official zoning map within this zone.

**Section 3. ZONE DISTRICT AMENDMENT.** The official zoning map is hereby amended and the zoning for **Block 11, Lot 2, Emma Jean Heights Sub., 2<sup>nd</sup> FILING**, is hereby changed from **Mid-Century Neighborhood Residential (N2)** to **Suburban Neighborhood Residential (N3)**, and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining **Suburban Neighborhood Residential (N3)** as set out in the Billings, Montana City Code.

**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, including ordinance 22-5811 approved on second reading June 13, 2022, which was intended to accomplish this zoning map amendment but included an incorrect legal description of the subject property referencing Emma Jean Heights Sub., 1st FILING instead of Emma Jean Sub. 2nd FILING.

**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 11<sup>th</sup> day of July, 2022.

PASSED, ADOPTED and APPROVED on second reading this 25th day of July,  
2022

CITY OF BILLINGS

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

William A. Cole, Mayor

Attest:

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

Denise R. Bohlman, City Clerk

Zone Change 1015, Emma Jean Heights

Correcting Ordinance 22-5211

## ORDINANCE 22-5811

### AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE ZONE CLASSIFICATION ON BLOCK 11, LOT 2, EMMA JEAN HEIGHTS SUB., 1<sup>ST</sup> FILING 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.** **Block 11, Lot 2, Emma Jean Heights Sub., 1<sup>st</sup> FILING** is presently zoned **Mid-Century Neighborhood Residential (N2)** and is shown on the official zoning map within this zone.

**Section 3. ZONE DISTRICT AMENDMENT.** The official zoning map is hereby amended and the zoning for **Block 11, Lot 2, Emma Jean Heights Sub., 1<sup>st</sup> FILING**, is hereby changed from **Mid-Century Neighborhood Residential (N2)** to **Suburban Neighborhood Residential (N3)**, and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining **Suburban Neighborhood Residential (N3)** as set out in the Billings, Montana City Code.

**Section 4. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

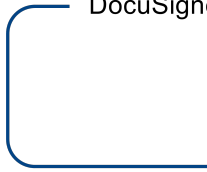
**Section 5. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**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 23<sup>RD</sup> day of May, 2022.

PASSED, ADOPTED and APPROVED on second reading this 13<sup>th</sup> day of June, 2022.

DocuSigned by: CITY OF BILLINGS



DocuSigned by:  
BY: William A Cole  
William A. Cole, Mayor

Attest:

DocuSigned by:  
BY: Joni Keenher  
Joni Keenher, Deputy City Clerk  
Zone Change 1015, Emma Jean Heights

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Ward Boundary Expansion Ordinance Second Reading - Annexation 22-06  
**Presented by:** Hunter Kelly, Planner 1  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review** No

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**RECOMMENDATION**

Staff recommends the City Council approve this ordinance on second reading, adding recently annexed property to Ward III. Council conducted a public hearing and approved this ordinance on first reading on July 11.

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

McCall Development, Inc. on behalf of McCall Properties, LLC & Brittany's Dream, LLC submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located north of Elysian Road, south of Titan Avenue, and west of Mallowney Lane. The land being annexed is described as being a tract of Land situated in the SE 1/4 of Section 18, T.1S., R.26E, P.M.M., Yellowstone County, Montana, more particularly described as follows: Lot 6A, Block 1, of the Amended Plat of Lots 5 and 6, Block 1, of Titan Subdivision, recorded November 2nd, 2006, under Document No. 3399260. Including adjacent Right-Of-Way of Titan Avenue. Said annexation containing 1.526 gross acres and 1.233 net acres, more or less.

Upon Council approval, this annexation requires a change in the boundaries of Ward III. Two Readings are required for this action. The first reading and public hearing was held July 11, 2022 and approved by the Council. The second reading will occur at this meeting.

**ALTERNATIVES**

City Council may:

- Approve adding the subject property to Ward III, or;
- Disapprove adding the subject property to Ward III. Disapproval will not modify the boundary of Ward III and will create a problem where property inside the City Limits is not within a City Ward.

**FISCAL EFFECTS**

This application has no impact on the Planning Division Budget.

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**Attachments**

Ward Boundary Ordinance

**ORDINANCE NO. 22-\_\_\_\_\_**

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 III 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 III the following described real property:

A tract of Land situated in the SE 1/4 of Section 18, T.1S., R.26E, P.M.M., Yellowstone County, Montana, more particularly described as follows:

Lot 6A, Block 1, of the Amended Plat of Lots 5 and 6, Block 1, of Titan Subdivision, recorded November 2nd, 2006, under Document No. 3399260.

Including adjacent Right-Of-Way of Titan Avenue.

Said annexation containing 1.526 gross acres and 1.233 net acres, more or less.

(# 22-06) See Exhibit "A" Attached

2. EFFECTIVE DATE. This ordinance shall be effective either thirty (30) days after second reading and final adoption as provided by law, or upon the effective date of Resolution No. 22-\_\_\_\_\_ approving the annexation of the above territory, whichever date is later.

3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

4. 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.

PASSED by the City Council on the first reading this 11<sup>th</sup> day of July, 2022.

PASSED by the City Council on the second reading this 25<sup>th</sup> day of July, 2022.

THE CITY OF BILLINGS:

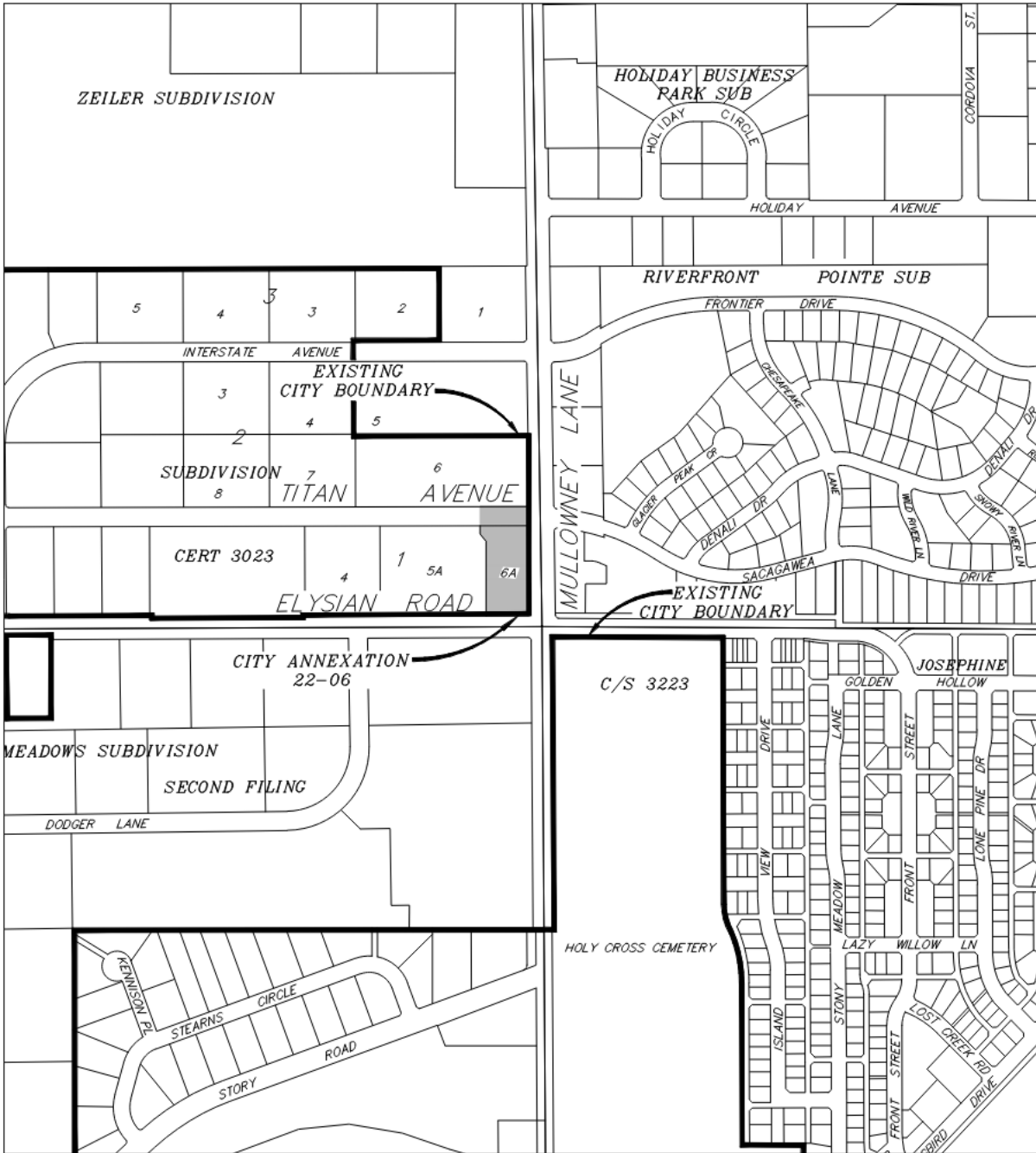
\_\_\_\_\_  
William A. Cole, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Denise Bohlman, CITY CLERK

(#22-06)

# EXHIBIT "A"



**City Council Regular**

**Date:** 07/25/2022  
**Title:** Payment of Claims for week of June 20, 2022  
**Presented by:** Andy Zoeller, Finance Director  
**Department:** Finance  
**Presentation:** No  
**Legal Review** Not Applicable

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**RECOMMENDATION**

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of \$2,842,037.31 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 is 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.

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**Attachments**

COUNCIL MEMO\_06202022

| Check Date | Check  | Name                       | Fund Name           | Amount        | Item Desc                                                        |
|------------|--------|----------------------------|---------------------|---------------|------------------------------------------------------------------|
| 06/20/2022 | 853129 | AAAE                       | Airport             | \$ 18,000.00  | Invoice #22FAVOL185512. 2022 Federal Affairs Membership          |
| 06/20/2022 | 853133 | Adv Eng and Environ. Serv. | Storm Sewer         | \$ 15,766.90  | WO 2133 Babcock Boulevard Drainage Area Improvements             |
| 06/20/2022 | 853139 | Arm Scor Cartridge Inc     | Public Safety       | \$ 19,195.00  | Arm Scor 14966, 40 S&W, 308, 10mm, 38 spl, 45acp                 |
| 06/20/2022 | 853140 | Askin Construction LLC     | Wastewater          | \$ 15,293.22  | WO 21-11Highwood Dr Reconstruction                               |
| 06/20/2022 | 853140 | Askin Construction LLC     | Water               | \$ 213,793.12 | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853140 | Askin Construction LLC     | Gas Tax             | \$ 7,219.48   | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853140 | Askin Construction LLC     | Sidewalk            | \$ 1,399.70   | WO 21-11Highwood Dr Reconstruction                               |
| 06/20/2022 | 853142 | Avery Electric Motor LLP   | General             | \$ 3,515.58   | pump motor repairs                                               |
| 06/20/2022 | 853143 | BEM Holdings Inc           | Public Safety       | \$ 5,548.95   | FIRE 1: PAINT, REPLACE CEILING TILES, REINSTALL PARTITIONS       |
| 06/20/2022 | 853143 | BEM Holdings Inc           | Public Safety       | \$ 2,930.40   | ADDED: FIRE 1 BASEMENT HALLWAY: PAINT CEILING TILES              |
| 06/20/2022 | 853144 | Big Ditch Company          | Storm Sewer         | \$ 11,948.00  | 2022 Stormwater Discharge; 00019355                              |
| 06/20/2022 | 853147 | Billings Depot Inc.        | Engineering         | \$ 14,789.43  | July Prepaid Rent                                                |
| 06/20/2022 | 853148 | Billings Restoration LLC   | Solid Waste         | \$ 59,519.35  | WO 22-37 Landfill Drop-Off Building; 2697 Pmt1F                  |
| 06/20/2022 | 853149 | Billings Tourism           | Tourism BID #2      | \$ 743,374.00 | Paid May Distributed June 2022                                   |
| 06/20/2022 | 853150 | Brenntag Pacific Inc       | Wastewater          | \$ 10,901.60  | sodium hypochlorite                                              |
| 06/20/2022 | 853151 | Brey Industries LLC        | Public Safety       | \$ 9,563.40   | FIRE 7: DEMO CONCRETE, RE-GRADE, RE-COMPACT SOILS                |
| 06/20/2022 | 853153 | Business Tax Section       | Gas Tax             | \$ 956.03     | WO 20-28 Songbird Drive Construction; 7 WO2028 Knife River       |
| 06/20/2022 | 853153 | Business Tax Section       | Airport             | \$ 3,731.57   | AIP-73 Terminal Expansion - Eligible for Reimbursement           |
| 06/20/2022 | 853153 | Business Tax Section       | Airport             | \$ 315.69     | AIP-73 Terminal Expansion - Ineligible for Reimbursement         |
| 06/20/2022 | 853153 | Business Tax Section       | Sidewalk            | \$ 81.32      | WO 20-28 Songbird Drive Construction; 7 WO2028 Knife River       |
| 06/20/2022 | 853153 | Business Tax Section       | Water               | \$ 2,159.52   | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853153 | Business Tax Section       | Wastewater          | \$ 154.48     | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853153 | Business Tax Section       | Sidewalk            | \$ 14.14      | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853153 | Business Tax Section       | Gas Tax             | \$ 72.92      | WO 21-11Highwood Dr Reconstruction; 2 WO2111 Askins              |
| 06/20/2022 | 853153 | Business Tax Section       | Facilities Mngmt    | \$ 99.86      | Repair faulty roof panel system at the BOC Salt Shed 1%          |
| 06/20/2022 | 853153 | Business Tax Section       | Solid Waste         | \$ 601.21     | WO 22-37 Landfill Drop-Off Building; 2697 Pmt1F                  |
| 06/20/2022 | 853153 | Business Tax Section       | Facilities Mngmt    | \$ 57.00      | Retainage Release for Purchase Order 21-000560                   |
| 06/20/2022 | 853153 | Business Tax Section       | Public Safety       | \$ 85.65      | FIRE 1: PAINT, REPLACE CEILING TILES                             |
| 06/20/2022 | 853153 | Business Tax Section       | Transit             | \$ 274.22     | Fuel Management System Upgrade for METroplex                     |
| 06/20/2022 | 853153 | Business Tax Section       | Park District 1     | \$ 360.00     | tax on Grizzly Resources #5 for Riverfront Park thinning project |
| 06/20/2022 | 853153 | Business Tax Section       | Water               | \$ 507.57     | WO2226 WTP Sediment Hauling; 2F WO2226 Winkler                   |
| 06/20/2022 | 853153 | Business Tax Section       | Public Safety       | \$ 96.60      | CGR - FIRE 7: INSTALL NEW DRAINAGE SYSTEM                        |
| 06/20/2022 | 853153 | Business Tax Section       | Tax Increment South | \$ 1,514.61   | WO 21-42 SBURA Gravel Streets, Phase I; 1WO2142 KnifeRiver       |
| 06/20/2022 | 853153 | Business Tax Section       | Property Ins        | \$ 47.60      | Broken window at Library                                         |
| 06/20/2022 | 853165 | Dale & Jax Door & Glass    | Property Ins        | \$ 4,712.40   | Broken window at Library                                         |
| 06/20/2022 | 853165 | Dale & Jax Door & Glass    | Public Safety       | \$ 170.00     | 23510 FIRE 7: INSTALLED NEW STRIKE PLATE                         |

| Check Date | Check  | Name                      | Fund Name           | Amount        | Item Desc                                                           |
|------------|--------|---------------------------|---------------------|---------------|---------------------------------------------------------------------|
| 06/20/2022 | 853165 | Dale & Jax Door & Glass   | Public Safety       | \$ 120.00     | 23521 FIRE 7: ADJUSTEF HINGE                                        |
| 06/20/2022 | 853165 | Dale & Jax Door & Glass   | Public Safety       | \$ 120.00     | 23526 FIRE 7: ADJUSTED TOP & BOTTOM HINGES                          |
| 06/20/2022 | 853165 | Dale & Jax Door & Glass   | Public Safety       | \$ 620.00     | FIRE 6: REPL'D DOOR CLOSER                                          |
| 06/20/2022 | 853167 | Dell Computer L P         | Information         | \$ 1,743.48   | OptiPlex 5000, i7, 32GB RAM, 512GB SSD, 2-24" monitors              |
| 06/20/2022 | 853167 | Dell Computer L P         | Public Safety       | \$ 1,449.72   | Dell 7430 14" laptop, i5, 16GB RAM, 256GB SSD with cellular -Fire   |
| 06/20/2022 | 853169 | Department of the         | General             | \$ 4,932.72   | CY 2021 Form 720 Fees Paid FY2022                                   |
| 06/20/2022 | 853170 | Dept Of Natural Resources | Gas Tax             | \$ 31,465.00  | WO 09-12 Inner Belt Loop; Easement/ROW Sec 14 1N R 25E              |
| 06/20/2022 | 853170 | Dept Of Natural Resources | Gas Tax             | \$ 46,880.00  | WO0912 Inter Belt Loop Easement / ROW Sec 22 1N R25E                |
| 06/20/2022 | 853171 | Desert Mountain Corp.     | Street/Traffic Oper | \$ 5,294.89   | inv#22-95281 ice slicer                                             |
| 06/20/2022 | 853172 | DGM Systems               | Airport             | \$ 6,715.00   | Invoice #DGM13038. Bandit Arm Controllers For Employee Lot          |
| 06/20/2022 | 853173 | DOWL                      | Storm Sewer         | \$ 9,137.20   | WO 20-24 West End Storm System Improvements; 4036.21844.01-13       |
| 06/20/2022 | 853173 | DOWL                      | Arterial Streets    | \$ 833.00     | 24th St W/Central Ave Signal Improvements; 4024.21753.01-22         |
| 06/20/2022 | 853175 | Downtown Billings BID     | Downtown BID        | \$ 119,363.57 | BID Assessment; Paid May Distributed June 2022                      |
| 06/20/2022 | 853177 | Dustbusters               | Street/Traffic Oper | \$ 6,462.05   | inv#71542 dustgard for gravel streets                               |
| 06/20/2022 | 161    | Endress & Hauser Inc      | Wastewater          | \$ 2,367.34   | ELECTRICAL SUPPLIES SONICS AT WRF                                   |
| 06/20/2022 | 161    | Endress & Hauser Inc      | Wastewater          | \$ 216.38     | ELECTRICAL SUPPLIES FOR SONICS AT WRF                               |
| 06/20/2022 | 853184 | EnvisionWare, Inc         | Library             | \$ 12,500.00  | Library Self-checks replacement per the TRP downpayment             |
| 06/20/2022 | 853186 | Faro Technologies Inc     | Police Programs     | \$ 5,333.31   | Billings Police Department. VR Ready Notebook.                      |
| 06/20/2022 | 853189 | Fisher Sand & Gravel Co   | Street/Traffic Oper | \$ 2,329.25   | inv#68557 asphalt                                                   |
| 06/20/2022 | 853189 | Fisher Sand & Gravel Co   | Street/Traffic Oper | \$ 2,306.70   | inv#68324 asphalt                                                   |
| 06/20/2022 | 853189 | Fisher Sand & Gravel Co   | Street/Traffic Oper | \$ 114.40     | inv#68322 asphalt                                                   |
| 06/20/2022 | 853189 | Fisher Sand & Gravel Co   | Street/Traffic Oper | \$ 454.85     | inv#68323 asphalt                                                   |
| 06/20/2022 | 853189 | Fisher Sand & Gravel Co   | Street/Traffic Oper | \$ 2,313.85   | inv#68321 asphalt                                                   |
| 06/20/2022 | 853196 | Grizzly Resources         | Park District 1     | \$ 35,640.00  | riverfront park thinning- 5 (1% tax taken out of original amount of |
| 06/20/2022 | 853198 | Hawkins Inc.              | Water               | \$ 29,779.85  | AQUA HAWK COAGULANT                                                 |
| 06/20/2022 | 162    | HDR, Inc.                 | Water               | \$ 128,094.47 | WO 19-12 West End Reservoir;1200437582/38                           |
| 06/20/2022 | 162    | HDR, Inc.                 | Wastewater          | \$ 7,942.14   | WO 20-44 WRF Nutrient Recovery Improvements Project;                |
| 06/20/2022 | 162    | HDR, Inc.                 | Water               | \$ 20,843.32  | WO 22-11 Staples Reservoir Evaluation/Design; 1200437585/6          |
| 06/20/2022 | 162    | HDR, Inc.                 | Water               | \$ 7,809.85   | WO 18-22 Leavens Reservoir Expansion & Zone 1 Improvements; 2       |
| 06/20/2022 | 853199 | High Point Networks LLC   | Library             | \$ 245.00     | 205467 Firewall monthly service                                     |
| 06/20/2022 | 853199 | High Point Networks LLC   | Information         | \$ 6,075.57   | ST100/ST50 switch                                                   |
| 06/20/2022 | 853201 | Hydro-tech, Inc.          | Water               | \$ 117,711.00 | WO 22-11 Staples 6 MG Reservoir Repair; 1F WO2211 Hydro-Tech        |
| 06/20/2022 | 853202 | Iaff                      | Sidewalk Debt Svc   | \$ 4,752.94   | Payroll Summary                                                     |
| 06/20/2022 | 853205 | Industrial Comm. & Elec.  | Public Safety       | \$ 3,291.55   | handhelds and extension cables                                      |
| 06/20/2022 | 853206 | InfoSend Inc              | P.W. Admin          | \$ 13,241.43  | MAY STATEMENT PROCESSING                                            |
| 06/20/2022 | 853206 | InfoSend Inc              | P.W. Admin          | \$ 2,923.85   | MAY STATEMENT PROCESSING                                            |

| Check Date | Check  | Name                         | Fund Name           | Amount        | Item Desc                                                  |
|------------|--------|------------------------------|---------------------|---------------|------------------------------------------------------------|
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 33.06      | 59842819                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 275.40     | 59842823                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 240.20     | 59891481                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 5.30       | 59842819                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 864.30     | 59842824                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 28.49      | 59891481                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 1,378.70   | 59891481                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 17.91      | 59842821                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 48.86      | 59837960                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 7.80       | 59837960                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 13.27      | 59842820                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 21.58      | 59842821                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 36.50      | 59842822                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 60.16      | 59837960                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 26.08      | 59842819                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 24.75      | 59891481                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 10.68      | 59842818                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 17.38      | 59891481                                                   |
| 06/20/2022 | 853207 | Ingram Library Services Inc. | Library             | \$ 384.13     | 59891481                                                   |
| 06/20/2022 | 853212 | Jacobs Engineering Grp       | Solid Waste         | \$ 19,527.77  | WO 22-27 Landfill Gas Emissions Compliance                 |
| 06/20/2022 | 853220 | Knife River                  | Tax Increment South | \$ 149,945.97 | WO 21-42 SBURA Gravel Streets, Phase I; 1WO2142 KnifeRiver |
| 06/20/2022 | 853225 | Mailing Technical Services   | General             | \$ 3,577.05   | mailing of summer activities guide - 5999                  |
| 06/20/2022 | 853225 | Mailing Technical Services   | Library             | \$ 2,608.33   | LIBR Library mailing May 2022                              |
| 06/20/2022 | 853232 | Montana CSED                 | Sidewalk Debt Svc   | \$ 4,111.62   | Payroll Summary                                            |
| 06/20/2022 | 853233 | MDU                          | EOC 911             | \$ 73.54      | 082-939-8378-2 STANDBY GENERATOR - 911 CENTER, BILLINGS    |
| 06/20/2022 | 853233 | MDU                          | General             | \$ 87.44      | 703 760 1000 8                                             |
| 06/20/2022 | 853233 | MDU                          | Public Safety       | \$ 71.87      | 672 860 1000 3                                             |
| 06/20/2022 | 853233 | MDU                          | Public Safety       | \$ 494.01     | 819 360 1000 8                                             |
| 06/20/2022 | 853233 | MDU                          | General             | \$ 157.41     | 902 360 1000 6                                             |
| 06/20/2022 | 853233 | MDU                          | Public Safety       | \$ 143.12     | 668 670 1000 2                                             |
| 06/20/2022 | 853233 | MDU                          | General             | \$ 704.23     | 879 660 1000 8                                             |
| 06/20/2022 | 853233 | MDU                          | General             | \$ 120.44     | 112 138 9381 8                                             |
| 06/20/2022 | 853233 | MDU                          | Public Safety       | \$ 25.13      | 930 442 2308 4                                             |
| 06/20/2022 | 853233 | MDU                          | Water               | \$ 30.96      | 162 660 1000 4                                             |
| 06/20/2022 | 853233 | MDU                          | Public Safety       | \$ 600.70     | 307 111 5825 0                                             |
| 06/20/2022 | 853234 | MT Fed. of Public Empl.      | Sidewalk Debt Svc   | \$ 2,741.25   | Payroll Summary                                            |

| Check Date | Check  | Name                    | Fund Name         | Amount       | Item Desc                                                  |
|------------|--------|-------------------------|-------------------|--------------|------------------------------------------------------------|
| 06/20/2022 | 853235 | MMIA                    | Property Ins      | \$ 53,818.66 | Liability Self Insurance Payment for May 2022              |
| 06/20/2022 | 853236 | MMIA                    | Public Safety     | \$ 3,457.84  | Wage Replacement Benefits Dakota Singh reimbursement       |
| 06/20/2022 | 853238 | Montana State Fireman's | Sidewalk Debt Svc | \$ 4,388.21  | Payroll Summary                                            |
| 06/20/2022 | 853240 | Morrison Maierle Inc    | Wastewater        | \$ 10,984.33 | WO 20-14 Wastewater Master Plan Update; 1 RetRel           |
| 06/20/2022 | 853241 | Moulton Bellingham PC   | General           | \$ 45.00     | Inv. #147149 Stone et al. vs. COB                          |
| 06/20/2022 | 853241 | Moulton Bellingham PC   | General           | \$ 585.00    | Inv. #147135 Abromeit et al. v COB                         |
| 06/20/2022 | 853241 | Moulton Bellingham PC   | General           | \$ 9,782.50  | Inv. #147134 Houser WWFF                                   |
| 06/20/2022 | 853241 | Moulton Bellingham PC   | General           | \$ 5,842.50  | Inv. #147136 McDaniel vs. COB                              |
| 06/20/2022 | 853242 | MPPA MT Police          | Sidewalk Debt Svc | \$ 3,908.80  | Payroll Summary                                            |
| 06/20/2022 | 853246 | Neil Drywall Inc        | Public Safety     | \$ 3,050.00  | FIRE 1: BASEMENT OFFICE, FRAMING & DRYWALL, TRAINING CHIEF |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 74.82     | 1647695-4. De Icer. June 2022                              |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 103.36    | 1138926-9. Aero Interiors. June 2022                       |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 263.03    | 2001846-1. Mud Wash. June 2022                             |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 418.65    | 2001848-7. Detail Bay 1 Hertz. June 2022                   |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 47.04     | 2001862-8. Detail Bay 3 Enterprise. June 2022              |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 2,272.19  | 0100483-7. Runway Lights. June 2022                        |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 1,165.92  | 0100484-5. ARFF Facility. June 2022                        |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 165.59    | 2001855-2. Detail Bay 2 National/Alamo. June 2022          |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 13.01     | 3733186-5. Airport Storage. June 2022                      |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 510.69    | 1669567-8. TSA. June 2022                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 824.99    | 3477231-9. Parking Zone. June 2010                         |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 62.76     | 3085107-5. New Employee Parking. June 2022                 |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 1,263.70  | 1993430-6. Car Wash. June 2022                             |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 177.10    | 2001865-1. Detail Bay 4 Avis/Budget. June 2022             |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 193.96    | 3446396-8. USDA. June 2022                                 |
| 06/20/2022 | 853247 | NorthWestern Energy     | Airport           | \$ 41.64     | 2001867-7. Detail Bay 5 Thrifty/Dollar. June 2022          |
| 06/20/2022 | 853247 | NorthWestern Energy     | Wastewater        | \$ 170.72    | 389 62nd St Lift Entrance; 1175972-7 6.09.2022             |
| 06/20/2022 | 853247 | NorthWestern Energy     | Water             | \$ 685.30    | 0100485-2                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Public Safety     | \$ 517.18    | 0871546-8                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Facilities Mngmt  | \$ 1,598.92  | 0975808-7                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Facilities Mngmt  | \$ 620.67    | 1160802-3                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Facilities Mngmt  | \$ 1,819.89  | 1160804-9                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Water             | \$ 3,128.63  | 0100606-3                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Facilities Mngmt  | \$ 2,468.65  | 1269391-7                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Water             | \$ 79,258.54 | 0100606-3                                                  |
| 06/20/2022 | 853247 | NorthWestern Energy     | Wastewater        | \$ 1,042.88  | 0100606-3                                                  |

| Check Date | Check  | Name                    | Fund Name           | Amount       | Item Desc                                                         |
|------------|--------|-------------------------|---------------------|--------------|-------------------------------------------------------------------|
| 06/20/2022 | 853248 | Nwestco LLC             | Transit             | \$ 27,148.09 | Fuel Management System Upgrade for METroplex                      |
| 06/20/2022 | 853249 | OAG Aviation WW         | Airport             | \$ 6,945.75  | Invoice #USI040646. Annual Flightview Web Components              |
| 06/20/2022 | 853256 | Reliable Mechanical     | Facilities Mngmt    | \$ 8,368.00  | Material for the Stillwater Building                              |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 93.63     | 22 May Rimrock Pitman Psychotherapy                               |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 200.00    | 22 May Rimrock Screenings                                         |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 157.34    | 22 May Rimrock Roberts OP                                         |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 5,891.23  | 22 May Rimrock No Ins., copays, deduct.                           |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 93.63     | 22 May Rimrock Brun Psychotherapy                                 |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 2,100.00  | 22 May Rimrock Ancillary                                          |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 110.91    | 22 May Rimrock Smith MHE                                          |
| 06/20/2022 | 853259 | Rimrock Foundation      | Municipal Court     | \$ 63.42     | 22 May Rimrock Pitman Psychotherapy                               |
| 06/20/2022 | 853260 | Ritter                  | Public Safety       | \$ 6,901.08  | TUITION FY2022: PERCENTAGE ADJUSTMENT                             |
| 06/20/2022 | 853262 | Sanderson Stewart       | Tax Increment South | \$ 25,567.50 | WO 21-42 SBURA Streets improvements, Phase 1; 52000/8             |
| 06/20/2022 | 853262 | Sanderson Stewart       | Arterial Streets    | \$ 420.00    | WO 22-28 Grand Ave & 32nd Street West Traffic Signal              |
| 06/20/2022 | 853265 | Selbys                  | Wastewater          | \$ 4,997.50  | HP DesignJet Plotwave TRP FY22                                    |
| 06/20/2022 | 853265 | Selbys                  | Water               | \$ 4,997.50  | HP DesignJet Plotwave TRP FY22                                    |
| 06/20/2022 | 853265 | Selbys                  | Wastewater          | \$ 1,197.62  | Plotwave install, delivery & training (TRP FY22)                  |
| 06/20/2022 | 853265 | Selbys                  | Water               | \$ 1,796.42  | Plotwave install, delivery & training (TRP FY22)                  |
| 06/20/2022 | 853271 | Stewart Title Company   | CDBG                | \$ 15,000.00 | FTHB Shawna Charbonneau 1310 Yellowstone Ave Unit 1               |
| 06/20/2022 | 853275 | Terracon Consultants    | Gas Tax             | \$ 5,675.00  | WO 22-21 Brewington Dr Reconst Geotech; T653465/4F                |
| 06/20/2022 | 853276 | Tetra Tech, Inc.        | Solid Waste         | \$ 540.00    | Professional Services for 3 years to perform surface emission and |
| 06/20/2022 | 853276 | Tetra Tech, Inc.        | Solid Waste         | \$ 4,078.95  | Professional Services for 3 years to perform surface emission and |
| 06/20/2022 | 163    | Town & Country Supply   | Fleet               | \$ 34,894.30 | 427405 PO NUM 314602                                              |
| 06/20/2022 | 163    | Town & Country Supply   | Airport             | \$ 37,511.09 | Invoice #427883. QTA Car Rental Fuel                              |
| 06/20/2022 | 163    | Town & Country Supply   | General             | \$ 1,517.43  | monthly charges for fuel oil - 426909                             |
| 06/20/2022 | 163    | Town & Country Supply   | Fleet               | \$ 52,769.38 | 427875 PO NUM 314595                                              |
| 06/20/2022 | 853278 | Tractor & Equipment Co. | Street/Traffic Oper | \$ 97,232.71 | 2022 tracked excavator approved by council during the 5/9/22      |
| 06/20/2022 | 853279 | Trommelo Co, Inc        | Public Safety       | \$ 7,000.00  | 1729, interview and application screening                         |
| 06/20/2022 | 853280 | Ultra Graphics LLC      | General             | \$ 3,961.19  | 22/23 Jury Summons Mailing                                        |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 1,253.70  | 050142, carrier with buckles                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 584.60    | 040124,shirts                                                     |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 301.80    | 030828,chain cuffs                                                |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 141.72    | 030481, pants                                                     |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 211.26    | 050958,pants                                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 57.43     | 040068,women's pants                                              |
| 06/20/2022 | 853281 | Uniforms2gear, Inc.     | Public Safety       | \$ 857.46    | 050860,carrier and clips                                          |

| Check Date | Check  | Name                | Fund Name           | Amount      | Item Desc                                         |
|------------|--------|---------------------|---------------------|-------------|---------------------------------------------------|
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 52.64    | 050575,polos                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 438.90   | 040265,jacket                                     |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 219.64   | 030176,pants                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 268.80   | 050382,carrier pouches                            |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 70.42    | 050251,pants                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 25.75    | 031103, necktie                                   |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 219.45   | 040539, jackets                                   |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 473.76   | 040264,polos                                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 1,965.70 | 040543, holders with battery                      |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 219.45   | 031048, jacket                                    |
| 06/20/2022 | 853281 | Uniforms2gear, Inc. | Public Safety       | \$ 920.34   | 050143, carrier with buckles                      |
| 06/20/2022 | 853284 | Verizon Wireless    | Public Safety       | \$ 41.57    | Police -Mike Robinson                             |
| 06/20/2022 | 853284 | Verizon Wireless    | Public Safety       | \$ 80.02    | Police iPad St John 406-690-5955 Police iPad      |
| 06/20/2022 | 853284 | Verizon Wireless    | Transit             | \$ 970.26   | MET Max Transit 5710-71420-403160                 |
| 06/20/2022 | 853284 | Verizon Wireless    | Airport             | \$ 51.64    | Airport                                           |
| 06/20/2022 | 853284 | Verizon Wireless    | Public Safety       | \$ 480.51   | MDT Toughbooks                                    |
| 06/20/2022 | 853284 | Verizon Wireless    | Parking             | \$ 27.32    | Parking 406-690-5822                              |
| 06/20/2022 | 853284 | Verizon Wireless    | General             | \$ 27.32    | Victoria Hill -Laptop                             |
| 06/20/2022 | 853284 | Verizon Wireless    | Solid Waste         | \$ 109.28   | PW-Solid Waste                                    |
| 06/20/2022 | 853284 | Verizon Wireless    | Transit             | \$ 309.02   | MET AVL                                           |
| 06/20/2022 | 853284 | Verizon Wireless    | Water               | \$ 54.64    | PWBLNP Comm-Meter CityWorks/Neptune               |
| 06/20/2022 | 853284 | Verizon Wireless    | Street/Traffic Oper | \$ 134.70   | PW-Streets iPad and Derick Milller                |
| 06/20/2022 | 853284 | Verizon Wireless    | Solid Waste         | \$ 27.32    | PW Dozer Trimble Dozer                            |
| 06/20/2022 | 853284 | Verizon Wireless    | General             | \$ 40.01    | Tina Hoeger Laptop                                |
| 06/20/2022 | 853284 | Verizon Wireless    | Water               | \$ 27.32    | PWBLKNP Water Treatment Brian Risser 406-696-4245 |
| 06/20/2022 | 853284 | Verizon Wireless    | Engineering         | \$ 136.60   | PW-Engineering                                    |
| 06/20/2022 | 853284 | Verizon Wireless    | Transit             | \$ 970.26   | MET Max Transit 5710-71420-403160                 |
| 06/20/2022 | 853284 | Verizon Wireless    | Police Programs     | \$ 27.32    | CCSIU MDT                                         |
| 06/20/2022 | 853284 | Verizon Wireless    | Police Programs     | \$ 405.70   | CCSIU Cell/PTT                                    |
| 06/20/2022 | 853284 | Verizon Wireless    | Telephone System    | \$ (970.26) | MET Max Transit 5710-71420-403160                 |
| 06/20/2022 | 853284 | Verizon Wireless    | Public Safety       | \$ 40.01    | Police MiFi 406-633-0820 406-598-6294             |
| 06/20/2022 | 853284 | Verizon Wireless    | Wastewater          | \$ 1,120.28 | MET Tablets 5710-71420-403160                     |
| 06/20/2022 | 853284 | Verizon Wireless    | Solid Waste         | \$ 207.28   | PW-SW-ON CALL Solid Waste On Call                 |
| 06/20/2022 | 853284 | Verizon Wireless    | Police Programs     | \$ 80.02    | CCSIU RAVEN                                       |
| 06/20/2022 | 853284 | Verizon Wireless    | Wastewater          | \$ -        | PW-DIS-COLL Cityworks 60/40                       |
| 06/20/2022 | 853284 | Verizon Wireless    | Solid Waste         | \$ 541.82   | Solid Waste Tablets -Routware                     |

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|------------|--------|------------------------|---------------------|---------------|----------------------------------------------------------------|
| 06/20/2022 | 853284 | Verizon Wireless       | Water               | \$ 27.32      | PW Belknap Meter Shop                                          |
| 06/20/2022 | 853284 | Verizon Wireless       | Street/Traffic Oper | \$ 163.92     | PW-Streets City Works                                          |
| 06/20/2022 | 853284 | Verizon Wireless       | General             | \$ 467.59     | City Administrator 0100-13130-403450                           |
| 06/20/2022 | 853284 | Verizon Wireless       | Park District 1     | \$ 52.36      | PRPL-PARKS                                                     |
| 06/20/2022 | 853284 | Verizon Wireless       | Parking             | \$ 52.05      | PRKING Enforcement (Parking)                                   |
| 06/20/2022 | 853284 | Verizon Wireless       | Solid Waste         | \$ 75.85      | PW-SW-ON CALL Solid Waste On Call                              |
| 06/20/2022 | 853284 | Verizon Wireless       | Public Safety       | \$ 54.56      | Police                                                         |
| 06/20/2022 | 853284 | Verizon Wireless       | Street/Traffic Oper | \$ 193.76     | PW-STRT TRFC Streets                                           |
| 06/20/2022 | 853284 | Verizon Wireless       | Fleet               | \$ 106.07     | Motor Pool                                                     |
| 06/20/2022 | 853284 | Verizon Wireless       | Public Safety       | \$ 268.32     | Fire MDT 1500-22210-403450                                     |
| 06/20/2022 | 853285 | Vermont Systems Inc    | General             | \$ 7,434.54   | Rectrac system annual equipment, inventory, management, system |
| 06/20/2022 | 853291 | Winkler Excavating Inc | Water               | \$ 50,248.93  | WO2226 WTP Sediment Hauling; 2F WO2226 Winkler                 |
| 06/20/2022 | 853294 | YWCA                   | General             | \$ 200,000.00 | YWCA Gateway Horizons Domestic Violence Shelter Grant          |

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Downtown Billings Partnership - Tax Increment Assistance - Facade Incentive Grant, BSEDA, 201 North Broadway  
**Presented by:** Wyeth Friday  
**Department:** Planning & Community Services  
**Presentation:** Yes  
**Legal Review** Not Applicable

**RECOMMENDATION**

The Downtown Billings Partnership (DBP) Board has reviewed this TIF application and recommends the City Council approve up to a maximum reimbursement of \$50,000 from Downtown Urban Renewal tax increment finance district funds to Big Sky Economic Development Authority for facade restoration and sidewalk hardscaping at its new offices and entrepreneurial development center at 201 North Broadway.

Actual reimbursement will be based upon 100% of the actual costs incurred for qualified expenses for renovation, subject to the following conditions:

1. This TIFD reimbursement is the maximum that can be received pending satisfactory submission of all paid invoices showing the completion of expenditures related to this project.
2. If funds are not available, reimbursement can be carried over to the next fiscal year.

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

Located in the heart of downtown Billings and at the northeast corner of the intersection of Broadway and 2nd Avenue North, the Montana National Bank building, as listed on the National Register of Historic Places, has been a staple to the City of Billings since 1918. Occupied in recent years by Buchanan Capital, The Billings Symphony, and Zoot Enterprises as a datacenter, the space has been largely underutilized. Big Sky Economic Development (BSED) purchased and is currently renovating the building. The space will become an entrepreneurial center, incubating and accelerating businesses within Yellowstone County and the City of Billings, a business training space, and the new BSED offices will be on-site to continue its mission of growing the region's economy and quality of life.

This overall renovation will total nearly \$4.6M and represents a significant commitment by BSED to the health and vibrancy of downtown Billings. This new space will provide the Rock31 program the facilities it needs to be successful. Rock31 is a new hybrid solution to entrepreneurial development where incubation services, acceleration programming, and co-working space all meet to serve individuals ready to connect with experts, build their concept and grow. This will drive economic diversity through the start and growth of innovative businesses; lead entrepreneurial development and programming; expand the ability to create high quality jobs in our community; and catalyze private investment, all under Sky Point and the core of downtown Billings.

The maximum eligibility of a facade grant is not to exceed \$50,000, and a 3:1 match must be provided by the applicant. The facade project that is the subject of this TIF request involves the restoration of the stonework of the facade and the hardscaping of the sidewalk. Those improvements will enhance the pedestrian experience and contribute to the public safety of this corner as well as protect the integrity of an iconic building. Protecting historic buildings and activation of otherwise dark vacant spaces are elements of the Urban Renewal Plan and DBA Strategic Plan. BSED's other exterior investments beyond this facade grant include installing lighting consistent with CPTED best practices and exterior lighted signage for safety and wayfinding purposes. The overall exterior/facade work in the application attached shows a total of \$186,443. However, the applicant also will be installing additional hardscape and exterior improvements which were left out of the application total. The additional improvements listed below in the main categories bring the total to \$202,963, making the request for up to \$50,000 meet the 3:1 matching ratio for these requests, per DBP guidelines. The DBP Board recommendation was updated to include all the facade improvement elements and breaks out the categories further, but also shows that only three areas of work are included in the facade grant recommendation for funding - Sidewalk repair, facade repair and cleaning. Here are the main categories:

- Design= \$6,000
- Permits = \$4,275
- Windows = \$13,897

- Doors/entry = \$22,550
- Facade Restoration and Repair = \$25,050 (*Includes additional cleaning and repair work*)
- Hardscaping (sidewalk) = \$26,162
- Lighting = \$23,111
- Other = \$81,918 (*Includes additional cleaning, signage, lights*)

**Total = \$202,963**

Renovating a century-old building comes with significant costs, including many updating or code-modernization efforts. Recent, unforeseen building challenges have impacted the BSED building budget. Due to these challenges, BSED is applying to the DBP facade grant program to support critical public-benefit elements on the exterior of the building.

The application was vetted by staff and presented to the Development Committee on June 3. The Development Committee reviewed the proposal but four members had to recuse themselves due to conflicts of interest. The remaining three members that could vote ended up with a mix of one in support, one against it, and one member indifferent. Therefore, the committee forwarded the application to the full DBP Board for review and action at a special meeting on July 15 without a full recommendation and full committee endorsement. The DBP Board reviewed the application and made its recommendation to City Council to approve the application. Since the meeting took place after the final memo deadline for the City Council meeting on July 25, staff was not able to provide full minutes of the meeting for this memo. Additional information on the DBP Board discussion may be provided at the July 25 meeting.

The DBP Board supports the project because:

- The project addresses blight remediation (MCA 7-15-4282 through 7-15-4294 and Ordinance 12-5590) through the rehabilitation of the existing building on the site. The maximum facade grant application amount is \$50,000, so this application is well within the facade grant requirement of a 3:1 private to public matching fund requirement for these grants. In this case, the total exterior/facade project is \$202,963 and the request is for up to \$50,000, or a 3:1 ratio. As noted above, the total renovation project cost is estimated at about \$4.6 million.
- The project further enhances the vibrancy of Downtown Billings through revitalization of the intersection of Broadway and 2nd Avenue North; increased public activity along the street frontages; enhanced pedestrian experience and safety in this area; and improved public safety through street level facade improvements.
- The application aligns with elements/goals of the DBA Strategic Plan (may be viewed through this link <https://downtownbillings.com/about/about-the-dba/>), City TIF Policy, MCA, and the North 27th Street District Urban Renewal Plan (See Table 1 below and the DBP Board Recommendation document attachment).

**Table 1.**

| Qualified Improvements                                                                                                                                                                        | DBA Strategic Plan                                                           | City TIF Policy                                                                                                                                                                         | Urban Renewal Plan                                                                                                            | Montana Code Annotated |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Site work and safety - <i>Some demolition; Concrete work for sidewalks</i><br><br><i>Building Exterior Facade and work - brick and limestone</i><br><br>Public access and area improvements - | Vibrant & Connected Downtown -- P. 13<br><br>Strong Downtown Identity --P.13 | Permitted uses of TIF Funds: <ul style="list-style-type: none"> <li>• Demolition - P.2</li> <li>• Private infrastructure with Public Benefit and Public infrastructure --P.2</li> </ul> | Business Recruitment and retention - P. 54<br>Infrastructure Improvements-- P. 55<br>Crime Prevention and Public Safety -P.55 | 7-15-4288              |

**ALTERNATIVES**

City Council may:

- Approve the recommendation from the DBP Board for the expenditure of these TIF funds consistent with some elements/goals of the DBA Strategic Plan, North 27th Street Urban Renewal Plan, City TIF Policy and MCA.
- Modify the recommendation from the DBP Board for the expenditure of these TIF funds before taking action, or;

- Disapprove the recommendation from the DBP Board for the expenditure of these TIF funds. If the Council chooses not to approve this TIF application, specific reasoning for the denial is necessary to provide further direction to the DBP Board and staff, and City staff for future applications.

### **FISCAL EFFECTS**

The recommendation is for up to a maximum of \$50,000 to be reimbursed to Big Sky Economic Development Authority for the identified building facade improvements. The estimated total exterior/facade project cost is \$202,963, making the required 3:1 match for these facade grants. The funds are payable per the conditions of approval outlined above in the DBP recommendation and pending satisfactory submission of all paid invoices showing actual cost incurred for the project. If approved, payment will be incorporated into the current FY23 budget with an amendment as needed. Current estimates of the future Downtown District revenues are able to cover this project in FY23 and FY24 as well as support known future planned projects and bonding.

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### **Attachments**

BSEDA Facade Grant Application  
DBP Transmittal Letter to City Council  
DBP Funding Recommendation  
2008 Downtown Urban Renewal Plan  
City TIF Policy



# Façade Incentive Grant

## Information & Application

Updated 3/31/2020

Downtown Billings Partnership, Inc.  
116 N. 29<sup>th</sup> St, Billings, MT 59101 - Tel. 406-294-5060  
[www.downtownbillings.com](http://www.downtownbillings.com)

# Façade Incentive Grant

## Purpose:

The purpose of this program is to provide financial and practical assistance to encourage rehabilitation, enhancement, restoration, and preservation of façades in downtown Billings as a catalyst to: (i) attract new customers and businesses to downtown Billings; (ii) stimulate new, private investment and economic development; (iii) positively impact the marketability and perception of downtown Billings; and (iv) promote commercial revitalization. Incentive monies are available to developers, owners, and tenants to *encourage a higher level of quality and design in the downtown environment*. **Funding is available for façade improvement projects based upon three factors and awards are cumulative. A match of 3:1 is required.**

Façade projects must support the goals of the Downtown Billings Strategic Plan and the Urban Renewal Plan of the North 27<sup>th</sup> St. TIFD. Applicants are encouraged to consider the design aesthetic of the surrounding neighborhood when submitting a design for review.

Applicants are reminded that grant awards made by the Downtown Billings Partnership (DBP) are discretionary in nature and should not be considered an entitlement by the applicant. All grant criteria contained herein are guidelines for awards and successful applicants may receive any amount up to the maximum award. Should an applicant meet all grant criteria, a grant may or may not be awarded at the DBP and Billings City Council's discretion due to funding limitation, competing applications, and/or competing priorities of the DBP.

## Timeframe and application process:

Applications will be accepted and reviewed quarterly. Applications must be received by the 15<sup>th</sup> day of the first month of each quarter. Each complete application will be reviewed by the DBP staff, Development Committee, and the DBP Board of Directors and, if recommended, will go in front of the Billings City Council for final approval within each quarterly grant cycle.

| <b>Application Due to DBP</b>                                                                                                                                                          | <b>Application Reviewed by Development Committee and DBP Board</b>                                | <b>Application Presented to City Council for Final Approval</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| July 15                                                                                                                                                                                | 2 <sup>nd</sup> Thursday of August – Dev. Com<br>4 <sup>th</sup> Friday of August – DBP Board     | September Council Business Meeting                              |
| October 15                                                                                                                                                                             | 2 <sup>nd</sup> Thursday of November – Dev. Com<br>4 <sup>th</sup> Friday of November – DBP Board | December Council Business Meeting                               |
| January 15                                                                                                                                                                             | 2 <sup>nd</sup> Thursday of February – Dev. Com<br>4 <sup>th</sup> Friday of February – DBP Board | March Council Business Meeting                                  |
| April 15                                                                                                                                                                               | 2 <sup>nd</sup> Thursday of May – Dev. Com<br>4 <sup>th</sup> Friday of May – DBP Board           | June Council Business Meeting                                   |
| <b>Every effort will be made to facilitate every complete application through the entire process within each quarterly grant cycle. Incomplete applications may extend the process</b> |                                                                                                   |                                                                 |

## Funding Policy:

Funding for eligible façade projects will be determined by the following criteria:

**Building Frontage** – the length of the face of the building along a public street. Building frontage is the only measurement that is considered, regardless of the position of interior or common walls.

**Building Height** – the number of stories of the building (stories are defined by the current building code).

**Architectural Significance** – Historic buildings, or buildings in a historic district that have been deemed eligible for the National Register and have successfully completed a Part One application for the National Register. Please note that incentive funds may not be used for the purpose of pursuing a historic designation.

**Please note that these amounts are the maximum grand awards that may be made per property under the same ownership in any 2-calendar-year period.**

| <b>Factor (Nominal Measurement)</b> | <b>Incentive Amount up to \$</b> | <b>Required Match</b> |
|-------------------------------------|----------------------------------|-----------------------|
| Less than 55' Frontage              | \$15,000                         | 3:1                   |
| 55'-110' Frontage                   | \$25,000                         | 3:1                   |
| Greater than 110' Frontage          | \$35,000                         | 3:1                   |
| 3 Stories and Taller                | Additional \$10,000              | 3:1                   |
| Qualifying Historic Property        | Additional \$5,000               | 3:1                   |

Eligible façade improvements include: cleaning, prepping and painting, window replacement/repairs, door replacement, foyer repairs, exterior lighting, façade restoration/rehabilitation, new façade, architecture/design fees, landscaping/hardscape improvements, building permits/planning fees, and other façade improvements deemed eligible by the DBP Board of Directors.

At the sole discretion of the DBP Board of Directors, applicants are required to seek endorsement from the TIF Development Committee, which shall consist of design professionals, business or property owners, community members with an interest in downtown vitality, and members of the DBP Board. Applications will be reviewed by the DBP staff under supervision of the Development Committee. The DBP shall review applications on a first come, first served basis for the duration of funding availability. Quarterly, all projects that are recommended for approval by the Committee shall be submitted to the DBP Board of Directors for recommendation to Billings City Council for final approval or disapproval of funding the project.

All applicants will be apprised of the status of their application by written communication from the DBP staff. Award recipients shall receive a Development Agreement indicating the amount of the incentive funds awarded and any conditions deemed necessary by the DBP Board for receipt of the award. Applicants are required to return a signed copy of the Development Agreement to the DBP staff before funds will be committed to the project.

#### **Release of Funds:**

It is the responsibility of the award recipient to maintain proper documentation of funds expended in the course of completing the project. Release of funds is subject to submission of this documentation to the DBP by the award recipient. The project must be completed essentially as presented to the Committee and Board in order to receive payment.

Incentive funds will be paid out according to the following criteria:

1. Applicants must submit copies of all required building permits.
2. Payment documentation must be submitted to the DBP office at 116 N 29<sup>th</sup> St.
3. Incentive awards will be paid upon **completion** of the project.

**Acceptable documentation is defined as PAID invoices, statements, or schedule of values from vendors, contractors, or consultants clearly detailing the work completed for the project.**

**Encumbrance Policy:**

Applicants receiving funding under this program during the course of a given fiscal year (July 1 through June 30) are eligible to carry forward/encumber unexpended funds for a **maximum of one additional fiscal year** if an effort has been made to begin the project in the initial year; and/or when circumstances related to weather, construction season, etc. prohibit the completion of the project. Applicants must advise the DBP by June 1<sup>st</sup> if they will be requesting an extension of their project schedule.

**Disclaimer:**

The Downtown Billings Partnership, Inc., its committees, partners and or affiliates are not responsible for the planning, design, or construction of improvements to property that is owned by the applicant. No warranties or guarantees are expressed or implied by the description of, application for, or participation in the Urban Renewal Project Program. The applicant is advised to consult with licensed architects, engineers, or building contractors before proceeding with final plans or construction.

### Façade Program Application

| Project Location                |                                                |
|---------------------------------|------------------------------------------------|
| Property Address                | <b>201 North Broadway, Billings, MT, 59101</b> |
| Assessor Parcel Number(s)       | <b>Geocode: 03-0927-03-2-46-09-000</b>         |
| Name of Business(es) in Project | <b>Rock31/Big Sky Economic Development</b>     |
|                                 |                                                |

| Applicant Information                                                                              |                                                |
|----------------------------------------------------------------------------------------------------|------------------------------------------------|
| Name                                                                                               | <b>Big Sky Economic Development Authority</b>  |
| Address                                                                                            | <b>201 North Broadway, Billings, MT, 59101</b> |
| Phone <b>(406)-256-6871</b>                                                                        | Email <b>SteveA@bigskyeda.org</b>              |
| Do you <input checked="" type="checkbox"/> Own <input type="checkbox"/> Lease the subject property |                                                |


| Description of Proposed Improvements                                                                                                                                                                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Significant work remains to preserve the 140ft x 70ft x 133ft facade, specifically additions to exterior lighting, restorations and repairs to the sidewalk and original stonework, and the final cleaning of the exterior. |
| Identify ways in which the project supports the Strategic Plan and Urban Renewal Plan                                                                                                                                       |
| Please see attached "Description of Project/Narrative."                                                                                                                                                                     |

| Submittals – Applications <u>must</u> include the following materials, if applicable, for consideration. Applications lacking sufficient materials to describe the project will not be reviewed.                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>a) Current photos of the proposed project site – Before and after photos will be requested</li> <li>b) Rendering or sketch of proposed improvements</li> <li>c) Architectural plans, including dimensions/measurements</li> <li>d) Color and materials samples for paint, awnings, signs, etc.</li> <li>e) Sign plans</li> <li>f) Awning design (if applicable)</li> </ul> |

| Estimated Costs and Schedule – Applications lacking sufficient cost estimates will not be reviewed |                                |
|----------------------------------------------------------------------------------------------------|--------------------------------|
| Design Work                                                                                        | \$ 6,000                       |
| Permits                                                                                            | 4,275                          |
| Window Replacement/Repair                                                                          | 13,897                         |
| Door Replacement/Entry Repair                                                                      | 22,500                         |
| Façade Restoration/Repair/New                                                                      | 19,900                         |
| Landscape/Hardscape                                                                                | 26,162                         |
| Exterior Lighting                                                                                  | 23,111                         |
| Other proposed Improvements                                                                        | 70,548                         |
| <b>Project Cost Total</b>                                                                          | <b>\$186,443</b>               |
| Estimated Days/Months for Completion                                                               | <b>Completed July 31, 2022</b> |

**Complete applications are due no later than noon on the 15<sup>th</sup> day of the first month of the quarter.**

|                   |
|-------------------|
| <b>Signatures</b> |
|-------------------|

|                                |                                                                                   |
|--------------------------------|-----------------------------------------------------------------------------------|
| Project Applicant(s)           |  |
| Property Owner (if applicable) |                                                                                   |

## Description of Project/Narrative:

Located in the heart of downtown Billings and corner to the intersection of iconic SkyPoint, the Montana National Bank building, as listed on the National Register of Historic Places, has been a staple to the City of Billings since 1918. Occupied in recent years by Buchanan Capital, The Billings Symphony, and Zoot Enterprises as a data center, the space has been largely underutilized. Big Sky Economic Development (BSED) purchased and is currently renovating the building. The space will become an entrepreneurial center, incubating and accelerating businesses within Yellowstone County and the City of Billings, a business training space, and the new BSED offices will be on-site to continue our mission of growing our region's economy and quality of life. This renovation will total nearly \$4.6M and represents a significant commitment by BSED to the health and vibrancy of downtown Billings.

This new space will provide our Rock31 program the facilities it needs to be successful. Rock31 is our new hybrid solution to entrepreneurial development where incubation services, acceleration programming, and co-working space all meet to serve individuals ready to connect with experts, build their concept and grow. **This will drive economic diversity through the start and growth of innovative businesses; lead entrepreneurial development and programming; expand the ability to create high quality jobs in our community; and catalyze private investment, all under SkyPoint and the core of downtown Billings.**

While dramatic remodeling takes place inside the building, this project also provides a great opportunity for urban renewal to both preserve the history of the building and create a vibrant and safe space under sky point. This revitalization will ensure the longevity of the structure's exterior, implement key public-safety driven light investments, provide signage, and vibrancy. Crime mapping research, (crimemapping.com) indicates there have been **400+ incidents within a 3-block radius of the new BSED Building** – this type of activity is often the result of underutilization, empty buildings, dark spaces, and a lack of traffic. All of which will be dramatically improved by BSED's presence in the building.

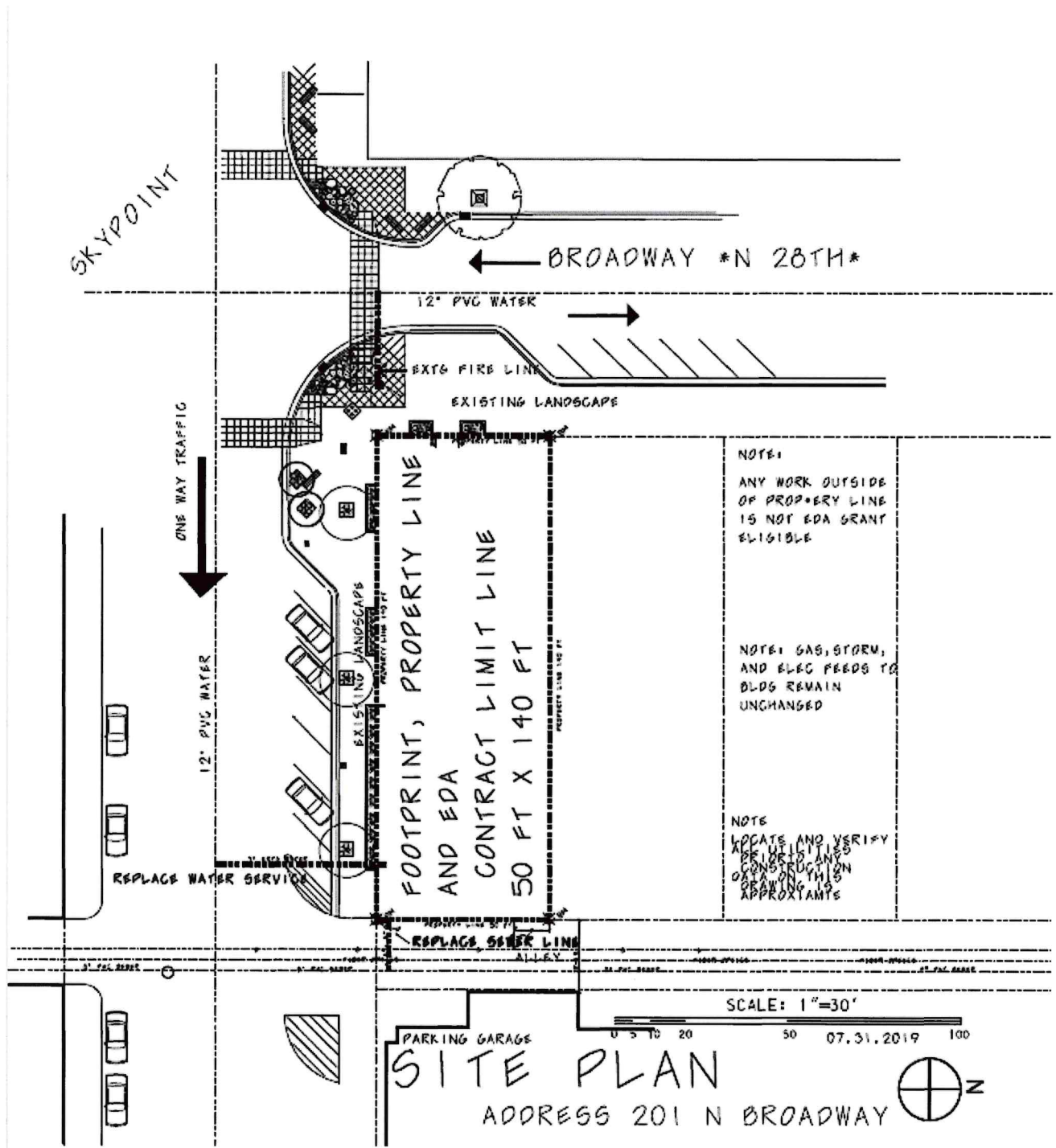
To ground this data in actual incidents, BSED spoke with Morgan Ditto-Kirkwood, Business and Finance Director at Sundown Security. She shared the following:

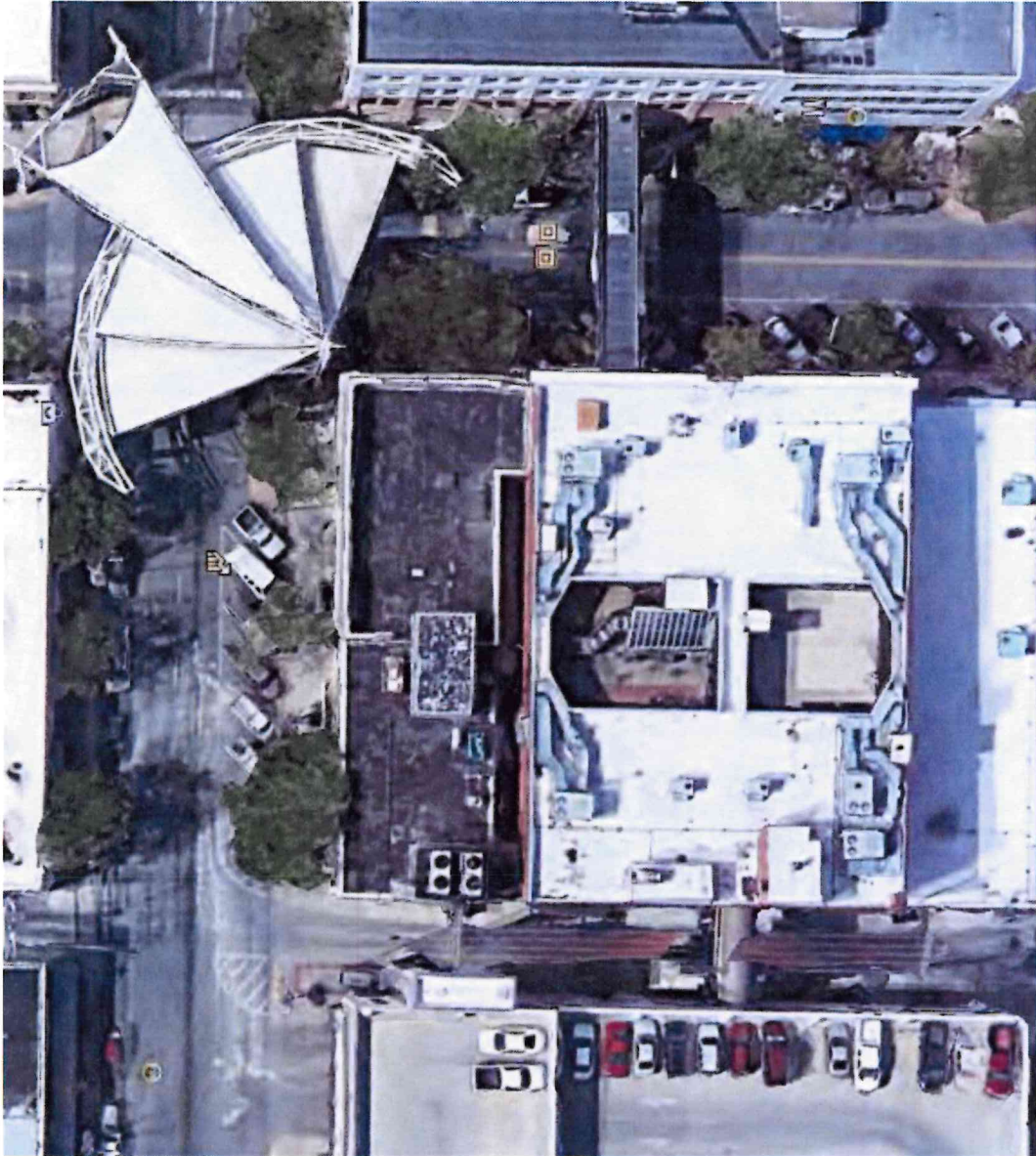
***"We currently have 6 posted guard agreements in a 1-mile radius from the new BSED building on N Broadway. Our collection of data in ways of personnel incident reports show a minimum of 4 incidents per property per week (24 encounters/incidents on average), where others are much higher. One post at a retail store has the highest amount of undesirable traffic, with an average of 3 incidents per day, 7 days a week. Physical assaults amongst the transient and homeless population occur at least monthly."***

It is activity like this we seek to mitigate through environmental design and grant investment.

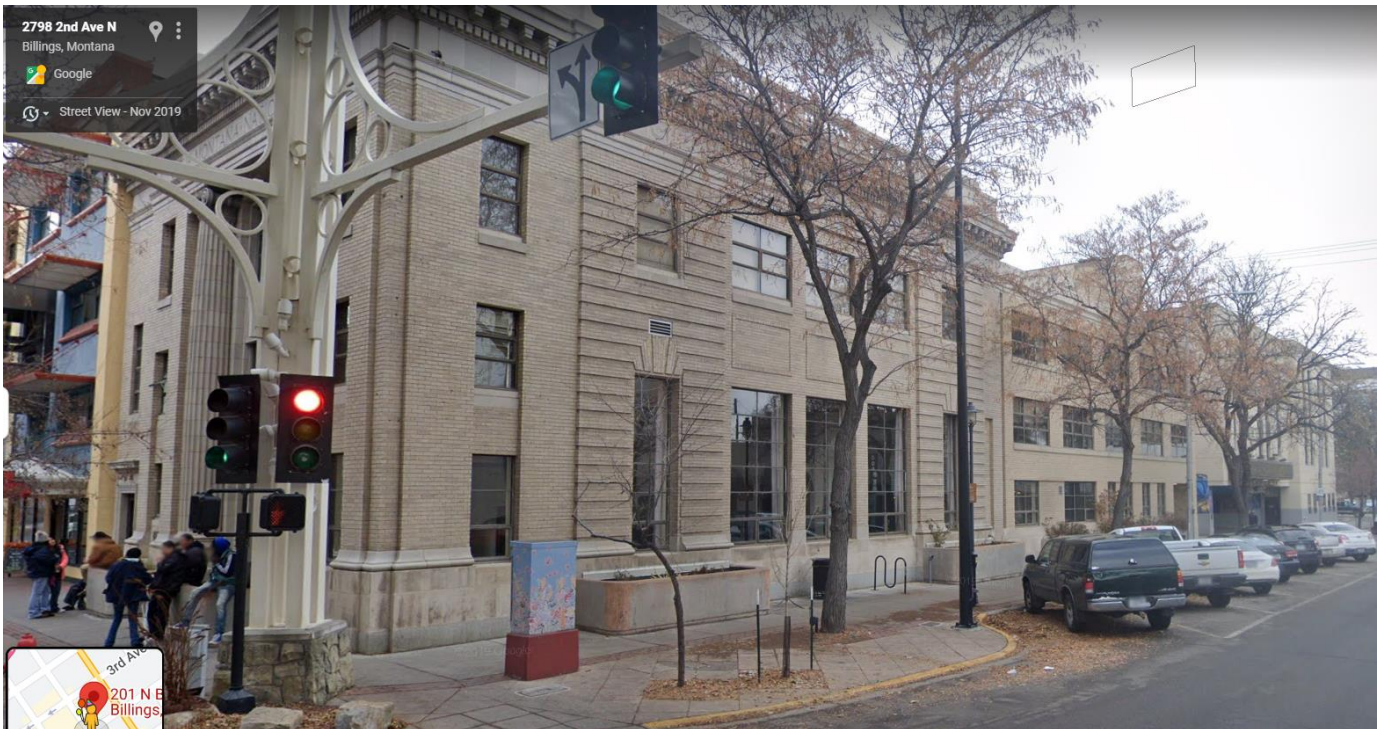
Renovating a century old building comes with significant costs, including many updating or code-modernization efforts. Recent, unforeseen building challenges have been damaging to our building budget. Due to these challenges, BSED is turning to the DBP to support critical public-benefit elements on the exterior of the building.

c. SITE PLAN





Property = 140 Ft x 50 Ft = 7,000 SF

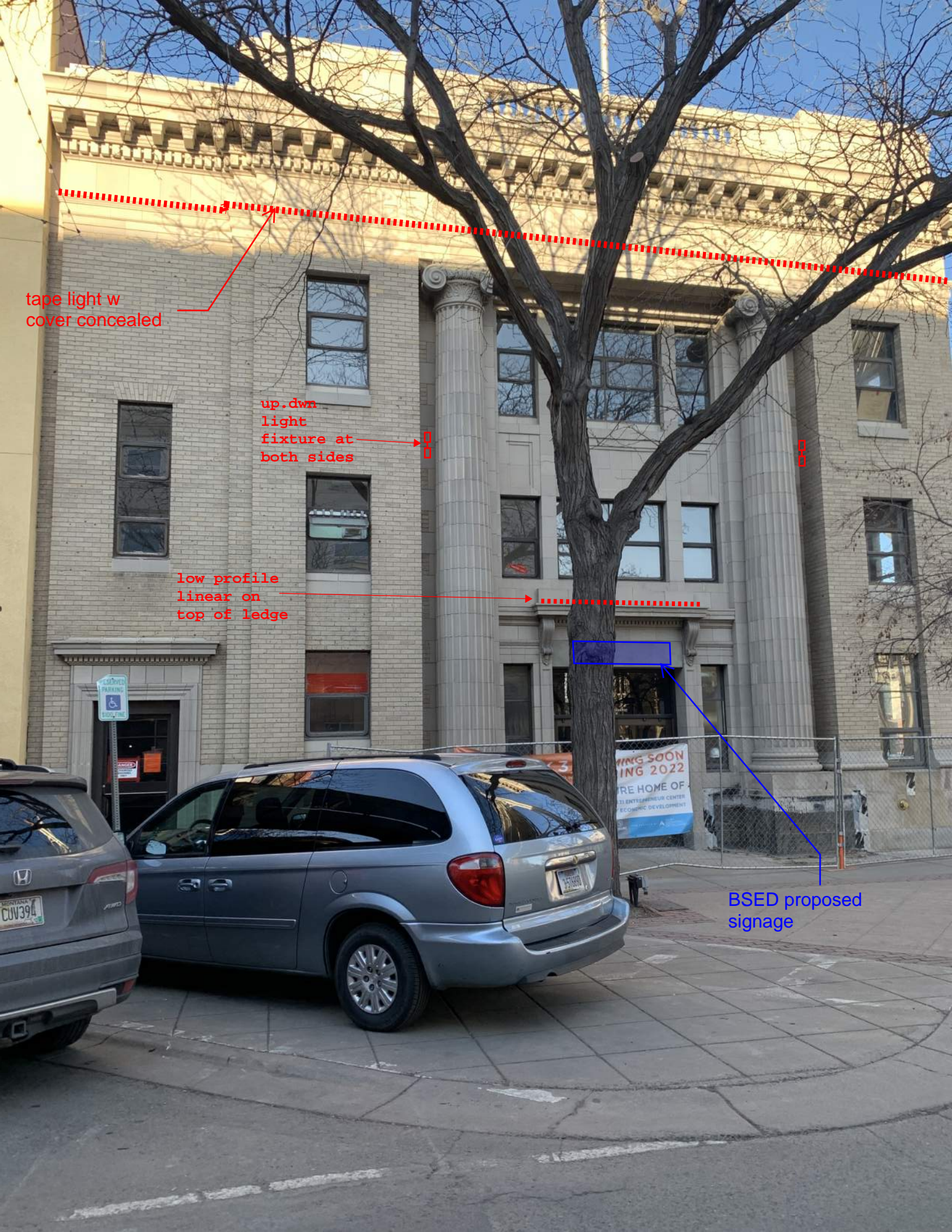


tape light w  
cover concealed

up.dwn  
light  
fixture at  
both sides

low profile  
linear on  
top of ledge

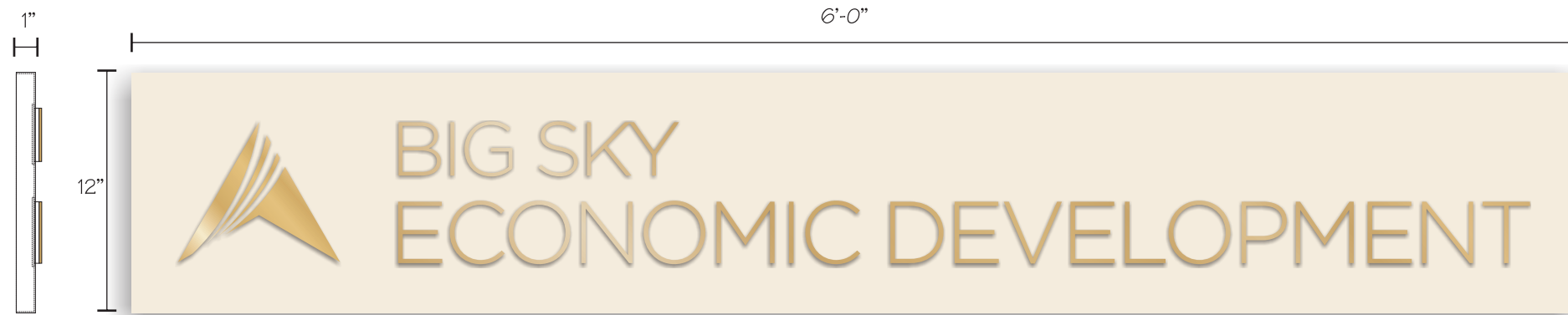
BSED proposed  
signage



tape light w  
cover concealed

BSED  
proposed  
illuminated  
corner  
signage





SINGLE FACED NON-ILLUMINATED BUILDING SIGN SCALE 3/4" = 1'-0"

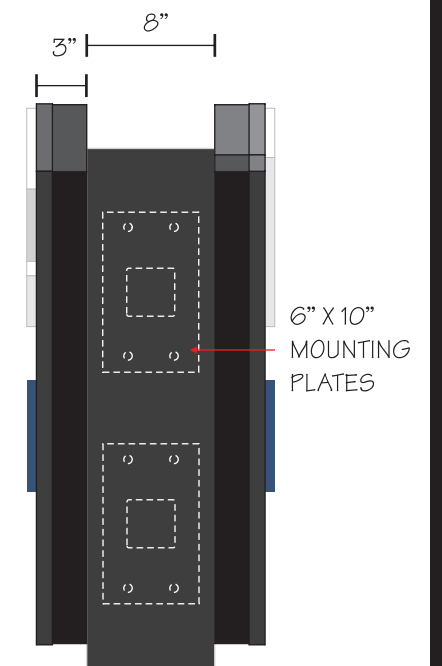


**B** MANUFACTURE AND INSTALL ONE S/F BUILDING SIGN, FABRICATED ALUMINUM 1" DEEP REVERSE PAN. FLAT LATEX PAINT FINISH LIGHT BEIGE TO MATCH BUILDING STONE COLOR. ROUTE OUT COPY AND LOGO FROM FACE. BACK WITH BLACK ACRYLIC. COPY AND LOGO ARE 1/4" DEEP CLEAR ACRYLIC WITH A ROMARK MP 942-767 METAL GRAPHIC PLUS ANTIQUE GOLD/GOLD LAMINATED FACE. GLUE WELD TO THE BLACK ACRYLIC. MOUNT PANEL IN HEADER ABOVE ENTRANCE DOOR AS SHOWN IN PHOTO RENDERING.



DOUBLE FACED PROJECTING SIGNS SCALE 1/2" = 1'-0"

**A** MANUFACTURE AND INSTALL TWO(2) D/F PROJECTING SIGNS. FABRICATED 8" DEEP ALUMINUM CENTER CABINET. 3" SQUARE TUBE SUPPORTS WELDED TO STEEL MOUNTING PLATES. ENAMEL PAINT FINISH ALL BLACK. 3" DEEP ALUMINUM PAN CHANNEL FREE FORM SHAPES. BLACK PRE-FINISHED RETURNS. #7328 WHITE ACRYLIC FACES WITH 1" BLACK TRIM CAP RETAINERS. "ROCK 31" ARE CUT OUT 1/2" DEEP SINTRA WITH A MP 13702 BEALE STREET BLUES PAINT FINISH. LOWER COPY IS APPLIED 7725-197 LIGHT NAVY VINYL. ROCK LOGO IS 1/2" DEEP WHITE ACRYLIC GLUE WELDED TO FACE WITH APPLIED PRINTED VINYL. ILLUMINATE FACES FROM INTERIOR OF PANS WITH SLOAN WHITE LEDS. LAG. THRU BOLT SIGNS TO BUILDING IN LOCATIONS SHOWN IN PHOTO RENDERING.



**DESIGN**  As Designed  
 Approval for Production  With Changes

X  
 Client Signature \_\_\_\_\_

Sales \_\_\_\_\_

DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

This design is the property of Sign Products Inc. and all rights to its use or reproduction are reserved

DESIGNER TP  
 SHEET # 1 OF 1

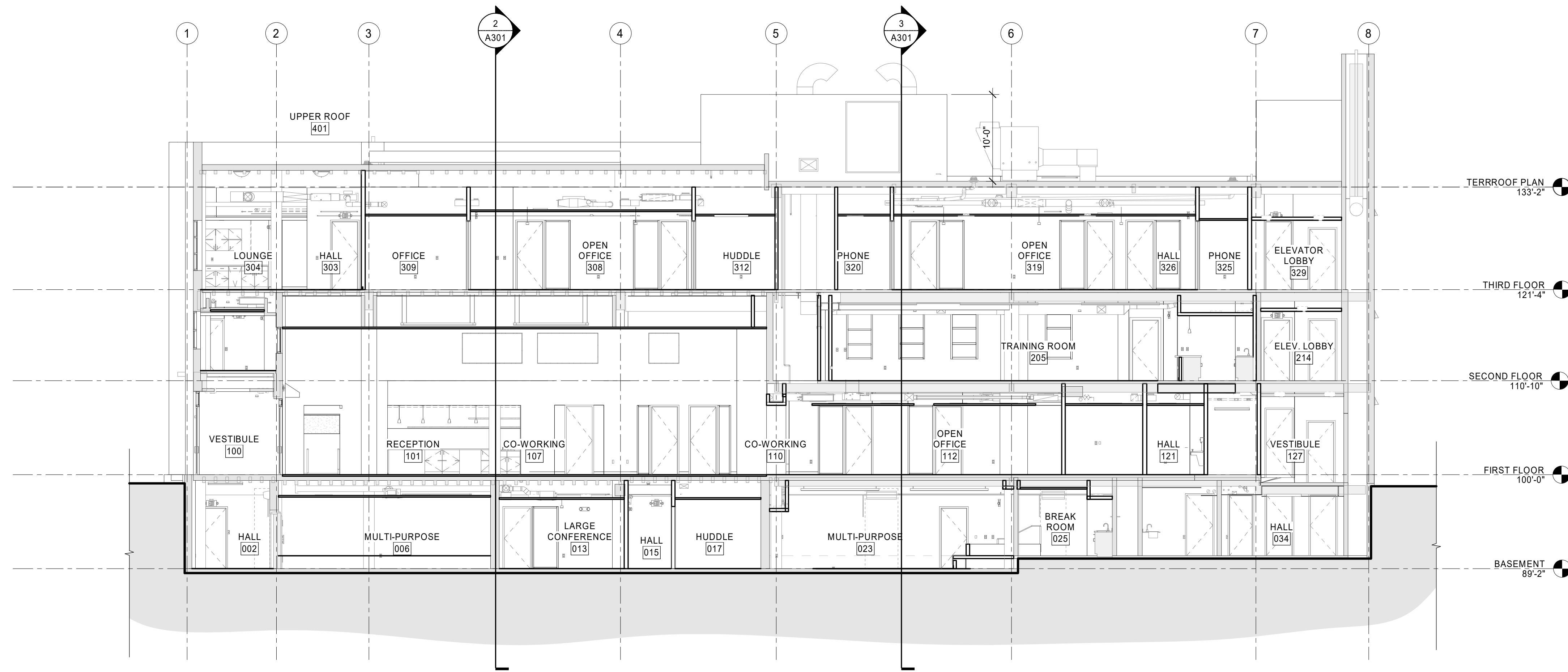
DESIGN # 19861-22  
 SALES TONY D.

DATE 05-19-22  
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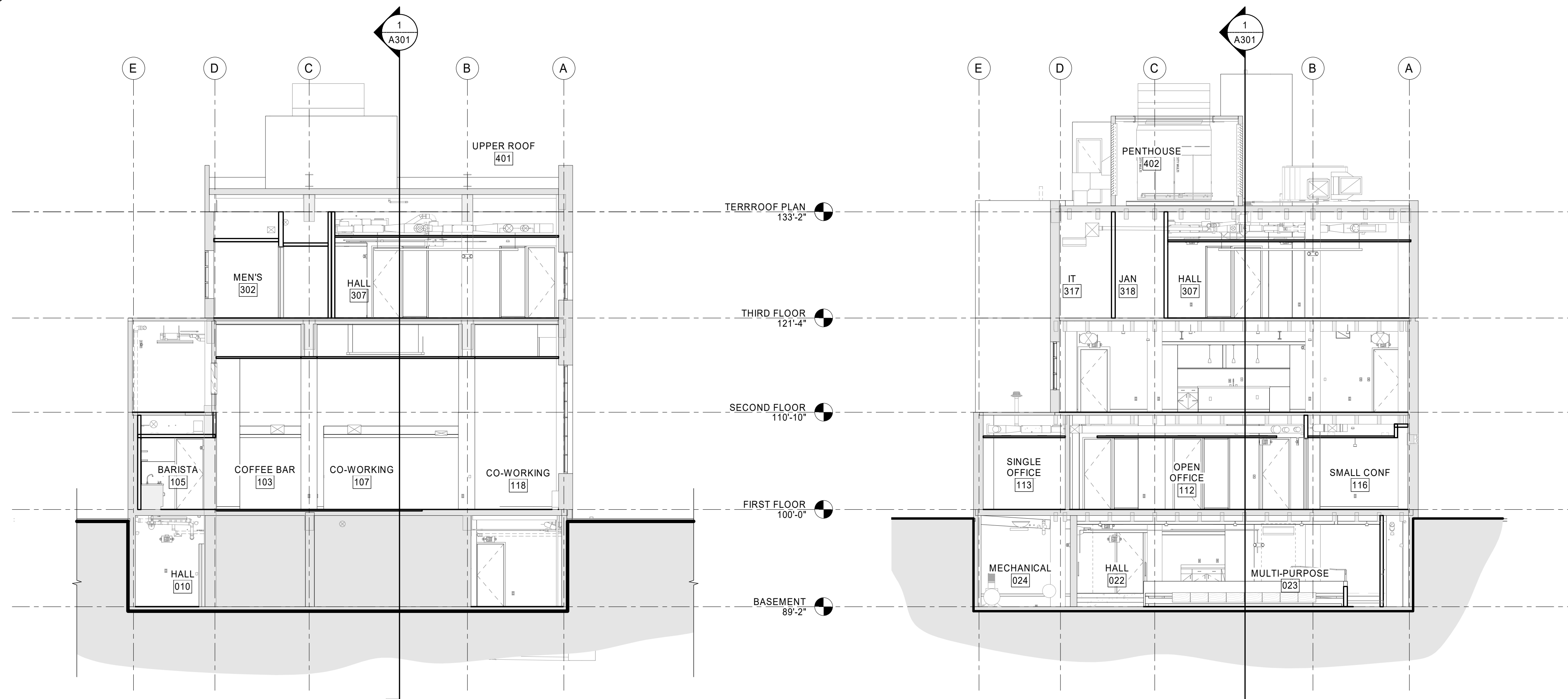
CLIENT  
 ROCK 31 - BIG SKY ECON. DEV.  
 BILLINGS, MT

SIGN PRODUCTS, INC.  
 1425 MONAD, BILLINGS, MT 59104  
 Phone: (406) 252-6348 Fax: (406) 252-6654

SIGN PRODUCTS  
 MONTANA • WYOMING



**1** BUILDING SECTION  
A301 1/8" = 1'-0"



**2** BUILDING SECTION  
A301 1/8" = 1'-0"

**3** BUILDING SECTION  
A301 1/8" = 1'-0"



July 11, 2022

City of Billings  
Community Services  
Attn: Wyeth Friday  
P.O. Box 1178  
Billings, MT 59103-1178

Planning and

Request for TIF Assistance - Big Sky Economic Development Corporation

Dear, Wyeth -

The DBP is hereby submitting a request for TIF assistance on behalf of the Big Sky Economic Development Corporation (BSED) for a project in the Expanded North 27th Street Urban Renewal District.

The project involves the restoration of the stonework of the facade behind the planters and the hardscaping of the sidewalk. Those improvements will enhance the pedestrian experience and contribute to the public safety of this corner as well as protect the integrity of an iconic building under SkyPoint. Protecting historic buildings and activation of otherwise dark vacant spaces are elements of the Urban Renewal Plan and DBA Strategic Plan. BSED's other exterior investments include installing lighting consistent with CPTED best practices and exterior lighted signage for safety and wayfinding purposes.

The maximum eligibility of a facade grant is not to exceed \$50,000. The Board of Directors of the DBP supports this project and recommends approval. This project complies with the Montana Code Annotated as well as City's TIF Policy in regards to the 5:1 preferred threshold of private to public investment. Furthermore, this project conforms with many goals and elements of the Urban Renewal Plan and the Downtown Billings Strategic Plan.

The DBP is requesting a position for review by the Billings City Council during its regular meeting Monday, July 25th.

Thank you for your consideration,

Mehmet Casey  
Development Director  
Downtown Billings Partnership



July 12, 2022

The Downtown Billings Partnership recommends approval

Project: Big Sky Economic Development/Rock31 Entrepreneurial Center

Entity: Big Sky Economic Development Corporation

Tax parcel: A00376

Facade restoration and sidewalk hardscaping

| Items                              | Expenses         | Eligibility   |                 |
|------------------------------------|------------------|---------------|-----------------|
|                                    |                  | MCA 7-15-4233 | MCA 7-15-4288   |
| Sidewalk repair                    | \$18,745         |               | \$18,745        |
| Facade repair<br>(brick/limestone) | \$20,550         |               | \$20,550        |
| Facade cleaning                    | \$12,407         |               | \$10,705        |
| Lighting                           | \$19,371         | \$0           | \$0             |
| Lights over<br>doorways            | \$3,740          | \$0           | \$0             |
| Signage                            | \$29,511         | \$0           | \$0             |
| Doors/entrances                    | \$22,550         | \$0           | \$0             |
| Planter demo                       | \$7,417          | \$0           | \$0             |
| Windows                            | \$13,897         | \$0           | \$0             |
| Masonry                            | \$4,500          | \$0           | \$0             |
| Design                             | \$6,000          | \$0           | \$0             |
| Permits                            | \$4,275          | \$0           | \$0             |
| General conditions                 | \$40,000         | \$0           | \$0             |
| <b>Total</b>                       | <b>\$202,963</b> | <b>\$0</b>    | <b>\$50,000</b> |



**Public Benefit:**

This project answers to goals/elements of the URD and DBA Strategic Plan.

This project complies and conforms with MCA and City TIF policy.

Facade improvements attract new visitations and lend themselves to an enhanced pedestrian experience.

Projects like this stimulate new private investment and economic development.

This project also prompts commercial revitalization as well as positively impacts the marketability and perception of downtown.

**NOTE: SUPPORTING DOCUMENTS FOLLOW AGENDA**

# CITY OF BILLINGS

CITY OF BILLINGS' VISION STATEMENT:

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

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## AGENDA

COUNCIL CHAMBERS

December 8, 2008

6:30 P.M.

**CALL TO ORDER – Mayor Tussing**

**PLEDGE OF ALLEGIANCE – Mayor Tussing**

**INVOCATION – Councilmember McCall**

**ROLL CALL**

**MINUTES – November 13, 2008, Special Meeting  
November 24, 2008**

**COURTESIES** – Presentation to Al Winegardner and family in appreciation of donation in memory of Jayne Winegardner

**PROCLAMATIONS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Item: 1 ONLY.**  
**Speaker sign-in required.** (Comments offered here are limited to 1 minute per speaker. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item.)

*(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)*

### **CONSENT AGENDA:**

1. **A. Change Order #3**, W.O. 08-09, Waste Water Treatment Plant Primary Effluent Pipe Replacement and Sludge Drying Bed Expansion, Western Municipal, \$20,468.65, and **increase** the City Administrator's change order authority by \$50,000.

**B. Approval** of compensation agreement for Private Contract No. 599, Emmanuel Baptist Church Sanitary Sewer Extension project, \$325,360.

**C. Approval** of amended Purchase and Sale Agreement with School District Two for ten acres within Cottonwood Park for \$200,000, and **authorization** for the Mayor to execute associated documents to consummate the sale and transfer of ownership of the property.

**D. Approval** of grant application submittal to Safe Route to School Program for the Elementary School Traffic Plan, \$50,000.

**E. Resolution** relating to financing of proposed Zone 3 Storage, Zone 4 Reservoir project and Water Rehabilitation project; establishing compliance with reimbursement bond regulations under the Internal Revenue Code for the purpose of reimbursing the City with bond sale proceeds for financing water projects prior to the availability of funds.

**F. Resolution** relating to financing of a proposed Wastewater treatment plant disinfection system project; establishing compliance with reimbursement bond regulations under the Internal Revenue Code for the purpose of reimbursing the City with bond sale proceeds for financing sewer projects prior to the availability of funds.

**G. Second/Final reading** ordinance expanding the North 27<sup>th</sup> Street Urban Renewal Area – 2008.

**H. Second/Final reading** ordinance modifying the South Billings Boulevard Urban Renewal District.

**I. Exempt Amended Plat** of Tract 1 of Certificate of Survey 1815.

**J. Bills and Payroll**  
(1) November 7, 2008  
(2) November 14, 2008

**(Action:** approval or disapproval of Consent Agenda.)

## **REGULAR AGENDA:**

**2. PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR BIG SKY ECONOMIC DEVELOPMENT AUTHORITY/GENERAL ELECTRIC CAPITAL CORPORATION** for a new building at 3333 Hesper Road. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).

**3. PUBLIC HEARING AND RESOLUTION GRANTING NEW OR EXPANDING INDUSTRY TAX INCENTIVES FOR DALCO INDUSTRIES DBA TETON STEEL** for property improvements at Gabel Road and South 29<sup>th</sup> Street. Staff

recommends approval. (**Action:** approval or disapproval of staff recommendation).

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR REVISIONS TO BOARDS AND COMMISSIONS:** Revisions that provide consistency in procedural areas for advisory boards, commissions and committees, and reorganizes ordinances into one Article of the Code. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
5. **PUBLIC HEARING FOR EXTENSION OF INTERIM ZONING ORDINANCE:** A proposed one-year extension of the Interim Zoning Ordinance that amends Section 27-611, Sexually Oriented Businesses, and allows the interim zoning ordinance to be effective until December 23, 2009. Staff recommends approval. (**Action:** approval or disapproval of staff recommendation).
6. **DOWNTOWN BILLINGS PARKING STUDY.** Delayed from 11/24/08. Staff recommends approval of contract with Rich and Associates, Inc. for \$68,500. (**Action:** approval or disapproval of staff recommendation).
7. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (*Restricted to ONLY items not on this printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.*)

(**Action:** approval or disapproval of Consent Agenda.)

## ADJOURN

(**NOTE:** Additional information on any of these items is available in the City Clerk's Office)

Visit our Web site at:  
<http://ci.billings.mt.us>

**ATTACHMENT A**

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE MODIFYING THE URBAN RENEWAL PLAN OF THE NORTH 27<sup>TH</sup> STREET DISTRICT URBAN RENEWAL AREA; MODIFYING THE BOUNDARIES OF THE DISTRICT; ADOPTING A MODIFIED URBAN RENEWAL PLAN INCLUDING A TAX INCREMENT PROVISION; APPROVING URBAN RENEWAL PROJECTS THEREIN AND AUTHORIZING THE ISSUANCE OF TAX INCREMENT URBAN RENEWAL REVENUE BONDS OF THE CITY TO FINANCE COSTS THEREOF

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

WHEREAS, on July 11, 2005 the City Council adopted Ordinance No. 05-5333, which created the North 27<sup>th</sup> Street District Urban Renewal Area (hereafter “North 27<sup>th</sup> Street District”) and adopted the Urban Renewal Plan of the North 27<sup>th</sup> Street District Urban Renewal Area (“N. 27<sup>th</sup> Street Plan”) that included a tax increment provision and endorsed urban renewal projects.

WHEREAS, on November 13, 2006 the City Council adopted Ordinance No. 06-5394 which expanded the boundaries and amended the N. 27<sup>th</sup> Street Plan to create the Extended N. 27<sup>th</sup> Street District that included a tax increment provision and endorsed urban renewal projects.

WHEREAS, it has been determined that the Extended North 27<sup>th</sup> Street District and the N. 27<sup>th</sup> Street Plan should be modified to include additional property contiguous to the Extended North 27<sup>th</sup> Street District.

WHEREAS, this Council on November 24, 2008, conducted a public hearing on a proposal to modify the N. 27<sup>th</sup> Street Plan by adopting the Urban Renewal Plan of the Expanded North 27<sup>th</sup> Street District Urban Renewal Area - 2008, thereby establishing a modified urban renewal area to be formally designated as the Expanded North 27<sup>th</sup> Street District Urban Renewal Area - 2008 (the “Expanded North 27<sup>th</sup> Street District - 2008” or “the Property”), and to undertake urban renewal projects therein, all as authorized by Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”).

WHEREAS, the Expanded North 27<sup>th</sup> Street District - 2008 is depicted on Attachment 1 (depicting the relationship of the Expanded North 27<sup>th</sup> District – 2008 to the Extended N. 27<sup>th</sup> Street District) and which is hereby incorporated herein and made a part hereof. Pursuant to this Ordinance, the boundaries of the Redevelopment Area are modified to reflect the addition of the Property depicted on the map on Attachment 1. The Redevelopment Area, as modified, is depicted on Attachment 1 and legally described on Attachment 2 (the “Resulting Redevelopment Area”) (each of which is hereby incorporated herein and made a part hereof). The Resulting Redevelopment Area is contiguous.

WHEREAS, opportunities have been presented to the City that makes it desirable for the City to consider urban renewal projects within the Expanded North 27<sup>th</sup> Street District - 2008 consisting of demolishing certain blighted structures within the district; improving such properties with new construction, landscaping, utilities, and other similar improvements; and making the properties so improved available for private redevelopment in accordance with the Act (the "Projects"). Development proposals to be considered for funding include mixed use projects, building renovations, services for the District and the construction or expansion of City owned parking structures within the District.

WHEREAS, the proposed modified urban renewal plan titled the Urban Renewal Plan of the Expanded North 27<sup>th</sup> Street District - 2008 is attached hereto as Attachment 3 (which is hereby incorporated herein and made a part hereof) (the "Modified Plan"). The Modified Plan contains a tax increment provision and will govern the operation and administration of the Expanded North 27<sup>th</sup> Street District - 2008.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Billings, Montana, as follows:

1. Findings. This Council hereby finds, determines and declares, based on the comments received at the public hearing and other studies and information available to this Council, that:

a. The Property presently contains structures and improvements that are in a state of substantial deterioration, are obsolete or defective, pose unsanitary or unsafe conditions, are vacant and unused, and have inappropriate uses. The present condition of the Property substantially impairs the sound functioning of the downtown area of the City and its environs, is conducive to juvenile delinquency and crime, poses the threat of vandalism or mischief and fire or loss, constitutes an economic and social liability, and is a menace to the public health, safety, and welfare of the residents of the City. Accordingly, the Council reaffirms its previous findings that the Property is a blighted area within the meaning of Section 7-15-4210 of the Act. This Council finds that the rehabilitation, redevelopment or a combination thereof of the Property is necessary and in the interest of the health, safety, morals or welfare of the residents of the City. This Council finds that undertaking measures to eradicate or diminish the blight affecting the Property will help to foster a more dynamic, livable, and vibrant downtown.

b. If Projects require relocation of displaced persons, a detailed relocation plan is required and will be prepared.

c. The Modified Plan conforms to the 2003 Billings and Yellowstone County Growth Policy and the City's Downtown Framework Plan.

d. The Modified 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.

e. A sound and adequate financial program is required for the financing of Projects, which program includes substantial private investment and financing and the sale and issuance by the City of Tax Increment Bonds in proportions yet to be determined, for the purpose of financing a portion of the costs of the Projects as set forth above.

f. Approved Projects will constitute urban renewal projects within the meaning of the Act and are authorized to be undertaken by the City.

2. Plan Adoption. The Modified Plan is hereby adopted and approved in all respects, including without limitation, the segregation and application of tax increments as provided in Sections 7-15-4282 through 7-15-4293 of the Act as provided therein. For purposes of allocating taxes according to the Act, the "prior assessed value" of taxable property within the Expanded North 27<sup>th</sup> Street District - 2008 is that value shown on the assessment rolls as of January 1, 2008.

3. Project Approval. Authorized Projects are hereby approved.

4. Bonds. This Council approves financing the costs of Urban Renewal Projects, or a portion thereof, with proceeds of the Bonds. The City is hereby authorized and directed to undertake activities and analysis ordinarily prerequisite to the issuance of tax increment urban renewal revenue bonds in a principal amount not to exceed \$10 million for financing of the costs of Urban Renewal Projects or a portion thereof.

5. Conditional Commitment. The adoption of the Plan does not constitute a guarantee or a firm commitment that the City will issue the Bonds or undertake Projects. If, based on comments or information made available to or obtained by the City, it appears that the issuance of the Bonds or Projects is not in the public interest or consistent with the purposes of the Act, the City reserves the right not to issue the Bonds or undertake the Project.

7. Repealer. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

8. 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.

9. Effective Date. This Ordinance shall be in full force and effect from and after the date that is 30 calendar days after the date set forth below.

ADOPTED by the City Council of the City of Billings, Montana, on second reading this 8<sup>th</sup> day of December, 2008.

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Ron Tussing, Mayor

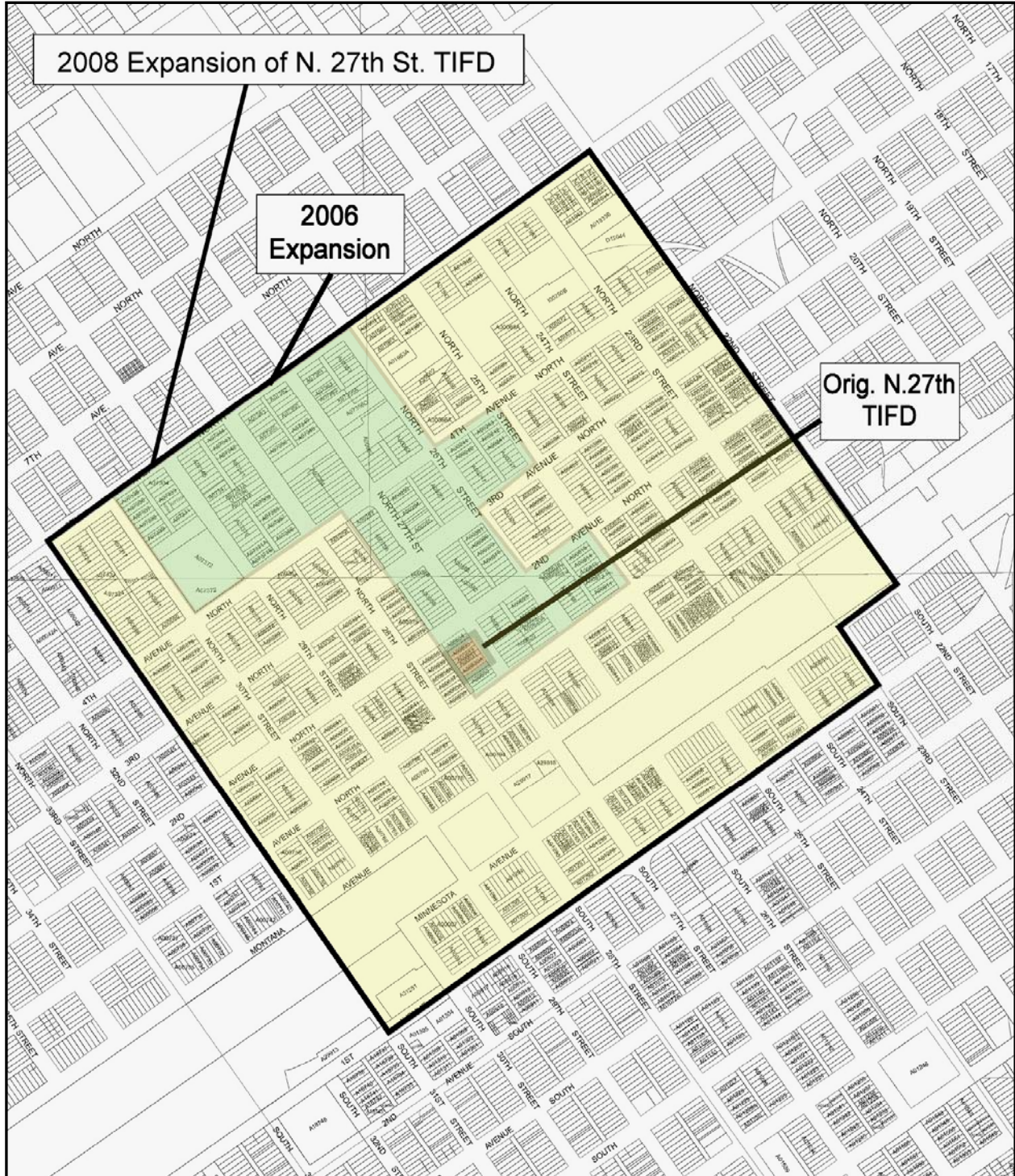
ATTEST:

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Cari Martin, City Clerk

**ATTACHMENT 1**

**Expanded North 27<sup>th</sup> Street Urban Renewal District – 2008 Boundaries, Boundaries of the Extended N. 27<sup>th</sup> Street District (2006) and the Boundaries of the N. 27<sup>th</sup> Street District (2005)**



**ATTACHMENT 2**  
**Expanded North 27<sup>th</sup> Street Urban Renewal District – 2008**  
**Boundary Description**

**Beginning at a point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and North 31<sup>st</sup> St. proceeding east along the centerline of 6<sup>th</sup> Ave. North to a point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and N. 22<sup>nd</sup> Street proceeding south along the centerline of North 22<sup>nd</sup> Street, crossing the centrally assessed Burlington Northern Railroad property, to a point at the intersection of South 22<sup>nd</sup> Street and Minnesota Avenue proceeding west along the centerline of Minnesota Avenue to a point at the intersection of Minnesota Avenue and South 23<sup>rd</sup> Street proceeding south along the centerline of South 23<sup>rd</sup> Street to a point at the intersection of South 23<sup>rd</sup> Street and 1st Avenue South proceeding west along the centerline of 1<sup>st</sup> Avenue South to a point at the intersection of the centerlines of 1<sup>st</sup> Avenue South and South 31<sup>st</sup> Street proceeding north along the centerline of South 31<sup>st</sup> Street, crossing the centrally assessed Burlington Northern Railroad property, to the starting point at the intersection North 31<sup>st</sup> Street and 6<sup>th</sup> Avenue North encompassing all parcels and tax codes therein.**

**ATTACHMENT 3**  
**Expanded North 27<sup>th</sup> Street Urban Renewal Area – 2008**  
**Modified Plan**

**EXPANSION OF THE BILLINGS, MONTANA  
NORTH 27<sup>TH</sup> STREET URBAN RENEWAL AREA,  
WITH TAX INCREMENT, AND AMENDMENT TO  
THE URBAN RENEWAL PLAN**

**FOR CITY OF BILLINGS AND PLANNING REVIEW**  
**October 14, 2008**

Prepared by



Downtown Billings Partnership, Inc  
2815 2<sup>nd</sup> Ave. North – Billings, MT 59101 – [gregk@downtownbillings.com](mailto:gregk@downtownbillings.com)

## **SECTION 1 – INTRODUCTION**

On July 11, 2005, the City Council adopted an ordinance that (a) created the North 27<sup>th</sup> Street District Urban Renewal Area (“North 27<sup>th</sup> Street District”) and (b) adopted an urban renewal plan for the district. On November 13, 2006 the City Council adopted an ordinance that (a) expanded the North 27<sup>th</sup> Street District and (b) modified the urban renewal plan for the district. For reasons discussed in this Amendment to the Urban Renewal Plan of the North 27<sup>th</sup> Street District (“Plan”), it has been determined that the North 27<sup>th</sup> Street District should be expanded again to include other contiguous blighted properties in need of redevelopment. Further, it has been determined that this area, known as the Central Business District of Billings, has been and is in need of expanded public parking, enhanced pedestrian connections and experiences, improved public safety, and infrastructure improvements to public and private properties that will lead to increased taxable values. The existing urban renewal plan may be modified by ordinance in accordance with the procedure described in M.C.A. § 7-15-4221. The Urban Renewal Plan of the North 27<sup>th</sup> Street District approved by the City Council on July 11, 2005 and modified on November 13, 2006 is hereby included by reference as part of this amended Plan and shall remain applicable hereto except to the extent the original plan is explicitly or impliedly amended by this Plan. It is recognized as part of this Plan that the basic vision of the document known as Downtown Billings Framework Plan, adopted by the Billings City Council on December 22, 1997 and by the Yellowstone County Commissioners on December 23, 1997, is still valid and should be considered a part hereof. The terms defined in “Part I – DEFINITIONS” of the North 27<sup>th</sup> Street District Plan shall have the same meanings in this Plan unless a contrary meaning is expressed herein. The expanded district proposed in this Plan is hereafter referred to as the Expanded North 27<sup>th</sup> Street District - 2008 or the “District.”

## **SECTION 2 – BACKGROUND**

The original Downtown Redevelopment District, a downtown tax increment finance district, was created on December 20, 1975 by a resolution which cited hazardous conditions existing in the district due to overhead utility wires, inefficient land use, problems of access and circulation, physical constraints to development, random location of mixed uses and deteriorated building

conditions, and found that rehabilitation and redevelopment of the District would be in the public interest. That original district (hereafter “1975 District”) comprised one hundred and twenty four (124) blocks in the city center after the 1985 south expansion and the 2004 east expansion. The 1975 District expired March 1, 2008 but the Urban Renewal Plan and the Framework Plan used for that district, in many parts and in relation to this District remain valid.

Because the 1975 District has terminated, but many of the undesirable conditions continue to exist, it was determined that it would be in the best interest of the City to expand the North 27<sup>th</sup> Tax Increment District to assist the construction of public improvements, stabilize and grow the tax base, increase the parking inventory, increase the inventory of downtown residential property, stimulate multi-use development (“Multi-Use Facility Projects”), fill street level vacancies, provide expanded security, develop safe event locations with appropriate traffic control devices, expand the Business Improvement District, make modifications to street and intersection lighting, increase traffic calming and reduce the noise in the district through Quiet Zone management and further implement the vision of the Downtown Framework Plan.

Currently, there is a need to expand the North 27<sup>th</sup> Street District to encompass development needs on the North 27<sup>th</sup> Street corridor, the North Broadway corridor, the Old Town Neighborhood and the Montana Avenue Historic District (including expansion of the Historic District to include areas south of the railroad tracks), the Civic District, areas adjacent to the Medical Corridor, adjacent to the East Billings Urban Renewal Area and other underutilized properties within the Central Business District of Billings. Although there has been significant improvement in the valuation of property in much of the 1975 District, the area defined by this proposed expanded tax increment district has major properties that have been neglected for many years and continue to show signs of serious blight and tax base decline. Many parcels have been removed from the tax rolls and/or are delinquent on payments of taxes and fees. The Expanded North 27<sup>th</sup> Street District creates an opportunity to continue redevelopment of the center of downtown with a mixture of public and private investment in a roughly seventy-one-square-

block district (just over half of the size of the 1975 expanded district) encompassing the existing North 27<sup>th</sup> Street District.

The area has several pockets of low taxable value, with several lots of the land being owned by government and other non-profit entities and several buildings that are over 50% vacant.

The creation of the Expanded North 27<sup>th</sup> Street District is essential to any planned development at 4<sup>th</sup> Avenue North and North Broadway, redevelopment of the vacant Northern Hotel, improving security and expanding the clean safe and vibrant programs of the Business Improvement District, continuing redevelopment of the Civic Plaza area, developing the boundary areas of the Medical Corridor and the East Billings Urban Renewal Area, and expanding the Historic District. It could also assist with the essential remodeling of the Northern Hotel, the Babcock Theatre, the Westwood Building, the Lincoln Hotel Building. Public infrastructure construction within this expanded District could assist with the renovation and/or relocation of various City facilities, such as the public library. It is currently expected that the expanded North 27<sup>th</sup> Street District may help fund the following projects:

## **I. Business Programs and Projects**

- a. Business Retention
  - i. Targeted assistance and review of existing street level businesses
  - ii. Retail market survey
- b. Business Recruitment
  - i. Development of a “chainlet” network
  - ii. Business plan development assistance
  - iii. Association networking
  - iv. Business Improvement District support
  - v. Business cluster analysis
  - vi. Pedestrian study
    - 1. demographics
    - 2. directions
    - 3. linkages
    - 4. destinations
    - 5. wayfinding

## **II. Parking and Transportation**

- a. Increase use of public transit
- b. Parking structures to support current and future needs

- c. Explore parking linkages to adjacent destinations
- d. Explore parking management practices and programs
  - i. Off street parking
  - ii. On street parking

### **III. Crime Prevention and Public Safety**

- a. Cooperative Security Program
- b. Business Watch Program
- c. Crime and Fraud prevention programs
  - i. Geared towards street level businesses

### **IV. Management, Implementation and Maintenance**

- a. Downtown Billings Partnership, Inc. or its successor, management agreement
  - i. Project development
  - ii. Public awareness
  - iii. Advocacy and liaison between public and private sectors
- b. Business Improvement District expansion and development
  - i. Cooperative work agreements with PMDs
  - ii. Development and promotion of Conference Corridor
  - iii. BID expansion
  - iv. “Green” Management
    - 1. Recycling programs
    - 2. Tree management

### **V. Infrastructure Improvements**

- a. Public
  - i. Expansion of Historic District
  - ii. New Library
  - iii. New Planning Department Offices
  - iv. Public Parking and Greenspace
  - v. Intersection Lighting by Public Works
  - vi. New SILMDs for mid-block lighting
  - vii. Streetscapes and traffic calming plans
  - viii. Sidewalks, curbs and gutter improvements
    - 1. stabilization of vaults
  - ix. Relocation of public and private utility lines
- b. Public infrastructure improvements that would support the following development projects/programs
  - i. Workforce housing development
  - ii. Loft and Condo development
  - iii. Lodging development
  - iv. Conference Facilities

v. Entertainment venues

**SECTION 3 – SUMMARY OF BLIGHT FINDINGS**

The area in the proposed expansion of the North 27th Street District contains a great deal of blight. Within the district there is substantial structural deterioration, long-term land vacancy, a railroad spur line that has been abandoned and a major rail line that continues to divide the Central Business District. Several of the commercial buildings in the district are deteriorated and/or vacant and need demolition or renovation. Many of the storefronts and upper floors are vacant or under-occupied. Sidewalks are cracked; alleys are deteriorated, and, in general, much of the area is below accepted 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. Most of the district falls into the blighted, neglected and under-utilized categories.

**SECTION 4 – DESCRIPTION OF BLIGHTED AREA**

The expanded urban renewal area described in this amended Plan incorporates most of the Central Business District. Within the district there are several older, single-story structures that have been retrofitted for offices and warehousing, numerous surface parking lots, and several vacant structures. Many of these structures are unsuited to their current uses because of age obsolescence and physical deterioration.

Montana's Urban Renewal Law (Montana Code Annotated Title 7, Chapter 15, Parts 42 and 43) provides the authority to declare the existence of blighted areas and to target them for improvements. "Blighted area" is defined in Section 7-15-4206(2), M.C.A., as follows:

*[A]n area that is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests 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;*
- (i) deterioration of site;*
- (j) diversity of ownership;*
- (k) tax or special assessment delinquency exceeding the fair value of the land;*
- (l) 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 this subsection (2).*

The land being added to the Plan area includes 405 (Exhibit A) property tax codes plus a segment of centrally assessed BN Railroad property. The complete, expanded Urban Renewal Area will have 481 property tax codes plus the segment of BN Railroad property. Within that total area, and as noted in the 2006 approved Urban Renewal Plan, there are many “target areas” that should be immediately considered for redevelopment. The properties on N. Broadway between 4<sup>th</sup> Avenue North and 6<sup>th</sup> Avenue North will need additional parking to facilitate the construction of a Stockman Bank facility. The area adjacent to the Northern Hotel on North Broadway is in need of parking due to the closure of the privately owned parking structure in that area due to unsafe and blighted conditions of the structure. The area east of the Yellowstone County Courthouse Lawn is targeted for a new federal courthouse and will need additional parking and green spaces. The area between the new MET transit facility on N. 25<sup>th</sup> Street and to the east boundary of the East Billings Urban Renewal Area (N. 22<sup>nd</sup> Street) is in need of redevelopment that could include workforce housing and parking. The status of the Battin Federal Courthouse is still unclear. The facility is contaminated with asbestos and is destined to become vacant with the completion of a new federal courthouse and office building. This

vacancy will present a redevelopment opportunity in the near future. The area surrounding City of Billings Park IV contains many surface parking lots that could be developed if Park IV is sold to a private developer. This area lacks high-rise housing with mixed use occupancy on the first floor. The future use of the Lincoln Center is unclear and it could be a redevelopment opportunity if the school district ceases its administrative and continuing education functions in the building. The properties on 1<sup>st</sup> Ave. S. and Minnesota Avenue are not currently in a Historic District and values remain stagnant as compared to the Montana Avenue area. The redevelopment of the south side of the railroad tracks has not kept up with the redevelopment north of the tracks and should be a target area. Several properties located between Montana Avenue and 1<sup>st</sup> Avenue North are severely underutilized and in need of redevelopment. Without attention to some of this blight, over time, the value of the Montana Avenue redevelopment will most likely be negatively impacted.

#### **SECTION 5 – DETERMINATION OF BLIGHT**

The proposed expansion area of the North 27<sup>th</sup> Street District contains a number of underdeveloped properties. The Council previously determined that the property included in the North 27<sup>th</sup> Street District was “blighted” within the meaning of the Act in Resolution 05-18276 adopted June 13, 2005 and Resolution 06-18488, adopted September 25, 2006. The Redevelopment Area, including the portion that is to be expanded to form the Expanded North 27<sup>th</sup> Street District - 2008, was previously determined to be blighted and an appropriate area for an urban renewal project in Resolution No. 12107 dated January 5, 1976. Deficiencies in public and private properties located in the district lead to a determination that the area continues to be blighted, as defined by state statute. Specific areas of blight on the site are listed below:

##### Deficient Structures in Expanded Area

There are several buildings that are over 50 years in age and do not qualify as being historically significant. Many are in poor repair and may contain potentially hazardous asbestos and lead paint.

#### Deficient Public Facilities in Extended Area

The streets, curbs, gutters and sidewalks in much of the area are in satisfactory repair. However, sewer and water utilities in the area are aging and have required frequent repairs in recent years. Several parking lots generally do not meet code requirements for paving, striping and landscaping. Many of them are cracked and crumbling. The city owned parking ramps within the area, except for Park IV have extensive “waiting lists” and public parking for adjacent office and commercial structures continues to be inadequate. Demand for parking will continue and additional and expanded parking structures will be required to accommodate commercial growth.

#### Deficient Land Use in Extended Area

In general, the area is under-utilized due to the significant amount of surface parking areas and a large number of single-story structures. The taxable value of this district must be stabilized and encouraged to grow.

### **SECTION 6 – THE SITE AND ITS RELATIONSHIP TO THE CITY**

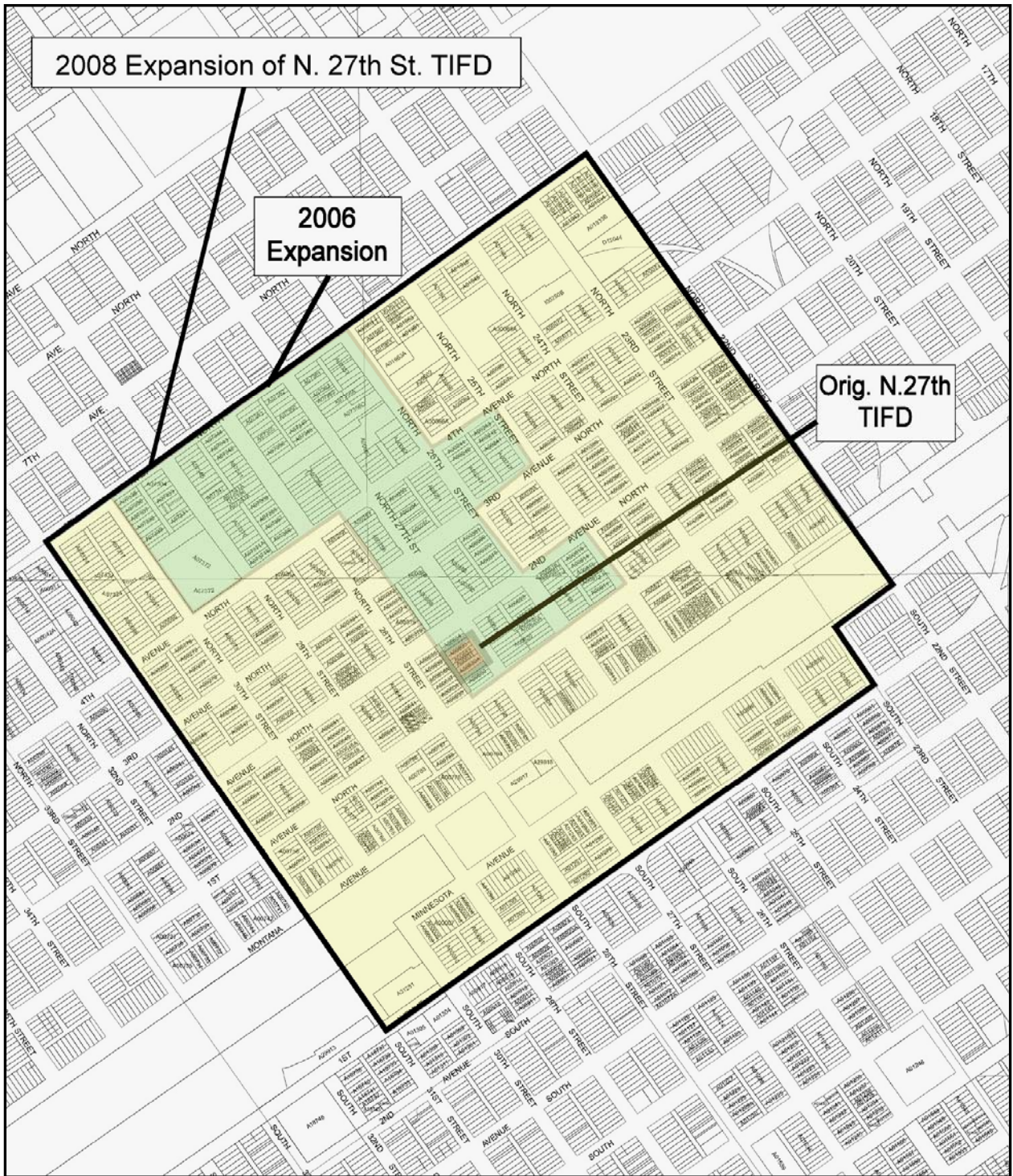
As noted, the expanded North 27<sup>th</sup> Street Urban Renewal Area comprises most of the Central Business District (CBD) of the City of Billings.

### **SECTION 7 – LEGAL DESCRIPTION**

The legal description of the proposed Expanded North 27<sup>th</sup> Street District – 2008 is as follows:

**Beginning at a point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and North 31<sup>st</sup> St. proceeding east along the centerline of 6<sup>th</sup> Ave. North to a point at the intersection of the centerlines of 6<sup>th</sup> Avenue North and N. 22<sup>nd</sup> Street proceeding south along the centerline of North 22<sup>nd</sup> Street, crossing the centrally assessed Burlington Northern Railroad property, to a point at the intersection of South 22<sup>nd</sup> Street and Minnesota Avenue proceeding west along the centerline of Minnesota Avenue to a point at the intersection of Minnesota Avenue and South 23<sup>rd</sup> Street proceeding south along the centerline of South 23<sup>rd</sup> Street to a point at the intersection of South 23<sup>rd</sup> Street and 1st Avenue South proceeding west along the centerline of 1<sup>st</sup> Avenue South to a point at the intersection of the centerlines of 1<sup>st</sup> Avenue South and South 31<sup>st</sup> Street proceeding north along the centerline of South 31<sup>st</sup> Street, crossing the centrally assessed Burlington Northern Railroad property, to the starting point at the intersection North 31<sup>st</sup> Street and 6<sup>th</sup> Avenue North encompassing all parcels and tax codes therein, all inclusive.**

Map of entire Expanded N. 27<sup>th</sup> District



## **SECTION 8 – PROPERTY DEVELOPERS**

New development in the proposed tax increment district will also be accomplished through the implementation of the Downtown Framework Plan. These Projects are described in Section 2 of this plan.

## **SECTION 9 – PROJECT RELATIONSHIP TO THE FRAMEWORK PLAN**

The proposed urban renewal area and expanded tax increment district is located generally in the center of the City and encompasses most of the “districts” as defined by the Billings Framework Plan (“Framework Plan”). One goal of the Framework Plan was to remove barriers to downtown circulation and development created by 4<sup>th</sup> Avenue North and 6<sup>th</sup> Avenue North and establish the area between the avenues as both a discreet district and a recognized extension of the CBD, thereby allowing potential ties to the medical corridor and MSU-Billings from the CBD. Generally, the Framework Plan stressed the downtown’s ability to make a positive impact on the entire city. The Framework Plan also recommended a private non-profit organization to assist the City of Billings with the management of the Tax Increment District through an annual work plan and contract. This Expanded N 27<sup>th</sup> Street District may be managed in a similar manner and could make use of the redevelopment and facilitation established through that management entity.

### **Framework Plan Recommendation: Housing**

The Framework Plan states that housing should be a top priority and that the City should continue to work with builders and developers to encourage downtown housing through various methods. Specifically, the plan states that high-rise housing is to be located in the east transition zone and portions of the north transition zone.

The formation of an expanded tax increment district will help to raise funds that can be used for construction or rehabilitation of public infrastructure necessary to attract and retain housing in the area.

## **Framework Plan Recommendation: Priorities**

The top priorities identified in the Framework Plan include the following:

- Development incentives, including business retention and recruitment
- Housing – demonstration projects
- Streetscape Kit of Parts – expand kit to include Minnesota Avenue
- Events Kit of Parts – Modern and safer traffic control devices may be needed
- Paring configuration adjustments – several one-way streets could be converted to 2-way
- 5<sup>th</sup> Avenue North Corridor preservation and enhancement

**This amendment to the Plan and the urban renewal projects that it contemplates specifically address all six of these priorities.**

### **SECTION 10 – CONFORMANCE TO THE GROWTH POLICY**

One of the requirements of Montana’s Urban Renewal Law (Title 7, Chapter 15, Parts 42 and 43) is that the urban renewal plan must conform to the community’s growth policy. The Yellowstone County and City of Billings Growth Policy (“Growth Policy”) refers to and promotes downtown redevelopment in a variety of ways. This amendment to the Plan is consistent with the current Growth Policy.

### **SECTION 11 – CERTAIN PLAN FEATURES AND FINANCIAL MATTERS**

Section 7-15-4217, M.C.A., of the Act requires cities to make certain findings when they adopt an urban renewal plan and approve Urban Renewal Projects. These are addressed below:

1. Most of the District contains no existing dwelling units or housing, and planned projects would not displace any persons from housing. Accordingly, there is no need to have a workable and feasible plan for substitute housing until and unless such a project is developed in the future.
2. This amended Plan conforms to the Growth Policy for the City as a whole and to the

Framework Plan.

3. This Modified Plan affords maximum opportunity, consistent with the needs of the City as a whole, for the rehabilitation or redevelopment of the Expanded North 27<sup>th</sup> Street District by private enterprise. It is unreasonable to expect that the district will be remain stabilized and/or redeveloped without substantial public support. Numerous properties within the area are dilapidated. As presently constituted, property in the district is not conducive to any sort of uniform or integrated development and, as presently existing, cannot compete with other areas of the City for substantial developments, particularly areas at the outskirts of the City. Experience has validated the foregoing facts and observations. This amended Plan is intended to facilitate the identification and construction of significant Urban Renewal Projects, which would not be possible without this Plan.
4. A sound and adequate financial program exists for financing projects, which include the sale and issuance by the City of the Bonds in an amount not to exceed the costs of the project, including administration costs and costs of issuance of the Bonds. Any approved Development Project will require commitments of substantial private financing that will provide the primary means for funding construction of the improvements.
5. This Expanded N. 27<sup>th</sup> Street District - 2008 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 be mailed only 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 12 – TAX INCREMENT

Tax increment financing is necessary to encourage private reinvestment within the District, which will further encourage economic growth in the District and Downtown Billings, create substantial employment opportunities, and increase the tax base of the City and other taxing jurisdictions. The expanded North 27<sup>th</sup> Street District is hereby established as a tax increment financing urban renewal area within the meaning of the Act, and, in particular, Section 7-15-4282 through 7-15-4293 of the Act. This Section constitutes a tax increment provision within the meaning of the Act. In connection therewith:

1. For the purpose of calculating the incremental taxable value each year for the life of the district, the base taxable value shall be calculated as current base taxable value of the district plus the base taxable value of all real and personal property added to the district by this amended plan and as show in Exhibit B as of **January 1, 2008**.
2. The City is hereby authorized to segregate the tax increment derived in the district and use and deposit such increment into the tax increment fund of the district for use as authorized by the Act and as authorized herein from time to time, including, without limitation, pledging the tax increment to repayment of Bonds.
3. The tax increment received from the district may be used to pay directly costs of an approved Development Project as may from time to time be approved by the Council. The Council also hereby authorizes the use of tax increment in the district to pay debt service on Bonds issued to finance a portion of the costs of these Development Projects, and costs associated with the sale and security of such Bonds in compliance with the Act, subject to any limitations imposed by the Montana Constitution and federal law.
4. The tax increment provision of the district will terminate upon the latter of:
  - a. The fifteenth (15<sup>th</sup>) year following the original creation of the district; or
  - b. The payment or provision for payment in full or discharge of all Bonds, and the payment of interest thereon, for which the tax increment has been pledged.

After termination of the tax increment provision, all taxes shall continue to be levied upon the actual taxable value of the taxable property in the district, but shall be paid into funds of the taxing bodies levying taxes within the district.

## SECTION 13 – CONCLUSIONS

The creation of this expanded North 27th Street Urban Renewal District will have a positive impact on Downtown Billings and no impact on the total taxable value flowing to the taxing entities from the now expired 1975 Urban Renewal District.

Expansion of the North 27<sup>th</sup> Street District is an essential first-step in completing what may be a number of urban renewal projects. If completed, mixed use projects approved within the first two years could stimulate over \$30 million in new construction, and possibly as much as \$15 million in re-sales and redevelopment. Approximately 500 new employees and new downtown residents could be located on the commercial and upper floors of possible mixed use projects. Thus, expansion of the district, in addition to further stabilizing the tax base, eliminating blight and providing renaissance to the CBD, will also bring new employees and residents to the CBD.

Mixed use development within the Expanded District ties in favorably with and actually stimulates the remodeling plans that are currently underway for several downtown properties. Additionally, like any major new development, the anticipated Stockman Bank construction at 4<sup>th</sup> Avenue North and North Broadway will have a stimulating effect on the surrounding area. Specific examples of this are:

1. It will tie the CBD to the medical corridor located immediately to the north of the development.
2. The Billings Clinic has purchased the Underriner property to the north and west of the Library. The Clinic's plans at this point have not been determined; however, the development proposed in this amended Plan will enhance and encourage future development by this group.

3. The Framework Plan encourages the development of the 5<sup>th</sup> Avenue North corridor. An enhanced Library, as accomplished by projects described in this Plan, will provide an excellent entrance to this corridor.
4. Future redevelopment and revitalization of structures like the Northern Hotel and the Babcock Theatre Building are enabled by this district.
5. This expanded district may assist with the completion of and continued modernization of City owned downtown parking structures.

In conclusion, expansion of the North 27<sup>th</sup> Street Urban Renewal District to include the property described in this amended Plan will have a positive effect on the CBD and the City.

**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 9<sup>th</sup> day of July, 2018.



CITY OF BILLINGS

BY: William A Cole  
William A. Cole, Mayor

ATTEST

BY: Denise R. Bohlman  
Denise R. Bohlman, City Clerk

**City Council Regular**

**Date:** 07/25/2022  
**Title:** Resolution to Establish Landfill Reserve for Future Capital Expenses  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** Yes  
**Legal Review** Yes

**RECOMMENDATION**

Staff recommends City Council not approve the resolution to separate tipping fees collected by non-city residents into a separate landfill capital fund.

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

City Council discussed this resolution on the July 11, 2022, meeting and asked that it be brought back for action on the next business meeting. At the July 11, 2022, City Council meeting, a motion was passed to modify the resolution. The modification removed the words "facilities and operations" from the paragraph numbered 1. The resolution attached to this memo for consideration reflects that change.

At the conclusion of the December 20, 2021 City Council meeting, CM Ewalt proposed a council initiative to set aside 20% of revenues from out-of-city limits customers using the landfill to pay for future capital expenses at the landfill. This initiative was seconded by CM Yakawich and approved by Council.

During the FY 2021 budget process staff recommended Council set out-of-city landfill tipping fees to be 50% higher and out-of-state tipping fees to be 100% higher than in-city fees. This recommendation was inclusive of the 20% CM Ewalt had successfully included in the prior two tipping fee adjustments and increased resources for capital investments at the landfill. Therefore, staff believes we accomplished the Council's direction without adding unnecessary accounting work.

Public Works currently has an average of approximately \$6.3 million of capital expenses annually programmed in the five-year Capital Improvement Plan (CIP), as well as planned compactors, grinders, and other large landfill equipment programmed in the Equipment Replacement Plan (ERP). The amount reserved will be utilized for these programmed capital expenses and approved by Council in the CIP and ERP, as well as through Council actions for landfill bid awards, agreements, and purchases of equipment.

**ALTERNATIVES**

City Council may:

- Approve the resolution establishing a landfill reserve for future capital expenses; or,
- Not approve the resolution. If not approved, the revenues collected from customers who pay outside Billings rates will continue to be used for solid waste personnel, operations and maintenance, capital, and debt service expenses.

**FISCAL EFFECTS**

The amount generated from twenty (20) percent of all landfill fees accrued from users outside the City of Billings is estimated to be approximately \$900,000 annually. There is no actual fiscal impact as establishing the reserve merely requires a shift from the flexibility of spending this revenue on personnel, operations and maintenance, capital, and debt service to be spent only on capital expenses.

**Attachments**

Resolution

**RESOLUTION 22-**

**A RESOLUTION ESTABLISHING SOLID WASTE LANDFILL RESERVE FOR  
FUTURE CAPITAL EXPENSES**

WHEREAS, the City anticipates a need for construction and improvements of solid waste facilities and operations for providing landfill use to inhabitants of the City of Billings, Montana and its environs; 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 and safe solid waste landfill operation and to provide adequate funding to meet the cost of constructing and improving the same; and

WHEREAS, landfill fees are established annually by resolution.

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

1. That twenty (20) percent of all revenues from landfill fees accrued from users outside of the City of Billings who pay outside Billings rates shall be reserved annually to pay for future capital expenses for the City of Billings landfill.
2. That use of this reserve will be designated in the annual capital improvement and equipment replacement plans which are approved by City Council.

APPROVED, AND PASSED by the City Council of the City of Billings this 25<sup>th</sup> day of July, 2022.

CITY OF BILLINGS

By: \_\_\_\_\_  
William A. Cole, Mayor

ATTEST:

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