****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 and click on "Your Government," "City Council," and "Agendas & Minutes".
- View the meeting:
  - On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)*
  - Online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 also has links to their Facebook page and YouTube channel.
  - On the City's website at www.billingsmt.gov and click on "Watch Meetings Online" on the homepage.
  - In-Person.
  - 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.
  - 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.
  - **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 Webinar IDs and Passcodes
- Click Here for Zoom Meeting Instructions for Attendees (as guests)

Please contact Denise Bohlman, City Clerk, at bohlmand@billingsmt.gov, or at 406.657.8210, with any questions.

CITY OF Billings

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

CITY COUNCIL
REGULAR BUSINESS MEETING
AGENDA

COUNCIL CHAMBERS | MAY 22, 2023 | 5:30 P.M.

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Boyett

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

MINUTES: May 8, 2023

COURTESIES:

PROCLAMATIONS:

COUNCIL REPORTS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1, 2, 7c and 8 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.)

SPECIAL PRESENTATION: Big Sky Passenger Rail Authority (Jason Stuart, Vice Chair)

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

A. **Bid Awards:**

1. **Compost Mixer and Conveyor System.** (Opened 5/2/2023) Recommend Roto Mix, LLC.
2. **W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Drain Improvements.** (Opened 5/2/2023) Recommend Schedule 1, Phase 2, Western Municipal Construction.

B. **Memorandum of Understanding** with Yellowstone County for water main replacements at MetraPark.

C. **Assignment and Assumption** of Pretreatment Service Agreement from ExxonMobil to Par Montana, LLC.

D. **Agreement** with Hoopla for the Library's digital library platform.

E. **Declaring Surplus Property** and authorizing the sale of 300-gallon waste containers to the City of Powell, Wyoming.

F. **Declaring Surplus Property** and authorizing the sale of 300-gallon waste containers to the Town of Upton, Wyoming.

G. **Donations** to City of Billings for "Mobilize the MAGIC City" Project.

H. **Donations** to the Billings Public Library from various donors.

I. **Preliminary Minor Plat** of Elysian Subdivision. *Quasi-Judicial

J. **Preliminary Minor Plat** of Price Subdivision, Amended Lots 1 and 5, Block 1. *Quasi-Judicial

K. **Preliminary Major Plat** of Lake Hills Subdivision, 40th Filing. *Quasi-Judicial

L. **Final Plat** of Bitterroot Heights Subdivision, 3rd Filing. *Quasi-Judicial

M. **Bond Resolution** for Pooled Series 2023 Sidewalk Bonds for W.O. 21-11 and W.O. 22-07.

N. **Resolution** of Intent to Create SILMD 331 and set a public hearing date for June 12, 2023.

O. **Resolution** of Intent to Create SID 1423 and set a public hearing date for June 12, 2023.

P. **Resolution** extending the Energy and Conservation Commission to December 31, 2025.

Q. **Resolution** notifying Election Administrator of mail ballot.

R. **Third/Final Reading Ordinance** amending Billings, Montana City Code, Section 18-204, prohibiting weapons and firearms.

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

1. April 17, 2023
2. April 24, 2023

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. **APPROVAL OF BID PACKAGE NO. 2 CONTRACT AMENDMENT** with Dick Anderson Construction for New City Hall Renovation Project. Staff recommends approval.

   - Presented by: John Caterino, Facilities Manager

   Recommended Motion: I move to approve the Bid Package No. 2 Contract Amendment with Dick Anderson Construction, as recommended by staff.

3. **PUBLIC HEARING AND RESOLUTION** adopting Water and Wastewater Rates and Fees. Staff recommends approval.

   - Presented by: Jennifer Duray, Deputy Public Works Director

   Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Resolution adopting Water and Wastewater Rates and Fees, as recommended by staff.

4. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1029:** text amendments to the Neighborhood Districts, Fence Materials and Sign Code. Zoning Commission recommends approval.

- Presented by: Nicole Cromwell, Zoning Coordinator

Recommended Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve First Reading Ordinance for Zone Change 1029, amending text to the Neighborhood Districts, Fence Materials and Sign Code, as recommended by the Zoning Commission.

5. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1023:** located at Wicks Lane and Bitterroot Drive. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

- Presented by: Karen Husman, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve First Reading Ordinance for Zone Change 1023 and adopt the findings of the 10 criteria, as recommended by the Zoning Commission.

6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1024:** located at 3100 block of Central Avenue. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

- Presented by: Karen Husman, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve First Reading Ordinance for Zone Change 1024 and adopt the findings of the 10 criteria, as recommended by the Zoning Commission.

7. **FIFTY-FOUR WEST DEVELOPMENT:**

a. **JOINT PUBLIC HEARING FOR ANNEXATION 23-03 AND ZONE CHANGE 1025:**

i. **RESOLUTION APPROVING ANNEXATION 23-03:** located North of Rimrock Road and East of 54th Street West. Staff recommends conditional approval. *Quasi-Judicial

- Presented by: Hunter Kelly, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to conditionally approve the Resolution Approving Annexation 23-03, as recommended by staff.

ii. **FIRST READING ORDINANCE FOR ZONE CHANGE 1025:** located on the north side of Rimrock Road and east of 54th Street on a parcel located on the northeast corner of the intersection. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

- Presented by: Karen Husman, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken testimony, I move to approve First Reading Ordinance for Zone Change 1025 and adopt the findings of the 10 criteria, as recommended by the Zoning Commission.

b. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward IV to include recently annexed property in Annexation 23-03: a parcel located North of Rimrock Road and East of 54th Street West. Staff recommends approval.

- Presented by: Hunter Kelly, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the First Reading Ordinance expanding the boundaries of Ward IV, as recommended by staff.

c. **PRELIMINARY MAJOR PLAT** of Fifty-Four West Subdivision. Planning Board recommends approval. *Quasi-Judicial

- Presented by: Hunter Kelly, Planner

Recommended Motion: I move to conditionally approve the preliminary major plat of Fifty-Four West Subdivision, and adopt the Findings of Fact, as recommended by the Planning Board.

8. **FRANCHISE FEE LITIGATION SETTLEMENT AGREEMENT.** Staff recommends approval.

- Presented by: Gina Dahl, City Attorney

Recommended Motion: I move to approve the settlement agreement concerning franchise fee litigation, 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, 72 hours prior to the meeting date.

~ ~ ~

City Council Regular

Date:	05/22/2023
Title:	BID AWARD: Compost Mixer and Conveyor System
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends the City Council award a contract to Roto Mix, LLC, for a compost mixer and conveyor system in the amount of $376,355.

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

Staff is in the process of constructing a compost facility to handle yard waste and sludge from the Wastewater Reclamation Facility (WRF). The yard waste will be hauled into the compost facility from city yard waste trucks and other private haulers. Solid Waste currently hauls the sludge from the WRF. The mixer and conveyor system is a critical part in the compost operation. The mixer will allow staff to adequately and completely mix sludge and yard waste before setting the material in rows to be composted.

The equipment was advertised on April 21st and 28th in the Yellowstone County News and on the City's website. Bids were opened May 2, 2023. One bid was received from Roto-Mix, LLC. Staff evaluated the bid and determined that it was responsible and appropriate to award.

ALTERNATIVES

City Council may:

- Approve the purchase of a compost mixer and conveyor system from Roto Mix, LLC in the amount of $376,355; or,
- Not approve the purchase. If not approved, staff will not be able to adequately and efficiently mix compost material which could have adverse effects on the compost process and/or the finished product.

FISCAL EFFECTS

The composting project was budgeted in FY23 using Solid Waste Funds. There is adequate budget to purchase the equipment.

Attachments

DRAFT Purchase Agreement

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and, **ROTO-MIX**, of 2205 East Wyatt Earp, Dodge City, KS 67801, hereinafter referred to as "**SELLER**."

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

1. PRODUCT PURCHASED: SELLER agrees to sell and **CITY** agrees to purchase the goods ("Product") as described below and, if applicable, per written **CITY'S** specifications and **SELLER'S** proposal attached hereto as Exhibit "A," which are incorporated into this **AGREEMENT** by this reference. The Product being purchased consists of:

Item	Price
Mixer	**$239,385.00**
Control Box	**$51,835.00**
Conveyor	**$85,135.00**

2. PRICE: The **CITY** agrees to pay Three Hundred Seventy-Six Thousand Three Hundred Fifty-Five Dollars and Zero Cents ($376,355.00) as the purchase price. All prices are inclusive of any applicable local, state or federal taxes that may be applied to the product to be purchased. The purchase price is free on board at the place of delivery and **SELLER** may not impose any additional, shipping, delivery or storage charges.

The prices established in this **AGREEMENT** may be extended to other political subdivisions within the State of Montana solely at the **SELLER'S** discretion.

3. DELIVERY AND PAYMENT: SELLER agrees to deliver the above-described goods or product to **CITY** within 30-45 days of receipt of **CITY'S** order unless otherwise provided in this **AGREEMENT**. Delivery will occur at 5240 Jellison Road or at a place otherwise selected by **CITY**. Upon delivery, **CITY** may inspect the goods or product to ensure that it meets **CITY** specifications, and **SELLER** may obtain specifications from **CITY** upon request. If the Product meets **CITY** specifications, **CITY** shall tender the purchase price stated above to **SELLER** through the **CITY'S** normal claim process.

4. SPECIFICATIONS: SELLER agrees that this Product complies with the

CITY'S specifications provided to **SELLER** and with the **SELLER'S** proposal thereto as accepted by the **CITY**. Unless otherwise agreed to by the **CITY**, the **CITY'S** specifications govern and control in the event of inconsistencies with the **SELLER'S** response to the same.

5. NONDISCRIMINATION:

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

B. The **SELLER** shall state, in all solicitations or advertisements for employees to work on jobs, that all qualified applicants will receive equal consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex or marital status, or mental or physical impairment/disability.

The **SELLER** and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), which prohibit discrimination against qualified protected veterans and/or qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

The **SELLER** and any subcontractor shall abide by the requirements of 41 CRF 60-1.4, which states employees or applicants may not be discharged or in any other manner discriminated against because

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

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

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

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

F. The **SELLER** agrees to post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

6. DEFAULT AND TERMINATION: If **SELLER** fails to deliver the goods or product as set forth in Paragraphs 2 and 3 above, or violates any provision of this **AGREEMENT**, or if the goods or product fails to meet **CITY'S** specifications, **CITY** may, at its option, declare the **SELLER** in default and immediately cancel and rescind this **AGREEMENT**. Thereafter, **CITY** may procure substitute goods or product to replace the goods or product described herein. In such event, **SELLER** is liable to **CITY** for the difference between the price set forth herein and the price paid by **CITY** for replacement goods or product. Additionally, the **CITY** may pursue any other remedy it has at law or in equity.

7. WARRANTY: Unless superseded or supplemented by an express warranty, **SELLER** represents and warrants that the Product(s) are covered by implied warranties for merchantability and fitness for the particular purpose for which they have been purchased.

8. ASSIGNMENT: SELLER may not assign this **AGREEMENT** or any of its rights hereunder without the express written consent of **CITY**.

9. ENTIRE AGREEMENT: This **AGREEMENT**, including its appendices, if any, is the entire understanding between the parties relating to the subject matter contained herein. No agent or representative of either party has authority to make any representations, statements, warranties or agreements not herein expressed and all

modifications or amendments of this **AGREEMENT**, including the appendices, must be in writing and signed by an authorized representative of each of the parties hereto.

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

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

CITY OF BILLINGS, MONTANA

_____
WILLIAM A. COLE, MAYOR

APPROVED AS TO FORM

_____
CITY ATTORNEY'S OFFICE

ATTEST:

_____
DENISE BOHLMAN, CITY CLERK

ROTO-MIX

_____
SIGNATURE

_____
PRINT NAME

_____
PRINT TITLE

EXHIBIT A

CITY OF Billings

$ 376,355 total bid.

A. Summary of Invitation for Bid

This bid is for the purpose of entering into a contract for a Compost Mixer and Conveyer for the City of Billings. The successful bidder agrees to provide the City of Billings with an acceptable quality of equipment/service, performance and workmanship as determined by the City of Billings.

It is the purpose of this bid to obtain the best quality of equipment/service at the most favorable price to the City of Billings. Consideration will be given for the level of service offered and ability to meet stated specifications as outlined in the contract documents.

The lowest bid need not be accepted if it is documented that a specific supplier in the past has been a poor performer or has provided poor goods.

B. Instructions to Bidders

Sealed bids entitled Compost Mixer and Conveyer for the City of Billings Public Works Department – Solid Waste, Billings, Montana, will be received by the City Clerk up until 2:00 PM (MST) on Tuesday May 2, 2023.

All bids may be submitted to the Billings City Clerk, via email at bids@billingsmt.gov or via mail or delivery at 210 N. 27th Street, Billings, MT 59101 (P. O. Box 1178, Billings, MT 59103). Bids will be publicly opened and read aloud via Facebook Live on the City's Facebook page: https://www.facebook.com/Billings-MT-City-Government-74352842013/. Bid tabulations will be posted for public viewing after the bids have been opened.

More specific additional information regarding this Compost Mixer and Conveyer may be obtained by contacting Kyle Foreman, Solid Waste Superintendent via telephone at 406-247-8620, or via email at foremank@billingsmt.gov

Each bid must be accompanied by a Certified Check, Cashier's Check, or Bid Bond payable to the City of Billings, Montana, in the amount not less than ten percent (10%) of the total amount of the bid. The bid security will be retained by the City Clerk until the successful bidder enters into a contract with the City of Billings. If no contract is entered into, by the successful bidder, within sixty (60) days the security may be forfeited to the City of Billings.

No bids may be withdrawn after the scheduled time for the public opening of bids, which is 2:00 PM (MST) on Tuesday May 2, 2023.

CITY OF Billings

C. Contract Requirements and Specifications

It is the intent and purpose of this specification to describe the requirements of a compost mixer and conveyer. The unit shall be new and unused, the latest model in production and shall have all standard equipment normally furnished on such models including the specifications in Exhibit A. Delivery shall take place at 5240 Jellison Rd, Billings, MT, 59101. Upon award, vendor has 120 days to deliver the new mixer and conveyor.

D. Pricing and Addendum

Please bid net prices at which you will agree to furnish required goods or services. **PLEASE BID MIXER, CONTROL BOX, AND CONVEYOR SYSTEM SEPERATLY.**

TOTAL BID PRICE - **MIXER** - Two Hundred Thirty Nine Thousand Three Hundred Eighty Five (words) dollars

and None (words) cents ($ 239,385.00 (figures))

TOTAL BID PRICE – **CONTROL BOX** - Fifty One Thousand Eight Hundred Thirty Five (words) dollars

and None (words) cents ($ 51,835.00 (figures))

TOTAL BID PRICE – **CONVEYOR** - Eighty Five Thousand One Hundred Thirty Five (words) dollars

and None (words) cents ($ 85,135.00 (figures))

1) Specification check list is included. Also included is an "Addendum Sheet" provided by Roto-Mix. This "Addendum Sheet" must also be accepted if Roto-Mix is awarded this contract. Mainly clearing up ambiguity in the bid specification.

CITY OF Billings

EXHIBIT A - SPECIFICATIONS

__X__ Unit will be stationary with a minimum volume capacity of 1100 cubic feet

Mixer Shell

__X__ Mixer shell construction shall be made of Carbon Steel A36 with 7 gauge Abrasion Resistant Steel Liners

__X__ Left and right upper side sheet construction shall be a minimum of 3/16" thick mild steel

__X__ Front and rear end sheet construction shall be ¼" thick mild steel

__X__ Augar bottom and rotor bottom construction shall be 3/8" thick mild steel.

__X__ All support members, shields, subframe, cross-bars, etc shall be constructed of carbon steel A36

__X__ The inside of the mixer (sheet metal; bottoms, end sheet, and side sheet would be lined with 7 gauge AR steel

Mixer Rotor/Augers

__X__ The mixer shall have one mixing "Staggered Rotor" and two mixing "Augers".

__X__ Mixer will have 2 chambers side by side

__X__ The first chamber will contain both a upper and lower auger that contain "paddles."

__X__ The second chamber will contain a rotor mounted for rotation

__X__ Rotor shall have seven ~~(7)~~ (8) are assemblies mounted in spaced relation to one another

__X__ Paddles shall be mounted to the arms

__X__ The Rotor (STAGGERED ROTOR ASSEMBLY) shall have (8) 3-pointed arms equally spaced along a pipe running the length of the mixing chamber.

__X__ ¼" UHMW wipers will be attached to 3/8" steel wiper channels .

CITY OF Billings

__X__ Rotor tube will be 16" OD x .625 Heavy Pipe. Rotor diameter is Approximately 90.5".

__X__ Top auger will be 8" Sch 80 Hi-Y 50 Tube with ½" thick flighting. Flight will be ½" x 24" OD RH 14" Pitch. Hard surfacing to be applied to the outside edge of flighting and wrapping around onto the front edge.

__X__ Bottom auger will be 10.0" OD x .75 wall HFS Tube. Flighting will be ¾" and 5/8" thick x 24 OD. Hard surfacing to be applied to the outside edge of flighting and wrapping around onto the front edge.

__X__ The discharge door shall be constructed out of AR Steel.

__X__ Unit shall be equipped with 4 1/10 of 1% ~~30K~~ 50K CT Load Cells and J-Box

__X__ Indicator is EZ3410 with remote display RD 4000 4" LED display w/ visor

__X__ Unit will have two (2) 75 hp electric motors. Will be a split drive. Belt drives from the electric motors power the gearboxes on both sides.

__X__ Splined shafts and sprockets on both augers

Control Panel with Motor Starters

Winning bidder shall provide a pre-wired NEMA 4x free standing pod-mount enclosure constructed on stainless steel and 12" legs. The panel will be 245A, 480VAC, 3 phase, 4 wire and will control:

__X__ Soft start for mixer auger
__X__ Soft start for mixer rotor
__X__ Hydraulic pump motor
__X__ Stand alone belt conveyor
__X__ One (1) gate via open/close contact closure demand from momentary selector switch to hydraulic actuator

Control panel will include

__X__ Main incoming circuit breaker with operating handle mechanism mounted thru door.
__X__ Circuit breaker short circuit protection and solid state reduced voltage motor starter for each motor load, (Augers and Rotor)
__X__ Circuit breaker short circuit protection and full voltage motor starter for each motor load, (conveyor & hydraulic pump).
__X__ SPD (Surge Protection Device), 480/277VAC, three phase, 4 wire, 50KA.

CITY OF Billings

__X__ 2 KVA transformer and 120 vac circuit breakers to accommodate various control panel loads.
__X__ Interior service light, GFI duplex receptable, and condensation heater.
__X__ DC power supply, 12VDC, 10A with 2 fused terminal blocks (for connection to scales and wireless unit).
__X__ HOA switches, elapsed time meters, motor run/fail pilot lights, emergency stop pushbutton, SSRV reset pushbuttons for auger and rotor mounted through door.
__X__ HOA switch, motor fail pilot light and elapsed time meter for hydraulic pump.
__X__ External alarm light (SSRV fail or E-stop pushed).
__X__ Radio-based remote control receiver supplied and installed in control panel (Operator control station supplied loose.)

CITY OF Billings

Compost Conveyor

X Minimum 36" wide by 50" wide - 48"W x 45'L Dog-Leg Conveyor.

X Minimum 8" heavy channel frame

N/A Minimum 4" by 2" top cord - Channel iron construction. Not angle iron.

X Minimum 20HP motor

See Addendum Minimum TPH ~~800~~ - 200 TPH very adequate.

X Vulcanized splice

X 3ply belt, 3/16 top, 1/16 bottom

X Cema C Idlers

X Vulcanized drum pulley

X Wing Tail pulley

X Adjustable height undercarriage (pin style)

N/A Swivel box hubs — Unit is non-towable. Not radial.

X Radial receiving hopper

N/A Tow Eyes — Unit is non-towable.

N/A Minimum 150' cord => Cannot run cord to control panel. Must be hardwired.

X Electrical starter and breaker

Warranty/Service

Please state available warranty and any additional warranty available for additional cost: Mixer - 1 year full warranty.
Conveyor - 2 year parts. 5 year structural.
Control Panel - 18 months after production or 1 year after installation. Whichever is earlier.

CITY OF Billings

Please state company/entity responsible for performing warranty/service work:

Mixer - Roto-Mix

Conveyor - MASABA

Control Panel - Electric Controls Company

CITY OF Billings

I/We acknowledge 0 addendum.
#

Roto-Mix
Company Name

5-1-2023
Date

Wally Stimpert
Contact Name (please print)

Sales
Title

Wally Stimpert
Signature of Contact Position

By signing the above, I certify that I am authorized by the Company named above to respond to this request.

2205 East Wyatt Earp Blvd – PO Box 1724 – Dodge City, Kansas 67801
Phone: 620-225-1142 – Fax: 620-225-6370 – Email: info@rotomix.com

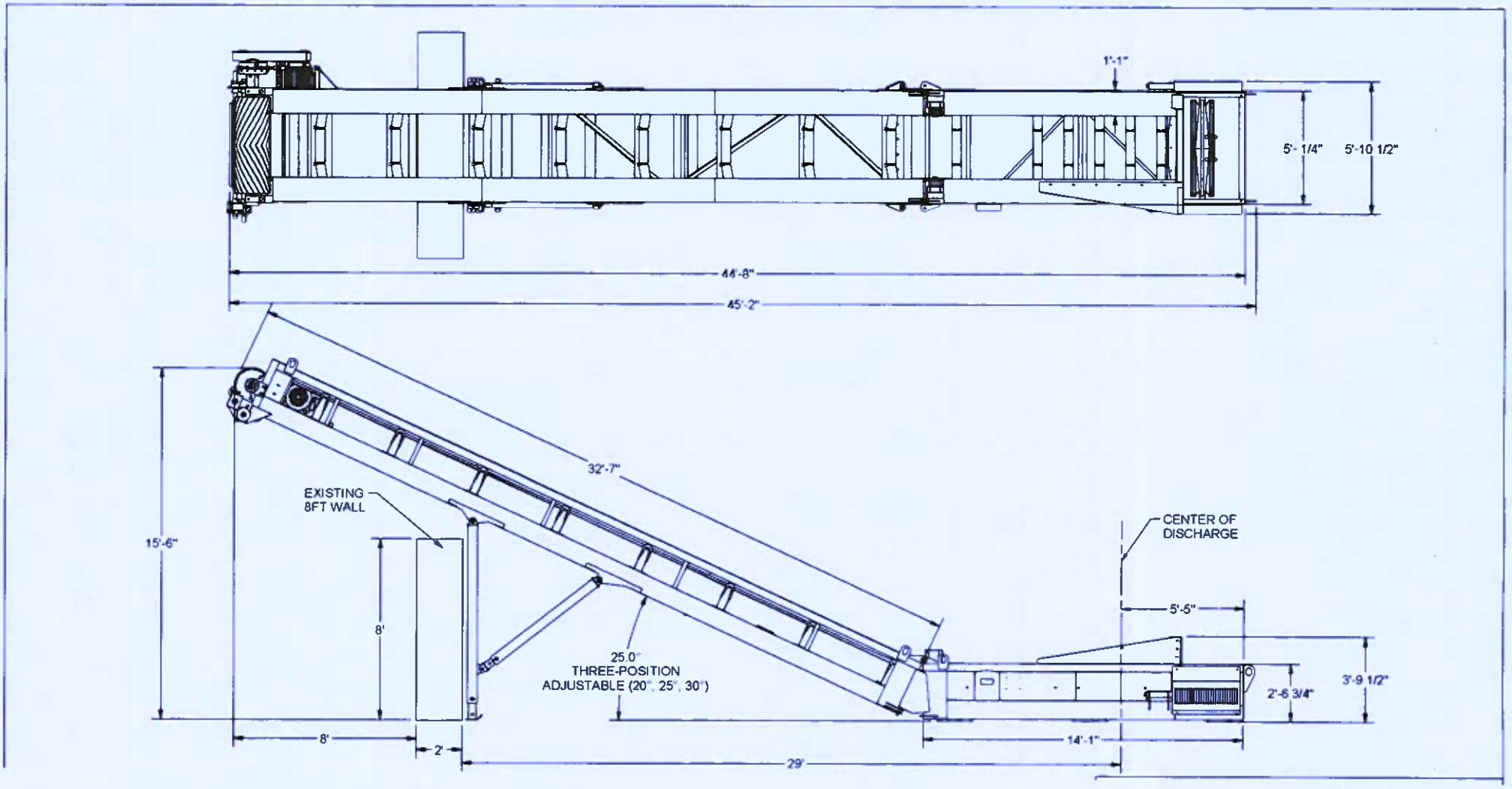
TO:
CITY OF BILLINGS
210 N. 27'TH STREET
PO BOX 1178
BILLINGS, MT 59101

FROM:
ROTO-MIX
2205 EAST WYATT EARP
DODGE CITY, KS 67801
WALLY STIMPERT. CONTACT.

IN REFERENCE TO: Bid on Compost Mixer and Conveyor. 5/2/2023.
10 listed items.

ROTO-MIX ADDENDUMS AND ADDITTIONS TO THE BID SPECIFICATION. THIS LIST THE ITEMS THAT ROTO-MIX IS WILLING TO PREFORM AND SUPPLY. ROTO-MIX CANNOT FULLY COMPLY WITH EVERY LINE ITEM THAT IS ON THE BID SPECIFICATION. IN SOME CASES ROTO-MIX WILL BUILD ABOVE THE BID SPECIFICATION.

1. The mixer will have "50k" load cells. Not the listed "30k".
2. The conveyor that I am proposing is a 48" wide x 45' stationary long dog-leg conveyor. Capacity is 200 TPH (very adequate). Conveyor is of stationary type. Not towable.
3. Roto-Mix will also provide start-up training on site.
4. Roto-Mix cannot supply a 150' cord to power the control panel. This panel is too large to be supplied with cord. The panel must be hard wired in. City of Billings will supply electrician and necessary supplies to power the control panel (run wiring from power supply to control panel and hook-up control panel). City of Billings will also run necessary wiring from control panel to the separate motor loads (mixer, conveyor).
5. Delivery. Roto-Mix cannot accept the 120 days to deliver the mixer, conveyor and control panel. The best I can do is give an estimated delivery. Our schedule pre-covid was 3 months. Now it is closer to 13-14 months. If awarded this contract, Roto-Mix will strive to build the unit at earliest possible schedule date. That date is unkown. My guess is 10-12 months, but that is all it is, a guess.
6. Roto-Mix will not need to get a "Montana Contractor License". Not a contractor.
7. Roto-Mix will not need to get a "City of Billings Business License".
8. The City of Billings agrees to unload mixer, conveyor and control panel upon arrival at facility, from shipping trailer.
9. City of Billings agrees to place, install and set-up the mixer, conveyor and control panel upon arrival at facility.
10. Pertaing to the Bid Security. BID SECURITY: Not withstanding Section B of the IFB, the bid security will not be forfeited if the City of Billings fails to negotiate with the successful bidder in good faith, which results in the parties not entering into a contract within sixty (60) days after the bid acceptance.


1'-1"
5'- 1/4"
5'-10 1/2"
44'-8"
45'-2"
32'-7"
EXISTING
8FT WALL
15'-6"
8'
25.0°
THREE-POSITION
ADJUSTABLE (20°, 25°, 30°)
CENTER OF
DISCHARGE
5'-5"
2'-6 3/4"
3'-9 1/2"
8'
2'
29'
14'-1"

City Council Regular

Date:	05/22/2023
Title:	W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Drain Improvements, Bid Award
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends that City Council award a contract for W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Improvements, Schedule 1, Phase 2, to Western Municipal Construction in the amount of $2,266,135.

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

W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Drain Improvements, is a regional storm drainage improvement project that will construct trunk storm drain mains along both Bitterroot Drive and Wicks Lane. The trunk main will be installed starting from the temporary detention pond located near the intersection of North Cherry Hills Loop and Bitterroot Drive, north along Bitterroot Drive to the intersection of Wicks Lane, and then east along Wicks Lane. This regional storm drain trunk project serves both current capacity needs of east Heights and provides the drainage infrastructure backbone for future roadway improvement projects on Bitterroot Drive from Yellowstone River Road to Wicks Lane and Wicks Lane from Hawthorne Lane to Bitterroot Drive. The section of Wicks Lane from Hawthorne Lane to Bitterroot Drive is scheduled to be improved in FY25 under the current CIP.

A regional storm drain trunk main for this portion of the Heights was first identified in a 1989 master plan. However, based upon funding, city-wide drainage infrastructure needs and the development climate at the time, this project has only recently been identified as a priority. At the time of the previous master plan, regional drainage for this area was planned to discharge into Five Mile Creek north of Mary Street. However, during design of this project, an alternate route was developed which utilizes the existing Yellowstone River outfall corridor east of River View Drive resulting in a significant cost savings from the original plan while still meeting the regional drainage needs of the east Heights.

As FY23 funding for this project was not sufficient to construct the entire trunk main, this project was split into two sections. Additionally, to capitalize on the market price fluctuation of large storm drain pipe, two different types of storm drain pipe and various alternatives were bid as separate schedules. This contract is for award of the upstream section of this project. The downstream phase will need to be constructed in a subsequent fiscal year once funding becomes available. Constructing the upstream section provides a functioning storm drain to serve existing developed areas and also provides the drainage foundation for the future improvement of Wicks Lane from Hawthorne Lane to Bitterroot Drive. The project constructs about 1600 lineal feet of 30 to 42-inch diameter storm drain along Bitterroot Drive and about 800 feet of 54-inch diameter storm drain east of Bitterroot Drive along Wicks Lane.

The project was advertised on March 24, March 31, April 7, April 14, April 21 and April 28, 2023, in the Yellowstone County News and on the City's website. Bids were opened on May 2, 2023, and three bids were received. Western Municipal Construction, submitted the lowest, responsible bid for the desired schedule for which the City has adequate funding.

ALTERNATIVES

City Council may:

- Award W.O. 21-32: Wicks Lane and Bitterroot Drive Storm Improvements, Schedule 1, Phase 2 to Western Municipal Construction in the amount of $2,266,135; or,
- Do not award a contract and reject all bids. If the project is not awarded, the City's storm drainage infrastructure in this portion of the east Heights will continue to be undersized and unable to meet both current and future needs.

FISCAL EFFECTS

The following bids were received:

			Schedule 1,		Schedule 2,		Schedule

CONTRACTOR	**Schedule 1, Phase 2: Bitterroot Drive RCP Option**	Schedule 1, Phase 1: Wicks Lane RCP Option	Phase 1: Wicks Lane Water Quality Outfall	Schedule 2, Phase 1: Wicks Lane FRP Option	Phase 1: Wicks Lane Water Quality Outfall	Schedule 2, Phase 2: Bitterroot Drive FRP Option	2, Phase 2: Bitterroot Drive FRP Additive Alternate
Western Municipal Construction	**$2,266,135.00**	$1,399,112.20	$179,000.00	$1,511,852.00	$171,000.00	$2,458,631.40	$61,694.50
COP Construction, LLC.	**$2,283,134.20**	$1,405,940.00	$180,000.00	$1,592,884.00	$180,000.00	$2,494,122.20	$80,502.00
Askin Construction, LLC.	**$2,451,447.00**	$1,531,414.00	$193,000.00	$1,530,186.00	$186,000.00	$2,498,433.00	$65,880.00

The project was budgeted in FY23 using Storm Funds. There is sufficient budget to award Schedule 1 Phase 2 of this project. The Phase 1 project will be bid at a later date when funding becomes available.

City Council Regular

Date:	05/22/2023
Title:	MOU with Yellowstone County for Water Main Replacements at MetraPark
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends that City Council approve the MOU with Yellowstone County.

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

Yellowstone County is replacing the water mains at MetraPark. The Water Reclamation Facility's (WRF) water service is fed through the lines on the MetraPark site. The WRF uses approximately 35% of the water that is delivered through the water mains so the County asked the City to participate in the cost of the replacement. The mains are in poor condition and several breaks have occurred in recent years. City staff reviewed the request and recommends that City Council approve a contribution to the project. Staff recommends that the City pay 35% of the cost of the main line that provides water to the WRF but only 25% of the looped main. The city does derive substantial benefit from having the looped line primarily for fire flows and redundancy but because it also serves buildings on the MetraPark site, we believe a 25% share is appropriate. The County agreed to the proposed contribution.

ALTERNATIVES

City Council may:

- Approve the MOU with Yellowstone County; or,
- Not approve the MOU with Yellowstone County. If the MOU is not approved, the County will not have sufficient funds to complete the entire project which means some existing water main will be left in service and increases the potential for water outages at the Water Reclamation Facility.

FISCAL EFFECTS

The MOU includes a City contribution of 35% of the pipeline cost for the main waterline and 25% of the pipeline cost for waterline loop. The total bid cost for the project is $818,857. The total cost of the City's contribution is $245,657. These City's contribution will be paid from wastewater funds as this is the water service for the WRF. Funds will be budgeted in FY24 and paid after July 1, 2023.

Attachments

MOU

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN YELLOWSTONE COUNTY AND CITY OF BILLINGS REGARDING METRAPARK WATERLINE IMPROVEMENTS

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is entered into this 18th day of April, 2023, by and between **YELLOWSTONE COUNTY** (the "COUNTY") and **CITY OF BILLINGS** (the "CITY"), individually referred to as "Party" and collectively referred to as "Parties".

PURPOSE

The purpose of this MOU is to outline the financial contributions agreed upon by the Parties to replace the waterline within the MetraPark facility site, commonly known and referred to as MetraPark Waterline Improvements (hereinafter, the "PROJECT").

SCOPE OF WORK

The proposed scope of work for the PROJECT-PHASE ONE is to replace sections of the COUNTY'S waterline within the MetraPark facility site which beneficially serves the CITY by providing water to the service line for the CITY'S Water Reclamation Facility.

RECITALS

WHEREAS, the PROJECT-PHASE ONE will benefit the COUNTY and CITY facilities; and

WHEREAS, the CITY agrees to participate in a cost contribution to complete the PROJECT-PHASE ONE.

NOW THEREFORE, in consideration of the foregoing recitals, COUNTY and CITY agree:

1) The PROJECT-PHASE ONE will be bid out by the COUNTY, as Owner of the PROJECT-PHASE ONE.

2) The cost of the PROJECT-PHASE ONE, will be primarily borne by the COUNTY. The CITY will contribute 35% of the pipeline and appurtenance cost for the main waterline and 25% of the pipeline and appurtenance cost for waterline loop shown on Exhibit A and incorporated, herein.

3) The total bid cost of the pipeline and appurtenances for the PROJECT - PHASE ONE is $818,857. Approximately one half of the PROJECT-PHASE ONE cost is for the main waterline and one half is for the waterline loop. The total cost of the CITY's contribution to the PROJECT-PHASE ONE is $245,657.

4) The COUNTY will be the Owner of the PROJECT-PHASE ONE and shall solely contract with the successful bidder to complete the PROJECT-PHASE ONE.

5) Upon approval of the CITY's FY24 budget, the COUNTY will submit to the CITY an invoice detailing the amount of the CITY'S contribution, and the CITY will pay to the COUNTY, in full, the invoiced amount within 30 days of invoicing. Any change orders applicable to the construction of the main or looped waterline submitted to COUNTY by contractor during construction of the PROJECT will be copied to CITY, and CITY agrees to pay thirty five percent (35%) of the costs of any applicable change orders but which, in the aggregate amount, shall not exceed $80,000, and to remit such payment to COUNTY within 30 days of receipt of the change order costs.

6) This MOU is limited to only the financial contributions of the CITY to the COUNTY, as Owner of the PROJECT-PHASE ONE, and covers what is hereby written. Modifications within the scope of work of the MOU shall be made by mutual consent of the Parties by the issuance of a written modification signed and dated by all the Parties prior to any changes being made.

7) In the event of a dispute arising out of the performance of this MOU, either Party may send a written notice of dispute to the other Party, and within fifteen (15) working days of receipt of such notice, the notified Party shall respond and agree to a meeting for the purpose of negotiating a settlement or procedure for settlement of the dispute. No settlement remedy herein conferred is intended to be exclusive of any other remedy existing at law or in equity or otherwise.

8) Any notice to be given to the Parties hereunder will be addressed as follows (until notice of a different address is given to the Parties):

YELLOWSTONE COUNTY
Board of County Commissioners
316 North 36th/Rm 3101
P.O. Box 35000
Billings, MT 59107

CITY OF BILLINGS
City Administrator
210 N. 27th Street
P.O. Box 1178
Billings, MT 59103

9) This MOU shall be construed in accordance with the laws of the State of Montana.

10) This MOU is not in effect until signed by all Parties.

TERM

This MOU shall become effective on the date entered above and will remain in effect until satisfactory final completion of the PROJECT-PHASE ONE and all cost sharing commitments have been met.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding as follows:

YELLOWSTONE COUNTY, MONTANA - BOARD OF COUNTY COMMISSIONERS

By _____ Witness: _____
John Ostlund
Chair, Board of County Commissioner

Jeff Martin
Clerk and Recorder

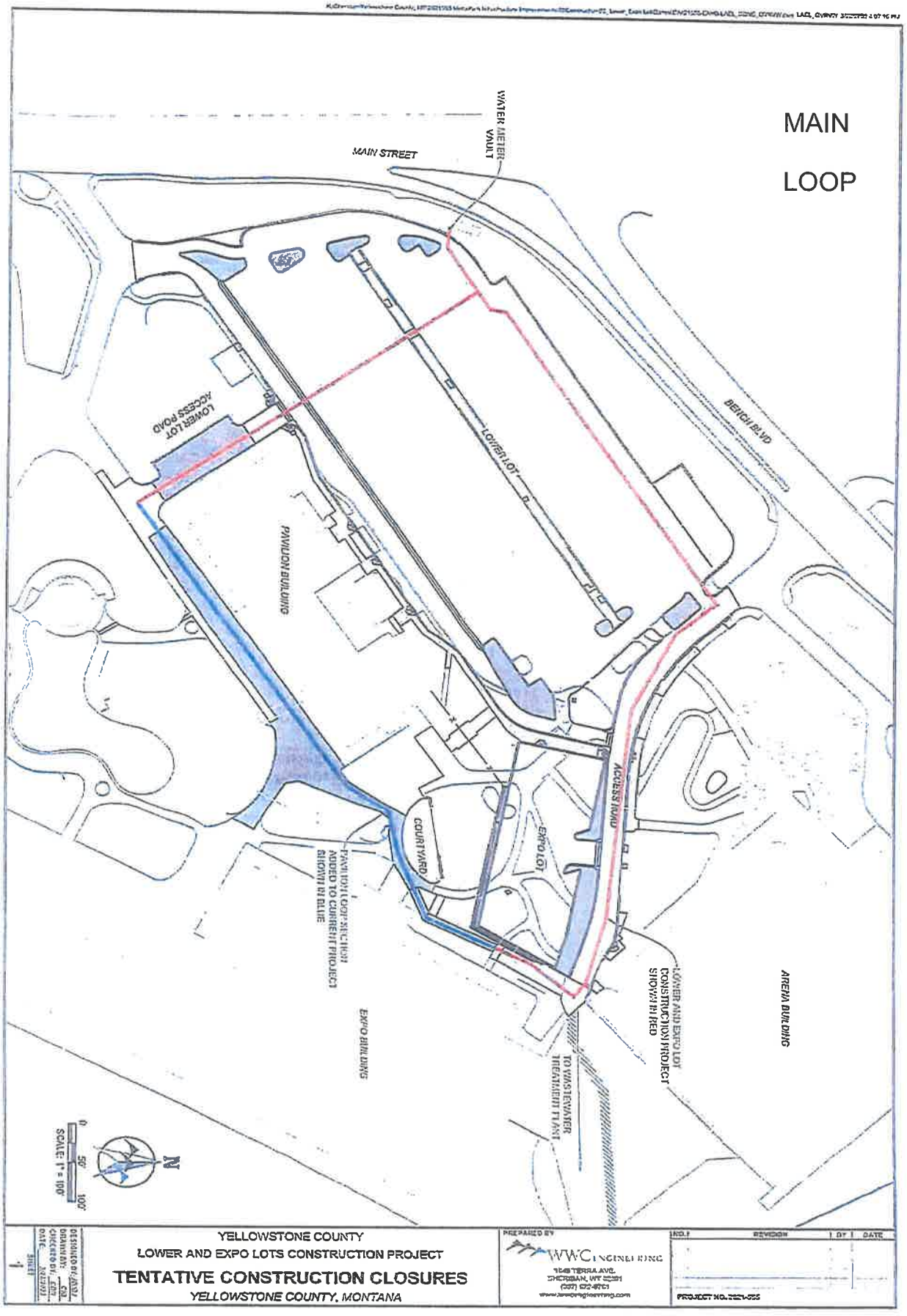
By _____
Donald Jones
Member, Board of County Commissioners

By _____
Mark Morse, Chair Pro-Tem
~~Member~~, Board of County Commissioners

CITY OF BILLINGS

By: _____
William A. Cole, Mayor

Exhibit A


MAIN
LOOP
WATER METER VAULT
MAIN STREET
LOWER LOT ACCESS ROAD
LOWER LOT
BENCH BLVD
PAVILION BUILDING
ACCESS ROAD
COURTYARD
EXPO LOT
PAVILION CONSTRUCTION ADDED TO CURRENT PROJECT SHOWN IN BLUE
EXPO BUILDING
TO WASTEWATER TREATMENT PLANT
LOWER AND EXPO LOT CONSTRUCTION PROJECT SHOWN IN RED
ARENA BUILDING
SCALE: 1" = 100'
0
50'
100'
N
YELLOWSTONE COUNTY
LOWER AND EXPO LOTS CONSTRUCTION PROJECT
TENTATIVE CONSTRUCTION CLOSURES
YELLOWSTONE COUNTY, MONTANA
PREPARED BY
WWC ENGINEERING
1645 TERRA AVE.
SHERIDAN, WY 82801
(307) 672-4801
NO.
REVISION
BY
DATE
PROJECT NO.

City Council Regular

Date:	05/22/2023
Title:	Assignment and Assumption of Pretreatment Service Agreement from ExxonMobil to Par Montana, LLC
Presented by:	Jennifer Duray
Department:	Public Works
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends that City Council approve the assignment and assumption of the Pretreatment Service Agreement from ExxonMobil to Par Montana, LLC.

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

The City entered into a Pretreatment Service Agreement with ExxonMobil Corporation on December 19, 2016. The Agreement identifies the terms and conditions to permit the ExxonMobil Corporation's refinery industrial wastewater discharge into the City's wastewater system for treatment. This includes ensuring compliance with City, State and Federal requirements, fee and rate methodology, limits on industrial loadings, and indemnification conditions. The Agreement is effective until December 15, 2031, and has provisions for three additional six-year renewals unless either party terminates the Agreement by providing three years written notice to the other party.

Par Montana, LLC is purchasing the Billings, Montana refinery from ExxonMobil effective June 1, 2023. This Assignment and Assumption Agreement conveys all rights, interests, and obligations of ExxonMobil's Pretreatment Services Agreement to Par Montana, LLC subject to the same conditions and terms set forth in the Pretreatment Services Agreement.

ALTERNATIVES

City Council may:

- Approve the Assignment and Assumption Agreement of ExxonMobil's Pretreatment Services Agreement to Par Montana, LLC; or,
- Not approve the Assignment and Assumption Agreement. If the agreement is not signed, there will not be a pretreatment agreement in place to control discharge to our sewer system.

FISCAL EFFECTS

Estimated FY24 revenues derived from the Pretreatment Services Agreement are $805,095 for FY24. There is no fiscal impact for the assignment of the Agreement.

Attachments

Assignment

ExxonMobil Corporation
Billings Refinery
700 ExxonMobil Rd
PO Box 1163
Billings, MT 59103-1163
406 657 5380 Tel

Par Montana Holdings, LLC
825 Town & Country Lane, Suite 1500
Houston, TX 77024
281-899-4800 Tel

CERTIFIED MAIL

City of Billings
Attention: Public Works Department
210 North 27th Street
Billings MT 59101

RE: Proposed Divestment of the Billings Refinery and select midstream assets by ExxonMobil to Par Montana, LLC ("**Par Montana**"), a Delaware limited liability company, and its affiliates (collectively, **Par**)
Notice of and Request for Consent for proposed assignment and assumption of the Pretreatment Service Agreement City of Billings ("**City**") and Exxon Mobil Corporation ("**ExxonMobil**") dated as of December 19, 2016 (as amended and supplemented through the date hereof, the **Contract**)

Dear Public Works:

By this correspondence **ExxonMobil** confirms that it has provided notice to **City** of the proposed divestment to **Par** of **ExxonMobil's** Billings Refinery and select midstream assets in Montana and Washington, as described in the Equity and Asset Purchase Agreement dated as of October 20, 2022 filed by **Par** with, and publicly available through the Securities and Exchange Commission. **ExxonMobil** intends to cooperate with the efforts of **City** and **Par Montana** in support of the orderly transition of the **Contract** from **ExxonMobil** to Par Montana effective as of the consummation of the divestment at the closing ("**Closing**") of the transaction contemplated by the Equity and Asset Purchase Agreement ("**Agreement**"). **Par Montana** anticipates a need for continued wastewater treatment services according to the **Contract**.

Responsive to **ExxonMobil's** request, **City** consents to an assignment of the **Contract** to assignee **Par Montana**, which will occur at a closing that is anticipated to occur on June 1, 2023, subject to the same conditions and terms set forth in the **Agreement**. A copy of **ExxonMobil's** form of assignment and assumption agreement that they will use at the closing with to **Par Montana**, is attached (for reference, the Contract is one of the "Assumed Contracts" pursuant to the detailed terms of the Agreement). For clarity:

(i) the foregoing relates only to the divestment to the **Par** entities (and not to any other potential purchaser); and
(ii) **ExxonMobil** will remain liable for obligations accruing under the Contract up to (but not after) the assignment and assumption by **Par Montana**.

In the space provided below, please confirm **City's** agreement as laid out above and email an executed copy of this letter to joseph.w.lierow@exxonmobil.com.

If you have any questions or concerns or if you anticipate delay in responding, please contact Mr. Joe Lierow via telephone at (406) 545-1155 or via email at joseph.w.lierow@exxonmobil.com. His new email address after June 1, 2023, will be jlierow@parpacific.com.

Sincerely,

Par Montana Holdings LLC
DocuSigned by:
Barry McFarland
AA3E095EB59F4CA...
Barry McFarland
VP Environmental, Health, Safety and Operational Risk

Signature Date April 28, 2023

Exxon Mobil Corporation
DocuSigned by:
K. A. Jakub
32195E11D3614BD...
Kim A. Jakub
Refinery Manager

Signature Date April 28, 2023

AGREED AS DESCRIBED ABOVE

City of Billings

By: _____

Printed Name: _____

Title: _____

Date: _____, 2023

DocuSign

Certificate Of Completion

Envelope Id: 6C27D37CBB2C4E57A14EC44ED681B3BB
Status: Completed
Subject: Complete with DocuSign: COB Notice and Request for Consent Side Letter Agreement v2.pdf
Source Envelope:
Document Pages: 9
Signatures: 2
Certificate Pages: 3
Initials: 0
AutoNav: Enabled
EnvelopeId Stamping: Disabled
Time Zone: (UTC-06:00) Central Time (US & Canada)

Envelope Originator:
Sheanna Cali
Address Redacted
sheanna.larson@exxonmobil.com
IP Address: 136.228.238.224

Record Tracking

Status: Original
4/28/2023 11:02:37 AM
Security Appliance Status: Connected

Holder: Sheanna Cali
sheanna.larson@exxonmobil.com
Pool: Main SecApp 1

Location: DocuSign

Signer Events	Signature	Timestamp
Barry McFarland bmcfarland@parpacific.com Vice President Security Level: Email, Account Authentication (None)	DocuSigned by: Barry McFarland AA3E095EB59F4CA... Signature Adoption: Pre-selected Style Using IP Address: 99.101.203.212	Sent: 4/28/2023 11:05:28 AM Viewed: 4/28/2023 11:06:49 AM Signed: 4/28/2023 11:07:31 AM
Electronic Record and Signature Disclosure: Accepted: 3/31/2023 1:42:24 PM ID: 78151cb5-80ce-473d-b421-f1e95bb5de11 Company Name: Exxon Mobil Corporation		
K. A. Jakub kimberly.a.jakub@exxonmobil.com Process Mgr ExxonMobil General Security Level: Email, Account Authentication (None)	DocuSigned by: K. A. Jakub 32195E11D3614BD... Signature Adoption: Pre-selected Style Using IP Address: 174.215.18.205 Signed using mobile	Sent: 4/28/2023 11:05:29 AM Viewed: 4/28/2023 1:13:07 PM Signed: 4/28/2023 1:13:49 PM
Electronic Record and Signature Disclosure: Accepted: 3/31/2023 1:46:29 PM ID: 297eb4c9-f630-48b5-9ac3-1fc776883623 Company Name: Exxon Mobil Corporation		

In Person Signer Events	**Signature**	**Timestamp**
Editor Delivery Events	**Status**	**Timestamp**
Agent Delivery Events	**Status**	**Timestamp**
Intermediary Delivery Events	**Status**	**Timestamp**
Certified Delivery Events	**Status**	**Timestamp**
Carbon Copy Events	**Status**	**Timestamp**
Witness Events	**Signature**	**Timestamp**
Notary Events	**Signature**	**Timestamp**
Envelope Summary Events	**Status**	**Timestamps**

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/28/2023 11:05:29 AM
Certified Delivered	Security Checked	4/28/2023 1:13:07 PM
Signing Complete	Security Checked	4/28/2023 1:13:49 PM
Completed	Security Checked	4/28/2023 1:13:49 PM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE ExxonMobil Global Services Company and ExxonMobil Affiliates ("ExxonMobil") [1] may use the DocuSign service to collect signatures, endorsements, and approvals for corporate purposes. DocuSign may be used by ExxonMobil to conduct corporate business endorsements and approvals or to gather electronic signatures from 3rd parties for business purposes in accordance with local law and contracting guidelines. Please read the information below and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button.

Acknowledging your access and consent to receive materials electronically By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference.
- I am authorized to do the specific type of work (approve, endorse, etc.) in the country where I am physically located when using DocuSign

Getting paper copies You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing the document.

How to contact Exxon Mobil Corporation: For email address changes or if you have questions about a document you receive please contact the sending ExxonMobil Business organization.

[1] ExxonMobil and/or ExxonMobil Affiliates mean (a) Exxon Mobil Corporation or any parent of Exxon Mobil Corporation, (b) any company or partnership in which Exxon Mobil Corporation or any parent of Exxon Mobil Corporation now or hereafter, directly or indirectly (1) owns or (2) controls, more than fifty per cent (50%) of the ownership interest having the right to vote or appoint its directors or functional equivalents ("Affiliated Company") and (c) any joint venture in which Exxon Mobil Corporations, any parent of Exxon Mobil Corporation or an Affiliated Company has day to day operational control. Note, nothing contained herein is intended to override the corporate separateness of affiliated companies. Working relationships discussed in this material do not necessarily represent a reporting connection, but may reflect a functional guidance, stewardship, or service relationship. Where shareholder consideration of a local entity matter is contemplated by this material, responsibility for action remains with the local entity. All actions contemplated herein are subject to observance of corporate separateness principles and other requirements of applicable laws and contractual arrangements.

EXHIBIT C
FORM OF ASSIGNMENT AND BILL OF SALE

This Assignment and Bill of Sale (this "**Assignment**") is made by and among **EXXON MOBIL CORPORATION**, a company organized under the laws of the State of New Jersey ("**EMC**"), **EXXONMOBIL OIL CORPORATION**, a company organized under the laws of the State of New York ("**EMOC**"), **EXXONMOBIL PIPELINE COMPANY LLC**, a limited liability company organized under the laws of the State of Delaware ("**EMPC**", and collectively with EMC and EMOC, the "**Assignors**", and each individually, an "**Assignor**"), each of whose address is 22777 Springwoods Village Parkway, Spring, Texas 77389, and **PAR MONTANA, LLC**, a limited liability company organized under the laws of the State of Delaware, whose address is 825 Town & Country Lane, Suite 1500, Houston, Texas 77024 ("**Assignee**"), and is effective as of 00:00 (Mountain time) on the first calendar day following the Closing (as defined in the Purchase Agreement (defined below)) (the "**Effective Time**").[1] Assignors and Assignee shall be referred to herein individually as a "**Party**" and collectively as the "**Parties**".

ARTICLE 1
DEFINED TERMS

Section 1.1 **Certain Definitions**. Capitalized terms used in this Assignment that are not otherwise defined herein shall have the meanings given to such terms in that certain Equity and Asset Purchase Agreement, by and among Assignors, on the one hand, and Assignee, Par Montana Holdings, LLC, a limited liability company organized under the laws of the State of Delaware, and Par Pacific Holdings, Inc., a corporation organized under the laws of the State of Delaware, on the other hand, dated as of October [•], 2022 (as amended, the "**Purchase Agreement**").

ARTICLE 2
ASSIGNMENT OF ASSETS

Section 2.1 **Assignment**. Assignors, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, and DELIVER unto Assignee, all of Assignors' right, title, and interest in and to the following assets, other than any Excluded Assets (subject to such exclusions, the "**Assets**"):[2]

(a) the Hydrocarbon Inventory;

(b) the Working Capital;

(c) the Fuels Marketing Contracts;

(d) the Assumed Contracts;

(e) the Assigned Permits;

---

[1] **Note to Draft**: The Effective Time will match the Closing Date.

[2] **Note to Draft**: The description of the Assets to be revised, as necessary, to match the Purchase Agreement.

(f) the Shipment History described on Schedule 2.1(a)(ix) of the Purchase Agreement as being transferred to Assignee;

(g) the Books and Records related to the Assets, EBC and YLHC, and held by Assignors or any of their Affiliates;

(h) the emissions credits and allowances described in Schedule 2.1(a)(xi) of the Purchase Agreement that are not Excluded Assets;

(i) to the extent transferrable, all of each Assignor's rights under warranties, indemnities, and all similar rights against Third Parties to the extent related to any of the Assets, other than indemnities, causes of action, choses in action, rights of recovery defenses, rights of set off, counterclaims, or rights of recoupment of any kind or nature with respect to such Third Parties under the branded Fuels Marketing Contracts;

(j) the Refinery, the Terminals, and the Silvertip Pipeline System (but excluding, in each case, any right, title and interest to the Refinery, the Terminals, and the Silvertip Pipeline System to the extent any such right, title and interest is sold, conveyed, assigned, transferred, set over, or delivered to the Assignee by any of the Deeds); and

(k) all other assets set forth in Schedule 2.1(a)(xiii) of the Purchase Agreement.

TO HAVE AND TO HOLD the Assets unto Assignee, its successors and assigns, forever, SUBJECT TO the Permitted Encumbrances. Assignee hereby purchases, acquires and accepts from Assignors, all of such Assignors' right, title and interest in and to the Assets.

Section 2.2 **Excluded Assets**. Nothing herein contained shall be deemed to sell, assign, transfer, convey, or deliver to Assignee, and Assignors retain all right, title, and interest to each of the Excluded Assets.

ARTICLE 3
DISCLAIMERS

Section 3.1 **Disclaimers**. Assignee acknowledges it has made, or will make, its own independent investigation, analysis, evaluation, and verification of the Assets. **THE PARTIES AGREE THAT, TO THE EXTENT REQUIRED BY LAW TO BE OPERATIVE, THE DISCLAIMERS OF WARRANTIES CONTAINED IN THIS SECTION 3.1 ARE "CONSPICUOUS" DISCLAIMERS FOR THE PURPOSES OF ANY LAW OR ORDER. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF ASSIGNORS IN THE PURCHASE AGREEMENT OR IN ANY CERTIFICATE DELIVERED BY ASSIGNORS PURSUANT TO SECTION 9.1(F) OF THE PURCHASE AGREEMENT (COLLECTIVELY "ASSIGNORS' WARRANTIES"), THE ASSETS ARE SOLD TO AND ACCEPTED BY ASSIGNEE "AS IS, WHERE IS" AND "WITH ALL FAULTS". ASSIGNORS' WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. ASSIGNORS EXPRESSLY DISCLAIM (AND ASSIGNEE ACKNOWLEDGES IT HAS NOT RELIED UPON) ANY AND ALL REPRESENTATIONS AND WARRANTIES OTHER THAN THE ASSIGNORS' WARRANTIES. WITHOUT LIMITATION OF THE FOREGOING AND EXCEPT FOR**

ASSIGNORS' WARRANTIES, THE ASSETS ARE CONVEYED TO ASSIGNEE PURSUANT HERETO WITHOUT (A) ANY WARRANTY OR REPRESENTATION, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, RELATING TO (1) TITLE TO THE ASSETS, THE CONDITION, QUANTITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, MERCHANTABILITY OF ANY EQUIPMENT, OR ITS FITNESS FOR ANY PURPOSE, (2) THE QUALITY, ACCURACY, OR COMPLETENESS OF ANY DATA, REPORTS, FILES, RECORDS, OPERATING MANUALS, PROJECTIONS, INFORMATION, OR MATERIALS NOW, HERETOFORE, OR HEREAFTER FURNISHED OR MADE AVAILABLE TO ASSIGNEE IN CONNECTION WITH THIS ASSIGNMENT OR THE PURCHASE AGREEMENT, (3) PRICING ASSUMPTIONS, OR QUALITY OR QUANTITY OF HYDROCARBON INVENTORY, (4) THE ENVIRONMENTAL CONDITION OF THE ASSETS, (5) ANY IMPLIED OR EXPRESS WARRANTY OF NON-INFRINGEMENT, (6) ASSIGNEE'S INTENDED OR ACTUAL USE OF THE ASSETS AFTER THE EFFECTIVE TIME, OR (7) ANY OTHER MATTERS CONTAINED IN ANY MATERIALS MADE AVAILABLE TO ASSIGNEE BY ASSIGNORS OR BY ASSIGNORS' REPRESENTATIVES, OR (B) ANY OTHER EXPRESS, IMPLIED, STATUTORY, OR OTHER WARRANTY OR REPRESENTATION WHATSOEVER. IN ADDITION, AND NOT BY WAY OF LIMITATION, EXCEPT AS EXPRESSLY SET FORTH IN THE ASSIGNORS' WARRANTIES, ASSIGNORS MAKE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, OR COMPLETENESS OF ANY FILES, BOOKS AND RECORDS, OR OPERATING MANUALS CONVEYED AS PART OF THE BOOKS AND RECORDS RELATED TO THE ASSETS, EBC OR YLHC. EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 5 AND ARTICLE 10 OF THE PURCHASE AGREEMENT, ASSIGNEE'S USE OF SUCH FILES, BOOKS AND RECORDS, OR OPERATING MANUALS SHALL BE AT ASSIGNEE'S OWN RISK AND ASSIGNEE RELEASES ASSIGNORS FROM ANY LOSS, LIABILITY, OR DAMAGE ARISING FROM, ASSOCIATED WITH, OR RELATED TO ASSIGNEE'S USE OF SUCH FILES, BOOKS AND RECORDS, OR OPERATING MANUALS.

ARTICLE 4
ASSUMED LIABILITIES

Section 4.1 **Assumed Liabilities**. On the terms and subject to the conditions in the Purchase Agreement (including indemnification pursuant to Section 10.1 of the Purchase Agreement), from and after the Effective Time, and subject to the exclusion of the Liabilities set forth in Section 2.4 of the Purchase Agreement, Assignee hereby assumes, effective as of the Effective Time, and agrees to timely fulfill, perform, pay, and discharge all Liabilities related to, arising from, or in respect of the Assets.

ARTICLE 5
MISCELLANEOUS

Section 5.1 **Separate Instruments**. If a separate form or instrument of conveyance is required by any applicable Governmental Authorities for purposes of registering or completing the transfer of the Assets pursuant to this Assignment, any such separate form or instrument of

conveyance (a) is not intended to modify, and shall not modify, any of the terms, covenants, and conditions, or limitations on warranties, set forth in this Assignment and is not intended to create, and shall not create, any representations, warranties, or additional covenants of or by Assignors to Assignee, and (b) shall be deemed to contain all of the terms and provisions of this Assignment, as fully and to all intents and purposes as though the same were set forth at length in such separate form or instrument of conveyance.

Section 5.2 Governing Law; Arbitration. THIS ASSIGNMENT, AND ALL DISPUTES IN RESPECT OF IT, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPALS THAT WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION). EACH OF ASSIGNORS AND ASSIGNEE CONSENT TO ARBITRATION IN ACCORDANCE WITH SECTION 16.4 OF THE PURCHASE AGREEMENT FOR ANY ACTION OR DISPUTE ARISING OUT OF THIS ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 5.3 Successors and Assigns. This Assignment shall inure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns; provided, however, that, nothing in this Assignment shall assign or convey, or in any way operate to assign or convey, any right, title, or interest in, to, or under the Purchase Agreement to any successor or assign of Assignee with respect to the Assets or any part thereof, it being expressly understood that rights, titles, and interests under the Purchase Agreement may only be obtained or assigned in strict accordance with the terms thereof.

Section 5.4 Titles and Captions. All Article or Section titles or captions in this Assignment are for convenience only, shall not be deemed part of this Assignment, and in no way define, limit, extend, or describe the scope or intent of any provisions hereof. Unless the context requires otherwise, references in this Assignment to Sections or Schedules are to Sections or Schedules of this Assignment.

Section 5.5 Further Assurances. After the Effective Time, each of Assignors and Assignee shall, from time to time, at the request of and without further cost or expense to the other Party, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated by this Assignment.

Section 5.6 Amendment and Waivers.

(a) The terms and conditions of this Assignment may only be amended, supplemented, or varied by an agreement in writing signed by each of the Parties and specifically referring to this Assignment.

(b) No waiver by any Party of any terms, provisions, or conditions of this Assignment, or failure to require performance of any obligation arising under this Assignment, shall be effective, unless expressed in writing and signed by, or on behalf of, the Party granting such waiver and any such waiver shall only relate to the matter to which

it expressly relates and shall not apply to any subsequent or other matter. Any Party's failure or delay exercising, or partial exercising, of any of the provisions of this Assignment, or the grant of time or any other indulgence, shall not constitute a waiver by such Party of any breach of this Assignment or raise any defense against any claim of any Party for breach of this Assignment.

Section 5.7 **Counterparts**. This Assignment may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Assignment, a Party may send a copy of its original signature on the execution page hereof to the other Parties by facsimile or electronic transmission and such transmission shall constitute delivery of an executed copy of this Assignment to the receiving Party.

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IN WITNESS WHEREOF, this Assignment has been executed as of the dates below, but is effective for all purposes as of the Effective Time.

ASSIGNORS:

EXXON MOBIL CORPORATION

By: _____
Name:
Title:

Date: _____

EXXONMOBIL OIL CORPORATION

By: _____
Name:
Title:

Date: _____

EXXONMOBIL PIPELINE COMPANY LLC

By: _____
Name:
Title:

Date: _____

ASSIGNEE:

PAR MONTANA, LLC

By: _____
Name:
Title:

Date: _____

City Council Regular

Date:	05/22/2023
Title:	Agreement with Hoopla Electronic Database
Presented by:	Kelsie Rubich, Assistant Library Director
Department:	Library
Presentation:	No
Legal Review	No

RECOMMENDATION

Staff recommends council approval.

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

A recent survey of library patrons showed significant demand for a streaming video service. It also highlighted challenges related to lengthy wait times with the library's current eBook and audiobook platform, **Libby**. Many survey responses explicitly requested the addition of the product **Hoopla** to the library's digital offerings. Currently, the library utilizes **Freegal** for downloadable and streaming music and **Libby** for electronic books and audiobook content.

Freegal is limited because it solely offers streaming music with no additional media formats. The library has subscribed to Freegal for over eight years and has observed a consistent decline in usage. Last year, Freegal cost the library **$15,999** and was used by just over 300 patrons.

Hoopla offers content in several formats, unlike other vendors. The Hoopla digital library platform provides on-demand access to over 1.4 million items, including audiobooks, eBooks, comics, movies, TV shows, magazines, and music. It is unique in offering a variety of formats on a single platform. These items will only be available to library patrons, and multiple users can borrow content simultaneously. It will enhance library services and address patron needs.

The library intends to cancel its Freegal subscription and redirect these funds to Hoopla. Additionally, the library has received a grant of $11,000 from the library foundation to fund this endeavor. Hoopla will be an additional resource for library patrons, enhance content availability, add sought-after streaming video, and reduce overall wait times.

Hoopla has no setup, platform, or maintenance fees. The vendor has a 60-day notice cancellation period, operates on a pay-per-checkout model, and the library can be billed for services each month or draw from a lump sum deposited in advance.

The vendor estimates an average cost of $1.95 per item circulated, and the total monthly cost to the library will vary based on the overall user adoption rate. If accelerated patron adoption occurs, monthly checkout limits, and caps on the cost of items per checkout, can be implemented.

The Hoopla digital library platform offers numerous benefits to the library and its users. Its extensive collection of simultaneous-use digital content, cross-device compatibility, and potential to attract new patrons make it a valuable addition to the library's offerings. By replacing Freegal with Hoopla and maintaining its subscription to Libby, the library will enhance its services, respond to patron requests for digital video content, and reduce wait times for eBooks and audiobooks.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

No budgetary impact. This will be funded through a Billings Library Foundation grant of $11,000, and the currently funded electronic resources noted above.

City Council Regular

Date:	05/22/2023
Title:	Sale of 300-gallon surplus waste containers to the City of Powell, Wyoming
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends authorizing the sale one hundred 300-gallon surplus waste containers to the City of Powell, Wyoming.

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

The City regularly sells used 300-gallon containers to other municipalities throughout the State of Montana each year. Due to the conversion from shared 300-gallon containers to individual containers that occurred in 2022, the City has an excess of used 300-gallon containers. City policy allows the sale of containers to communities within Montana without pubically advertising the sale and without Council approval. However, to sell to municipalities in other states, Council approval is required.

The City has been charging $100 per container. A new container is $494. These containers are extremely worn, but a good value for small municipalities.

ALTERNATIVES

City Council may:

- Approve the sale of one hundred 300-gallon waste containers to the City of Powell, Wyoming for $10,000 or,
- Not approve the sale. If not approved, the City will need to find an alternate way to dispose of the containers.

FISCAL EFFECTS

Revenues from the sale of the containers will generate $10,000 for the Solid Waste fund.

City Council Regular

Date:	05/22/2023
Title:	Sale of 300-gallon surplus waste containers to the Town of Upton, Wyoming
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends selling thirty 300-gallon containers to the Town of Upton, Wyoming.

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

The City regularly sells used 300-gallon containers to other municipalities throughout the State of Montana. Due to the conversion from shared 300-gallon containers to individual 96-gallon containers that occurred in 2022, the City has an excess of used 300-gallon containers. City policy allows us to sell to communities within Montana without publicly advertising the sale and without council approval. However, to sell to municipalities in other states, Council approval is required.

The City has been charging $100 per container. A new container is $494. These containers are extremely worn but a good value for small municipalities.

ALTERNATIVES

City Council may:

- Approve; the sale of thirty 300-gallon containers to the Town of Upton, Wyoming for $3,000; or
- Not Approve the sale. If not approved, the City will need to find an alternate way to dispose of the containers.

FISCAL EFFECTS

Revenues from the sale of the containers will generate $3,000 for the Solid Waste fund.

City Council Regular

Date:	05/22/2023
Title:	Acceptance of Donations for Mobilize the MAGIC City Project
Presented by:	Elyse Monat
Department:	Planning & Community Services
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends that Council accepts $5,070 in donations in support of the "Mobilize the MAGIC City" project.

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

The City of Billings was awarded an Our Town creative placemaking grant from the National Endowment for the Arts (NEA) in support of its Mobilize the MAGIC (Making Art Grounded in Community) City Project. The grant from the NEA is for $50,000. This project is a partnership between the City of Billings, the Billings Arts Association, Healthy By Design, and the NEA. The grant from the NEA must be matched dollar-for-dollar. Part of the match will come from in-kind donations such as staff and volunteer time from City staff and committee members. The other part of the match will be a cash match.

This agenda item is to provide approval of four donations to the City in support of this project totaling $5,070.00. The Healthy By Design coalition donated $2,500, Dr. Rachel Schaffer and Dr. Deborah Schaffer donated $1,000, Anne Cole and Mayor Cole donated $1,000, Kim and Tom Rupsis (Council Member) donated $450 through their business, Granite Peak Systems, LLC, and Pamela Jones and Ed Hahn donated $120. With a previous donation from Big Sky Economic Development, the total in donations for the project is now at $7,570.

Through the "Mobilize the MAGIC City" project, the City contracted with local artist Terri Porta as the City's Artist In Residence for a year. The project seeks to develop a process to involve art and artists in everyday civic life to improve economic development, road safety, health outcomes, and more. Project outcomes will include at least two placemaking hubs (community-informed public art), a Placemaking Playbook, and a Public Arts Committee Feasibility Study.

ALTERNATIVES

City Council may:

- Accept the donations; or,
- Not accept the donations.

Council previously approved the grant application to the NEA with the understanding that part of the match would have to be fundraised. Not accepting this donation would be in contradiction to the Council's previous approval of the grant.

FISCAL EFFECTS

If Council accepts these donations, they will provide $5,070 in support of the "Mobilize the MAGIC City" project. With these new donations and a previous donation from Big Sky Economic Development of $2,500, the total in cash donations for the project is now at $7,570.

City Council Regular

Date:	05/22/2023
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:

Library Foundation	$18,505	Earmarked for specific programs at the Library
Cladis/Fortin Foundation	$2,000	Children's Summer Reading Program supplies and prizes
Town Pump Charitable Foundation	$1,000	Earmarked for Keep Kids Reading - Teen Program
Eisner Graphic Novel Grant	$4,000	Earmarked for materials, programming, and staff travel. Additionally, the BPL will receive approximately $2,000 of specific Eisner graphic novels materials.

ALTERNATIVES

City Council may:

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

FISCAL EFFECTS

There is no budgetary impact.

City Council Regular

Date:	05/22/2023
Title:	Elysian Subdivision - Preliminary Minor Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends the City Council conditionally approve the preliminary plat of Elysian Subdivision and adopt the Findings of Fact as presented in the staff report.

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

On April 14, 2023, IMEG for Cogburn Holdings, LLC, applied for preliminary minor plat approval of Elysian Subdivision. The proposed subdivision creates 5 lots for professional office / residential development. The subject property is generally located south of Elysian Road and west of East Lane. The property is zoned PD, with underlying zoning of Highway Commercial (HC) and Controlled Industrial (CI), builders will follow these zoning requirements in accordance with the PD when developing the lots.

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, prior to final plat approval, the applicant will submit all drawings and specifications for water systems, sewer systems and stormwater systems to the City of Billings Engineering Department for review and approval prior to installation.

2. To protect public health and safety and provide the area with roads that can handle increased traffic, prior to final plat, the applicant will include the percentage of proportional contribution to roads and intersections in the SIA under the heading III Transportation. Any road work that need to be done prior to final plat will be done as required by the TIS and reviewed and approved by City of Billings Engineering.

3. To protect public health and safety and as required by City of Billings Subdivision Regulations, prior to final plat approval, the applicant will provide road names on the final plat that have been approved by City Land Management. Section 23-406 Street and Roads A 15.

4. To protect public health and safety, prior to final plat approval, the subdivider shall provide and construct a minimum of 3 pedestrian connection to the Elysian School property. The SIA shall be updated to describe these connections, and they shall be depicted on the final plat.

5. To provide for mail delivery to the future landowners, businesses and or residents, prior to final plat approval, the applicant will coordinate with the USPS for locating a Central Box Unit (CBU) and providing enough space for safe delivery and retrieval of mail.

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 December 18, 2022
- Preliminary plat application submitted to Planning Division on April 14, 2023

- Preliminary plat to City Council May 22, 2023
- 35 working-day preliminary plat review period ends June 5, 2023

PLAT INFORMATION

General location:	South of Elysian Road and west of East Lane
Legal Description:	Tract 2A, Certificate of Survey 3535
Owner/Subdivider:	Cogburn Holdings, LLC
Engineer and Surveyor:	IMEG
Existing Zoning:	PD with underlying zoning of HC and CI
Existing land use:	Farmland
Proposed land use:	Commercial
Gross area:	49.364 acres
Proposed number of lots:	5
Lot size:	Max: 12.3 acres Min: 4.4 acres
Parkland requirements:	Parkland dedication is not required as this is a minor subdivision. Section 23-1008 A. BMCC

STAKEHOLDERS

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

ALTERNATIVES

In accordance with state law, the City Council has 35 working days to act upon this minor preliminary plat. The 35 working day review period for the proposed plat ends on June 5, 2023. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 working day review period, the City Council is required to:

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

Staff is recommending Conditional Approval and adoption of the Findings of Fact.

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.

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 Elysian Subdivision. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property is was used as farm land. Water rights will not be transferred to subdivision property owners. Existing ditches near this proposed development will remain in place. There is a ditch in the south west corner of the subdivision. Connection to Shackleford Lane will require modification to the ditch. The subdivision should not affect agricultural water users' facilities.

2. Effect on local services

a. **Utilities** – Public water services to the subject property will be provided by the City of Billings. Phase 1 of Elysian Subdivision will construct a 12" water main in Road A north from Road B intersection to the northern boundary of Lots 2 and 5. Phase 1 will also include a 12" water main from the tee in Road B to the intersection of East Lane.

Phase 2 of the Elysian Subdivision will construction a 12" water main in Road A from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road. The water main extension will turn east and run through Elysian Road and connect to the existing system near Elysian School within Elysian Road.

All water line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings. The City of Billings, Engineering Department, will review and approve all proposed water lines prior to installation. **(Condition #1)**

Fire hydrants will also be installed as required by the City of Billings Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

Sanitary sewer service will be provided by the City of Billings through a sewer main extension. Phase 1 of Elysian Subdivision will construct a 12" sewer main in Road A north from Road B intersection to the northern boundary of Lots 2 and 5.

Phase 2 of the Elysian Subdivision will construction a 12" sewer main in Road A from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road.

All sewer line construction shall be installed in conformance with the design standards, specification, rules and regulations of the City of Billings Engineering Department. The City of Billings Engineering Department will review and approve all proposed sanitary sewer lines prior to installation. **(Condition #1)**

All telephone, gas, electrical power, and cable television lines that are placed within the public right-of-way shall be installed prior to surface improvements.

b. **Storm water** – Stormwater management for the proposed subdivision will be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains and to on-site retention/detention ponds. An alternate road section has been proposed to mitigate storm drainage coming from the public roads.

All of the public stormwater infrastructure will be located within public easement or public ROW. Stormwater infrastructure located in the public ROW will be maintained by the City. Infrastructure, including piping and ponds, not in the ROW will be maintained by the Elysian Property Owner's Association.

Private lots will be required to mitigate stormwater from private development within private property boundaries.

All drainage improvements shall comply with the provisions of the City of Billings Stormwater Management Manual and Section 23-706, BMCC, a stormwater management plan shall be submitted to the Engineering Division prior to filing of the final plat. **(Condition #1)**

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – Access to the lots in this proposed subdivision is from Elysian Road and East Lane. Access to each individual lot will be from the internals streets that are proposed with this subdivision. Road A will be a 70-foot-wide right of way, and built to a commercial road width standard. Road B currently will be providing a 35-foot-wide road dedication and they are in the process of obtaining a road easement from the property owner to the south.

East Lane and Elysian Road are both currently built to a county road standard. They are within a 60-foot-wide easement. This subdivision will be dedicating an additional 37 feet of right of way for both roads. Road improvements will not be required at this time but there will be a cash contribution to those roads and a future creation of a SID for widening those roads when the traffic warrants are met to trigger the need to widen them.

Further discussion and detail of proposed roads can be found in the SIA under the heading III Transportation.

A traffic study has been completed for this proposed subdivision and the applicant will be making contributions to the intersections and roads impacted by the additional traffic burden places on them. Those contributions will be outlined in the SIA and will be made to the City prior to final plat approval. **(Condition #2)**

Currently the streets within the subdivision are called out by Road A and Road B. All streets within the subdivision shall be named before final plat. **(Condition #3)**

Sidewalks will be installed at the time of individual lot development. All sidewalks will be boulevard type walks with 5-foot wide boulevard sidewalks. The applicant will add language to the SIA that requires a minimum of 3 connections from the lots that share a common lot line with Elysian school to the school grounds. **(Condition #4)**

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 605 South 24th Street West (Station #5).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** – Elysian School provides service to students within this subdivision for K through 8. School District #2 provides service to students within this subdivision from high school (West High School). School District #2 responded stating West High School is over capacity at this time.

g. **Parks and Recreation** – There is not parkland dedication requirement for this subdivision. Minor subdivisions are not required to provide parkland. (76-3-621(3(c), MCA))

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. They have requested the installation of centralized mailbox unit (CBUs). The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. This is outlined in the SIA under the heading IX Postal Delivery. **(Condition #5)**

3. Effect on the natural environment

The subject property is relatively level land adjacent to expanding suburban development to the east. A geotechnical study was performed for lot 1 within the subdivision, a summary of the information from that study is included in the SIA under the heading X. Soils/Geotechnical Study. The SIA recommends those developing lots 2-5 have a

geotechnical study done prior to construction. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open farm land areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading, II Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

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

6. Phasing of the Subdivision

The subdivider is proposing to build the subdivision in two phases. Phase one lots will be available for sale and buildings with the final approval of the proposed subdivision. Phase two is planned to be open on or before June 1, 2028.

Each phase is outlined in the SIA under the heading, XI Phasing of Improvements.

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

> **Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):** Neighborhoods that are safe and attractive and provide essential services are much desired.
>
> **Essential Investments (relating public and private expenditures to public values)** Planning and construction of safe and affordable 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)

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP shows future trails along Elysian Road and East Lane. There are no trails within the proposed subdivision.

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

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

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

The subject property is located within a PD zoning district. All building development on the lots shall comply with the PD zoning when applying for a building permit. The underlying zoning is Highway Commercial and Controlled Industrial. The PD was put in place before the new zoning code was adopted and remains as the previous code.

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 furnish private utility easements as required by private utility providers.

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 Elysian Road and from East Lane. All streets are dedicated to the public as shown on the plat.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Elysian Subdivision does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

Staff is forwarding to the City Council, the preliminary plat of Elysian Subdivision, recommending conditional approval and adoption of the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, May 22, 2023

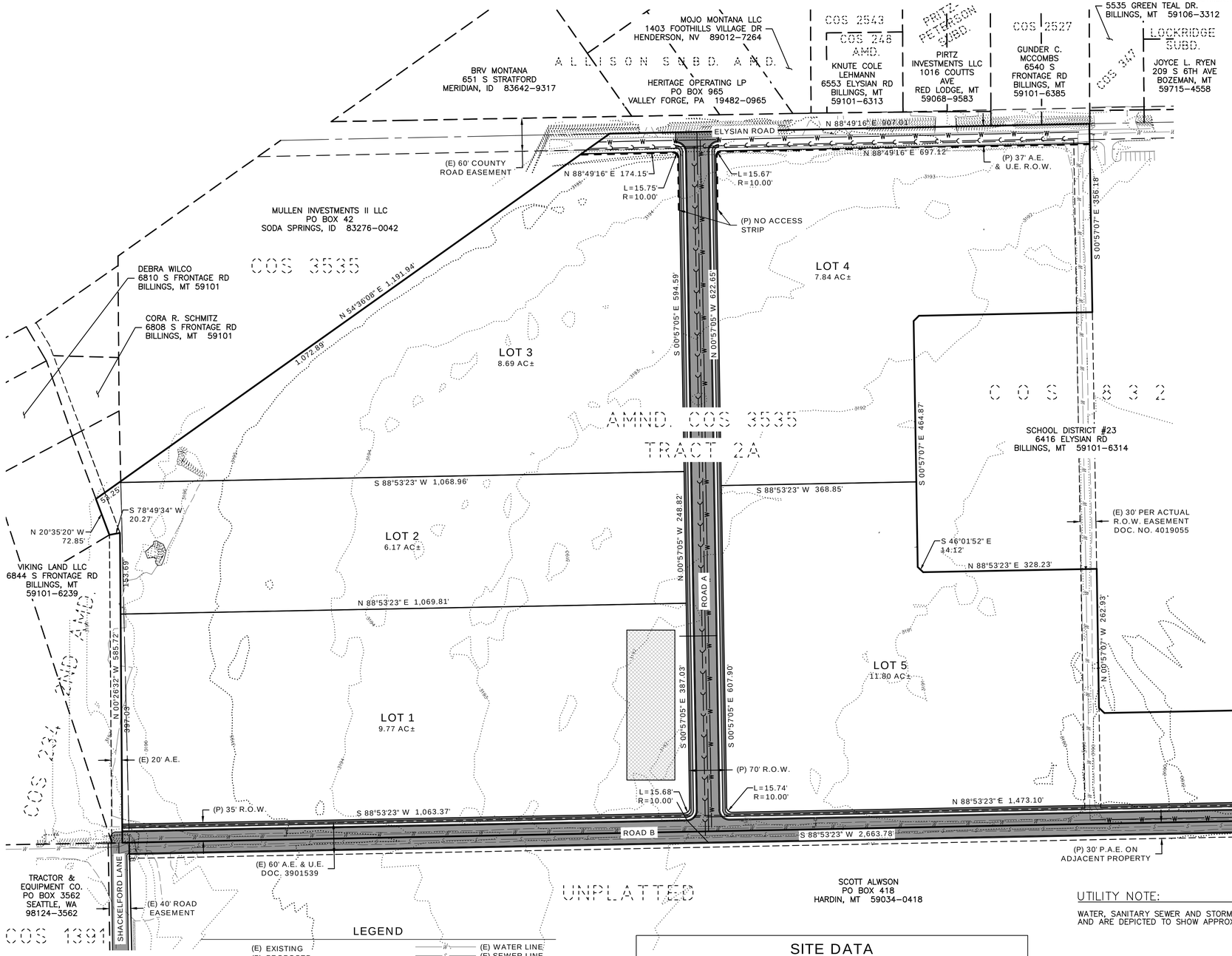
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William A. Cole, Mayor

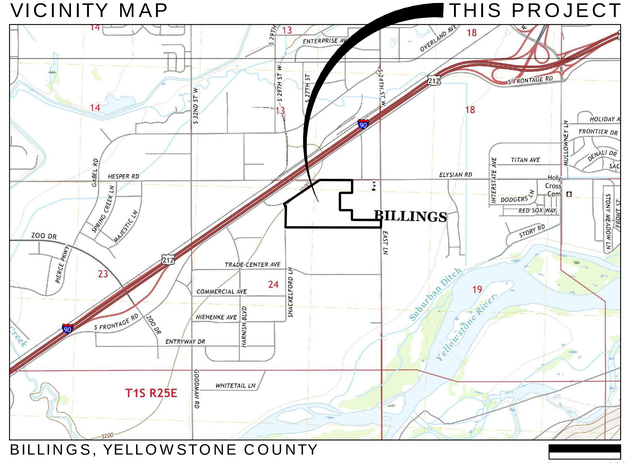
PRELIMINARY PLAT OF

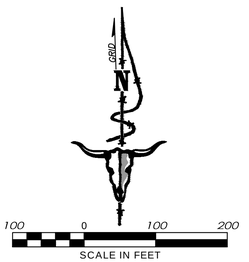
ELYSIAN SUBDIVISION

TRACT 2A OF COS 3535 LOCATED IN THE NE1/4 & NW1/4 OF SECTION 24, TOWNSHIP 1 SOUTH, RANGE 25 EAST, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA



VICINITY MAP





BASIS OF BEARING
STATE PLANE MONTANA – ZONE 2500
GROUND (TRUE) DISTANCES

RECORD OWNER:
DEVELOPMENT 55 LLC

SUBDIVIDER:
DEVELOPMENT 55 LLC

DATE:
MAY, 2023

TOTAL SUBDIVISION AREA:
49.37 ACRES (GROSS)
44.3 ACRES (NET)

LEGEND

- (E) EXISTING
- (P) PROPOSED
- COS CERTIFICATE OF SURVEY
- R/W OR R.O.W. RIGHT-OF-WAY
- A.E. ACCESS EASEMENT
- U.E. UTILITY EASEMENT
- P.A.E. PUBLIC ACCESS EASEMENT
- (E) PROPERTY BOUNDARY
- (E) ADJACENT PROPERTY BOUNDARY
- (E) 5' CONTOUR
- (P) LOT LINE
- (E) WATER LINE
- (E) SEWER LINE
- (P) WATER LINE
- (P) SEWER LINE
- (P) STORM RETENTION AREA
- (P) ASPHALT
- (P) GRAVEL
- (P) CONCRETE

SITE DATA

NUMBER OF LOTS	5	NET ACREAGE	44.3 AC
MAXIMUM LOT AREA	514,198 SF	GROSS ACREAGE	49.37 AC
MINIMUM LOT AREA	268,806 SF	EXISTING ZONING	PUD
AREA OF PARKLAND	NA	PROPOSED ZONING	PUD
AREA OF R/W DEDICATION	5.1 AC	EXISTING LAND USE	AGRICULTURAL
LINEAR FEET OF STREETS	4,900 LF	PROPOSED LAND USE	INDUSTRIAL, COMMERCIAL, & MULTI-FAMILY RESIDENTIAL

UTILITY NOTE:

WATER, SANITARY SEWER AND STORM SEWER ARE CURRENTLY BEING DESIGNED AND ARE DEPICTED TO SHOW APPROXIMATE PLANNED LOCATIONS.

1/4	SEC.	T.	R.
☒	24	1S	24E

PERIMETER LEGAL DESCRIPTION

TRACT 2A, COS 3535, SECTION 24, TOWNSHIP 1S, RANGE 25E, P.M.M.

SHEET 1 OF 1
ELYSIAN SUBDIVISION
(A SUBDIVISION OF CITY OF BILLINGS)

SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Elysian Subdivision

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City of Billings, Montana

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Elysian Subdivision

This agreement is made and entered into this ___ day of_____, 20____, by and between *Development 55, LLC.* whose address for the purpose of this agreement is 2150 Coca Cola Lane, Rapid City, SD 57702, hereinafter referred to as "Subdivider," and the CITY OF BILLINGS, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the plat of *Elysian Subdivision,* located in the City of Billings, Yellowstone County, Montana, was submitted to the Yellowstone County Board of Planning; and

WHEREAS, at a regular meeting conducted on_____day of_____, 20_____, the City Council conditionally approved a preliminary plat of Elysian Subdivision, and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Elysian Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

The Subdivider has not requested any variances from the City of Billings 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.

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. A traffic impact study has been completed for Elysian 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:

- South Frontage Road/Midland Road & Mullowney Lane
- Mullowney Lane & Elysian Road
- Elysian Road & East Lane
- South Frontage Road & Elysian Road
- South Frontage Road & East Lane
- East Lane and Road B
- Elysian Road and Road A

A Cash Contribution shall be based on the percent of traffic contributions to the intersection based on the total cost of an intersection as determined by the City of Billings Engineering for the year in which the contribution is made. Cash contributions

shall be made prior to final plat approval.

B. Streets

- Shackelford Lane is an existing local city road and is located within a 40' wide right-of-way (ROW). No additional right-of-way is being dedicated as part of this subdivision. The Subdivider will be responsible for building a paved roadway and temporary drainage structures that fit within the existing 40' ROW. Improvements will be made from the subject property south to the northern boundary of Bottrell Subdivision as part of Phase 1 of Elysian Subdivision.
- An existing water and sewer line are located in an undedicated access road within a 60-foot perpetual right-of-way for the City to be able to maintain the utility lines. This easement is located in the subdivision to the east of this proposed subdivision. This easement is recorded under Document number 4012842. There is a reciprocal access and utility easement between the two adjacent property owners per Document 3901539.

  Road B is considered a Commercial Local Access as part of the City's Long-Range Transportation Plan (LRTP). 35' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements. A 30' Public Access Easement must be obtained from the adjacent private property owner to the south as part of the subdivision prior to final plat approval.

  The Subdivider shall construct Road B as a local commercial road as part of Phase 1 of Elysian Subdivision. The road cross section will follow City Local Commercial Access Road standards.
- East Lane is an existing road and is located within a 60' wide County Road Easement. The City's LRTP considers East Lane a Collector. 37' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements.

  No frontage improvements or cash-in-lieu is proposed as part of Elysian Subdivision. A future Special Improvements District (SID) will be created in order to improve the East Lane corridor and be assessed to Lot 5 within Elysian Subdivision. A Waiver of Right to Protest a future SID is included as part of this subdivision.
- Elysian Road is an existing road and is located within a 60' wide County Road Easement. The City's LRTP has Elysian Road as a future Collector. 37' of ROW is being dedicated as part of Elysian Subdivision to conform with City requirements.

  No frontage improvements or cash-in-lieu is proposed as part of Phase 1 of Elysian Subdivision. A future Special Improvements District (SID) maybe created to improve Elysian Road and be assessed to Lot 3 and Lot 4 along their frontage. Waiver of Right to Protest a future SID is included as part of this subdivision.

  If no SID has been created at the time Lot 3 or Lot 4 are to be developed as part of Phase 2 of Elysian Subdivision, then frontage improvements will be required at that time. Lot 3 and Lot 4 property owners will each be responsible for their corresponding frontage improvements. These improvements may include curb and gutter, 10' wide multi-use path, street widening, water mains, and sewer

mains.

- Road A is a proposed 70’ of right-of-way being dedicated to the City.

  The Subdivider shall construct a local commercial road in (Road A) as part of Elysian Subdivision. The road cross section will follow City Local Commercial Access Road standards

  Phase 1 of Elysian Subdivision will construct (Road A) to the northern boundary of Lot 2 and Lot 5. An approved temporary turn-around shall be installed at the terminus of (Road A) as part of Phase 1. The temporary turn-around will be removed once the remainder of (Road A) is constructed north to Elysian Road during Phase 2.

  Phase 2 of Elysian Subdivision will construct the remainder of (Road A) along the frontage of Lot 2 and Lot 4 all the way to the intersection with Elysian Road.

C. Sidewalks

Sidewalks within the subdivision will be the standard 5’ wide sidewalk and 5’ wide boulevard. Sidewalk ramps at intersections will be constructed by the Subdivider at the time of road construction. Sidewalks along private lot frontage will be constructed when the lot is developed. The sidewalk will be composed of concrete and be completed within the road’s ROW to city standards.

D. Street Lighting

There is no proposed street lighting, however street lighting is included as an item in the waiver of right to protest.

E. Traffic Control Devices

- One stop sign will be installed on Road A at the intersection with Elysian Road as part of Phase 2.
- One stop sign will be installed on Road A at the intersection with Road B .
- One stop sign will be installed on Road B at the intersection with East Lane.

F. Access

- Lot 1 of the subdivision will have access from Road B.
- Lot 2 and 3 will have access from Road A.
- Lot 4 will have access from Road A.
- Lot 5 will have access from Road A and Road B.

G. Billings Area Bikeway and Trail Master Plan

- There is a proposed Primary Bike Route shown along Elysian Road and East Lane in the Billings Area Bikeway and Trail Master Plan.

H. Public Transit

- Sidewalks are proposed adjacent to boulevards for Road B, Road A, Elysian Road, and East Lane.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.

- The subdivision appears to be located within the moderate interface density of the Wildland Urban Interface (WUI) per the Wildland Urban Interface Parcels Yellowstone County map provided by the Montana Department of Natural Resources and Conservation. The subdivision will be served by fire hydrants.
- The nearest ambulance providers are Eagle Ambulance Service and Beartooth EMS. Both providers are approximately 1 mile away from the subdivision.
- The subdivision will be served by City of Billings Police Department.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Stormwater Management Manual and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division.

Storm Drainage for Elysian Subdivision will be provided by a combination of curb and gutter, underground piping and on-site retention/detention ponds. Stormwater runoff from the right-of-way will be mitigated in retention ponds on Lot 1, Lot 3 or Lot 5. Provisions for either a future connection to East Lane, or a means of discharge to local ditch will be provided. If stormwater runoff is to be discharged into a local ditch, the Subdivider must obtain permission from the ditch company.

All of the public stormwater infrastructure will be located within public easement or public ROW. Stormwater infrastructure located in the public ROW will be maintained by the City. Infrastructure, including piping and ponds, not in the ROW will be maintained by the Elysian Subdivision Property Owner's Association.

Private lots will be required to mitigate stormwater from private development within private property boundaries.

The Stormwater Management Plan will be incorporated in the final version of the recorded SIA. If the development fails to maintain storm drainage facilities, the city has the right to create a maintenance district and maintain the facilities.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The Subdivider shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department — Distribution and Collection 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 appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Subdivider and future lot owners acknowledge 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 through a water main extension. Phase 1 of Elysian Subdivision will construct a 12” water main in Road A north from Road B intersection to the northern boundary of Lots 2 and 5. Phase 1 will also include a 12” water main from the tee in Road B to the intersection of East Lane.
- Phase 2 of the Elysian Subdivision will construction a 12” water main in Road A from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road. The water main extension will run in Elysian Road along Lot 3 and Lot 4 frontage.
- If an SID for Elysian Road is created, Lots 3 and 4 will be assessed for half of the construction of the watermain fronting their property. If the SID is not created prior to development of Lots 3 and 4, construction of the water main will be required along their respective frontage at the time of development. Subdivider can enter into a reimbursement agreement with the City for half of the construction.

B. Sanitary Sewer

- Each lot is to be served by City of Billings through a sewer main extension.

Phase 1 of Elysian Subdivision will construct a 12" sewer main in Road A north from Road B intersection to the northern boundary of Lots 2 and 5.

- Phase 2 of the Elysian Subdivision will construction a 12" sewer main in Road A from the southern boundary of Lots 3 and 4 to the intersection with Elysian Road. The sewer main extension will run in Elysian Road along Lot 3 and Lot 4 frontage.
- If an SID for Elysian Road is created, Lots 3 and 4 will be assessed for half of the construction of the sewer main fronting their property. If the SID is not created prior to development of Lots 3 and 4, construction of the sewer main will be required along their respective frontage at the time of development. Subdivider can enter into a reimbursement agreement with the City for half of the construction.

C. Power, Telephone, Gas, and Cable Television

Northwestern Energy, Montana-Dakota Utilities Company, Spectrum, and Direct are utilities that will be available at this site. All Private utilities will be located underground within the adjacent street rights-of-way or utility easement.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Elysian Subdivision, as this is a minor subdivision [MCA 76-3-621(3)(e)].

VIII. IRRIGATION

There is currently an irrigation ditch adjacent to the property within the Shackelford Lane right-of-way to the west of Lot 1, at the intersection with Road B. Any improvements to Shackelford Lane will require modifications to the irrigation ditch. Subdivider shall obtain approval from ditch owner for said modifications.

IX. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study was completed by Rimrock Engineering, Inc dated March 8th, 2023. This geotechnical study covers the subdivision infrastructure and the development on Lot 1. The Geotechnical Study suggests that individual geotechnical reports be completed prior to development of Lots 2 through 5 of the subdivision.

X. PHASING OF IMPROVEMENTS

A. Improvements of the subdivision are to be developed two (2) phases. The phases are defined as follows:

Phase 1

- Lots 1, 2, and 5
- Completed roads: Shackelford Lane, Road B, Road A to the northern boundary of Lot 2 and Lot 5.
- Shall be opened immediately upon preliminary plat approval.

Phase 2

- Lots 3 and 4
- Completed roads: Remainder of Road A, frontage improvements on Elysian Road if no SID is in place at the time of development.
- Shall be opened on June 1, 2028.

B. The Subdivider does not desire to commence development of Phase 2 improvements within the subdivision at this time, but does desire to file the approved final plat for Elysian Subdivision. In accordance with the foregoing, the Subdivider and the City agree as follows:

a. Improvements for Phase 2 shall be installed by the Subdivider in the future. The Subdivider agrees not to sell or convey lots encumbered by Phase 2 without the improvements being completed or financially secured.

The foregoing provisions shall not restrict the Subdivider's right to sell and convey, lots in Phase 1 or sell and convey, as one unit, all lots in the Subdivision, however, the sale and transfer 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. Said declaration notifies all third parties that said lots may not be legally sold, conveyed or transferred (except as provided above).

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install, and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING THE 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 and 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" Development 55, LLC.

_____
Joe Easton, Authorized Signer of Development 55, LLC.

STATE OF MONTANA)
: ss
County of _____)

On this_____day of_____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Joe Easton, authorized signer of Development 55, LLC. who executed the foregoing instrument and acknowledged to me that he executed the same.

SS_____

[Left intentionally blank additional signatures on following pages]

This agreement is hereby approved and accepted by the City of Billings, this_____day of _____, 2023.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this_____day of_____, 2023, 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 date 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 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:

Elysian Subdivision

Signed and dated this_____day of_____, 2023.

Development 55, LLC.

By:_____

Its: _____

STATE OF MONTANA)
: ss
County of_____)

On this ____day of_____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Joe Easton, Authorized Signer of Development 55, LLC., known to me to be the person who executed the forgoing instrument and acknowledged to me that he executed the same.

IN WITNESS WHEROF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

SS_____

Return to City of Billings Clerk
210 N 27th St.
Billings, MT 59101

DECLARATION OF RESTRICTION ON TRANSFERS. AND CONVEYANCES

ELYSIAN SUBDIVISION

THIS DECLARATION is made this_____day of_____20_____, by Development 55, LLC hereinafter referred to as "Declarant,"

WITNESSETH:

WHEREAS, the Declarant is the subdivider of all of the lots in Elysian Subdivision, situated in Section 24, Township 1 south. Range 25 east, PMM., City of Billings, Yellowstone County, Montana, hereinafter referred to as the "Subdivision"; and

WHEREAS, in connection with the filing of the plat for the Subdivision, the Declarant executed that certain Subdivision Improvements Agreement dated the _____day of _____, 20____to the City of Billings, which Agreement contains restrictions against the sale, conveyance or transfer of certain lots in the Subdivision until such time as a private contract has been executed providing for the installation and construction of required public improvements; and

WHEREAS, in order to more fully evidence the restriction against sale, conveyance, or transfer and to give third parties notice of such restrictions, the Declarant desires to execute and record this Declaration of Restrictions.

NOW, THEREFORE, in consideration of these premises, the Declarant, for itself and its successors and assigns, does hereby declare:

1. Except as hereinafter provided, the Declarant does hereby agree and declare that the following described lots shall not be sold, transferred, or conveyed to any third party unless and until a release has been executed and recorded in accordance with

the provisions hereinafter appearing:

Phase 2:

Lots 3 and 4; Elysian Subdivision in the City of Billings, according to the official plat on file in the office of the Clerk and Recorder of Yellowstone County, Montana (_2_ lots total).

2. It is the express purpose and intent of this Declaration to restrict or preclude sale, transfer, or conveyance of the above-described lots until such time as a private contract has been executed and necessary funding guarantees provided, as the case may be, providing for the construction and installation of those public improvements required under the above-described Subdivision Improvements Agreement which by reference thereto is hereby incorporated herein as though fully set forth at this point. It is anticipated, however, that the Declarant will develop Elysian Subdivision, in distinct phases, upon providing for the installation and construction of the public improvement necessary to serve the particular phase. In that regard a release of some but not all of the above described lots may be executed and recorded from time to time, in accordance with the provisions hereinafter appearing, and upon the recording of said release, the covenants and restrictions contained herein with respect to the lots described in said release shall be deemed canceled and terminated, and of no further force and effect.

3. Upon compliance with the requirements for a private contract specified above, a release for the lot or lots affected thereby shall be executed and recorded by the City of Billings, pursuant to the provisions contained in the said Subdivision Improvements Agreement. The execution and recording of said release shall be deemed conclusive evidence to all third parties purchasing or acquiring any lot described therein that the restriction against sale, conveyance, or transfer of said lot has been removed.

4. UNTIL SUCH RELEASE IS EXECUTED AND RECORDED, THIS DECLARATION SHALL SERVE AS NOTICE TO ALL THIRD PARTIES PURCHASING OR ACQUIRING ANY OF THE ABOVE-DESCRIBED LOTS OF THE EXPRESS RESTRICTIONS AGAINST ANY SUCH SALE, CONVEYANCE OR TRANSFER, AND OF THE TERMS AND CONDITIONS OF THE SAID SUBDIVISION IMPROVEMENTS AGREEMENT, AND SHALL FURTHER SERVE AS NOTICE THAT THE CITY OF BILLINGS MAY ENFORCE ANY AND ALL LEGAL RIGHTS AND REMEDIES SPECIFIED IN THE SUBDIVISION IMPROVEMENTS AGREEMENT SHOULD THE TERMS OF THIS DECLARATION BE VIOLATED.

The terms, conditions, and restrictions contained in this Declaration shall not preclude or restrict the ability of the Declarant to (a) sell, convey, and transfer all of the above-described lots, all of the lots in one phase, or those lots remaining subject to the terms of this Declaration, as one unit or group, to a third party, parties or entities; provided, however, that such sale shall be subject to this Declaration and the lots shall continue to be subject to the restrictions herein provided against the sale, transfer and conveyance until a release has been executed

and recorded; or (b) enter into sale and purchase agreements for individual lots; provided, however, that the deeds or other conveyance documents shall not be delivered to the prospective buyer nor shall the closing under any such sale and purchase agreements occur until such time as a release covering the affected lot has been executed and recorded.

5. The terms and conditions of this Declaration shall run with the land and shall be binding upon and shall inure to the benefit of the Declarant, the City of Billings, and their successors and assigns.

IN WITNESS WHEROF, the Declarant has executed this Declaration the day and year first above written.

Development 55, LLC.

_____

Joe Easton, authorized signer, Development 55, LLC.

STATE OF MONTANA)
: ss.
County of _____)

On this_____day of_____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Joe Easton, authorized signer of Development 55, LLC., known to me to be the person who signed the foregoing instrument and who acknowledged to me that he executed the same.

SS_____

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

CITY OF Billings
MAYOR'S OFFFICE

IMEG
175 N 27th Street
Billings, MT 59101

Dear Applicant:

On May 22, 2023, the Billings City Council conditionally approved the preliminary plat of Elysian Subdivision subject to the following conditions of approval:

1. To protect public health and safety, prior to final plat approval, the applicant will submit all drawings and specifications for water systems, sewer systems and stormwater systems to the City of Billings Engineering Department for review and approval prior to installation.
2. To protect public health and safety and provide the area with roads that can handle increased traffic, prior to final plat, the applicant will include the percentage of proportional contribution to roads and intersections in the SIA under the heading III Transportation. Any road work that need to be done prior to final plat will be done as required by the TIS and reviewed and approved by City of Billings Engineering.
3. To protect public health and safety and as required by City of Billings Subdivision Regulations, prior to final plat approval, the applicant will provide road names on the final plat that have been approved by City Land Management. Section 23-406 Street and Roads A 15.
4. To protect public health and safety, prior to final plat approval, the subdivider shall provide and construct a minimum of 3 pedestrian connection to the Elysian School property. The SIA shall be updated to describe these connections, and they shall be depicted on the final plat.
5. To provide for mail delivery to the future land owners, businesses and or residents, prior to final plat approval, the applicant will coordinate with the USPS for locating a Central Box Unit (CBU) and providing enough space for safe delivery and retrieval of mail.
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) 657-8666 or by email at greend@billingsmt.gov

May 22, 2023

Sincerely,

_____
William A. Cole, Mayor

City Council Regular

Date:	05/22/2023
Title:	Price Subdivision, Amended Lots 1 and 5, Block 1 - Preliminary Subsequent Minor Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends to City Council that the preliminary plat of Price Subdivision, Amended Lots 1 and 5, Block 1, be conditionally approved and the Council adopt the Findings of Fact as presented in the staff report.

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

On April 3, 2023, Sanderson Stewart submitted for preliminary subsequent minor plat approval for Price Subdivision, Amended Lots 1 and 5, Block 1. The proposed subdivision creates 4 lots from 2 existing lots. Lots 1 and 5 have existing residential development on them. The two new lots take acreage from lots 1 and 5 and are proposed to have a 'No Build' provision on them that does not allow construction on them that requires water and sewer infrastructure. This is necessary to meet the original platting of Price Subdivision that was provisioned on a maximum of five lots for single family occupancy and any outbuildings that may be associated with those residences. The creation of these lots per the owner continues to comply with that provision in that the new lots will not be developed for additional single-family residences over and above the original five as contemplated. This does not preclude the owners or developers of pursuing changes to this provision should they desire to pursue such in the future. Those provision and any changes thereto require review, recommendation, and approval by the City of Billings. The subject property is generally located east of Ironwood Subdivision. The property is zoned N3, Suburban Neighborhood.

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 inform future owners of the reason for the ‘No Build' lots being created with this subdivision, prior to final plat, the applicant will copy the language in the SIA under the heading XI Not Build Provision to the SIA under the heading II Property Conditions and Information for lot Purchasers. This will alert the future owners of the no build restriction on lots 1A and 5A.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, 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 23, 2023
- Preliminary plat application submitted to Planning Division on April 3, 2023
- Preliminary plat to City Council May 22, 2023
- 35 working-day preliminary plat review period ends May 22, 2023

PLAT INFORMATION

General location:	East of Ironwood Subdivision
Legal Description:	Lots 1 and 5, Block 1, Price Subdivision
Owner/Subdivider:	Jock Clause
Engineer and Surveyor:	Sanderson Stewart

Existing Zoning:	N3
Existing land use:	Residential / Native grasslands
Proposed land use:	Residential / Native grasslands
Gross and Net area:	155.64 acres / 155.64 acres
Proposed number of lots:	4
Lot size:	Max: 58.95acres Min: 16.26 acres
Parkland requirements:	Parkland dedication is not required as this is a minor subdivision. Section 23-1008 A. BMCC

STAKEHOLDERS

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

ALTERNATIVES

In accordance with state law, the City Council has 35 working days to act upon this minor preliminary plat. The 35 working day review period for the proposed plat ends on May 22, 2023. State and City subdivision regulations also require that preliminary plats be reviewed using specific criteria, as stated within this report. The City may not unreasonably restrict an owner's ability to develop land if the subdivider provides evidence that any identified adverse effects can be mitigated. Within the 35 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.

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 Price Subdivision, Amended Lots 1 and 5, Block 1. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property is currently was originally subdivided for large lot residential development. Water rights will not be transferred to subdivision property owners. Any existing ditches near this proposed development will remain in place and will not be altered by the future property owners. The subdivision should not affect agricultural water users' facilities.

2. Effect on local services

a. **Utilities** – Public water services already exist to proposed lots 1A and 5A where existing houses are located. Proposed lots 1B and 5B will not be connecting to the existing water main located within the existing easement as shown on the plat. Lots 1B and 5B will have a 'No Build' provision placed on them so there will be no buildings allowed that need a connection to water.

Fire hydrants were installed as required by the City of Billings Fire Department. The City Fire Department reviewed and approved all hydrant locations prior to installation with the original filing of the subdivision.

Public sewer services already exist to proposed lots 1A and 5A where existing houses are located. Proposed lots 1B and 5B will not be connecting to the existing sewer main located within the existing easement as shown on the plat. Lots 1B and 5B will have a 'No Build' provision placed on them so there will be no buildings allowed that need a connection to sewer.

All telephone, gas, electrical power, and cable television lines that are placed within the public right-of-way shall be installed prior to surface improvements.

In the SIA under the heading XI No Build Provision, it outlines the reason for the no build restriction. Lots 1A and 5A have the 'No Build' restriction placed on them to maintain the original subdivision requirement of 5 buildable lots. As a condition of approval this information needs to be added to the SIA under the heading II Property Conditions and Information for lot Purchasers. **(Condition #1)**

b. **Storm water** – Stormwater management for the proposed subdivision will not be modified from the storm water system put in place with the original filing. With the extremely large lots the majority of the water from storms will be handled as the land has historically done. Percolation into the ground and possible storm collection into the existing large drainage to the south that flows east.

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – There is an existing private road, Canyonwoods Drive, within the subdivision. A cul-de-sac turn around is constructed near the westerly boundary of Price Subdivision. This is a private access road for the subdivision and is gated at the cul-de-sac.

Sidewalks were not installed within this subdivision and will not be required with this 2-lot amendment.

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 1501 54th Street West (Station #7).

The subdivision is located within the ambulance service area of American Medical Response (AMR) although because of the distance from the nearest AMR station they will not be able to make it there in 8 minutes or less.

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** –School district #2 provides service to students within this subdivision. There will be no additional students going to the school as the two new proposed lots will have a 'No Build' restriction on them.

g. **Parks and Recreation** – There is no parkland dedication requirement for this subdivision. Subdivision that create lots over 5 acres are not required to dedicate parkland. 76-3-621, MCA

h. **Mail Delivery –** There are an existing Central Box Unit (CBU) at the cul-de-sac that the existing home receive mail delivery from United States Postal Service within this subdivision.

3. Effect on the natural environment

There will be no further effect on the land, as the two new proposed lots will have a 'No Build' restriction on them. A geotechnical study was performed for the original subdivision.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open farm land areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading, II Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

Fire hydrants been installed to meet fire department requirements. The effects on public health and safety should be minimal.

6. Phasing of the Subdivision

There are no plans to phase the subdivision.

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

> **Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods):** Neighborhoods that are safe and attractive and provide essential services are much desired.
>
> **Home Base (healthy, safe and diverse housing options)**
> A mix of housing types that meet the needs of a diverse population is important
>
> **Community Fabric (attractive, aesthetically pleasing, uniquely Billings)** Natural landscapes are important because they define the uniqueness of Billings and help protect the environment.

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)

The proposed subdivision lies within the jurisdiction of the BABTMP, but there is no trail identified within this subdivision.

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

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

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

The subject property is located within a N3 zoning district. All building development on the lots shall comply with the N3 zoning when applying for a building permit.

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

The subdivider will furnish private utility easements as required by private utility providers.

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 Canyonwood Drive. Canyonwood drive within this subdivision is a private street.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Price Subdivision, Amended Lots 1 and 5, Block 1 does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

Staff is forwarding to the City Council, the preliminary plat of Price Subdivision, Amended Lots 1 and 5, Block 1, recommending conditional approval and adoption of the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, May 22, 2023

_____

William A. Cole, Mayor

PRELIMINARY

AMENDED PLAT OF LOTS 1 AND 5, BLOCK 1,

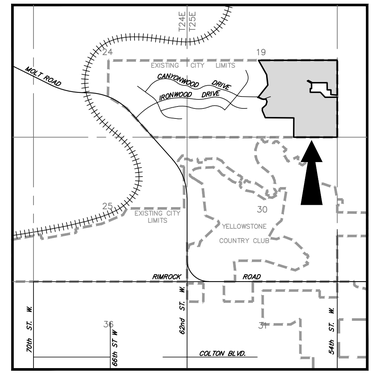
PRICE SUBDIVISION

SITUATED IN THE SE1/4 OF SECTION 19, T. 1 N., R. 25 E., P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : JOCK CLAUSE & HANSON DEVELOPMENT LLC — MARCH, 2023

PREPARED BY : SANDERSON STEWART — BILLINGS, MONTANA

LINE TABLE		
Line #	Bearing	Distance
L1	N 79°28'26" W	195.30'
L2	N 00°45'33" E	162.95'
L3	N 89°11'45" W	129.86'
L4	N 00°47'20" E	250.07'
L5	N 89°09'27" W	514.62'
L6	N 58°34'27" W	154.40'
L7	S 71°29'12" W	39.40'
L8	S 58°34'57" E	165.75'
L9	S 00°48'47" W	181.69'
L10	N 89°16'40" W	45.00'
L11	S 00°44'08" W	129.59'
L12	S 89°13'57" E	353.62'
L13	S 41°12'31" E	235.02'
L14	S 89°12'57" E	397.08'
L15	N 22°02'03" W	260.36'
L16	N 01°26'13" E	87.08'
L17	N 48°52'11" E	172.77'
L18	N 17°15'07" E	115.67'
L19	N 20°21'42" W	102.10'



VICINITY MAP

NOT TO SCALE

NORTH

150 75 0 150 300

SCALE:1" = 150'

PLAT DATA

GROSS AREA	= 155.64 ACRES
NET AREA	= 155.64 ACRES
NUMBER OF LOTS	= 4
MINIMUM LOT SIZE	= 16.264 ACRES
MAXIMUM LOT SIZE	= 58.594 ACRES
LINEAL FEET OF STREETS	= 0
PARKLAND REQUIREMENT	= N/A
PARKLAND DEDICATION	= N/A
EXISTING ZONING	= N3: SUBURBAN NEIGHBORHOOD
SURROUNDING ZONING:	
NORTH	= A
SOUTH	= N3 & P1
EAST	= P2 & A
WEST	= N3
EXISTING LAND USE	= LARGE TRACT RESIDENTIAL
PROPOSED LAND USE	= LARGE TRACT RESIDENTIAL

P:\13042_04_Price_Sub_Amended_Plat_&_Det-ermination\CADD_CIVIL\PRODUCTION_DWG\13042_04 Price_Sub_Minor_PP_PROD.dwg, 24x36 PLAT, 3/30/2023 9:27:01 AM, mbertken, 1:1

Return to:
Sanderson Stewart
1300 North Transtech Way
Billings, MT 59102

SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS AMENDED PLAT OF LOTS 1 AND 5, BLOCK 1 PRICE SUBDIVISION CITY OF BILLINGS

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Return to:
City Clerk
City of Billings
P.O. Box 1178
Billings, MT 59101

SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS AMENDED PLAT OF LOTS 1 AND 5, BLOCK 1 PRICE SUBDIVISION

THIS AGREEMENT is made and entered into this ____ day of _____, 20__, by and between **JOCK CLAUSE & KATHY CLAUSE**, whose address for the purpose of this agreement is P.O. Box 53, Meeteetse, Wyoming 82433, **TYLAND, LLC.**, an Idaho Limited Liability Company, whose address for the purpose of this agreement is 5635 Canyonwoods Drive, Billings, Montana 59106, hereinafter referred to as "Subdividers," and the **CITY OF BILLINGS**, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the Amended Plat of Lots 1 and 5, Block 1, Price Subdivision, hereafter referred to as "the Subdivision", located in the City of Billings, 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 Amended Plat of Lots 1 and 5, Block 1, Price Subdivision; and

WHEREAS, at a regular meeting conducted on _____ day of_____, 20_, the City Council conditionally approved a preliminary plat of Amended Plat of Lots 1 and 5, Block 1, Price Subdivision; and

WHEREAS, the plat of Amended Plat of Lots 1 and 5, Block 1, Price Subdivision, located in the City of Billings, Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning as an expedited plat which was deemed to not require preliminary review; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat, and

WHEREAS, the provisions of this Agreement shall be effective and applicable to the Subdivision upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

None requested.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners are advised that Price Subdivision is in close proximity to a large natural park and contains wildlife migratory routes. Consequently, owners are advised that wildlife indigenous to the prairie and to the rimrock environments, including but not limited to deer, antelope, mountain lions, and wild turkeys, are found on the property, and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens, unless they take steps to deter the animals. Any impacts associated with wildlife and damage arising therefrom is the responsibility of the lot owners. Lot owners shall be advised that Montana Fish, Wildlife, and Parks does not provide assistance unless there is damage to commercial agricultural crops, or a threat to public health and safety.

B. Due to steep slopes and large drainage basins, there is a possibility during a storm event of surface runoff damaging property and there is also a risk of rocks and boulders dislodging from the steep slopes and damaging property.

C. Lot owners are advised that there is a Declaration of Restrictions and Protective Covenants recorded in conjunction with this Subdivision which outlines additional requirements specific to this Subdivision.

D. Lots owners are advised that a lot specific geotechnical study will be required to be submitted at the time of application for a building permit.

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 Subdividers 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 Subdividers and property owner or owners specifically agree that they are waiving valuable rights and do so voluntarily.

F. The Subdividers 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 are advised 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

The section of Canyonwoods Drive within Price Subdivision is a private road and is improved to meet City emergency access road standards. A cul-de-sac turn-around is constructed near the westerly boundary of Price Subdivision. A security gate at the end of the cul-de-sac restricts public access beyond the security gate.

B. Sidewalks

There is no requirement for sidewalks within Price Subdivision.

C. Street Lighting

There is no requirement for street lighting within Price Subdivision.

D. Traffic Control Devices

An access control gate has previously been installed at the Price Subdivision entrance. In addition to providing access to lot owners and their guests within the Subdivision, the gate provides access to emergency personnel as well as City of Billings personnel and other authorized persons needing access to the city reservoir site and public water main facilities. Specific details regarding access, and maintenance of the road and public water main facilities are as outlined within the easement document recorded at the Yellowstone County Clerk and Recorder's office under document number 3369930.

In the event of power failure, the access control gate shall automatically open on battery back-up power and remain open until primary power is restored. In the case of emergency, including emergency access to the city reservoir site, should the gate operations fail, the gate may be destroyed or removed. The Subdividers will be responsible for all costs related to reinstalling or repairing the gate.

E. Access

Lots 1A, 1B, 5A, and 5B will access the private Canyonwoods Drive via individual drive approaches.

The 62nd Street Emergency Access Road serving Ironwood Subdivision will also serve as the required secondary access for Amended Plat of Lots 1 and 5, Block 1, Price Subdivision. Individual drive approaches exceeding 150-feet shall have an approved turnaround at their terminus.

F. Billings Area Bikeways and Trail Master Plan

The Billings Area Bikeways and Trail Master Plan does not identify trails or bike lanes within the area of this subdivision. No trails or bike lanes are proposed.

G. Public Transit

No additional improvements are anticipated at this time for the subdivision relating to public transit.

IV. EMERGENCY SERVICE

Emergency service access to the Subdivision is provided by Canyonwoods Drive. The access control gate will permit emergency vehicles to access the subdivision.

A. Construction of Buildings

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 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: (except as noted in IV.B., herein)

- 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 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.

B. Residential Fire Sprinkler Systems

All residences built within this subdivision will be required to install residential fire sprinkler systems as they exceed the 600-foot dead-end access requirement per City of Billings Subdivision Regulations and also exceed 600-foot distance requirement from a fire hydrant to the furthest portion of a residence per 2012 International Fire Code Requirements.

V. STORM DRAINAGE

No additional improvements are anticipated at this time for the subdivision relating to storm drainage.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Water

Lots 1A and 5A have existing service connections to the main from the City of Billings water reservoir. No Water service for Lots 1B and 5B will be provided by connecting individual lot services to the existing water main from the City of Billings water reservoir as those parcels are subject to a 'No Build' provision. The water main is located within the existing easement as shown on the plat. If water services are longer than 250-feet from the curb valve to the dwelling, a meter vault shall be installed at the time a dwelling requests water service. The meter vault shall be appropriately sized to also include the installation of a back flow preventer on the fire line. The fire line shall be a separate and independent line, in addition to the domestic water service, from the curb valve locations near the edge of the roadway to the dwellings. The vault shall be placed immediately downstream of the curb valves.

B. Sanitary Sewer

Lots 1A and 5A have existing service connections to the private sanitary sewer main in Canyonwoods Drive, maintained by the Homeowner's Association. No sanitary sewer services are being provided for Lots 1B and 5B as those parcels are subject to a 'No Build' provision. All sanitary sewer

construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality and will be approved by the Public Works Department.

C. Power, Telephone, Gas, and Cable Television

Lots 1A and 5A are currently served by existing utilities located within the public right-of-way of Canyonwoods Drive. Services to Lots 1B and 5B will be provided from existing facilities if needed, however, Lots 1B and 5B are subject to a 'no build', provision. No additional new easements are required for the private utilities.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this subdivision, for lots larger than 5 acres [MCA 76-3-621(3)(a)].

VIII. IRRIGATION

There are no active agricultural facilities within the Subdivision.

IX. SOILS/GEOTECHNICAL STUDY

Lots 1A and 5A are already developed at this time. A project/building specific Geotechnical report may be required at the time of development of Lots 1B and 5B.

X. PHASING OF IMPROVEMENTS

No public improvements are required at this time by the Subdividers.

XI. NO BUILD PROVISION

The original platting of Price Subdivision was provisioned on a maximum of five lots for single family occupancy and any outbuildings that may be associated with those residences. The creation of these lots shall continue to comply with that provision in that they will not be intended to be developed for additional single-family residences over and above the original five as contemplated. This is not to preclude the development of associated out or accessory buildings to the original five residences. This also does not preclude the owners or developers of pursuing changes to this provision should they desire to pursue such in the future. Those

provisions and any changes thereto requiring review, recommendation, and approval by the City of Billings.

XII. FINANCIAL GUARANTEES

Except as otherwise provided, the Subdividers shall install and construct said required improvements by private contracts secured by bonds, irrevocable letters of credit, sequential development, or any other method that may be acceptable to the City of Billings. 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 Engineering Department and Public Works Department.

XIII. LEGAL PROVISIONS APPYING TO SUBDIVIDERS

A. The Subdividers agree to guarantee all public improvements for a period of two years from the date of final acceptance by 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. The Subdividers shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledge and agrees that nothing contained herein shall relieve or exempt them from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDERS"

_____ _____

JOCK CLAUSE **KATHY CLAUSE**

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of _____, personally appeared **JOCK CLAUSE & KATHY CLAUSE** , known to me to be the persons, who signed the foregoing instrument and acknowledged to me that they executed the same.

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

_____
Notary Public in and for the State of _____
Printed Name:_____

"SUBDIVIDERS"

TYLAND, LLC.,
an Idaho Limited Liability Company

By: _____

Title: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the person who signed the foregoing instrument as _____of **TYLAND, LLC.,** and acknowledged to me that said company executed the same.

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

_____
Notary Public in and for the State of _____
Printed Name:_____

This Agreement is hereby approved and accepted by Yellowstone County, this ____ day of _____, 20___.

"CITY" **CITY OF BILLINGS, MONTANA**

By:_____
Mayor

Attest:_____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this ____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____
Notary Public in and for the State of Montana
Printed Name:_____

Approved as to Form:

_____
City Attorney

WAIVER OF RIGHT TO PROTEST
FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdividers 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 the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and are 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:

AMENDED PLAT OF LOTS 1 AND 5, BLOCK 1, PRICE SUBDIVISION

Signed and dated this_____day of_____, 20___.

"SUBDIVIDERS"

JOCK CLAUSE **KATHY CLAUSE**

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of _____, personally appeared **JOCK CLAUSE & KATHY CLAUSE** , known to me to be the persons, who signed the foregoing instrument and acknowledged to me that they executed the same.

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

_____
Notary Public in and for the State of _____
Printed Name:_____

"SUBDIVIDERS"

TYLAND, LLC.,
an Idaho Limited Liability Company

By: _____

Title: _____

STATE OF _____)
: ss
County of _____)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of _____, personally appeared _____, known to me to be the person who signed the foregoing instrument as _____of **TYLAND, LLC.**, and acknowledged to me that said company executed the same.

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

_____
Notary Public in and for the State of _____
Printed Name:_____

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

Sanderson Stewart
1300 N Transtech Way
Billings, MT 59102

Dear Applicant:

On May 22, 2023, the Billings City Council conditionally approved the preliminary plat of Price Subdivision, Amended Lots 1 and 5, Block 1 subject to the following conditions of approval:

1. To inform future owners of the reason for the 'No Build' lots being created with this subdivision, prior to final plat, the applicant will copy the language in the SIA under the heading XI Not Build Provision to the SIA under the heading II Property Conditions and Information for lot Purchasers. This will alert the future owners of the no build restriction on lots 1A and 5A.

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

3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, 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) 657-8666 or by email at greend@billingsmt.gov

May 22, 2023

Sincerely,

_____
William A. Cole, Mayor

City Council Regular

Date:	05/22/2023
Title:	Lake Hills Subdivision, 40th Filing - City Major Preliminary Plat
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Staff proposes the Planning Board recommend to City Council that the preliminary plat of Lake Hills Subdivision, 40th Filing be conditionally approved and the Findings of Fact adopted as presented in the staff report.

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

On March 1, 2023 , WWC Engineering , on behalf of Ron S. Hill , applied for preliminary subsequent Major plat approval for Lake Hills Subdivision, 40th Filing . The Proposed subdivision creates 13 lots for development. The subject property is generally located South of Greenbriar Road and East of Clubhouse Way . The property is zoned N3 - Suburban Neighborhood Residential . The land is currently vacant.

VARIANCES

No variances are requested.

PROPOSED CONDITIONS OF APPROVAL

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

PROCEDURAL HISTORY

Pre-Application Meeting: January 26, 2023
Preliminary Plat application submitted to Planning Division: March 1, 2023
Departmental Review Meeting: March 16, 2023
Preliminary Plat Resubmittal: March 23, 2023
Planning Board Plat Review: April 11, 2023
Planning Board Public Hearing: April 25, 2023
Preliminary Plat to City Council: May 22, 2023
60 Working-Day Preliminary Plat Review period ends: May 24, 2023

PLAT INFORMATION

General Location: South of Greenbriar Road and East of Clubhouse Way
Legal Description: LOT 3 AND LOT 4, BLOCK 52; LOT 13, LOT 14, LOT 15, LOT 17, AND LOT 18, BLOCK 54, OF LAKE HILLS SUBDIVISION, 21ST FILING, DOCUMENT NO. 612471, AND LOT 2A AND LOT 5A OF AMENDED PLAT OF LAKE HILLS SUBDIVISION, 21ST FILING FILED AS DOCUMENT NO. 3931042
Owner/Subdivider: Ron S. Hill
Engineer/Surveyor: WWC Engineering
Existing Zoning: N3 - Suburban Neighborhood Residential
Existing Land Use: vacant land
Proposed Zoning: N3 - Suburban Neighborhood Residential
Proposed Land Use: Residential
Gross & Net Area: 4.654 Acres & 3.046 Acres
Lot Size:
- Minimum: 9,600 Square Feet
- Maximum: 13,900 Square Feet

Parkland Requirements: N/A; Parkland Requirements filled by adjacent Golf Course as part of original filings of Lake

Hills Subdivision.

STAKEHOLDERS

The Planning Board reviewed this application during its plat review meeting on April 11, 2023 and received a presentation from planning staff. The applicant was available. There was some discussion that mostly focused on why the redesign of lots was occurring.

At the Planning Board meeting on April 25th, staff gave a brief presentation to the Planning Board of the proposed subdivision. Planning Board President Cook asked if there were any questions from the board for staff, there were none. President Cook then opened the public hearing. He asked for those wishing to speak in favor or against Lake Hills Subdivision, 40th Filing to come forward. No one came forward to speak for or against the proposed subdivision. President Cook closed the public hearing and called for a motion. Board member Ronquillo made a motion and Board member Gravgaard seconded the motion for the Planning Board to forward to the City Council a recommendation of conditional approval for the preliminary plat of Lake Hills Subdivision, 40th Filing, and adoption of the Findings of Fact as presented in the staff report. The Planning Board unanimously voted in favor of the motion.

ALTERNATIVES

In accordance with state law, the City Council has 60 working days to act upon this major preliminary plat. The 60 working day review period for the proposed plat ends May 24, 2023 State and City subdivision regulations also require that preliminary plat 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

The preliminary plat of this subdivision will have no financial impact on the Planning Division.

SUMMARY

One of the purposes of the City's subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider's responsibility to mitigate. Various City departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be minimal impacts from this proposed subdivision.

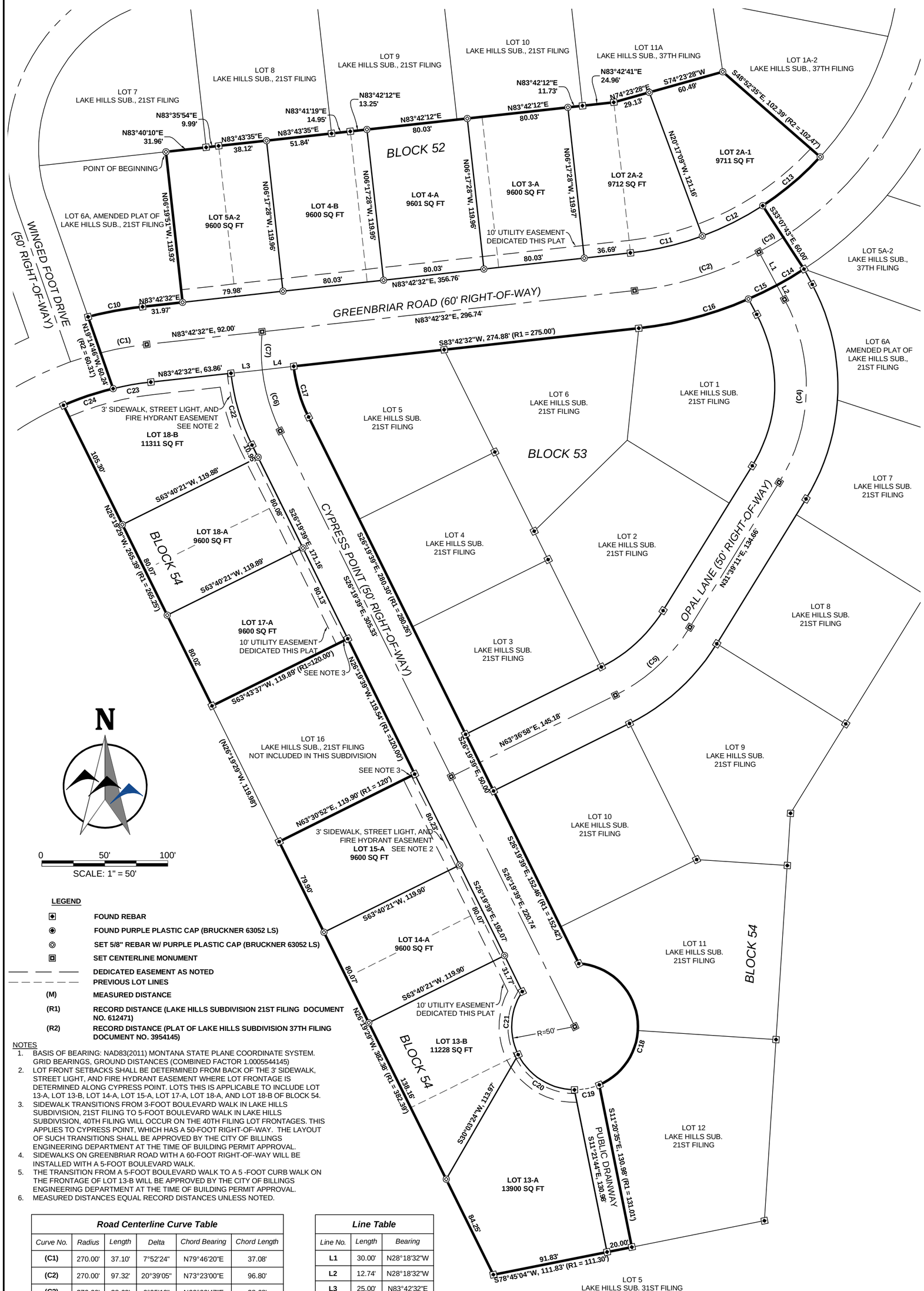
Attachments

Preliminary Plat
Subdivision Improvement Agreement
Findings of Fact
Mayor's Letterhead

PLAT OF LAKE HILLS SUBDIVISION, 40TH FILING

BEING LOT 3 AND LOT 4, BLOCK 52; LOT 13, LOT 14, LOT 15, LOT 17, AND LOT 18, BLOCK 54, OF LAKE HILLS SUBDIVISION, 21ST FILING, DOCUMENT NO. 612471, AND LOT 2A AND LOT 5A OF AMENDED PLAT OF LAKE HILLS SUBDIVISION, 21ST FILING FILED AS DOCUMENT NO. 3931042, WITHIN NW1/4 OF SECTION 16, T01N, R26E, P.M.M. CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: RON S. HILL
DATE SURVEYED: JANUARY 2023
PREPARED BY: WWC ENGINEERING



LEGEND

◆	**FOUND REBAR**
◉	**FOUND PURPLE PLASTIC CAP (BRUCKNER 63052 LS)**
◎	**SET 5/8" REBAR W/ PURPLE PLASTIC CAP (BRUCKNER 63052 LS)**
⊡	**SET CENTERLINE MONUMENT**
— — —	**DEDICATED EASEMENT AS NOTED**
- - - - -	**PREVIOUS LOT LINES**
(M)	**MEASURED DISTANCE**
(R1)	**RECORD DISTANCE (LAKE HILLS SUBDIVISION 21ST FILING DOCUMENT NO. 612471)**
(R2)	**RECORD DISTANCE (PLAT OF LAKE HILLS SUBDIVISION 37TH FILING DOCUMENT NO. 3954145)**

NOTES
1. BASIS OF BEARING: NAD83(2011) MONTANA STATE PLANE COORDINATE SYSTEM. GRID BEARINGS, GROUND DISTANCES (COMBINED FACTOR 1.0005544145)
2. LOT FRONT SETBACKS SHALL BE DETERMINED FROM BACK OF THE 3' SIDEWALK, STREET LIGHT, AND FIRE HYDRANT EASEMENT WHERE LOT FRONTAGE IS DETERMINED ALONG CYPRESS POINT. LOTS THIS IS APPLICABLE TO INCLUDE LOT 13-A, LOT 13-B, LOT 14-A, LOT 15-A, LOT 17-A, LOT 18-A, AND LOT 18-B OF BLOCK 54.
3. SIDEWALK TRANSITIONS FROM 3-FOOT BOULEVARD WALK IN LAKE HILLS SUBDIVISION, 21ST FILING TO 5-FOOT BOULEVARD WALK IN LAKE HILLS SUBDIVISION, 40TH FILING WILL OCCUR ON THE 40TH FILING LOT FRONTAGES. THIS APPLIES TO CYPRESS POINT, WHICH HAS A 50-FOOT RIGHT-OF-WAY. THE LAYOUT OF SUCH TRANSITIONS SHALL BE APPROVED BY THE CITY OF BILLINGS ENGINEERING DEPARTMENT AT THE TIME OF BUILDING PERMIT APPROVAL.
4. SIDEWALKS ON GREENBRIAR ROAD WITH A 60-FOOT RIGHT-OF-WAY WILL BE INSTALLED WITH A 5-FOOT BOULEVARD WALK.
5. THE TRANSITION FROM A 5-FOOT BOULEVARD WALK TO A 5 -FOOT CURB WALK ON THE FRONTAGE OF LOT 13-B WILL BE APPROVED BY THE CITY OF BILLINGS ENGINEERING DEPARTMENT AT THE TIME OF BUILDING PERMIT APPROVAL.
6. MEASURED DISTANCES EQUAL RECORD DISTANCES UNLESS NOTED.

Road Centerline Curve Table

Curve No.	*Radius*	*Length*	*Delta*	*Chord Bearing*	*Chord Length*
(C1)	270.00'	37.10'	7°52'24"	N79°46'20"E	37.08'
(C2)	270.00'	97.32'	20°39'05"	N73°23'00"E	96.80'
(C3)	270.00'	28.69'	6°05'19"	N60°00'47"E	28.68'
(C4)	145.00'	151.75'	59°57'42"	N1°40'20"E	144.92'
(C5)	145.00'	80.89'	31°57'47"	N47°38'04"E	79.85'
(C6)	145.00'	50.70'	20°02'04"	S16°18'37"E	50.45'
(C7)	145.00'	30.22'	11°56'26"	S0°19'22"E	30.17'

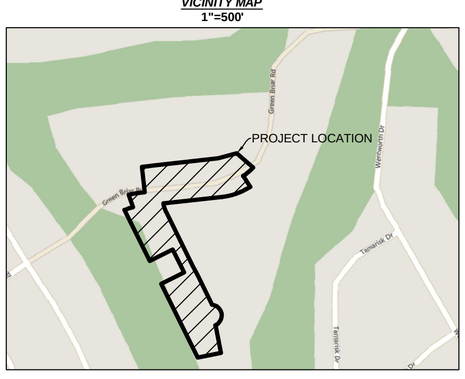
Line Table

Line No.	*Length*	*Bearing*
L1	30.00'	N28°18'32"W
L2	12.74'	N28°18'32"W
L3	25.00'	N83°42'32"E
L4	25.00'	N83°42'32"E

Curve Table

Curve No.	*Radius*	*Length*	*Delta*	*Chord Bearing*	*Chord Length*
C10	300.00'	43.89'	8°22'57"	N79°31'04"E	43.86'
C11	240.00'	58.62'	13°59'41"	N76°42'42"E	58.48'
C12	240.00'	53.62'	12°47'59"	N63°18'51"E	53.51'
C13	240.00'	59.85'	14°17'13"	S49°46'15"W	59.70'
C14	300.00'	25.03'	4°46'49"	S59°17'45"W	25.03'
C15	300.00'	25.03'	4°46'49"	S64°04'34"W	25.03'
C16	300.00'	90.28'	17°14'34"	S75°05'15"W	89.95'
C17	120.00'	41.96'	20°02'02"	S16°18'37"E	41.75'
C18	50.00'	133.97'	153°31'13"	S9°34'02"E	97.35'
C19	50.00'	20.18'	23°07'28"	N78°45'18"E	20.05'
C20	50.00'	55.29'	63°21'41"	S58°00'07"E	52.52'
C21	50.00'	52.35'	59°59'38"	S3°40'32"W	50.00'
C22	170.00'	59.44'	20°02'05"	S16°18'36"E	59.15'
C23	240.00'	30.31'	7°14'09"	N80°05'27"E	30.29'
C24	240.00'	41.55'	9°55'12"	N71°30'47"E	41.51'

VICINITY MAP
1"=500'



CERTIFICATE OF CITY ENGINEER'S OFFICE

I hereby certify that I have examined the annexed plat and find that it conforms with Section 76-4-125(1)(d) MCA, removing sanitary restrictions since the plat is inside a master planning area and is provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

Dated this _____ day of _____, 2023

_____
City Engineer's Office

NOTICE OF APPROVAL

STATE OF MONTANA)
: ss
County of Yellowstone)

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

Dated this _____ day of _____, 2023

_____ _____
President Executive Secretary

CERTIFICATE OF CITY COUNCIL APPROVAL

The City Council of the City of Billings, Yellowstone County, Montana does hereby certify that the accompanying plat for LAKE HILLS SUBDIVISION, 40TH FILING has been duly examined and have found the same to conform to the law and hereby approve it.

Dated this _____ day of _____, 2023

_____
City of Billings, Montana

BY: _____
Mayor

ATTEST: _____
City Clerk

LEGAL DESCRIPTION AND PROPERTY OWNER CERTIFICATE OF DEDICATION

State of Montana)
: SS
County of Yellowstone)

KNOW ALL BY THESE PRESENTS: That we, the undersigned owners, do hereby certify that we, have caused to be surveyed, subdivided, and platted into lots blocks roads and alleys and other divisions and dedications, as shown by this plat hereunto included, the following described tract of land, to wit:

The parcels situated in the NW1/4 of Section 16, T.01N., R.26E., P.M.M., City of Billings, Yellowstone County, Montana, being Lot 3 and Lot 4, Block 52; Lot 13, Lot 14, Lot 15, Lot 17 and Lot 18, Block 54 of Lake Hills Subdivision, 21st Filing, filed as Document No. 612471; and Lot 2A and 5A of Amended Plat of Lake Hills Subdivision, 21st Filing filed as Document No. 3931042 in the Office of the Yellowstone County Clerk and Recorder, being more particularly described as:

Beginning at the northwest corner of Lot 5A, Block 52 of Amended Plat of Lake Hills Subdivision, 21st Filing on the south line of Lot 7, Block 52 of Lake Hills Subdivision 21st Filing; thence on the south line of said Lot 7, N83°40'10"E a distance of 31.96 feet to the corner common to Lot 7 and Lot 8, Block 52 of Lake Hills Subdivision 21st Filing; thence on the south line of said Lot 8, N83°35'54"E a distance of 9.99 feet; thence continuing on said south line of Lot 8, N83°43'35"E a distance of 89.96 feet to the corner common to Lot 8 and Lot 9, Block 52 of Lake Hills Subdivision 21st Filing; thence on the south line of said Lot 9, N83°41'19"E a distance of 14.95 feet to a point on the south line of said Lot 9; thence on the south line of Lot 9 and Lot 10, Block 52 of Lake Hills Subdivision 21st Filing, N83°42'12"E a distance of 185.04 feet to the southwest corner of Lot 11A, Block 52 of Lake Hills Subdivision 37th Filing; thence on said south line of Lot 11A, N83°42'41"E a distance of 24.96 feet; thence continuing on said south line of Lot 11A, N74°23'28"E a distance of 89.62 feet to the corner common to said Lot 11A and Lot 1A-2, Block 52 of Lake Hills Subdivision 37th Filing; thence on the southwesterly line of said Lot 1A-2, S48°52'35"E a distance of 102.39 feet to the northerly right-of-way line of Greenbriar Road; thence along the northerly right-of-way line of Greenbriar Road a distance of 59.85 feet on a non-tangent curve to the right, having a radius of 240.00 feet, a delta angle of 14°17'13", and whose long chord bears S49°46'15"W a distance of 59.70 feet; thence crossing the Greenbriar Road right-of-way on the westerly line of Lake Hills Subdivision 37th Filing, S33°07'43"E a distance of 60.00 feet to the westerly corner common to Lot 6A, Block 54 of Amended Plat of Lake Hills Subdivision 21st Filing and Lot 5A-2, Block 54 of Lake Hills Subdivision 37th Filing; thence a distance of 50.06 feet along a non-tangent curve to the right, having a radius of 300.00 feet, a delta angle of 9°33'38", and whose long chord bears S61°41'10"W a distance of 50.00 feet to the northeast corner of Lot 1, Block 53 Lake Hills Subdivision 21st Filing at the intersection point of the easterly right-of-way line of Opal Lane and southerly right-of-way line of Greenbriar Road; thence continuing on the southerly right-of-way line of Greenbriar Road a distance of 90.28 feet on a curve to the right, having a radius of 300.00 feet, a delta angle of 17°14'34", and whose long chord bears S75°05'15"W a distance of 89.94 feet to a point of curvature on said southerly right-of-way of Greenbriar Road; thence continuing on said southerly right-of-way line, S83°42'32"W a distance of 274.88 feet to the intersection of the southerly right-of-way of Greenbriar Road and easterly right-of-way of Cypress Point; thence on the easterly right-of-way line of Cypress Point, a distance of 41.96 feet along a non-tangent curve to the left, having a radius of 120.00 feet, a delta angle of 20°02'02", and whose long chord bears S16°18'37"E a distance of 41.75 feet; thence on said easterly right-of-way, S26°19'39"E a distance of 280.30 feet to the intersection point of the easterly right-of-way of Cypress Point and northerly right-of-way of Opal Lane; thence S26°19'39"E a distance of 50.00 feet to the intersection of the easterly right-of-way line of Cypress Point and the southerly right-of-way of Opal Lane; thence continuing on the easterly right-of-way line of Cypress Point, S26°19'39"E a distance of 152.46 feet; thence 133.97 feet along a non-tangent curve to the right, having a radius of 50.00 feet, a delta angle of 153°31'13", and whose long chord bears S9°34'02"E a distance of 97.34 feet to the northwesterly corner of Lot 12, Block 54 of Lake Hills Subdivision 21st /Filing; thence on the west line of said Lot 12, S11°20'35"E a distance of 130.98 feet to the north line of Lot 5 of Lake Hills Subdivision 31st Filing; thence on north line of said Lot 5, S78°45'04"W a distance of 111.83 feet; thence on the east line of said Lot 5, N26°19'29"W a distance of 382.38 feet to the southwesterly corner of Lot 16, Block 54 Lake Hills Subdivision 21st Filing; thence on the southerly line of said Lot 16, N63°30'52"E a distance of 119.90 feet to the westerly right-of-way line of Cypress Point; thence on said westerly right-of-way line, N26°19'39"W a distance of 119.54 feet to the north line of Lot 16, Block 54 of Lake Hills Subdivision 21st Filing; thence on the north line of said Lot 16, S63°43'37"W a distance of 119.89 feet to the east line of Lot 5, Lake Hills Subdivision 31st Filing; thence on said east line, N26°19'29"W a distance of 265.39 feet to the southerly right-of-way line of Greenbriar Road;
thence on said southerly right-of-way a distance of 41.55 feet along a non-tangent curve to the right, having a radius of 240.00 feet, a delta angle of 9°55'12", and whose long chord bears N71°30'47E a distance of 41.50 feet; thence crossing the Greenbriar Road right-of-way on the easterly line of Lake Hills Subdivision 37th Filing, N19°14'46"W a distance of 60.24 feet to the intersection of the easterly right-of-way line of Winged Foot Drive and northerly right-of-way line of Greenbriar Road; thence on the said northerly right-of-way line a distance of 43.89 feet along a non-tangent curve to the right, having a radius of 300.00 feet, a delta angle of 8°22'57", and whose long chord bears N79°31'04"E a distance of 43.85 feet; thence continuing on said northerly right-of-way line, N83°42'32"E a distance of 31.97 feet to the southeast corner of Lot 6A, Block 52 of Amended Plat of Lake Hills Subdivision 21st Filing; thence on the easterly line of said Lot 6A, N06°19'51W a distance of 119.93 feet to the Point of Beginning.

Said described parcel contains a gross area of 4.654 acres and a net area of 3.046 acres, more or less, subject to any and all easements, reservations, restrictions and conveyances of record.

The above described tract of land is to be known and designated as LAKE HILLS SUBDIVISION, 40TH FILING, City of Billings, Yellowstone County, Montana. The undersigned do hereby grant unto all utility companies, as such are defined and established by Montana Law, and cable television companies, an easement for the location, maintenance, repair, removal of lines over, under and across the areas designated on the plat as Utility Easement to have and hold forever. The lands designated as public right-of-way are hereby granted and dedicated to the use of the public forever shall include the portions of Greenbriar Road and Cypress Point shown on the plat.

Dated this _____ Day of _____, 2023

Ron S. Hill, Living Trust

_____
Ron S. Hill, Trustee

ACKNOWLEDGMENTS

State of Montana)
: SS
County of Yellowstone)

On this _____ day of _____ , 2023, before me, the undersigned a notary public for the State of _____, personally appeared Ron S. Hill, Trustee of Ron S. Hill Living Trust, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

_____
Notary Public for the State of _____

CERTIFICATE OF SURVEYOR

The undersigned, a Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of January 2023, a survey was performed under his supervision of a tract of land to be known as LAKE HILLS SUBDIVISION, 40TH FILING, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act; said subdivision being in accordance with the Landowner's Certificate and as shown on the plat; that the monuments found and set are of the character and occupy the positions hereon.

Dated this _____ day of _____, 2023

_____
John Bruckner
Registration Number 63052 LS

CERTIFICATE OF CITY ATTORNEY

This Subdivision Plat has been reviewed by the City Attorney's Office and is acceptable to form.

Dated this _____ day of _____, 2023

_____
Reviewed by

ERRORS AND OMISSIONS REVIEW

Reviewed for errors and omissions in calculations and drafting this _____ day of _____, 2023, pursuant to section 76-3-611(2)(a), M.C.A.

_____
Examining Land Surveyor

Reg. No. _____

CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-3-611(1)(b), MCA, that all real property taxes and special assessments assessed and levied on the land described on this Subdivision Plat and encompassed by the proposed division have been paid.

Dated this _____ day of _____, 2023

_____
Deputy Treasurer
Yellowstone County, Montana

CERTIFICATE OF FILING BY CLERK AND RECORDER

SUBDIVISION IMPROVEMENTS AGREEMENT

Document No. _____

QRTR.	SEC.	TWP.	RGE.
⊠	16	01N.	26E.

LAKE HILLS SUBDIVISION, 40TH FILING

JOB#: 2022-019

REVISIONS	
Date	By

WWC ENGINEERING
550 S. 24TH ST. W., SUITE 201
BILLINGS, MT 59102
(406) 894-2210

Drawn By: JPB | Checked By: AMR | Date: JAN 2023 | Scale: 1" = 50'

PLOT STYLE: 04/15/2020 WWC COLOR.stb
FILE PATH: K:\Billings\RON HILL\2022019 Lake Hills Subdivision 40th Filing\05CADD\esign\2022019-PLAT.dwg

SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENTS DISTRICTS

Lake Hills Subdivision, 40th Filing
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SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Lake Hills Subdivision, 40th Filing

This agreement is made and entered into this _____day of___, 2023, by and between Ron S. Hill Living Trust, whose address for the purpose of this agreement is **P.O. Box 50636; Billings, Montana 59105**, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ___day of ____, 2023, the Board of Planning recommended conditional approval of a preliminary plat of Lake Hills Subdivision, 40th Filing; and

WHEREAS, at a regular meeting conducted on _____day of _____, 2023, the City Council conditionally approved a preliminary plat of Lake Hills Subdivision, 40th Filing; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to Lake Hills Subdivision, 40th Filing upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

A. No variances are being requested for this subdivision.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of home construction. If sidewalk is not constructed within 5 years, the City has the right to construct the sidewalk and assess the property owners.

B. Front setbacks for those lots included in the subdivision with frontage determined along Cypress Point shall be calculated from the back of 3-foot sidewalk, street light, and fire hydrant easement rather than front of lot line/edge of right-of-way. This applies to Lots 13-A, 13-B, 14-A, 15-A, 17-A, 18-A, and 18-B of Block 54.

C. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil survey and Geotechnical Engineering Report for Lake Hills Subdivision, 21st Filing, prepared by Rimrock Engineering, Inc. (July 2, 2019), indicate that there could be potential limitations for proposed construction on the lots. Refer to Section IX for discussion of the geotechnical study completed for some of the lots within the Subdivision. All permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

D. 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.

E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvements district which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be 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 a Stormwater Pollution and Prevention Plan (SWPPP) are required to be filed with the City and the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Association with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

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

Streets

- Rights-of-way widths of 60-feet for Greenbriar Road and 50-feet for Cypress Point have already been dedicated in previous filings. The previous filings also included a 50-foot radius cul-de-sac at the southerly end of Cypress Point.
- The Owner shall construct public streets, and curb & gutter within the Subdivision. Streets fronting lots within the Subdivision shall be constructed as 34' back of curb to back of curb. The cul-de-sac at the southerly end of Cypress Point shall be constructed with a City of Billings approved standard detail. These roads shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All streets shall be built in accordance with the City of Billings' site development ordinance and city subdivision regulations.
- The construction costs have been funded and no additional monetary security is required.

Sidewalks

- The Owner will install corner intersection handicap ramps.
- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of home construction and shall be included in each building permit.
- Sidewalk transitions from 3-foot boulevard walk in Lake Hills Subdivision, 21st Filing to 5-foot boulevard walk in Lake Hills Subdivision, 40th Filing will occur on the 40th Filing lot frontages. This applies to Cypress Point, which has a 50-foot right-of-way. The layout of such transitions shall be approved by the City of Billings Engineering Department at the time of building permit approval.
- Sidewalks on Greenbriar Road with a 60-foot right-of way will be installed with a 5-foot boulevard walk.
- The transition from a 5-foot boulevard walk to a 5-foot curb walk on the frontage of Lot 13-B will be approved by the City of Billings Engineering Department at the time of building permit approval.

Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

Traffic Control Devices

- Traffic control devices are not required for this subdivision but are included in the waiver of right to protest.
- The Owner will furnish and install street name signs for streets within the subdivision or located immediately adjacent thereto in accordance with the specifications of the City of Billings Public Works and Fire Departments.

Access

- Access to the lots will be from drive approaches installed at the time of lot development from streets built with this Subdivision. Access permits shall be obtained from City Engineering.

Billings Area Bikeway and Trails Master Plan (BABTMP)

- This subdivision is located within the jurisdiction of the BABTMP, but no trail corridors are identified within this subdivision area.

Public Transit

- This subdivision does not require improvements to ensure public transit service. The nearest transit stop is at the intersection of Wicks Lane and Gleneagles Boulevard.

IV. EMERGENCY SERVICE

The Billings Fire Department currently provides fire protection for the subdivision.

At the time of future lot development construction of buildings made of combustible materials shall have adequate fire apparatus access roads and fire hydrant(s) in place to meet fire suppression requirements. Prior to issuance of a building permit for construction using combustible materials (i.e. lumber plywood, wood trusses, etc.), fire apparatus access roads, and water supply requirements shall be provided in accordance with the International Fire Code as adopted be the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along an approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for apparatus access and water supply.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A master plan is in place for Lake Hills Subdivision and all Future stormwater improvements will be reviewed and approved by the Engineering Division to comply with said plan. The new storm drainage improvements shall be constructed as part of SID 1421. The construction costs have been funded through the establishment of SID 1421 and no additional monetary security is required.

Internal stormwater drainage will flow to two new storm inlets installed in Opal Lane and to the end of Cypress point to discharge through the storm easement south of the cul-de-sac. Discharge will be to storm dispersion ponds east and south of the subdivision located on Lake Hills Golf Course property. Flows leaving the stormwater dispersion ponds will continue in the direction they have historically flowed.

To help prevent stormwater drainage entering the subdivision, exterior storm drainage will be directed southerly onto Lake Hills Golf Course property on the west side of the subdivision flowing to a stormwater dispersion pond located south of the subdivision.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the County Water District of Billings Heights and Public Works Department – Distribution and Collection Division, respectively. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications. The appropriate water and wastewater construction fees in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc.) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the County Water District of Billings Heights, City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

Water

The County Water District of Billings Heights serves the property. There is an existing 8-inch water main located in Greenbriar Road that currently terminates at both East and West edges of the subdivision. SID 1421 will extend the 8-inch water main along the length of Greenbriar Road through the subdivision. An 8-inch water main will be installed along the lengths of Cypress Point and Opal Lane. New water services will be installed for all lots in the subdivision.

Sanitary Sewer

Sanitary sewer mains and services will be extended from those that are existing in the subdivision. An existing 8-inch main is located at the intersection of Greenbriar Road and Opal Lane and currently terminates near the east edge of the proposed subdivision at a manhole with stubouts to Greenbriar Road and Opal Lane. SID 1421 will install a new 8-inch sanitary sewer mains from the existing 8-inch main and run west along Greenbriar Road and southwest along Opal Lane to service lots. A new 8-inch main will be installed along Cypress Point connecting to the sanitary main within Opal Lane. New sewer services will be installed for all lots in the subdivision.

Power, Telephone, Gas, and Cable Television

Private utility facilities (power, natural gas, telephone, and cable) will be installed during construction and located within the right-of-way and utility easements shown on the plat.

VII. PARKS/OPEN SPACE

There is no parkland requirement for this subdivision as the parkland requirement has been previously met.

VIII. IRRIGATION

No irrigation ditch, field laterals, or irrigation easements exist in this subdivision.

IX. SOILS/GEOTECHNICAL STUDY

According to the Geotechnical Engineering Report for Lake Hills Subdivision, 21st Filing, prepared by Rimrock Engineering, Inc. (July 2, 2019), some soils found in this area consist of potentially compressible clay soils over sandstone shale bedrock at or near foundation and concrete slab elevations. Field and laboratory test results indicate that some site soils are compressible and potentially expansive with increased moisture which can be detrimental to lightly loaded structures.

Subsurface conditions vary from one location to another and the structural characteristics may vary from one structure to another. Currently all permitted structures within city limits are required by the City of Billings to obtain and follow a geotechnical report prior to construction.

X. PHASING OF IMPROVEMENTS

There are no intended phasing improvements.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements through Special Improvements District No. 1421. All engineering and legal

work in connection with such improvements shall be paid by the contracting parties pursuant to said special improvement district and the improvements shall be installed as approved by the City Engineer and the City of Billings Public Works and County Water District of Billings Heights.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors and assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER" Ron S. Hill, Living Trust

_____

Trustee, Ron S. Hill

STATE OF MONTANA)

: ss

County of Yellowstone)

On this___day of_____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Ron S. Hill, Trustee of Ron S. Hill Living Trust, known to me to who executed the foregoing instrument and acknowledged to me that he/she executed the same.

_____

Notary Public in and for the State of Montana
Printed Name:
Residing at:
My commission expires:

This agreement is hereby approved and accepted by the City of Billings, this _____day of _____, 2023.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this____ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____

Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording date 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 incident to the above 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 recoded 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:
Lake Hill Subdivision, 40th Filing

Signed and dated this _____day of_____, 2023.

Ron S. Hill Living Trust

_____

Trustee, Ron S. Hill

STATE OF MONTANA)
: ss
County of Yellowstone)

On this___ day of _____, 2023, before me, a Notary Public in and for the State of Montana, personally appeared Ron S. Hill, Trustee of Ron S. Hill Living Trust, known to me to be the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEROF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

_____

Notary Public in and for the State of Montana
Printed name: _____
Residing at: _____
My commission expires: _____

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Lake Hills Subdivision, 40th Filing. These findings are based on the preliminary plat application and supplemental documents; addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Billings Subdivision Regulations (Section 23-303(H), BMCC).

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

1. Effect on agriculture and agricultural water user facilities

The subject property was originally platted in 1958 as a county subdivision and these lots have been within the Lake Hills Golf course for many years. There are no agricultural water user facilities within this proposed subdivision. It will not have a negative effect on the agricultural industry.

This subdivision does not contain any ditches or water shares, and therefore will not have an effect on agricultural water user facilities.

2. Effect on local services

a. **Utilities** – Public water services to the subject property will be provided by the County Water District of Billings Heights. An 8-inch water line is located in Greenbriar Road, and will be extended to this subdivision and an 8-inch water main will be installed along the lengths of Cypress Point and Opal Lane.; this work is being funded by SID 1421. Each lot will be provided with individual water service connections. All water line construction shall be installed in conformance with the design standards, specification, rules and regulations of the County Water District of Billings Heights.

Fire hydrants will also be installed as required by the City Fire Department. The City Fire Department with review and approve all proposed hydrant locations prior to installation.

Sanitary sewer service will be provided by the City of Billings by connecting to the existing 8-inch sewer main located in subdivision. An existing 8-inch main is located at the intersection of Greenbriar Road and Opal Lane and currently terminates near the east edge of the proposed subdivision at a manhole with stub outs to Greenbriar Road and Opal Lane. SID 1421 will install a new 8-inch sanitary sewer mains from the existing 8-inch main and run west along Greenbriar Road and southwest along Opal Lane to service lots. A new 8-inch main will be installed along Cypress Point connecting to the sanitary main within Opal Lane. Each lot will be provided with individual sewer service connections. All sewer line construction shall be installed in conformance with the design standards,

specification, rules and regulations of the City of Billings Engineering Department.

Private utility providers shall use the provided easement outside the public right of way, these easements are shown on the face of the plat.

b. **Storm water** – Stormwater management for the proposed subdivision will be provided by directing water through a network of curb and gutters, inlets and piping. A stormwater master plan is in place for this subdivision. All proposed stormwater management will be reviewed and approved by City of Billings Engineering Department to ensure it meets the master planned stormwater plan for Lake Hills Subdivision. All drainage improvements shall satisfy the criteria set forth by the *City of Billings Stormwater Management Manual*. The new storm drainage improvements shall be constructed as part of SID 1421.

c. **Solid waste** – The City of Billings will provide solid waste collection and disposal. The City's landfill has adequate capacity for this waste.

d. **Streets** – Access to the lots in this proposed subdivision is from Greenbriar Road and Cypress Point. Greenbriar Road has a right-of-way width of 60-feet, and Cypress point has a right of way width of 50 feet. Street fronting lots within the subdivision will be constructed to 34-foot wide, back of curb to back of curb. Sidewalk transitions from 3-foot boulevard walk in Lake Hills Subdivision, 21st Filing to 5-foot boulevard walk in Lake Hills Subdivision, 40th Filing will occur on the 40th Filing lot frontages. This applies to Cypress Point, which has a 50-foot right-of-way. The layout of such transitions shall be approved by the City of Billings Engineering Department at the time of building permit approval. Sidewalks on Greenbriar Road with a 60-foot right-of way will be installed with a 5-foot boulevard walk. Sidewalks will be installed at the time of individual lot development. The developer will install accessible ramps at the intersections, which will be completed with the subdivision street improvements.

e. **Emergency services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The fire station that serves this area is located at 1601 St. Andrews Drive (Station #6).

The subdivision is located within the ambulance service area of American Medical Response (AMR).

Comments from the Police department state that continued expansion of subdivisions will require additional resources to maintain acceptable levels of service.

f. **Schools** – School District #2 provides service to students within this subdivision from elementary to high school (Sandstone Elementary School, Castle Rock

Middle School, and Skyview High School). School District #2 did not respond to request for comments at the time of the writing of this report.

g. **Parks and Recreation** – The parkland dedication requirement for this subdivision have been met with previous filings of Lake Hills Subdivision.

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. They have requested the installation of centralized mailbox unit (CBUs). The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #1)**

3. Effect on the natural environment

The subject property is relatively level land adjacent to urban development on its north and west sides. A geotechnical study was performed for the subdivision a summary of the information from that study is included in the SIA under the heading IX Soils/Geotechnical Study. The subdivision should have a minimal effect on the natural environment.

4. Effect on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. Future property owners should be aware that the proposed subdivision is located near prime wildlife habitat and adjacent to open agricultural areas, therefore conflicts with wildlife may occur. Any damage caused by wildlife is the responsibility of the owner. This notice is in the SIA under the heading II. Property Conditions and Information for Lot Purchasers.

5. Effect on the public health, safety and welfare

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

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

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

C. Does the subdivision conform to the City of Billings 2016 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan? [BMCC 23-(8)]

1. City of Billings 2016 Growth Policy

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

Essential Investments: Infill development and development near existing City infrastructure may be the most cost effective.

Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods): Neighborhoods that are safe and attractive and provide essential services are much desired.

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. Billings Heights Neighborhood Plan

The Billings Heights Neighborhood Plan, adopted in 2006, identifies this area for low-density residential development. The subdivision meets the following goals of the Heights Neighborhood Plan:

Urban Sprawl: This subdivision will be building houses in an already established neighborhood, reducing sprawl to new land.

Health, Safety and Welfare: Public infrastructure will be connected eliminating some existing dead ends on water and sewer lines.

Residential Development: This subdivision provides low-density residential single-family development in a neighborhood with existing low-density single-family development.

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision lies within the jurisdiction of the BABTMP. The BABTMP does not show any trails within the proposed subdivision. There will be no trails built with this subdivision.

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

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

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

The subject property is located within the N3 zoning district. All building development on the lot shall comply with current zoning when applying for a building permit.

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

The subdivider has provided private utility easements as required by private utility providers on the face of the plat.

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

Legal and physical access is provided to the proposed lots from the construction of Greenbriar Road and Cypress Point, all local streets to be dedicated to the public as shown on the plat.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Lake Hills Subdivision, 40th Filing does not create any adverse impacts that warrant denial of the subdivision.

- The proposed subdivision conforms to several goals and policies of the 2016 Growth Policy and does not conflict with the Transportation or Bikeway and Trail Plans.

- The proposed subdivision complies with state and local subdivision regulations, local zoning, and provides legal and physical access to each lot.

- Any potential negative or adverse impacts will be mitigated with the proposed conditions of approval.

RECOMMENDATION

The Planning Board recommends conditional approval of the preliminary plat of Lake Hills Subdivision, 40th Filing, to the City Council, and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, May 22, 2023

_____

William A. Cole, Mayor

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

CITY OF
Billings
MAYOR'S OFFFICE

May 22, 2023

John Bruckner
WWC Engineering
550 S 24th St W, Ste. 201
Billings, MT 59102

Dear Applicant/Engineer:

On May 22, 2023, the Billings City Council conditionally approved the preliminary plat of Lake Hills Subdivision, 40th Filing, subject to the following conditions of approval:

1. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS 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.

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

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

Should you have any questions please contact Hunter Kelly at (406) 247-8613 or by email at kellyh@billingsmt.gov

Sincerely,

_____
William A. Cole, Mayor

City Council Regular

Date:	05/22/2023
Title:	Bitterroot Heights Subdivision, 3rd Filing - Final Major Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends the City Council approve the final plat of Bitterroot Heights Subdivision, 3rd Filing.

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

On April 19, 2023, Performance Engineering applied for final plat approval for Bitterroot Heights Subdivision, 3rd Filing. The proposed subdivision creates 71 lots for residential development. The subject property is generally located on the west side of Bitterroot Drive and north of Mary Street. The property is zoned N3 (Suburban Neighborhood). The land is currently vacant with native grasses, shrubs and trees. Staff has reviewed the application and determined that the proposed plat has met all the conditions of approval and is forwarding a recommendation of final approval to the City Council. Upon City Council approval, these documents are appropriate as to form for filing with the Clerk and Recorder.

STAKEHOLDERS

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

ALTERNATIVES

The City Council may approve or deny the final plat of Bitterroot Heights Subdivision, 3rd Filing. If the City Council chooses to deny the final plat, the denial must be because the criteria in Section 76-3-611, MCA are not met.

The criteria are as follows:76-3-611. Review of final plat.
(1) The governing body or the agent or agency designated by the governing body shall examine each final plat, and the governing body shall approve the plat only if:

(a) it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this chapter and (local) regulations adopted pursuant to this chapter; and

(b) the county treasurer has certified that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid.Staff finds the final plat meets the criteria outlined in 76-3-611 above.

Staff found that the final plat is in compliance with the requirements of state statutes, conditions of approval and local regulations.

FISCAL EFFECTS

The final plat of this subdivision will have no financial impact on the Planning Division.

Attachments

Final Plat
Final SIA
Conditions of Approval

5/26/2022 11:06:24 AM PEC STANDARD BW.CTB

PLAT OF

BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING

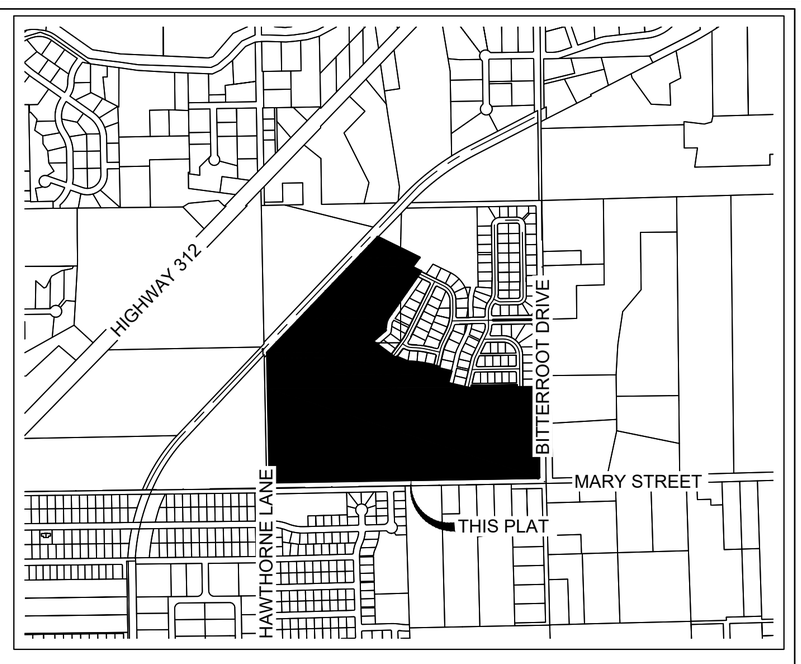
BEING TRACT 2A-1 OF COS 2317, 2ND AMENDED AND LOT 1 OF BLOCK 7 OF BITTERROOT HEIGHTS SUBDIVISION, 2ND FILING
LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 01 NORTH, RANGE 26 EAST, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : BCJM PROPERTIES, LLC

PREPARED BY : PERFORMANCE ENGINEERING, LLC

TOTAL AREA OF SUBDIVISION : ± 79.166 AC

OCTOBER 2021



VICINITY MAP

LEGAL DESCRIPTION AND OWNER CERTIFICATION OF DEDICATION

I, the undersigned owner, do hereby certify that I have cause to be surveyed, aggregated, and platted in to lots, blocks, roads and other divisions and dedications, as shown on this plat hereunto included, a tract of land being situated in the SE 1/4 of Section 11, Township 01 North, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described as Tract 2A-1 of Certificate of Survey No. 2317, 2nd Amended and Lot 1, Block 7 of Bitterroot Heights Subdivision, 2nd Filing.

Said tract contains a gross area of 79.166 acres, and a net area of 72.554 acres, more or less.

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

Said tract to be known and designated as BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING.

Pursuant to 76-3-621(1), the park dedication requirement for this subdivision has been met by parkland dedication.

This survey is not subject to review by the Montana Department of Environmental Quality pursuant to Section 76-4-130(2), MCA as the "deviation consists solely of connection to municipal or county water and/or sewer district facilities."

Dated this _____ day of _____, 20_____.

_____
_____ of BCJM Properties, LLC
(Print Title)

STATE OF MONTANA)
:ss
County of Yellowstone)

On this ____ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____ known to me to be the _____ of *BCJM Properties, LLC*, who signed the foregoing instrument and who acknowledged to me that they executed the same. Witness my hand and seal the day and year herein above written.

_____
Notary Public in and for the State of Montana
Printed Name _____
Residing at_____
My commission expires_____

CERTIFICATE OF SURVEYOR

I, the undersigned Mark W. Kadrmas, Registered Land Surveyor, do hereby certify that this survey was done under my direct supervision of a tract of land located in the SE 1/4 of Section 11, Township 01 North, Range 26 East, P.M.M., City of Billings, Yellowstone County, Montana, said tract being more particularly described as Tract 2A-1 of Certificate of Survey No. 2317, 2nd Amended and a portion of Lot 1, Block 7 of Bitterroot Heights Subdivision, 2nd Filing.

Said tract contains a gross area of 79.166 acres and a net area of 72.554 acres, more or less.

Said tract is subject to all easements and right-of-ways of record or apparent on the ground.

This survey was conducted in accordance with the provisions of the Montana Subdivision and Platting Act, Sections 76-3-101 thorugh 76-3-625, MCA.

_____
Mark W. Kadrmas, PLS 51414LS
Registered Land Surveyor
State of Montana

MONTANA
MARK W. KADRMAS
No. 51414 LS
LICENSED LAND SURVEYOR

NOTICE OF APPROVAL

STATE OF MONTANA)
:ss
County of Yellowstone)

This plat has been approved for filing by the Yellowstone County Board of Planning and conforms to the recommendations of this board.

_____ _____
Date President

_____
Executive Secretary

CERTIFICATE OF APPROVAL

STATE OF MONTANA)
:ss
County of Yellowstone)

We hereby certify that we have examined the plat of BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING and find that said plat conforms with the requirements of the laws of the State of Montana, and the requirements of the Yellowstone County Board of Planning. It is therefore approved and the dedication to public use of any and all lands shown on this plat as being dedicated to such use are accepted.

IN WITNESS WHEREOF, we have set our hands and the seal of the CITY OF BILLINGS, MONTANA this _____ day of _____, 20_____.

CITY OF BILLINGS, MONTANA

By:_____
Mayor

Attest:_____
City Clerk

ERRORS AND OMISSIONS REVIEW

I hereby certify that I have examined the foregoing plat for errors and omissions in computations and drafting.

Dated this _____ day of _____, 20_____.

Reviewed by_____

CERTIFICATE OF CITY ATTORNEY

This document has been reviewed by the City Attorney's office and is acceptable as to form.

_____ _____
Date Reviewed by

CERTIFICATE OF COUNTY TREASURER

I hereby certify, pursuant to Section 76-3-611 MCA, that the accompanying plat has been duly examined and that all real property taxes and special assessments assessed and levied on the land have been paid.

_____ _____
Date Yellowstone County Treasurer
Deputy

CERTIFICATE OF CITY ENGINEER'S OFFICE

I hereby certify that the foregoing plat conforms with Section 76-4-125(1)(d), MCA for the removal of sanitary restrictions since the plat and said lots will be provided with municipal facilities for the supply of water and the disposal of sewage and solid waste.

Dated this _____ day of _____, 20_____.

_____
City Engineer's Office

BASIS OF BEARINGS

Bearings are Montana State Plane (NAD83-2011) and were determined from an OPUS position at:

Latitude : 45° 50' 41.34" N
Longitude : 108° 27' 3.99" W

Distances are ground.

SURVEYOR'S NOTE

Unless otherwise noted, record distances between found monuments shown hereon are within local accepted practice.

SUBDIVISION IMPROVEMENTS AGREEMENT

Document No._____

C:\Users\KinsleeHage\Dropbox (PEC Billings)\PEC Billings Team Folder\BCJM\2020-146 BHS P3\CAD\DWG\Plat\20-146 BH Final Plat.dwg

PLAT OF

BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING

BEING TRACT 2A-1 OF COS 2317, 2ND AMENDED AND LOT 1 OF BLOCK 7 OF BITTERROOT HEIGHTS SUBDIVISION, 2ND FILING
LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 01 NORTH, RANGE 26 EAST, P.M.M.,
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

LEGEND

- FOUND MONUMENT, AS DESCRIBED
- SET MONUMENT
- CENTERLINE MONUMENT
- SECTION CORNER, FOUND AS DESCRIBED
- QUARTER CORNER, FOUND AS DESCRIBED
- SURVEY BOUNDARY
- PROPERTY LINE
- EASEMENT LINE

Curve Table					
Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	15.70	10.00	089°56'42"	N45° 54' 48"W	14.14
C2	36.10	73.00	028°20'09"	S20° 51' 01"W	35.74
C3	3.73	5.00	042°44'34"	S28° 03' 13"W	3.64
C4	15.64	10.00	089°37'43"	S44° 09' 56"W	14.10

Parcel Line Table		
Line #	Length	Direction
L1	433.84	S63° 34' 27"E
L2	109.42	S36° 25' 51"W
L3	89.70	S63° 35' 49"E
L4	56.64	S35° 01' 05"W
L5	481.91	S35° 01' 05"W
L6	73.83	S06° 40' 56"W
L7	153.39	S49° 22' 08"W
L8	208.35	S53° 29' 44"E
L9	56.00	S53° 29' 50"E
L10	15.83	N36° 30' 10"E
L11	108.62	S67° 34' 30"E
L12	85.44	S85° 50' 50"E
L13	74.78	S81° 32' 32"E
L14	143.89	S77° 02' 11"E
L15	17.82	S12° 52' 12"W
L16	111.95	S77° 03' 44"E
L17	116.95	S12° 53' 46"W
L18	26.28	N12° 10' 21"E
L19	20.75	S01° 28' 08"E
L20	199.69	N89° 18' 17"E

~ COS 1655 ~
~ WHITE TAIL SUBDIVISION ~
CITY OF BILLINGS UTILITY R-O-W
~ COS 1442 ~
ALUMINUM CAP
2639.16'
~ COS 1757 ~
~ BITTERROOT HEIGHTS SUBDIVISION, 2ND FILING ~
~ TIFFANY ACREAGE TRACTS ~
~ PARKLAND ~
EMPIRE DRIVE
BITTERROOT DRIVE
~ FIVE MILE CREEK SUBDIVISION ~
YPC
OPC
L1
L2
L3
L4
L5
BOWLES WAY
~ BITTERROOT HEIGHTS SUBDIVISION, 1ST FILING ~
L19
L20
(M = 199.69')
(R = 200.00')
S00° 38' 56"E
110'
REBAR
N89° 10' 49"E
418.50'
(R = 418.57')
PALMER LANE
STRAPPER LANE
(R = 1489.03')
1489.38'
C2
C3
L6
L7
L8
L9
L10
L11
L12
L13
L14
L15
L16
L17
L18
(R = 220.41')
S77° 04' 56"E
220.34'
N00° 38' 56"W
839.87'
(R = 839.82')
C4
BRASS CAP
ALUMINUM CAP
~ COS 903 ~
S00° 56' 22"E
W EUGENE AVENUE
EUGENE AVENUE
KELSEY LANE
KALEY LANE
S89° 06' 53"W
N43° 39' 39"E
MONUMENT NAIL
~ UNPLATTED ~
Lot : 1
2,358,468 SQ FT
~ COS 1963 AMD ~
MARY STREET
50'
N89° 06' 51"E
1200.95'
(R = 1200.73')
EXISTING 40' ROW
HAWTHORNE LANE
992.15'
N00° 56' 27"W
2638.28'
2603.15'
(R = 2493.35' per Doc. No. 3204917)
(R = 2492.96' per Doc. No. 3721471)
2493.48
~ COS 1897 ~
MONUMENT NAIL
ALUMINUM CAP
C1
ALUMINUM CAP
BRASS CAP
~ CRIST ACRES, AMENDED ~
~ DANIELS SUBDIVISION, 2ND FILING ~

0 200 400
IN FEET

5/26/2022 11:06:24 AM PEC STANDARD BW.CTB
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PEC STANDARD BW.CTB

5/26/2022 11:06:24 AM

PLAT OF

BITTERROOT HEIGHTS SUBDIVISION, 3RD FILING

BEING TRACT 2A-1 OF COS 3217, 2ND AMENDED AND LOT 1 OF BLOCK 7 OF BITTERROOT HEIGHTS SUBDIVISION, 2ND FILING

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 01 NORTH, RANGE 26 EAST, P.M.M., CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

LEGEND

- FOUND MONUMENT, AS DESCRIBED
- SET MONUMENT
- CENTERLINE MONUMENT
- SECTION CORNER, FOUND AS DESCRIBED
- QUARTER CORNER, FOUND AS DESCRIBED
- SURVEY BOUNDARY
- PROPERTY LINE
- EASEMENT LINE


BLOCK 3
Lot : 1 12,340 SQ FT
Lot : 2 11,369 SQ FT
Lot : 3 13,301 SQ FT
Lot : 4 17,228 SQ FT
STRAPPER LANE
BLOCK 1
Lot : 1 9,825 SQ FT
Lot : 2 9,825 SQ FT
Lot : 3 9,825 SQ FT
Lot : 4 10,286 SQ FT
Lot : 5 9,843 SQ FT
Lot : 6 9,843 SQ FT
Lot : 7 9,843 SQ FT
Lot : 8 11,116 SQ FT
PALMER LANE
Lot : 1 9,634 SQ FT
Lot : 2 8,284 SQ FT
Lot : 3 8,284 SQ FT
Lot : 4 8,284 SQ FT
Lot : 5 8,304 SQ FT
Lot : 6 9,381 SQ FT
Lot : 7 11,372 SQ FT
Lot : 8 9,547 SQ FT
Lot : 9 9,547 SQ FT
Lot : 10 9,547 SQ FT
Lot : 11 9,547 SQ FT
Lot : 12 12,127 SQ FT
Lot : 13 9,565 SQ FT
Lot : 14 8,499 SQ FT
Lot : 15 9,892 SQ FT
Lot : 16 9,892 SQ FT
Lot : 17 9,892 SQ FT
Lot : 18 9,891 SQ FT
Lot : 5 9,600 SQ FT
Lot : 6 9,600 SQ FT
Lot : 7 9,600 SQ FT
Lot : 8 9,600 SQ FT
Lot : 9 9,600 SQ FT
Lot : 10 9,600 SQ FT
Lot : 11 9,600 SQ FT
Lot : 12 9,600 SQ FT
Lot : 13 9,600 SQ FT
Lot : 14 9,600 SQ FT
Lot : 15 9,600 SQ FT
Lot : 16 9,600 SQ FT
Lot : 17 9,600 SQ FT
Lot : 18 9,600 SQ FT
Lot : 19 15,676 SQ FT
BLOCK 2
Lot : 1 9,639 SQ FT
Lot : 2 9,639 SQ FT
Lot : 3 9,639 SQ FT
Lot : 4 9,639 SQ FT
BLOCK 4
Lot : 1 9,339 SQ FT
Lot : 2 9,339 SQ FT
Lot : 3 9,396 SQ FT
Lot : 4 9,242 SQ FT
BLOCK 5
Lot : 5 9,129 SQ FT
Lot : 6 9,129 SQ FT
Lot : 7 12,603 SQ FT
Lot : 8 11,057 SQ FT
BLOCK 10
Lot : 1 11,990 SQ FT
Lot : 9 9,871 SQ FT
Lot : 10 9,817 SQ FT
BLOCK 9
Lot : 1 9,742 SQ FT
BLOCK 8
Lot : 1 10,153 SQ FT
Lot : 2 10,452 SQ FT
BLOCK 7
Lot : 1 12,285 SQ FT
Lot : 10 10,823 SQ FT
BLOCK 6
Lot : 1 9,371 SQ FT
Lot : 2 9,371 SQ FT
Lot : 3 9,371 SQ FT
Lot : 4 9,371 SQ FT
Lot : 5 9,371 SQ FT
Lot : 6 11,143 SQ FT
Lot : 7 13,121 SQ FT
Lot : 8 9,117 SQ FT
Lot : 9 9,598 SQ FT
Lot : 10 9,944 SQ FT
Lot : 11 10,823 SQ FT
BLOCK 11
Lot : 1 2,358,468 SQ FT
PUBLIC OPEN SPACE 3,033 SQ FT
PUBLIC OPEN SPACE 5,897 SQ FT
PUBLIC OPEN SPACE 2,297 SQ FT
WEST EUGENE AVENUE
EUGENE AVENUE
BOWLES WAY
KELSEY LANE
KALEY LANE
HAWTHORNE LANE
10' WIDE UTILITY EASEMENT
56' ROW
MONUMENT NAIL
16' WIDE ROW DEDICATED THIS PLAT
1489.38'
481.91'
433.84' (R = 433.56')
S63° 34' 27"E 145.14'
59.24'
142.63' N00° 30' 44"W
115.32'
118.36' N27° 12' 53"W
L = 190.44', R = 150.00', Δ = 72° 44' 32"
105.44'
107.88' N26° 24' 11"E
107.80' N26° 24' 11"E
104.97'
N63° 35' 49"W 127.81'
S35° 01' 05"W 107.87'
91.90'
65.06'
114.52' S46° 20' 32"E
81.40'
82.33'
126.89'
74.14'
74.99'
138.15'
71.63'
72.45'
149.04' S46° 20' 32"E
26.03'
51.61'
154.66' S56° 06' 33"E
43.64'
147.51' S72° 30' 53"E
49.00'
120.37' S80° 05' 24"E
L = 223.58', R = 330.00', Δ = 38° 49' 08"
L = 116.77', R = 150.00', Δ = 44° 36' 06"
L = 150.68', R = 390.00', Δ = 22° 08' 13"
S49° 22' 08"W 153.39
S43° 39' 28"W 349.93'
S43° 39' 39"W 606.88'
S43° 39' 39"W 290.98'
S43° 37' 59"W 149.05'
S43° 37' 59"W 179.83'
S31° 30' 03"W
S46° 22' 01"E 372.11'
S46° 22' 01"E 354.91'
S53° 29' 44"E 208.35
157.06'
51.29'
92.22'
66.67'
63.85'
57.45'
87.90'
50.25'
155.62'
S67° 34' 30"E 108.62' (R = 108.67')
S85° 50' 50"E 85.44' (R = 85.41')
S81° 32' 74.78' (R = 74.75')
N17° 34' 45"E 106.91'
N09° 51' 45"E 56.44'
S16° 32' 25"W 126.55'
S36° 30' 10"W 114.20'
S25° 36' 05"W 132.52'
N89° 09' 32"E 49.45'
95.97'
S51° 49' 10"E
42.50'
138.47
56.00'
S48° 39' 28"E
S58° 29' 57"E 71.91'
S46° 20' 21"E 239.31'
S46° 20' 21"E 372.11'
S46° 20' 21"W 606.88'
S43° 39' 39"W 238.63'
S43° 39' 39"W 290.98'
S43° 39' 39"E 110.82'
N69° 08' 13"W 125.73'
S89° 03' 33"W 132.00'
S00° 56' 27"E 84.21'
S89° 49' 33"E 87.39'
S00° 56' 27"E 106.39'
S89° 03' 33"W 414.56'
S00° 56' 27"E 107.00'
S00° 56' 27"E 74.41'
S80° 03' 45"E 118.82'
109.67'
N00° 56' 27"W 95.11'
S00° 56' 27"E 115.03'
S00° 56' 27"E 56.21'
S00° 56' 27"E 96.85'
S00° 56' 27"E 107.70'
S00° 56' 27"E 114.64'
S07° 00' 00"W 65.13'
S58° 29' 57"E 145.40'
S58° 29' 57"E 139.34'
S53° 55' 46"E 122.41'
S58° 29' 57"E 154.86'
S53° 29' 50"E 120.67'
S46° 04' 32"W 92.60'
S34° 49' 01"W 85.18'
S24° 50' 03"E 140.37'
S53° 29' 44"E 208.35
S46° 22' 01"E 112.12'
S46° 20' 21"E 129.87'
S59° 20' 53"E
S46° 20' 32"E 126.89'
S46° 20' 32"E 105.00'
S46° 20' 21"E 105.00'
S46° 20' 21"E 114.02'
S46° 20' 21"E 122.50'
S46° 20' 21"E 139.65'
S46° 20' 21"E 157.96'
S46° 20' 21"E 158.08'
S46° 20' 21"E 79.25'
S46° 20' 21"E 80.75'
S46° 20' 21"E 91.84'
N46° 20' 21"W 102.00'
N46° 20' 21"W 105.00'
N46° 20' 32"W 105.00'
N46° 20' 21"W 105.01'
N47° 44' 39"W 102.08'
N43° 37' 59"W 120.03'
N43° 37' 59"W 120.07'
N43° 37' 59"W 120.11'
N43° 39' 28"W 78.80'
N43° 39' 28"W 78.89'
N43° 39' 28"W 78.88'
N43° 39' 28"W 91.93'
N43° 39' 39"E 78.89'
N43° 39' 39"E 78.88'
N43° 39' 39"E 115.00'
N43° 39' 39"E 113.74'
N38° 51' 21"E
S30° 11' 19"W 73.60'
S30° 11' 19"W 75.07'
S30° 11' 19"W 78.59'
L = 330.00', R = 1,000.00', Δ = 18° 49' 08"
L = 1,000.00', R = 1,000.00', Δ = 57° 17' 44

SUBDIVISION IMPROVEMENTS AGREEMENT
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Bitterroot Heights Subdivision, 3rd Filing

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(City of Billings)

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Bitterroot Heights Subdivision, 3rd Filing

This agreement is made and entered this _____ day of _____, 20___, by and between ***BCJM Properties, LLC***, whose address for the purpose of this agreement is ***2409 Nina Clare Rd., Billings, MT 59102***, hereinafter referred to as "Subdivider," and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the Board of Planning recommended conditional approval of a preliminary plat of *Bitterroot Heights Subdivision, 3rd Filing*; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 20___, the City Council conditionally approved a preliminary plat of *Bitterroot Heights Subdivision, 3rd Filing*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Bitterroot Heights Subdivision, 3rd Filing* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. VARIANCES

Subdivider has requested, and the City hereby grants, the following variances by the City Council from the strict interpretation of the City's Subdivision Regulations (Section 23.1101, BMCC):

1. No variances have been requested at this time.

II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS

A. Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development. Sidewalks shall be 5-foot boulevard style walk. 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. Much of the area of this subdivision was previously mined for gravel and has since been reclaimed. There exists the potential for variable soils conditions and groundwater levels within the subdivision area. Assessment and mitigation of these conditions, if necessary, shall be the responsibility of the lot owner. Additional geotechnical studies may be necessary at the time of individual lot development.

D. No water rights have been transferred to the lot owners.

E. There is attached hereto a Waiver waiving the right to protest the creation of the special improvement district or districts which by this reference is expressly incorporated herein and made as much a part hereof as though fully and completely set forth herein at this point. The Waiver will be filed with the plat, shall run with the land, and shall constitute the guarantee by the Subdivider and property owner or owners of the developments described herein. Said Waiver is effective upon filing and is not conditioned by the completion of the conditions set forth in the Agreement. The Subdivider and owner specifically agree that they are waiving valuable rights and do so voluntarily.

F. A Park Maintenance District has been created for the maintenance of the boulevard improvements, maintenance of drainage channels and detention facilities, and future park maintenance. The maintenance of the park, drainage, and boulevard improvements will be performed by the City, but paid for by funds received through the Park Maintenance District. The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development (construction) of the subdivision park will be required when at least 51% of the proposed lots are sold. Development of the park will be the responsibility of the Subdivider.

G. The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution and Prevention Plan (SWPPP) filed with the city and

the Montana Department of Environmental Quality (MDEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by MDEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the Billings Stormwater Management Manual.

H. Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for new construction on lots. Best Management Practices are defined with Section 28-201, BMCC and detailed in the Billings Stormwater Management Manual.

I. Lot owners should be aware that portion(s) of this property lie within the floodplain/floodway, as depicted on the FEMA maps for this area. Please be advised that special development restrictions may apply within these specified areas.

III. TRANSPORTATION

A. Streets

- Subdivider will execute a private contract to construct public streets, and curb and gutter within the Subdivision. The improvements will consist of 34-foot from back of curb to back of curb residential streets with 56-foot rights-of-ways.
- Standard curb and gutter will be installed on all of the interior streets being constructed within the Subdivision.
- All streets will be provided with an asphalt concrete driving surface.
- Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.

B. Sidewalks

- Individual lot owners will be responsible for the construction of the sidewalks adjacent to their lot at the time of lot construction and shall be included in each building permit.
- Sidewalks shall be 5-foot wide with a 5-foot boulevard planting strip between the sidewalk and the curb at corner intersection handicap ramps and aprons.
- Subdivider will install, within the private contract, corner intersection handicap ramps and aprons.
- Subdivider to install sidewalks and trails fronting parkland/open space areas.

C. Street Lighting

- No street lighting is proposed for the development; however, street lighting is included in the waiver of right to protest.

D. Traffic Control Devices

- Subdivider will install necessary traffic control devices within or adjacent to the Subdivision in conformance with the City of Billings standards.
- Street name signs for streets within the Subdivision, or located immediately adjacent thereto, shall be furnished and installed by the subdivider in accordance with the specifications of the City of Billings standards.

E. Access

- Subdivision access is limited to a single access to Bitterroot Drive via a public street (Empire Drive) located approximately 1,500 feet north of Mary Street and a single access to Mary Street via a public street (Hawthorne Lane) located approximately 2,600 feet west of Bitterroot Drive. Hawthorne Lane will be improved by increasing the paved width from 26 feet to 30 feet.
- An update to the Traffic Accessibility Studies submitted for the 1st and 2nd Filings shall be performed.

F. Billings Area Bikeways and Trail Master Plan

- The Bitterroot Heights Subdivision, 3rd Filing is within the planning area for the Billings Area Bikeway & Trail Master Plan. The Trail Plan indicates a proposed multi-use trail along the south side of Five Mile Creek with a connection to Mary Street within the old railroad right-of-way. The Plan designates Mary Street as a "primary bikeway" and designates Bitterroot Drive as an "arterial bikeway".
- Parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings have been master-planned to include provisions for necessary connections through subdivision property. Construction of the multi-use path through parklands dedicated with Bitterroot Heights Subdivision, 1st and 2nd Filings will be undertaken with development of the park and will commence when 51% of the total planned lots in all the filings are platted. In addition, 8-foot wide gravel maintenance paths have been constructed in the Public Open Space dedicated with the 2nd Filing.
- Ownership of trail corridor through Bitterroot Heights Subdivision, 1st and 2nd Filings will be by the City of Billings Parks Department. Maintenance will be the responsibility of the City of Billings Parks Department through establishment of a Park Maintenance District.

G. Public Transit

- Met Transit provides service to the Billings Heights, with the closest route at the intersection of Bench Boulevard and Pemberton Lane, approximately 1 mile from the 3rd Filing. No improvements are required to ensure public transit service.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (fire hydrants) in place to allow for fire suppression requirements. Prior to the issuance of a building permit for construction using combustible materials (i.e. lumber, plywood, wood trusses, etc.), fire apparatus access roads and water supply requirements shall be provided in accordance with the International Fire Code as adopted by the City of Billings.

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150 feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of twenty (20) feet wide.
- An operational fire hydrant shall be located within 600 feet of the furthest portion of a residence under construction or within 400 feet of the furthest portion of a commercial building under construction as measured along the access roads to the site.
- The above requirements do not alter or effect the current minimum subdivision requirements for fire apparatus access and water supply.
- The Subdivider shall provide a permanent 2nd access to the Subdivision by improving Hawthorne Lane to a 30-foot asphalt road.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions set forth in Chapter 28, BMCC, and the Stormwater Management Manual in place at the time of development. A complete stormwater management plan shall be submitted to the Engineering Division for review and approval at the time of development.

In accordance with the Stormwater Management Plan developed for Bitterroot Heights Subdivision 1st, Filing, a stormwater detention facility for Bitterroot Heights Subdivision has been constructed in the north-central portion of the property to serve ultimate build-out of all of Bitterroot Heights Subdivision. The detention facility is located on lands dedicated as parks and will be maintained by a Park Maintenance District.

Existing natural drainages that traverse the Bitterroot Heights Subdivision will be retained and improved for conveyance of stormwater runoff to the detention facility. The existing west drain has been re-routed with the 2nd Filing to drain to the existing detention facility, in accordance with the Stormwater Management Plan developed for the 1st Filing. The improved natural drainages will be contained within Public Open Space dedicated as parks and will be maintained by a Park Maintenance District.

Where not contained within street rights-of-way, storm drainage facilities will be located within dedicated rights-of-way or on public property. Where storm drain outfalls run between residential lots, a 20-foot wide right-of-way will be provided and a 5-foot concrete pathway will be constructed within the right-of-way.

VI. UTILITIES

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department – Engineering Division. The extension/connection of/to water mains and sanitary sewers is subject to the approval of the applications and the conditions of approval. Applications shall be submitted for processing prior to the start of any construction and prior to review and approval of any project plans and specifications.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, County Water District of Billings Heights, Fire Department and the Montana Department of Environmental Quality.

A. Water

Subdivider shall enter into a private contract to extend water mains from those that are existing in the Subdivision. Water will be provided by County Water District of Billings Heights. Each water main will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

B. Sanitary Sewer

Subdivider shall enter into a private contract to extend sanitary sewer mains from those that are existing in the Subdivision. All sanitary sewer mains will be 8 inches with services stubbed to each lot. Construction drawings shall be reviewed and approved prior to installation.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines within the public right-of-way shall be installed prior to surface improvements. 8-foot utility easements are provided along the front lot lines of selected lots for utility services as shown on the plat of Bitterroot Heights Subdivision, 3rd Filing.

VII. PARKS/OPEN SPACE

- The parkland requirement for the Bitterroot Heights Subdivision, 3rd Filing is 2.051 acres (11% of net area). The parkland requirement for the anticipated

build-out of Bitterroot Heights Subdivision (all filings) is 7.96 acres (11% of net area). A total of 12.441 acres of parkland has been dedicated to the City with Bitterroot Heights Subdivision, 1st and 2nd Filings. Additional parklands will be dedicated with future filings.

- The City and the Subdivider agree that the requirement for park dedication is satisfied by the conveyance of parklands to the City.
- The overall master plan for Bitterroot Heights Subdivision anticipates that approximately 380 lots will be created at full build-out. Development of the subdivision Park Master Plan, adopted by City Council, will be required when at least 51% of proposed lots are sold. The development of the park will be the responsibility of the Subdivider.

VIII. IRRIGATION

- No irrigation facilities are affected by the development of Bitterroot Heights Subdivision, 3rd Filing.
- No water rights have been transferred to the lot owners. Irrigation ditches that exist near this development are for the benefit of other properties. Ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

IX. SOILS/GEOTECHNICAL STUDY

- A geotechnical investigation was performed for the area of Bitterroot Heights Subdivision, 2nd Filing and can be obtained from the City Engineering Department office.

X. PHASING OF IMPROVEMENTS

- Phasing is not proposed for this Subdivision.

XI. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a private contract secured by letters of credit or a letter of commitment to lend funds from a commercial lender. All engineering and legal work in connection with such improvements shall be paid by the contracting parties pursuant to said private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of two years from the date of final acceptance by the City of Billings.

B. The owners of the properties involved in this proposed Subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this Agreement.

C. The covenants, agreements, and all statements in this Agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.

D. In the event it becomes necessary for either party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.

E. Any amendments or modifications of this Agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this Agreement.

F. Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals on the date first above written.

"SUBDIVIDER" *BCJM Properties, LLC*

By: _____

Its: Member Manager

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 27 day of March, 2023 before me, a Notary Public in and for the State of Montana, personally appeared Jacob Brosovich, known to me to be the Member Manager of *BCJM Properties, LLC*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

TAMARA FRANK NOTARIAL SEAL STATE OF MONTANA

TAMARA FRANK
NOTARY PUBLIC for the
State of Montana
Residing at Laurel, Montana
My Commission Expires
December 2, 2026

_____
Notary Public in and for the State of Montana
Printed Name: TAMARA FRANK
Residing at: Laurel MT
My commission expires: 12-02-2026

This agreement is hereby approved and accepted by the City of Billings, this ____ day of _____, 20___.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this _____ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Waiver of Right to Protest
FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

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:

Bitterroot Heights Subdivision, 3rd Filing

Signed and dated this 18 day of April, 2023.

BCJM Properties, LLC

By: Brittainy Doucette
Its: Member

STATE OF MONTANA)
: ss
County of Yellowstone)

On this 18 day of Apr.l, 2023 before me, a Notary Public in and for the State of Montana, personally appeared Brittainy Doucette known to me to be *BCJM Properties, LLC*, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

It the member of

Tamara Frank
Notary Public in and for the State of Montana
Printed Name: TAMARA FRANK
Residing at: Laurel MT
My commission expires: 12-02-2026

TAMARA FRANK NOTARIAL SEAL STATE OF MONTANA

TAMARA FRANK
NOTARY PUBLIC for the
State of Montana
Residing at Laurel, Montana
My Commission Expires
December 2, 2026

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

May 24, 2021

BCJM Properties, LLC
2409 Nina Clare Road
Billings, MT 59102

Dear Applicant:

On May 24, 2021, the Billings City Council conditionally approved the preliminary plat of Bitterroot Heights Subdivision, 3rd Filing, subject to the following conditions of approval:

1. To minimize the effects on local service, prior to final plat approval the applicant will coordinate with the USPS for locating and providing the correct amount of space for safely delivering the mail to the residents.

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

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

Should you have any questions please contact Dave Green at (406) 247-8666 or by email at greend@billingsmt.gov

Sincerely,

William A. Cole

William A. Cole, Mayor

pc: Performance Engineering / Rob Neihart

City Council Regular

Date:	05/22/2023
Title:	Bond Resolution for Pooled Series 2023 Sidewalk Bonds
Presented by:	Teri Walker
Department:	Finance
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends City Council approve the bond resolution for WO 21-11 and WO 22-07.

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

On June 14th, 2021, the Council approved the resolution ordering improvements identified in WO 21-11, Highwood Drive reconstruction. City Council approved the resolution ordering improvements identified in the W.O. 22-07 Mullowney Lane Improvements reconstruction project on February 27, 2023. The City has been working with First Interstate Bank for the purchase of the bonds. Once the resolution has been approved, the closing will take place and the bond proceeds will be disbursed to the construction accounts.

ALTERNATIVES

There are no viable alternatives because an agreement has been made with First Interstate Bank to purchase the bonds.

FISCAL EFFECTS

The term on the bonds is 12 years with an interest rate of 5.97%. The property owners identified in the documents ordering the improvements will be assessed for principal and interest cost of the bonds on their property tax bills.

Attachments

resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. 23-_____ entitled: "RESOLUTION RELATING TO $724,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2023; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on May 22, 2023, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: _____ _____; voted against the same: _____; abstained from voting thereon: _____; or were absent: _____ _____.

WITNESS my hand and seal officially this 22nd day of May, 2023.

_____
City Clerk

RESOLUTION NO. 23-_____

RESOLUTION RELATING TO $724,000 POOLED SPECIAL SIDEWALK, CURB, GUTTER AND ALLEY APPROACH BONDS, SERIES 2023; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR

BE IT RESOLVED by the City Council (the "Council") of the City of Billings, Montana (the "City"), as follows:

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Prior Acts. This Council has duly and validly ordered in under Montana Code Annotated, Title 7, Chapter 14, Part 41, as amended and Title 7, Chapter 12, Parts 41 and 42, as amended (collectively, the "Act"), the installation, construction, reconstruction, or replacements of certain curbs, gutters, sidewalks, drive approaches, driveways, alley approaches and appurtenant improvements in certain locations in the City, which are designated as W.O. 21-11, Highwood Drive Reconstruction (the "Highwood Drive Improvements") and W.O. 22-07, Mullowney Lane Improvements (the "Mullowney Lane Improvements").

The City Council ordered in the Highwood Drive Improvements and the Mullowney Lane Improvements pursuant to Resolution Nos. 21-10956 and 23-11104, adopted June 14, 2021 and February 27, 2023, respectively. The Highwood Drive Improvements and the Mullowney Lane Improvements (collectively, the "Improvements") are more specifically described on Exhibit A hereto.

In the resolutions ordering in the Highwood Drive Improvements and the Mullowney Lane Improvements, this council authorized the issuance of pooled special sidewalk, curb, gutter and alley approach bonds of the City for the purpose of financing costs of the Improvements.

This Council hereby determines that it is in the best interests of the City to sell its Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2023 (the "Series 2023 Bonds") at a private negotiated sale, subject to the limitations and conditions set forth in this Resolution. First Interstate Bank (the "Purchaser") has agreed to purchase the Series 2023 Bonds from the City at an aggregate purchase price of $724,000 (representing the stated principal amount of the Series 2023 Bonds) upon the terms set forth in this Resolution. The interest rate for the Series 2023 Bonds is 5.97%.

In the resolutions ordering in the Highwood Drive Improvements and the Mullowney Lane Improvements, this Council found that is in the public interest, and in the best interest of the City and the properties specifically benefitting from the Improvements, to secure payment of principal of and interest on the Series 2023 Bonds by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"), on the basis of the factors required to be considered under Montana Code Annotated, Section 7-12-4225. Those findings are hereby ratified and confirmed.

1.02. Costs. It is currently estimated that the costs and expenses to be assessed against properties adjacent to the Improvements, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the assessments, the cost of work and materials under the construction contract and all other costs and expenses, including costs of issuance of the Series 2023 Bonds and the deposit of proceeds in the Revolving Fund are as follows:

	Highwood Drive Improvements	Mullowney Lane Improvements
Construction	$125,656.67	$537,010.49
Engineering	8,368.55	21,229.51
Total	$134,025.22	$558,240.00
Less Property Owner Prepays	(27,289.75)	0.00
Subtotal	$106,735.47	$558,240.00
City Financing Expense	1,000.00	1,000.00
Revolving Fund Deposit	5,852.50	30,347.50
Costs of Issuance	2,407.66	12,592.34
Bank Fee	874.78	4,575.22
Rounding	179.53	195.00
Total	$117,049.94	$606,950.06

Such amount will be levied and assessed upon the assessable real property adjacent to the Improvements on the bases described in the resolutions referenced above. This Council has jurisdiction and is required by law to levy and assess such amounts, to collect such special assessments and credit the same to the 2023 Pooled Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the "2023 Sidewalk Sinking Fund") created for the Improvements.

1.03. Recitals. All acts, conditions and things required by the Constitution and laws of the State of Montana, including the Act, and the home rule charter of the City, in order to make the Series 2023 Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this Resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

Section 2. The Series 2023 Bonds.

2.01. Principal Amount, Maturity, Denominations, Date, Interest Rate. For the purpose of paying the costs and expenses incurred in the construction of the Improvements, funding a deposit to the Revolving Fund and paying costs of issuance of the Series 2023 Bonds, and in anticipation of the collection of special assessments to be levied therefor, the City shall forthwith issue and deliver to the Purchaser the Series 2023 Bonds, denominated "Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds, Series 2023" in the aggregate principal amount of $724,000, payable solely from the 2023 Sidewalk Sinking Fund. The Series 2023

Bonds shall mature on July 1, 2035, unless earlier redeemed, and shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 5.97% per annum. Interest shall be calculated on the basis of a 360-day year composed of twelve 30-day months.

2.02. Interest Payment Dates. Interest on the Series 2023 Bonds shall be payable on each January 1 and July 1, commencing January 1, 2024, to the owner of record thereof as such appear on the bond register at the close of business on the fifteenth day of the immediately preceding month, whether or not such day is a business day. Upon the original delivery of the Series 2023 Bonds to the Purchaser and upon each subsequent transfer or exchange of a Series 2023 Bond pursuant to Section 2.04, the Registrar (as hereinafter defined) shall date the Series 2023 Bonds as of the date of its authentication.

2.03. Method of Payment. The Series 2023 Bonds shall be issued only in fully registered form. The interest on and, upon presentation and surrender thereof at the principal office of the Registrar, the principal of the Series 2023 Bonds shall be payable by check or draft drawn on the Registrar. Notwithstanding the foregoing, so long as a Series 2023 Bond is evidenced by a single, fully registered term bond, it shall not be necessary to present and surrender such Series 2023 Bond until the full redemption thereof pursuant to Section 2.05, but the Registrar shall note in the bond register such principal payment. The principal of and interest on the Series 2023 Bonds are payable in lawful money of the United States of America.

2.04. Registration. The City hereby appoints the City Finance Director, to act as bond registrar, transfer agent and paying agent for the Series 2023 Bonds (the "Registrar"). The City reserves the right to appoint a bank, trust company or fiscal company as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana (the "Registration Act"), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. This Section 2.04 shall establish a system of registration for the Series 2023 Bonds as defined in the Registration Act. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Bond Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of the Series 2023 Bonds and the registration of transfers and exchanges of the Series 2023 Bonds.

(b) Transfer. The Series 2023 Bonds may be transferred in whole but not in part and only to (i) an affiliate of the Purchaser; (ii) a trust or other custodial arrangement established by the Purchaser or one of its affiliates, the owners of any beneficial interest in which are limited to qualified institutional buyers or accredited investors; or (iii) a person or entity that the Purchaser reasonably believes is qualified to purchase the Series 2023 Bonds. Upon surrender to the Registrar for transfer of any Series 2023 Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing and guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Series 2023 Bond of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the

books for registration of any transfer of the Series 2023 Bonds or any portion thereof selected or called for redemption.

(c) Exchange. Whenever any Series 2023 Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver a new Series 2023 Bond of a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner's attorney duly authorized in writing.

(d) Cancellation. Any Series 2023 Bond surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Series 2023 Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Series 2023 Bond or separate instrument of transfer is valid and genuine and that the requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owner. The City and the Registrar may treat the person in whose name any Series 2023 Bond is at any time registered on the bond register as the absolute owner of such Series 2023 Bond, whether such Series 2023 Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Series 2023 Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the City upon such Series 2023 Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer of a Series 2023 Bond or exchange of a Series 2023 Bond (except for an exchange upon the partial redemption of a Series 2023 Bond), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Series 2023 Bonds. In case any Series 2023 Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Series 2023 Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Series 2023 Bond or in lieu of and in substitution for any such Series 2023 Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Series 2023 Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Series 2023 Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. Any Series 2023 Bond so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Series 2023 Bond has already matured or such Series 2023 Bond has been called for redemption

in accordance with its terms, it shall not be necessary to issue a new Series 2023 Bond prior to payment.

2.05. Redemption.

(a) Mandatory Redemption. If on any interest payment date there will be a balance in the 2023 Sidewalk Sinking Fund after payment of the principal and interest due on the Series 2023 Bonds drawn against it, either from the prepayment of assessments or from the transfer of surplus money from a Construction Subaccount to a Principal Subaccount as provided in Section 3.02, the City Finance Director shall call for redemption on the interest payment date the principal amount of the Series 2023 Bonds which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the 2023 Sidewalk Sinking Fund on that date. The redemption price shall equal the principal amount of the Series 2023 Bonds to be redeemed plus interest accrued to the date of redemption. Such mandatory redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2023 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2023 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

(b) Optional Redemption. The Series 2023 Bonds are subject to redemption at any time, at the option of the City, in whole or in part, from sources of funds available therefor (other than those described in Section 2.05(a)), at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. Such optional redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2023 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2023 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

(c) Mandatory Sinking Fund Redemption. The Series 2023 Bonds are subject to redemption on January 1 and July 1 of the respective years (herein referred to as a "Sinking Fund Payment Date") and in the principal amounts (hereinafter referred to as a "Mandatory Sinking Fund Payment") set forth below:

	Term Bond	
Sinking Fund Payment Date	January 1 Mandatory Sinking Fund Payment Amount	July 1 Mandatory Sinking Fund Payment Amount
2024	$18,000	$22,000
2025	22,000	23,000
2026	24,000	25,000
2027	25,000	26,000
2028	27,000	28,000
2029	28,000	29,000
2030	30,000	31,000
2031	32,000	33,000
2032	34,000	35,000
2033	36,000	37,000
2034	38,000	39,000

2035	40,000	42,000

*Final maturity.

(d) Notice and Effect of Redemption. The date of redemption and the principal amount of the Series 2023 Bonds to be redeemed shall be fixed by the City Finance Director, who shall give notice thereof to the Registrar 45 days prior to the date set for redemption in order for the Registrar to give notice, by first class mail, postage prepaid, to the owners of the Series 2023 Bonds at their addresses appearing on the bond register, of the respective principal amounts of the Series 2023 Bonds to be redeemed and the date on which payment will be made, which date shall be not less than 30 days after the date of mailing notice. On the date so fixed, interest on the principal amounts of the Series 2023 Bonds so redeemed shall cease to accrue.

2.06. Form. The Series 2023 Bonds shall be prepared in substantially the form set forth in Exhibit B hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.07. Execution, Registration and Delivery. The Series 2023 Bonds shall be prepared under the direction of the City Finance Director and shall be executed on behalf of the City by the signatures of the Mayor, the City Finance Director and the City Clerk and sealed with the official seal of the City; provided that the seal and all signatures may be printed, engraved or lithographed facsimiles of the originals. In case any officer whose signature or a facsimile of whose signature shall appear on any Series 2023 Bond shall cease to be such officer before the delivery of such Series 2023 Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Series 2023 Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until a certificate of authentication on such Series 2023 Bond has been duly executed by the manual signature of an authorized representative of the Registrar. The certificate of authentication on a different Series 2023 Bond need not be signed by the same representative. The executed certificate of authentication on the Series 2023 Bonds shall be conclusive evidence that it has been authenticated and delivered under this Resolution. When the Series 2023 Bonds have been so executed, authenticated and registered, the Series 2023 Bonds shall be delivered by the Registrar to the Purchasers upon payment of the purchase price in accordance with the contract of sale heretofore made and executed.

2.07. Application of Proceeds. From the proceeds of the Series 2023 Bonds, the City Finance Director shall credit forthwith $36,200.00 to the Revolving Fund, as required by Section 7-12-4169(2) of the Act, and the balance of such proceeds to the Construction Subaccount in the respective Project Account (as hereinafter defined), in proportion to the principal amount of the Series 2023 Bonds allocable to the Missing Sidewalk Improvements and the Metal Streets Improvements as set forth in Section 1.02, to be used solely for the purposes described in Section 3.02.

Section 3. 2023 Sidewalk Sinking Fund; Assessments.

3.01. 2023 Sidewalk Sinking Fund. There is hereby created and established the fund designated as the "2023 Sidewalk, Curb, Gutter and Alley Approach Sinking Fund" which shall

be maintained by the City Finance Director on the books and records of the City separate and apart from all other funds of the City. Within the 2023 Sidewalk Sinking Fund there shall be maintained separate accounts for the Missing Sidewalk Improvements and the Metal Streets Improvements (collectively, the "Project Accounts"). Within each Project Account there shall be maintained three separate subaccounts, designated as the "Construction Subaccount," the "Principal Subaccount" and the "Interest Subaccount," respectively.

3.02. Construction Subaccounts. There shall be credited to the Construction Subaccount in the respective Project Account the proceeds of the sale of the Series 2023 Bonds attributable to the respective Improvements remaining after the required deposits to the Revolving Fund. Any earnings on investment of money in a Construction Subaccount shall be retained therein. All costs and expenses of constructing the Improvements, including costs of issuance of the Series 2023 Bonds, shall be paid from time to time as incurred and allowed from the Construction Subaccount in the respective Project Account in accordance with the provisions of applicable law, and money in a Construction Subaccount shall be used for no other purpose; provided that upon completion of the Improvements and after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any money remaining in a Construction Subaccount shall be transferred to the Principal Subaccount in the applicable Project Account and used to redeem the principal amount of the Series 2023 Bonds as provided in Section 3.03.

3.03. Principal Subaccounts and Interest Subaccounts. Money in the Principal Subaccounts and the Interest Subaccounts shall be used only for payment of the principal of and interest on the Series 2023 Bonds as such payments become due or to redeem all or a portion of the principal amount of the Series 2023 Bonds.

Upon collection of the installment of principal and interest due on November 30 and May 31 of each year on the special assessments to be levied with respect to the Improvements, the City Finance Director shall credit to the Interest Subaccount in the respective Project Account so much of said special assessments as is collected as interest payment and the balance thereof to the Principal Subaccount in the respective Project Account. Any installment of any special assessment paid prior to its due date with interest accrued thereon to the next succeeding interest payment date shall be credited with respect to principal and interest payments in the same manner as other assessments are credited to the Project Accounts. All money in the Interest Subaccounts and the Principal Subaccounts shall be used first to pay interest then due, and any remaining money shall be used to pay principal then due and, if money is available, to redeem all or a portion of the principal amount of the Series 2023 Bonds in accordance with Section 2.05; provided that any money transferred to a Principal Subaccount from a Construction Subaccount pursuant to Section 3.02 shall be applied to redeem the Series 2023 Bonds to the extent possible on the next interest payment date for which notice of redemption has been properly given pursuant to Section 2.05(a). Interest shall be paid from the respective Interest Subaccount as accrued on the Series 2023 Bonds to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.04. Loans From Revolving Fund. The Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to a Project Account in an amount sufficient to make good any deficiency then existing in the Interest Subaccount in such Project Account and issue an order authorizing a loan or advance from the

Revolving Fund to a Project Accounts in an amount sufficient to make good any deficiency then existing in the Principal Subaccounts in such Project Account, in each case to the extent that money is available in the Revolving Fund. A deficiency shall be deemed to exist in the Principal Subaccount or Interest Subaccount in a Project Account if the money on deposit therein on any December 15 or June 15 (excluding amounts in the Principal Subaccount representing prepaid special assessments) is less than the amount necessary to pay the principal of the Series 2023 Bonds then due (other than upon mandatory or optional redemption pursuant to Section 2.05(a) and (b) hereof), and interest payable on the Series 2023 Bonds, on the next succeeding interest payment date.

Pursuant to Ordinance No. 1096, the City has undertaken and agreed to provide funds for the Revolving Fund by annually levying such tax or making such loan from the general fund of the City, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. In the event that the balance on hand in the Revolving Fund fifteen days prior to any date when interest is due on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City is not sufficient to make good all deficiencies then existing in the funds for which the City covenants to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City has been paid and to the extent of amounts available in the Revolving Fund. On any date when all accrued interest on special improvement and sidewalk, curb, gutter and alley approach bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be loaned or advanced to the funds for payment and redemption of bonds and warrants to the extent such funds are deficient for such purpose and, if money in the Revolving Fund is insufficient therefor, *pro rata* in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as Series 2023 Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of the Series 2023 Bonds that until the principal amount of the Series 2023 Bonds and interest thereon are fully paid:

4.01. Compliance with Resolution. The City will hold the 2023 Sidewalk Sinking Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers and agents, will comply with all covenants and agreements contained in this Resolution. The provisions hereinabove made with respect to the 2023 Sidewalk Sinking Fund

and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the sale of the Series 2023 Bonds as set forth in Section 1.01.

4.02. Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts for the Improvements and to ensure the completion of the Improvements in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Construction Subaccount in the respective Project Account and within the amount of the proceeds of the Series 2023 Bonds appropriated thereto, amounts contributed by the City therefor and prepayments by owners of property adjacent to the Improvements.

4.03. Levy of Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property adjacent to the Improvements, in accordance with the Constitution and laws of the State of Montana and the Constitution of the United States, in an aggregate principal amount not less than the following amounts:

Improvement	Principal Amount
Highwood Drive Improvements	$117,049.94
Mullowney Lane Improvements	606,950.06
	$724,000.00

Such special assessments shall be levied on the basis or bases prescribed in the Resolutions ordering the Improvements, and shall be payable in substantially equal semiannual installments of principal and interest over a period of 12 years, at an annual rate equal to the sum of: (i) the average annual interest rate borne by the Series 2023 Bonds, plus (ii) one-half of one percent (0.50%) per annum. The assessments to be levied will be payable on the 30th day of November in each of the years 2023 through 2033, and on the 31st day of May in the years 2023 through 2035, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Series 2023 Bonds to January 1, 2024. The assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Section 7-12-4191 of the Act. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Section 7-12-4186 of the Act. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and

collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Series 2023 Bonds, including investment income thereon, are applied to the redemption of the Series 2023 Bonds, as provided in Sections 7-12-4205 and 7-12-4206 of the Act, or if refunding bonds are issued and the outstanding principal amount of the Series 2023 Bonds is decreased or increased, the City will reduce or increase, respectively, the assessments levied in the respective project area and then outstanding pro rata by the principal amount of such prepayment or the increment above or below the outstanding principal amount of the Series 2023 Bonds represented by the refunding bonds. The City and this Council, its officers and employees will reassess and re-levy such assessments, with the same effect as an original levy, in such reduced or increased amounts in accordance with the provisions of Sections 7-12-4176 through 7-12-4178 of the Act.

4.05. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatened questioning the validity or regularity of the ordering of the Improvements, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund, or the right and power of the City to issue the Series 2023 Bonds or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.06. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent assessments levied for costs of the Improvements, unless the City determines, by resolution of the Council, that such waiver is in the best interest of the owners of the Series 2023 Bonds.

Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Series 2023 Bonds which might cause the Series 2023 Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the "Code").

5.02. General Covenant. The City covenants and agrees with the owners of the Series 2023 Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2023 Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the "Regulations"), and covenants to take any and all actions within its powers to ensure that the interest on the Series 2023 Bonds will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

5.03. Arbitrage Certification. The Mayor, the City Finance Director and the City Clerk, being the officers of the City charged with the responsibility for issuing the Series 2023 Bonds pursuant to this Resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2023 Bonds, it is reasonably expected that the proceeds of the Series 2023 Bonds will be used in a manner that would not cause the Series 2023 Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

5.04. Arbitrage Rebate. The City acknowledges that the Series 2023 Bonds are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2023 Bonds from gross income for federal income tax purposes, unless the Series 2023 Bonds qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no "gross proceeds" of the Series 2023 Bonds (other than amounts constituting a "bona fide debt service fund") arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the City Finance Director and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

5.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than August 15, 2023, a statement concerning the Series 2023 Bonds containing the information required by Section 149(e) of the Code.

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2023 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the City to issue the Series 2023 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 7. Defeasance.

7.01. General. When the liability of the City on the Series 2023 Bonds issued under and secured by this Resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this Resolution to the owners of the Series 2023 Bonds shall cease.

7.02. Payment. The City may discharge its liability with reference to any Series 2023 Bond or installment of interest thereon which is due on any date by depositing with the Registrar on or before that date funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of the Series 2023 Bonds a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full; or if any Series 2023 Bond or installment of

interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full with interest accrued to the date of such deposit or mailing.

7.03. Prepayment. The City may also discharge its obligations with respect to any Series 2023 Bond called for redemption on any date when it is prepayable in accordance with its terms, by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Series 2023 Bonds a check or a draft in a sum sufficient and providing proceeds available, for the payment of the principal, interest and redemption premium, if any, which are then due; provided that notice of such redemption has been duly given as provided herein or irrevocably provided for.

7.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to the Series 2023 Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on the Series 2023 Bonds on or before maturity or, if the Series 2023 Bonds has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

7.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owner of the Series 2023 Bonds in respect of which such deposits have been made.

Section 8. Repeals and Effective Date.

8.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this Council that are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

8.02. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by this Council.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22nd day of May, 2023.

_____
Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT A

THE IMPROVEMENTS

General Description

The Series 2023 Bonds are being issued for the purpose of financing costs of installation, construction, reconstruction and/or replacements of certain curbs, gutters, sidewalks, drive approaches, and/or appurtenant features or a combination thereof in certain locations in the City heretofore ordered by this Council as the W.O. 21-11, Highwood Drive Reconstruction (the "Highwood Drive Improvements") and W.O. 22-07, Mullowney Lane Improvements (the "Mullowney Lane Improvements" and, collectively, the "Improvements"), as further described below.

Highwood Drive Improvements (W.O. 21-11)

The Improvements described below constituting the Highwood Drive Improvements will be the construction and installation of curbs, gutters, drive approaches, and appurtenant improvements, storm sewer improvements, and asphalt pavement on Highwood Drive, between Poly Drive and Rimrock Road, including Highwood Circle, Circle Drive, and Highland Park Place, within the City of Billings.

Mullowney Lane Improvements (W.O. 22-07)

The Improvements described below constituting the Mullowney Lane Improvements will be the reconstruction of and improvements to Mullowney Lane from the Midland Road/South Frontage Road intersection south to Elysian Road, including two-way left turn lanes, sidewalk on the west side, 10-foot wide multi-use trial on the east side, curb and gutter, storm drain, irrigation, streetlights, and a signalized intersection at the Elysian Road/Mullowney Land intersection located mid-way between the South Frontage Road and Elysian Road, within the City of Billings.

EXHIBIT B

UNITED STATES OF AMERICA
STATE OF MONTANA
YELLOWSTONE COUNTY

CITY OF BILLINGS

POOLED SPECIAL SIDEWALK, CURB, GUTTER AND
ALLEY APPROACH BOND, SERIES 2023

Interest at the rate per annum specified below,
payable on the 1st day of January and the 1st day of July
in each year, commencing January 1, 2024.

Interest Rate	Maturity Date	Date of Original Issue
5.97%	July 1, 2035	June 6, 2023

No. R-1 $724,000.00

REGISTERED OWNER: FIRST INTERSTATE BANK

PRINCIPAL AMOUNT: SEVEN HUNDRED TWENTY-FOUR THOUSAND DOLLARS AND NO/100

FOR VALUE RECEIVED, the City of Billings, Montana (the "City"), will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. 23-____, adopted May 22, 2023 (the "Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond, in whole or in part, before maturity. This Bond bears interest at the rate per annum specified above from the date of original issue specified above, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the City Finance Director. Interest on this Bond is payable semiannually on the 1st day of January and the 1st day of July in each year, commencing January 1, 2024, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the fifteenth day (whether or not a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof at the principal office of the Registrar, the principal of this Bond, shall be payable by check or draft drawn on the Registrar. Notwithstanding the foregoing, so long as this Bond is evidenced by a single, fully registered term Bond, it shall not be necessary to present and surrender this Bond until the full redemption hereof pursuant to the Resolution, but the Registrar shall note in the bond register such principal payment. The principal of and interest on this Bond are payable in lawful money of the United States of America. Interest on this Bond shall be calculated on the basis of a 360-day year composed of twelve 30-day months. The City Finance Director shall initially serve as Registrar for this Bond.

Terms used in this Bond with initial capital letters and not defined herein have the meanings given them in the Resolution.

This Bond is one of an issue in the aggregate principal amount of $724,000 (the "Series 2023 Bonds"), all of like date of original issue and tenor, except as to serial number, denomination, date, maturity date and redemption rights. The Series 2023 Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 14, Part 41 and Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), and ordinances and resolutions duly adopted by the governing body of the City, including the Resolution, for the purpose of financing costs of installation, construction, reconstruction or replacements of certain curbs, gutters, sidewalks, drive approaches, driveways, alley approaches and appurtenant improvements in certain locations in the City (the "Improvements"), to fund a deposit to the Special Improvement District Revolving Fund (the "Revolving Fund") and to pay costs of issuance of the Bonds.

The Series 2023 Bonds are payable from the collection of a special tax or assessment levied upon all assessable real property adjacent to the Improvements, in an aggregate principal amount not less than $724,000 ($117,049.94 for the Highwood Drive Improvements and $606,950.06 for the Mullowney Lane Improvements, except as such amounts may be reduced or increased in accordance with provisions of Montana law. Such assessments constitute a lien against the property against which they are made and levied and are to be deposited into the 2023 Special Sidewalk, Curb, Gutter and Alley Approach Sinking Fund of the City (the "2023 Sidewalk Sinking Fund"). The Series 2023 Bonds are not general obligations of the City.

The City has validly established the Revolving Fund to secure the payment of certain of its special improvement and sidewalk, curb, gutter and alley approach bonds and warrants, including the Series 2023 Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually, or more often as necessary, authorizing loans or advances from the Revolving Fund to the 2023 Sidewalk Sinking Fund, in amounts sufficient to make good any deficiency in the 2023 Sidewalk Sinking Fund to pay principal of or interest on the Series 2023 Bonds, to the extent money is available in the Revolving Fund, and to provide funds for the Revolving Fund by annually levying such tax or making such loan from its general fund, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement and sidewalk, curb, gutter and alley approach bonds and warrants secured thereby and subject to the durational limitations specified in the Act. While any property tax levy to be made by the City to provide funds for the Revolving Fund is subject to levy limits under current law, the City has agreed in the Resolution to levy property taxes to provide funds for the Revolving Fund to the extent described in this paragraph and, if necessary, to reduce other property tax levies correspondingly to meet applicable levy limits.

If on any interest payment date there will be a balance in the 2023 Sidewalk Sinking Fund after payment of the principal and interest due on the Series 2023 Bonds drawn against it, either from the prepayment of assessments or from the transfer of surplus money from a Construction Subaccount to a Principal Subaccount as provided in Section 3.02, the City Finance Director shall call for redemption on the interest payment date the principal amount of the Series 2023 Bonds which, together with the interest thereon to the interest payment date, will equal the

amount of such funds on deposit in the 2023 Sidewalk Sinking Fund on that date. The redemption price shall equal the principal amount of the Series 2023 Bonds to be redeemed plus interest accrued to the date of redemption. Such mandatory redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2023 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2023 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

The Series 2023 Bonds are subject to redemption at any time, at the option of the City, in whole or in part, from sources of funds available therefor (other than those described in Section 2.05(a)), at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium. Such optional redemption payments shall reduce the Mandatory Sinking Fund Payments *pro rata* among all Series 2023 Bonds based upon the respective outstanding principal amounts, and with respect to each Series 2023 Bond shall be applied to Mandatory Sinking Fund Payments in inverse order of Sinking Fund Payment Dates.

The Series 2023 Bonds are subject to redemption on January 1 and July 1 of the respective years (herein referred to as a "Sinking Fund Payment Date") and in the principal amounts (hereinafter referred to as a "Mandatory Sinking Fund Payment") set forth below:

Term Bond		
Sinking Fund Payment Date	January 1 Mandatory Sinking Fund Payment Amount	July 1 Mandatory Sinking Fund Payment Amount
2024	$18,000	$22,000
2025	22,000	23,000
2026	24,000	25,000
2027	25,000	26,000
2028	27,000	28,000
2029	28,000	29,000
2030	30,000	31,000
2031	32,000	33,000
2032	34,000	35,000
2033	36,000	37,000
2034	38,000	39,000
2035	40,000	42,000

*Final maturity.

As provided in the Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the principal office of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney. Upon such transfer or exchange, the City will cause a new Bond to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance hereof.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Resolution until the Certificate of Authentication hereon shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

IN WITNESS WHEREOF, the City of Billings, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor, the City Finance Director and the City Clerk, and by a printed facsimile of the official seal of the City.

CITY OF BILLINGS, MONTANA

(Facsimile Signature)
MAYOR

(Facsimile Signature)
(Facsimile Seal) CITY FINANCE DIRECTOR

(Facsimile Signature)
CITY CLERK

Dated:

CERTIFICATE OF AUTHENTICATION

This Bond is delivered pursuant to the Resolution mentioned herein.

CITY OF BILLINGS, MONTANA,
as Registrar, Transfer Agent, and
Paying Agent

By _____
City Finance Director

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA….....Custodian…..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	
		under Uniform Gifts to
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	Minor Act…..... (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____ _____ the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

_____

_____

_____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEED

_____

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended

City Council Regular

Date:	05/22/2023
Title:	Resolution of Intent to Create SILMD 331 and Set a Public Hearing Date
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends City Council approve the Resolution of Intent to create Street Improvement Light Maintenance District (SILMD) 331 and set a public hearing date of June 12, 2023.

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

Property Owners along Montana Avenue between 27th Street and 22nd Street have requested that the existing streetlights within this corridor be upgraded from High-Pressure Sodium Lights to more efficient LED lights. Passage of this Resolution of Intent is the first step in the legal process of creating a lighting maintenance district to pay for the required retrofit as well as the maintenance and operation costs. This resolution will discontinue the existing SILMDs in the area (SILMD 18 & 208) and combine them into the SILMD 331. Passage of this Resolution of Intent will trigger the mailing of legal notices to the affected property owners and set a public hearing at the June 12th, 2023, City Council meeting. The intent is to retrofit the existing pedestrian lighting on the north side of Montana Avenue (SILMD 208) and the existing streetlights (SILMD 18) with LED luminaires. The retrofit will require the installation of service meters and underground wiring. The adjacent property owners will pay for electrical energy, ongoing maintenance, administration costs, and installation through an assessment on their property tax statements. The assessments made will be based on equal value. The energy and maintenance assessments are estimated at $382.14 per property per year, totaling $10,700.00 for the entire District. The current total assessment for the two districts is currently about $13,000.00. The installation assessment is estimated at $2,357.14 per property, totaling $66,000. In summary, implementing the new district will simplify two districts into one district and total electrical use will decrease with the new LED lights.

ALTERNATIVES

City Council may:

- Approve the Resolution of Intent to Create SILMD 331 to provide a source of funding for the installation, operation, and maintenance of the streetlights and set a public hearing for June 12, 2022; or
- Do not approve the Resolution of Intent or set a public hearing date. If the Council does not adopt the Resolution, the property owners cannot be assessed for the installation, operation, or maintenance of the streetlights, so the new lights will not be installed.

FISCAL EFFECTS

The United States Federal Building at the Northwest corner of N. 26th Street lies within the SILMD 331 Boundary. The estimated assessments for this property are $382.14 for the maintenance and $2,357.14 for the improvements. Assessments for Federally owned properties are paid out of the City's General Fund.

Attachments

SILMD 331 Resolution of Intent

RESOLUTION NO. 23-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT LIGHTING DISTRICT NO. 331; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN STREET LIGHTING IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT LIGHTING DISTRICT BONDS SECURED BY THE CITY'S REVOLVING FUND; AND PROVIDING FOR THE ONGOING MAINTENANCE OF SUCH IMPROVEMENTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

Section 1. Proposed Improvements and Maintenance; Intention to Create District. The City proposes to undertake certain local street lighting improvements (as more particularly described in Section 3 hereof, the "Improvements") to benefit certain property located in the City. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41, 42 and 43, as amended (collectively, the "Act"), a special improvement lighting district (as herein defined, the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and security of special improvement lighting district bonds drawn on the District (the "Bonds"), the creation and administration of the District and the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are $66,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

In addition, it is the intention of this Council to provide for the ongoing maintenance for the Improvements and supplying electrical current therefor, and to assess the costs and expenses thereof against the lots and parcels of land within the District, in accordance with the Act.

Section 2. Number and Boundaries of District. The proposed Special Improvement Lighting Maintenance District shall be known and designated as "Special Improvement Lighting Maintenance District No. 331" (hereinafter called the "District"), and the boundaries of the District are shown on the map included as Exhibit A attached hereto (which is hereby incorporated herein and made a part hereof) and more particularly described in Exhibit B attached hereto (which is hereby incorporated herein and made a part hereof). A listing of each of the properties in the District is shown on Exhibit C hereto (which is hereby incorporated herein and made a part hereof).

The District includes lots, tracts and parcels within existing Special Improvement Lighting Maintenance Districts designated as "Special Improvement Lighting Maintenance District No. 18" and "Special Improvement Lighting Maintenance District No. 208" (hereinafter called the "Existing Districts"). If the District is created, Special Improvement Lighting Maintenance District No. 18 and Special Improvement Lighting Maintenance District No. 208 shall be discontinued, as shown in Exhibit D, as of the first fiscal year in which assessments are levied with respect to the District.

Section 3. General Character of Improvements and Maintenance. The general character of the Improvements, as shown in Exhibit E, consists of retrofitting existing streetlights in the District with LED luminaires, boring service lines and installing service meters on any unmetered feed within the District along Montana Avenue within the City of Billings. (collectively, the "Improvements").

The general character of the maintenance to be undertaken within the District consists of maintenance of the Improvements, and supplying electrical current therefor. Notwithstanding anything herein to the contrary, maintenance, for purposes of the District, includes routine maintenance, major maintenance and replacement of obsolete, damaged or worn-out street lighting fixtures and facilities.

Section 4. Benefited Property. The City hereby finds, determines and declares that each of the lots, tracts and parcels of land within the District will be specially benefited and affected by the Improvements, and that all of the lots and parcels of land within the District are hereby declared to be the lots, tracts and parcels of land to be assessed for the costs and expenses of the Improvements and the ongoing maintenance thereof and supplying electrical current therefor.

Section 5. Estimated Cost of Improvements; Initial Estimate of Maintenance Cost. The City has estimated that the costs of the Improvements, including all incidental costs, are $66,000.00, all of which are to be paid from the proceeds of the Bonds.

The City estimates that the aggregate costs and expenses of maintaining the Improvements and supplying electrical current therefor are $10,700 for the first year. It is expected that such costs and expenses will vary from year to year and will generally increase over time. Each year this Council shall adopt a resolution estimating such costs and expenses and may adjust annual assessment amounts in accordance with Section 7-12-4332 of the Act. Such costs and expenses may include amounts for the accumulation of maintenance reserves.

Section 6. Assessment Methods.

6.1. Method of Assessment for Improvements. This Council hereby determines to assess the cost of the Improvements and costs incidental thereto equally against each lot, tract or parcel of land within the District. The principal assessment per lot, tract or parcel is estimated to be $2,357.14 as set forth in Exhibit C hereto. If an increase occurs in the number of lots, tracts or parcels within the District (due to the subdivision of any one or

more properties or otherwise) during the term of the Bonds, the assessment per lot, tract or parcel then in the District will be recalculated as provided in M.C.A. 7-12-4162(3)(b).

6.2. Method of Assessment for Maintenance. This Council hereby determines to assess all of the costs and expenses of maintaining the Improvements and supplying electrical current therefor equally against each lot, tract or parcel of land within the District. The estimated assessment for maintenance of the Improvements and supplying electrical current therefor for the first year are set forth on Exhibit C hereto. Assessments levied in each year to pay ongoing costs of maintenance and supplying electrical current therefor will be assessed on an equal amount basis, based on the number of lots, tracts and parcels then in the District.

6.3. Assessment Methodology Equitable and Consistent with Benefit. This Council hereby determines that the method of assessment and the assessment of costs of the Improvements and the maintenance thereof against the properties benefited thereby as prescribed in Sections 6.1 and 6.2 are equitable and in proportion to and not exceeding the special benefits derived from the Improvements by the lots, tracts and parcels to be assessed therefor within the District.

Section 7. Payment of Assessments.

7.1. Assessments for Improvements. The special assessments for the costs of the Improvements and costs incidental thereto shall be payable over a term not exceeding [15] years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners have the right to prepay assessments relating to the Improvements as provided by law. All monies derived from the collection of the assessments described in Section 6.1 above shall be paid into a fund to be known as "Special Improvement Lighting District No. 331 Fund." Amounts in the Special Improvement Lighting District No. 331 Fund will be used to pay debt service on the Bonds, and for no other purpose.

7.2. Assessments for Maintenance. The special assessments for the costs and expenses of the maintenance of the Improvements and supplying electrical current therefor shall be payable in equal semiannual payments in each year. All monies derived from the collection of the assessments described in Section 6.2 above shall be paid into a fund to be known as "Special Lighting Maintenance District No. 331 Maintenance Fund." Amounts in the Special Lighting District No. 331 Maintenance Fund will be used to pay the costs and expenses of maintaining the Improvements and supplying electrical current therefor, and for no other purpose.

Section 8. Method of Financing Improvements; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed $66,000.00 to finance the costs of the Improvements and incidental costs. Principal of and interest on the Bonds will be paid out of the Special Improvement Lighting District No. 331 Fund from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in

the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 of the Act in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) Estimated Market Value of Parcels. The estimated market value of the lots, tracts or parcels in the District as of the date of adoption of this resolution, as estimated by the County Assessor for property tax purposes ranges from $12,957 to $4,284,931 and is set forth in Exhibit F. The average market value is $678,032.21 with the median being $406,800. The special assessments to be levied under Section 6.1 against each lot, tract or parcel in the District is expected to be less than the increase in estimated market value of the lot, tract or parcel as a result of the construction of the Improvements. All of the properties within the District are zoned CBD – Central Business District.

(b) Diversity of Property Ownership. There are a total of 28 lots, tracts or parcels in the District, owned by a total of 18 individual property owners. All of the parcels are developed.

(c) Comparison of Special Assessments and Property Taxes and Market Value. Based on an analysis of the aggregate amount of the proposed assessments, any outstanding assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a property in the District) against each lot, tract or parcel in the District in comparison to the estimated market value of such lot, tract or parcel after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts or parcels in the District exceeds the sum of the proposed assessments, outstanding assessments and delinquent property taxes, and is set forth in Exhibit F.

(d) Delinquencies. An analysis of the amount of delinquencies in the payment of outstanding assessments or property taxes levied against the properties in the District is set forth in Exhibit F. 0 of the 28 lots, tracts or parcels in the District to be assessed for the Improvements have delinquencies as of May 04, 2023. The historical rate of delinquencies in the District is not greater than the City as a whole.

(e) Public Benefit of the Improvements. The Improvements will result in safer and more usable streets and are of special benefit to the public and to the properties in the District.

Section 9. Reimbursement Expenditures.

9.1. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations,

Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

9.2 Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iii) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

9.3. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of $66,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

9.4. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

9.5. Reimbursement Allocations. The City Finance Director shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 10. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of a notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment for the cost and expense of making the Improvements and thereafter for maintaining the Improvements may make and file with the City Clerk until 5:00 pm, M.T., on the

expiration date of said 15-day period June 12, 2023, written protest against the proposed Improvements or against the extent or creation of the District, or both. This Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed, which regular meeting will be held on Monday, the 12th day of June, 2023, at 5:30 p.m., in the Council Chambers at 220 North 27th Street, Billings, Montana.

Section 11. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the *Yellowstone County News*, a newspaper of general circulation in the county, on May 26th and June 2nd, 2023, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm or corporation, or the agent of such person, firm, or corporation, having real property within the District listed in his, her or its name upon the last completed assessment roll for state, county, and school district taxes, at his, her or its last-known address, on the same day such notice is first published.

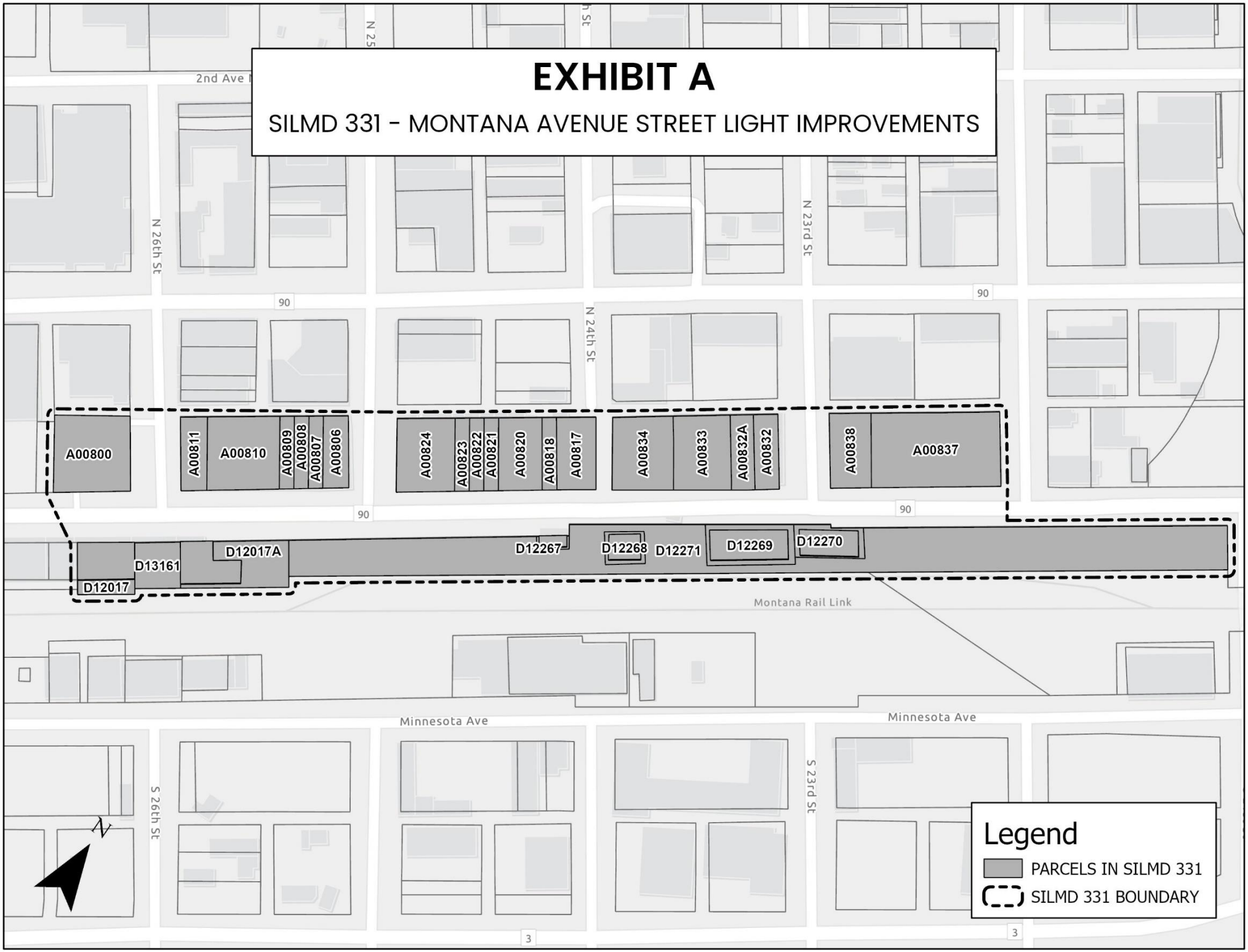
PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22nd day of May, 2023.

CITY OF BILLINGS

By:_____
William A. Cole, Mayor

ATTEST:

By _____
Denise R. Bohlman, City Clerk


EXHIBIT A
SILMD 331 - MONTANA AVENUE STREET LIGHT IMPROVEMENTS
2nd Ave
N 25th St
N 26th St
N 23rd St
N 24th St
90
A00800
A00811
A00810
A00809
A00808
A00807
A00806
A00824
A00823
A00822
A00821
A00820
A00818
A00817
A00834
A00833
A00832A
A00832
A00838
A00837
D12017
D13161
D12017A
D12267
D12268
D12271
D12269
D12270
Montana Rail Link
Minnesota Ave
S 26th St
S 23rd St
3
N
Legend
PARCELS IN SILMD 331
SILMD 331 BOUNDARY

SILMD 331 Montana Avenue Street Light Improvements

Exhibit B Property Descriptions

Prepared by: City of Billings

SILMD 331 includes all assessable lots, parcels and tracts of land abutting the south side of Montana Avenue, beginning at the west Right-Of-Way line of North 21st Street and running in a southwesterly direction along said Montana Avenue to the west Right-Of-Way line of North 22nd Street; and

Abutting the north and south sides of Montana Avenue, beginning at the west Right-Of-Way line of North 22nd Street and running in a southwesterly direction along said Montana Avenue to the east Right-Of-Way line of North 26th Street; and

Abutting the south side of Montana Avenue, beginning at the east Right-Of-Way line of North 26th Street and running in a southwesterly direction along said Montana Avenue for an approximate distance of 182 feet.

Abutting the north side of Montana Avenue, beginning at the east Right-Of-Way line of North 26th Street and running in a southwesterly direction along said Montana Avenue for an approximate distance of 223 feet.

Exempting there from all lands which are public street, road, or alley rights-of-way

EXHIBIT C

Tax ID	Owner Name		Short Legal Description	Yearly Equal Assessment Estimate for Maintenance	Equal Assessment Estimate for Improvements
A00800	UNITED STATES FEDERAL BUILDING		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 110, Lot 1 - 6, E15.21' LT 6 ALL LTS 19-24 & VAC ADJ ALLEY (FED BLDG)	$ 382.14	$ 2,357.14
A00806	COMPUTERS UNLIMITED		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 1 - 2	$ 382.14	$ 2,357.14
A00807	RPS, LLC		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 3	$ 382.14	$ 2,357.14
A00808	ANDESITE-SUMMIT LLC		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 4	$ 382.14	$ 2,357.14
A00809	KOYAMA, HARRY & SHERI		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 5	$ 382.14	$ 2,357.14
A00810	COMPUTERS UNLIMITED		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 6 - 10	$ 382.14	$ 2,357.14
A00811	MERYCO PARTNERSHIP, LLP		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 111, Lot 11 - 12	$ 382.14	$ 2,357.14
A00817	LARSON FAMILY PROPERTIES LLC		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 1, & 40'X 130' (W2 N24TH ST) ADJ VAC STREET (98)	$ 382.14	$ 2,357.14
A00818	PRISM PROPERTY LLC		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 2	$ 382.14	$ 2,357.14
A00820	COMPUTERS PARTNERSHIP		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 3 - 5, (09)	$ 382.14	$ 2,357.14
A00821	GREGORY, MICHAEL T & ALEXANDRA L		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 6	$ 382.14	$ 2,357.14
A00822	NELSON, ANDY & BERT		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 7	$ 382.14	$ 2,357.14
A00823	COMPUTERS UNLIMITED		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 8	$ 382.14	$ 2,357.14
A00824	COMPUTERS UNLIMITED		BILLINGS ORIGINAL TOWNSITE, S03, T01 S, R26 E, BLOCK 112, Lot 9 - 12, (17)	$ 382.14	$ 2,357.14
A00832	D B SQUARED LLC		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 113, Lot 1 - 2	$ 382.14	$ 2,357.14
A00832A	RUGER PROPERTIES LLC		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 113, Lot 3 - 4A, AMD (08)	$ 382.14	$ 2,357.14
A00833	COMPUTERS UNLIMITED		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 113, Lot 5A, & 6-7, 8A AMD (08)	$ 382.14	$ 2,357.14
A00834	PLAZA HOTEL PARTNERSHIP		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 113, Lot 9A - 12, (08)	$ 382.14	$ 2,357.14
A00837	BAR MW PROPERTIES LLC		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 114, Lot 1 - 9	$ 382.14	$ 2,357.14
A00838	2223 MONTANA LLC		BILLINGS ORIGINAL TOWNSITE, S33, T01 N, R26 E, BLOCK 114, Lot 10 - 12	$ 382.14	$ 2,357.14
D12017	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL LEASE #501,105 9000 SQFT AT 2608-2606 MONTANA AVE WAREHOUSE & PLATFORM (IMPS @ I-251) (13)	$ 382.14	$ 2,357.14
D12017A	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL LEASE #501059 OFFICE & DRY STORAGE WAREHOUSE @ 2526 MT AVE (IMPS AT I251A) (13)	$ 382.14	$ 2,357.14
D12267	BURLINGTON NORTHERN	E97	S03, T01 S, R26 E, MRL PARTIAL LEASE #500,500 1740 SQ FT FOR LAND UNDER RY POST OFFICE BLDG (IMPS AT I-261) (96)	$ 382.14	$ 2,357.14
D12268	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL PARTIAL LEASE #500,500 2480 SQ FT FOR LAND UNDER LUNCH ROOM BLGD (IMPS AT I-622) (96)	$ 382.14	$ 2,357.14
D12269	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL PARTIAL LEASE #500,500, 121,285, 10,740 SQ FT FOR LAND UNDER PASSENGER STATION DEPOT (LAND AT I006230)	$ 382.14	$ 2,357.14
D12270	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL PARTIAL LEASE #500,500 FOR 121,285 TOTAL, 4,800 SQ FT LAND UNDER RY SERVICE BLDG (IMPS AT I006240)	$ 382.14	$ 2,357.14
D12271	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL LEASE #500,500 121,285 SQ FT LESS 19,760 SQ FT UNDER 4 IMPS FINAL SQ FT 101,525 SQ FT (96)	$ 382.14	$ 2,357.14
D13161	MONTANA RAIL LINK	E97	S03, T01 S, R26 E, MRL LEASE #501,624 6,560 SQFT (13)	$ 382.14	$ 2,357.14
				$ 10,700.00	$ 66,000.00

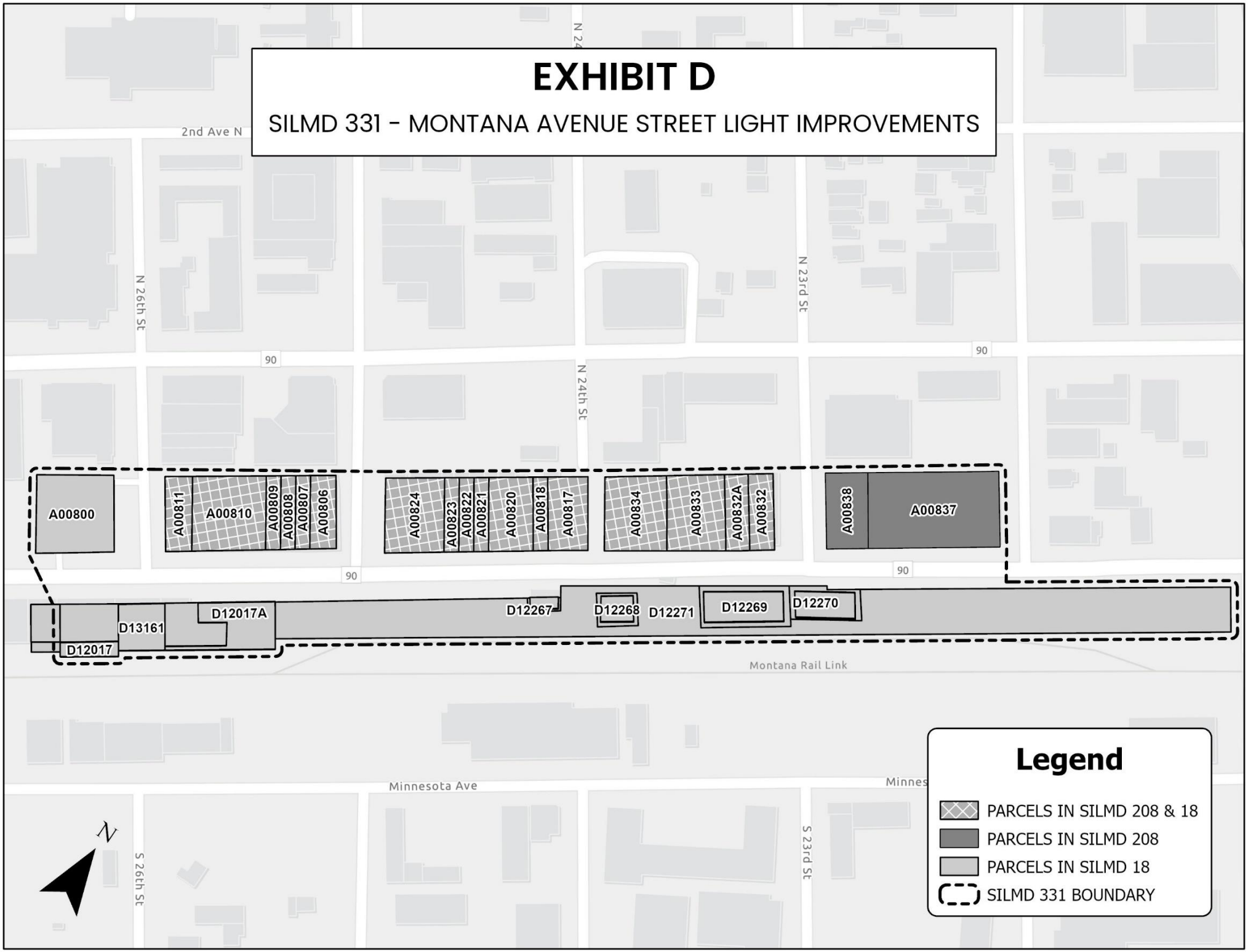
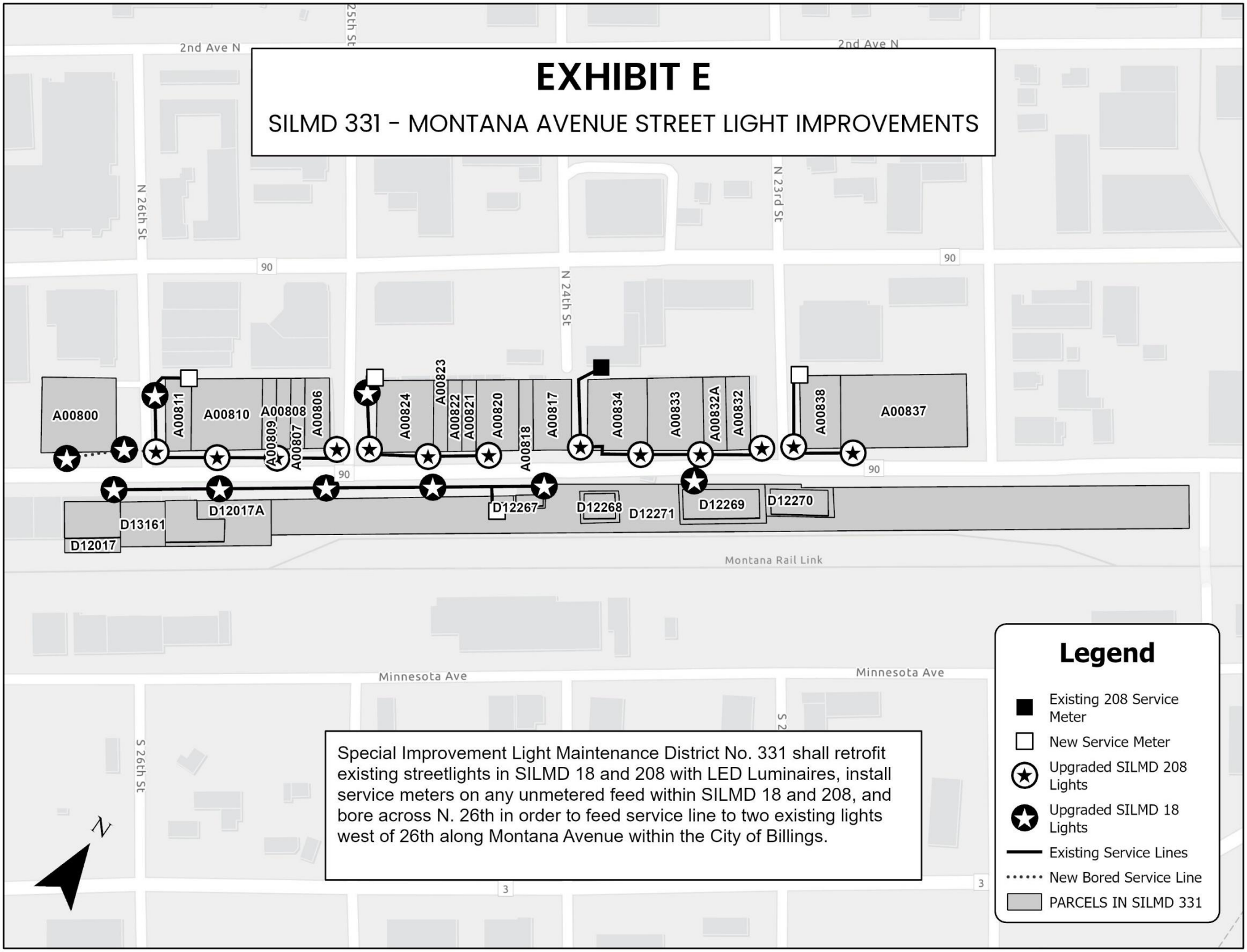

EXHIBIT D
SILMD 331 - MONTANA AVENUE STREET LIGHT IMPROVEMENTS
2nd Ave N
N 26th St
N 24th St
N 23rd St
90
A00800
A00811
A00810
A00809
A00808
A00807
A00806
A00824
A00823
A00822
A00821
A00820
A00818
A00817
A00834
A00833
A00832A
A00832
A00838
A00837
D12017
D13161
D12017A
D12267
D12268
D12271
D12269
D12270
Montana Rail Link
Minnesota Ave
S 26th St
S 23rd St
N
Legend
PARCELS IN SILMD 208 & 18
PARCELS IN SILMD 208
PARCELS IN SILMD 18
SILMD 331 BOUNDARY

EXHIBIT E

SILMD 331 - MONTANA AVENUE STREET LIGHT IMPROVEMENTS



SILMD 331 Streetlights

Exhibit F Property Market Value and Delinquency

Prepared By: City of Billings

TAX I.D. NUMBER	PREVIOUS SID #	PREVIOUS SID PAY-OFF	DELINQUENT	SILMD 331 IMPROVEMENTS ASSESSMENT	SILMD 331 CASH CONTRIBUTION	SID PAY-OFF + DELINQUENT + SILMD 331 ASSESSMENT	ESTIMATED MARKET VALUE	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
A00800				$2,357.14	$0.00	$2,357.14	$4,284,931.00	$4,287,288.14
A00806				$2,357.14	$0.00	$2,357.14	$970,700.00	$973,057.14
A00807				$2,357.14	$0.00	$2,357.14	$402,200.00	$404,557.14
A00808				$2,357.14	$0.00	$2,357.14	$428,900.00	$431,257.14
A00809				$2,357.14	$0.00	$2,357.14	$220,500.00	$222,857.14
A00810				$2,357.14	$0.00	$2,357.14	$474,800.00	$477,157.14
A00811				$2,357.14	$0.00	$2,357.14	$56,839.00	$59,196.14
A00817				$2,357.14	$0.00	$2,357.14	$2,136,400.00	$2,138,757.14
A00818				$2,357.14	$0.00	$2,357.14	$387,800.00	$390,157.14
A00820				$2,357.14	$0.00	$2,357.14	$1,144,400.00	$1,146,757.14
A00821				$2,357.14	$0.00	$2,357.14	$294,800.00	$297,157.14
A00822				$2,357.14	$0.00	$2,357.14	$335,200.00	$337,557.14
A00823				$2,357.14	$0.00	$2,357.14	$411,400.00	$413,757.14
A00824				$2,357.14	$0.00	$2,357.14	$714,000.00	$716,357.14
A00832				$2,357.14	$0.00	$2,357.14	$1,149,000.00	$1,151,357.14
A00832A				$2,357.14	$0.00	$2,357.14	$497,000.00	$499,357.14
A00833				$2,357.14	$0.00	$2,357.14	$1,091,900.00	$1,094,257.14
A00834				$2,357.14	$0.00	$2,357.14	$121,091.00	$123,448.14
A00837				$2,357.14	$0.00	$2,357.14	$956,100.00	$958,457.14
A00838				$2,357.14	$0.00	$2,357.14	$1,622,200.00	$1,624,557.14
D12017 (E97)				$2,357.14	$0.00	$2,357.14	$65,926.00	$68,283.14
D12017A (E97)				$2,357.14	$0.00	$2,357.14	$119,414.00	$121,771.14
D12267 (E97)				$2,357.14	$0.00	$2,357.14	$12,957.00	$15,314.14
D12268 (E97)				$2,357.14	$0.00	$2,357.14	$18,402.00	$20,759.14
D12269 (E97)				$2,357.14	$0.00	$2,357.14	$78,533.00	$80,890.14
D12270 (E97)				$2,357.14	$0.00	$2,357.14	$35,382.00	$37,739.14
D12271 (E97)	1405	$7,644.05		$2,357.14	$0.00	$10,001.19	$905,922.00	$915,923.19
D13161 (E97)				$2,357.14	$0.00	$2,357.14	$48,205.00	$50,562.14
AVERAGE		**$7,644.05**	**$0.00**	**$2,357.14**		**$2,630.14**	**$678,032.21**	**$680,662.36**
MEDIAN		**$7,644.05**	**$0.00**	**$2,357.14**		**$2,357.14**	**$406,800.00**	**$409,157.14**
LOW		**$7,644.05**	**$0.00**	**$2,357.14**		**$2,357.14**	**$12,957.00**	**$15,314.14**
HIGH		**$7,644.05**	**$0.00**	**$2,357.14**		**$10,001.19**	**$4,284,931.00**	**$4,287,288.14**

City Council Regular

Date:	05/22/2023
Title:	Resolution of Intent to Create SID 1423, Annafeld Subdivision, 4th Filing, Streetlights
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends that Council approve the Resolution of Intent to Create SID 1423 and set a public hearing date for June 12, 2023.

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

McCall Development Inc., the developer of Annafeld Subdivision, 4th Filing, desires to construct public improvements in the subdivision that include streetlights. McCall Development would like to complete these improvements utilizing a special improvement district, that is allowed through the recorded Subdivision Improvements Agreement for the subdivision. Annafeld Subdivision, 4th Filing, is located south of Elysian Road near Elysian School. The streetlights will be installed along each street frontage. The streetlights will be maintained by the Homeowners Association until all of Annafeld Subdivision is completed. At that point, a Special Improvement Light Maintenance District (SILMD) will be created for maintenance.

McCall Development previously constructed the streets and underground utilities (water, sewer, and storm drain) within Annafeld Subdivision, 4th Filing, totaling $2,626,290 worth of improvements. These improvements count toward the required improvements in order to meet the requirements of the City's Raw Land District Requirements (Resolution No. 05-18234). The previously constructed improvements represent approximately 83% of the total improvement costs when including street, utility, and streetlight improvements.

ALTERNATIVES

The Council may:
â€¢ Approve the Resolution of Intent to Create SID 1423 and set a public hearing for the June 12, 2023, City Council Meeting; or
â€¢ Not approve the Resolution of Intent to Create SID 1423. If not approved, the streetlight improvements will have to be constructed with a private contract.

FISCAL EFFECTS

The total estimated costs of the improvements are $538,000 which will be paid from the sale of SID bonds and assessed to the properties within the SID boundary. If the costs are greater than the estimated amount, the developer will pay the additional cost.

Attachments

SID 1423 Resolution of Intent

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No._____, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1423; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the "Resolution") was duly adopted by the City Council of the City at a meeting on May 22, 2023; that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____ _____;
voted against the same: _____ _____;
or were absent: _____.

WITNESS my hand officially this _____ day of _____, 20____.

_____
Denise Bohlman
City Clerk

RESOLUTION NO. 23-_____

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1423; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

BE IT RESOLVED by the City Council of the City of Billings, Montana (the "City"), as follows:

Section 1. Proposed Improvements; Intention to Create District. The City proposes to undertake certain local improvements within Annafeld Subdivision Fourth Filing (the "Annafeld Subdivision") as more particularly described herein (the "Improvements") to benefit certain properties located in the City as more particularly described herein. The costs of the Improvements are to be assessed as more particularly described herein. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41, 42 and 43, as amended, Special Improvement District No. 1423 (the "District") for the purpose of undertaking the Improvements and assessing the properties in the District for the costs thereof.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1423 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A list of each of the properties in the District is shown on Exhibit F hereto (which is hereby incorporated herein and made a part hereof) and each of the property owners in the District is shown on Exhibit D hereto. The Annafeld Subdivision is coterminous with the boundaries of the District.

Section 4. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit E, consists of the construction and installation of streetlights within the District.

Section 5. Engineer and Estimated Costs of the Improvements. The Engineer for the Improvements is Sanderson Stewart who has been selected by McCall Development, Inc., the owner of all of but two of the properties in the District and developer of the Annafeld Subdivision (the "Developer"), as more particularly described in Section 8(f). The Engineer has estimated that the costs of the Improvements (including engineering, design and construction administration costs) are $538,000 as more particularly described on Exhibit C hereto (which is hereby incorporated herein and made a part hereof) and such costs have been reviewed by the City's Public Works Department. Costs of the Improvements include costs of the construction and installation of the Improvements, costs for

the creation of the District, costs of funding a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"), costs associated with the sale of the Bonds (as hereinafter defined), and all other incidental costs (including engineering, design and construction administration costs).

Section 6. Property to be Assessed; Assessment Methodologies.

6.1. Property to be Assessed. The properties in the District will benefit from, and be benefited by, the Improvements and will be assessed for costs of the Improvements as specified in Sections 6 and 7. Costs of the Improvements shall be assessed against the property in the District based on the area option method described in Sections 7-12-4162 and 7-12-4323, M.C.A., as particularly applied and set forth in this Section 6.

6.2 Assessment Methodology.

(a) Area Option Method. Each property within the District will be assessed for that portion of the total costs of the Improvements that the assessable area of such property bears to the total assessable area of all properties in the District. The total assessable area of all properties to be assessed is 439,534 square feet. The costs of the Improvements to be assessed against properties in the District, per square foot of assessable area, are estimated to be $1.224.

6.3. Assessment Methodology Equitable and Consistent With Benefit. This Council hereby determines that the method of assessment and the assessment of costs of the Improvements against the properties in the District as prescribed in this Section 6 are equitable and in proportion to and not exceeding the special benefits derived from the Improvements by the properties to be assessed therefor. In addition, the Subdivision Improvements Agreement for the Annafeld Subdivision provides that the streetlight improvements will be borne by the landowners through either a private contract or the creation of a Special Improvement District.

Section 7. Payment for Improvements. Costs of the Improvements are to be paid from the proceeds of Special Improvement District Bonds (the "Bonds") in an aggregate principal amount not to exceed $538,000.00.

Section 8. Bond Financing; Pledge of Revolving Fund; Findings and Determinations. The Bonds will be repaid from the assessments for costs of the Improvements, together with interest thereon calculated pursuant to Section 7-12-4189, M.C.A., to be levied against the properties in the District. Assessments for the costs of the Improvements, together with interest thereon, shall be payable over a term not exceeding 15 years, each in equal semiannual installments as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Principal of and interest on the Bonds will be paid from such assessments.

All property owners in the District shall have the opportunity to prepay their assessments prior to sale of the Bonds. After the Bonds are issued, all property owners in the District have the right to prepay assessments as provided by law.

This Council further finds that it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the City to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize the issuance of the Bonds and the pledge of the Revolving Fund therefor, this Council has taken into consideration the following factors:

(a) Estimated Market Value of Parcels. The estimated market value of the properties in the District as of the date of adoption of this resolution, as estimated by the County Assessor, has not been established. The estimated market value of the lot that was subdivided is $81,179. The lots are mostly vacant and street and utility improvements were constructed and installed in 2022 by the Developer, as more particularly described in Section 8(f). The special assessments to be levied against the properties in the District are less than the increase in estimated value of the properties as a result of the construction of the Improvements. All of the properties in the District are zoned Planned Unit Development.

(b) Diversity of Property Ownership. There are a total of 80 properties in the District, of which two are owned by individual property owners and the rest of which are owned by the Developer. No improvements, public or private, are located on any of the properties within the District, other than the street and utility improvements, as more particularly described in Section 8(f).

(c) Comparison of Special Assessments, Property Taxes and Market Value. Based on an analysis of the aggregate amount of the proposed assessments, any outstanding assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a property in the District) against each property in the District in comparison to the estimated market value of such property after the Improvements, the City concludes that, overall, the estimated market value of the properties in the District following the completion of the Improvements will exceed the sum of the proposed assessments, outstanding assessments and delinquent property taxes, and is set forth in Exhibit F.

(d) Delinquencies. An analysis of the amount of delinquencies in the payment of outstanding assessments or property taxes levied against the properties in the District is set forth in Exhibit F, which analysis shows that of 80 properties, 0 properties were delinquent.

(e) Public Benefit of the Improvements. Street lights are being built in the public right-of-way and serve a public benefit.

(f) Other Factors. The Annafeld Subdivision is located in the southwestern part of the City, south of Elysian Road. This is one of the fastest growing areas within the City. The

Developer intends to undertake the development of a residential community, which will include a diverse mix of single family, cottage, town home and apartment living options, with approximately 1000 total residences. In 2022, the Developer installed the streets and utilities serving the properties in the Annafeld Subdivision 4th Filing. The costs of the street and utility improvements ($2,626,290.00) have been reviewed by the City's Public Works Department. The street and utility improvements are solely within the boundaries of the District and in accordance with the City's Special Improvement District Policy regarding raw land subdivisions as set forth in Resolution No. 05-18234 adopted by the Council on January 24, 2005 (the "Raw Land Policy") shall constitute On-Site Improvements (i.e., those improvements located within the boundaries of a Special Improvement District) in satisfaction of the requirement that the Developer directly pay or finance 50% or more of the costs of the On-Site Improvements in connection with the of the District and the issuance of the Bonds. The costs of the street and utility improvements, when combined with the costs of the Improvements, represent 83% of the total On-Site Improvements.

Section 9. Reimbursement Expenditures.

9.1 Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the "Regulations") require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the "small issuer" exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

9.2 Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a "de minimus" amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

9.3 Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of $538,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the

Regulations.

9.4 Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

9.5 Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 10. Public Hearing; Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 12:00 p.m., M.T., on the expiration date of said 15-day period (June 12, 2023), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 22nd day of May, 2023, at 5:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 11. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the *Yellowstone County News*, a newspaper of general circulation in Yellowstone County on May 26 and June 2, 2023, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation, with real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22nd day of May 2023.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A

LIGHTING EXHIBIT

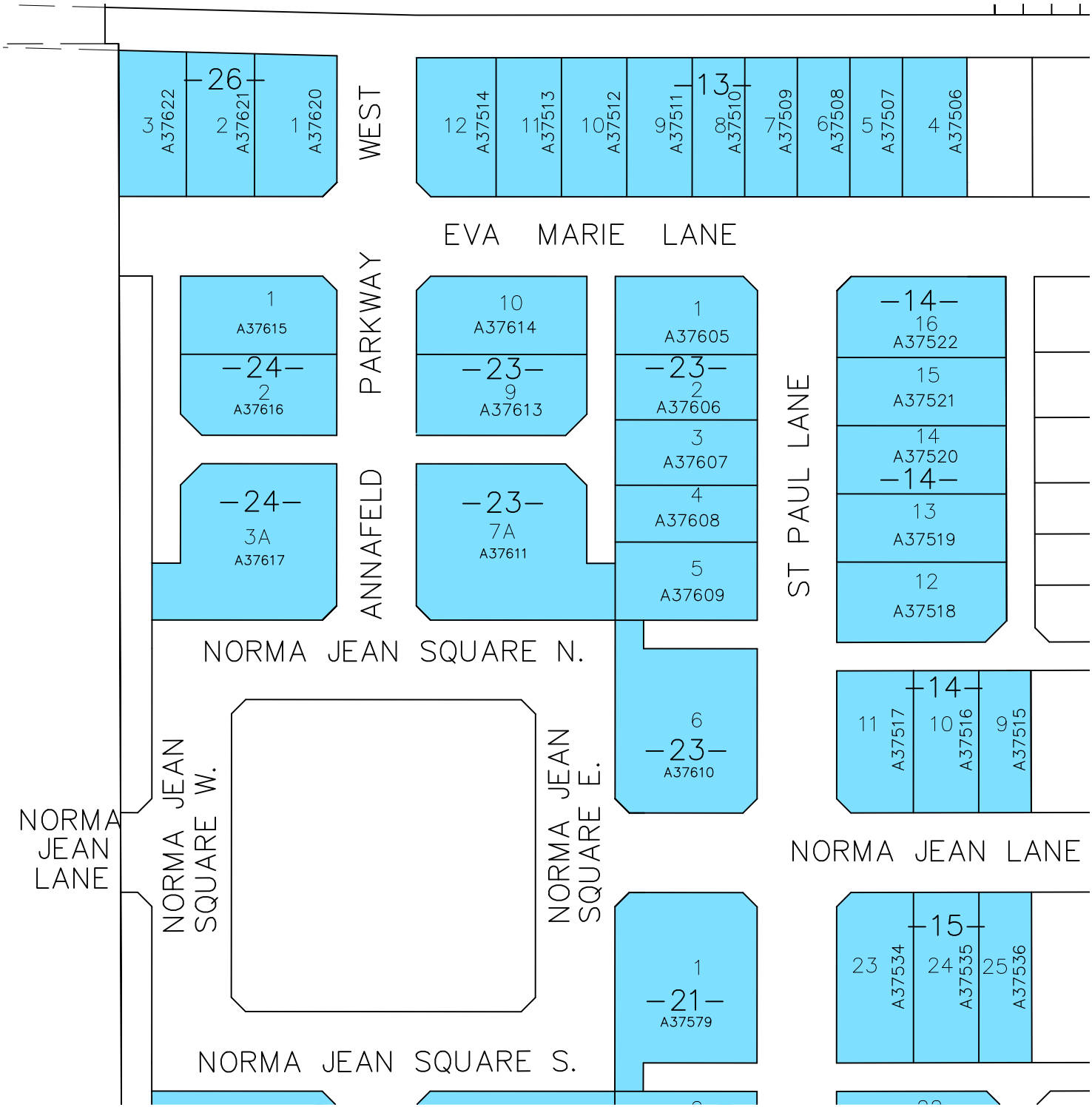
ANNAFELD SUBDIVISION, FOURTH FILING

PREPARED FOR : CITY OF BILLINGS

MARCH, 2023

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA



16001_141_LIGHTING_ EXHIBIT.DWG 16001.141 03/22/2023 BG

EXHIBIT A

LIGHTING EXHIBIT

ANNAFELD SUBDIVISION, FOURTH FILING

PREPARED FOR : CITY OF BILLINGS

MARCH, 2023

PREPARED BY : SANDERSON STEWART

BILLINGS, MONTANA



16001_141_LIGHTING_ EXHIBIT.DWG 16001.141 03/22/2023 BG

SID 1423 EXHIBIT B

SID 1423 includes Annafeld Subdivision 4th Filing Block 13, Lots 4-12, Block 14, Lots 9-16, Block 15, Lots 12-16, 18-25, Block 16, Lots 8-15, Block 21, Lots 1-16, 17A, Block 22, Lots 1A and 3-8, Block 23, Lots 1-6, 7A, 9, 10, Block 24, Lots 1-2, 3A, Block 26, Lots 1-3, Block 27, Lots 1-3.

SID 1423 Annafeld 4th Filing Parks and Streetlights

Exhibit C Engineers Estimate of Probable Cost

Prepared By: City of Billings

Item Number	Description	Quantity	Unit	Engineers Estimate	
				Unit Prices	Amount
				Dollars	Dollars
401	Mobilization/Demobilization	1	LS	$1,000.00	$1,000.00
402	Taxes, Bonds, Insurance	1	LS	$12,300.00	$12,300.00
403	Traffic Control	1	LS	$500.00	$500.00
404	1 1/2-inch PVC Conduit	5,400	LF	$19.50	$105,300.00
405	Type 1 Pull Box - Composite	41	EA	$1,040.00	$42,640.00
406	Foundation - Concrete	18	CY	$1,435.00	$25,830.00
407	Conductor - Copper - AWG6-600V	40	LF	$2.50	$100.00
408	Conductor - Copper - AWG8-600V	10,450	LF	$1.34	$14,003.00
409	Conductor - Copper - AWG10-600V	5,825	LF	$1.00	$5,825.00
410	Decorative Luminaire Standard	33	EA	$4,755.00	$156,915.00
411	High Efficacy Luminaire - LED	33	EA	$1,795.00	$59,235.00
412	Service Assembly - 200A	3	EA	$3,400.00	$10,200.00
				Sub-Total	**$433,848.00**
			Contigency (10%)		$43,384.80
			Engineering		$9,907.20
				Total	**$487,140.00**
				Finance Fee	$1,200.00
				Revolving Fund 5%	$26,900.00
				Bond Discount 2%	$10,760.00
				Issuance Costs	$12,000.00
					$538,000.00
				Total Area	439,534
				Cost per SF	$1.2240236

SID 1423 Annafeld 4th Filing Streetlights
Exhibit D Property Owner Description and Assessment
Prepared By: City of Billings

TAX ID	OWNER	OWNER	MAILING ADDRESS	CITY	STATE	ZIP CODE	Lot	Block	LOT AREA	ASSESSMENT #1 STREETLIGHT $1.224/SF
A37518	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	12	14	5346	$6,543.63
A37519	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	13	14	6626	$8,110.38
A37520	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	14	14	5721	$7,002.64
A37521	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	15	14	5714	$6,994.07
A37522	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	16	14	6726	$8,232.78
A37506	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	4	13	4464	$5,464.04
A37507	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	5	13	3630	$4,443.21
A37508	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	6	13	3628	$4,440.76
A37509	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	7	13	3626	$4,438.31
A37510	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	8	13	3625	$4,437.09
A37511	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	9	13	4504	$5,513.00
A37512	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	10	13	4502	$5,510.55
A37513	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	11	13	4500	$5,508.11
A37514	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	12	13	5425	$6,640.33
A37515	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	9	14	3685	$4,510.53
A37516	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	10	14	4600	$5,630.51
A37517	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	11	14	5346	$6,543.63
A37523	Michelle Kendall 1891 St. Paul Lane Billings, Mt 59101	Michelle Kendall	1891 St. Paul Lane	BILLINGS	MT	59101	12	15	3196	$3,911.98
A37524	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	13	15	2880	$3,525.19
A37525	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	14	15	2880	$3,525.19
A37526	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	15	15	2880	$3,525.19
A37527	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	16	15	2880	$3,525.19
A37529	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	18	15	5166	$6,323.31
A37530	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	19	15	5569	$6,816.59
A37531	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	20	15	5652	$6,918.18
A37532	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	21	15	5556	$6,800.68
A37533	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	22	15	5457	$6,679.50
A37534	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	23	15	6446	$7,890.06
A37535	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	24	15	5520	$6,756.61
A37536	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	25	15	4462	$5,461.59
A37537	Kennedy & Connor Langel 6158 Johanns Meadow Lane Billings, Mt 59101	Kennedy & Connor Langel	6158 Johanns Meadow Lane	BILLINGS	MT	59101	8	16	4503	$5,511.78
A37538	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	9	16	4488	$5,493.42
A37539	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	10	16	4600	$5,630.51
A37540	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	11	16	4600	$5,630.51
A37541	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	12	16	4600	$5,630.51
A37542	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	13	16	4600	$5,630.51
A37543	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	14	16	4800	$5,875.31
A37544	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	15	16	5651	$6,916.96
A37579	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1	21	12293	$15,046.92

A37580	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	2	21	4600	$5,630.51
A37581	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3	21	4600	$5,630.51
A37582	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	4	21	4000	$4,896.09
A37583	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	5	21	4000	$4,896.09
A37584	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	6	21	4600	$5,630.51
A37585	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	7	21	4600	$5,630.51
A37586	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	8	21	4600	$5,630.51
A37587	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	9	21	4600	$5,630.51
A37588	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	10	21	5429	$6,645.22
A37589	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	11	21	6784	$8,303.78
A37590	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	12	21	5520	$6,756.61
A37591	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	13	21	5520	$6,756.61
A37592	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	14	21	4800	$5,875.31
A37593	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	15	21	5520	$6,756.61
A37594	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	16	21	5407	$6,618.30
A37595	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	17A	21	13657	$16,716.49
A37597	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1A	22	12558	$15,371.29
A37599	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3	22	4947	$6,055.24
A37600	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	4	22	5060	$6,193.56
A37601	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	5	22	4400	$5,385.70
A37602	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	6	22	5060	$6,193.56
A37603	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	7	22	5060	$6,193.56
A37604	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	8	22	6237	$7,634.24
A37605	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1	23	5450	$6,670.93
A37606	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	2	23	4600	$5,630.51
A37607	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3	23	4600	$5,630.51
A37608	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	4	23	4000	$4,896.09
A37609	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	5	23	5500	$6,732.13
A37610	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	6	23	11863	$14,520.59
A37611	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	7A	23	13838	$16,938.04
A37613	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	9	23	6728	$8,235.23
A37614	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	10	23	6550	$8,017.35
A37615	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1	24	6000	$7,344.14
A37616	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	2	24	6158	$7,537.54
A37617	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3A	24	12738	$15,591.61
A37620	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1	26	5738	$7,023.45
A37621	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	2	26	4853	$5,940.19
A37622	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3	26	4862	$5,951.20
A37623	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	1	27	5550	$6,793.33
A37624	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	2	27	4600	$5,630.51
A37625	Mccall Development, Inc. 1536 Mullowney Lane Ste 100 Billings, Mt 59101	McCall Development, Inc.	1536 Mullowney Lane STE 100	BILLINGS	MT	59101	3	27	4000	$4,896.09
									439,534.00	$538,000

SID 1423 Annafeld Sub 4th Filing Streetlights

Exhibit E Description of Improvements

Prepared by: City of Billings

Special Improvement District No. 1423 shall construct streetlights serving Annafeld Subdivision 4th Filing within the City of Billings.

SID 1423 Annafeld 4th Filing Streetlights

Exhibit F Property Market Value and Delinquency

Prepared By: City of Billings

TAX I.D. NUMBER	PREVIOUS SID #	PREVIOUS SID PAY-OFF	DELINQUENT	SID 1423 ASSESSMENT	SID PAY-OFF + DELINQUENT + SID 1423 ASSESSMENT	ESTIMATED MARKET VALUE	ESTIMATED MARKET VALUE AFTER IMPROVEMENTS
A37518				$6,543.63	$6,543.63		$6,543.63
A37519				$8,110.38	$8,110.38		$8,110.38
A37520				$7,002.64	$7,002.64		$7,002.64
A37521				$6,994.07	$6,994.07		$6,994.07
A37522				$8,232.78	$8,232.78		$8,232.78
A37506				$5,464.04	$5,464.04		$5,464.04
A37507				$4,443.21	$4,443.21		$4,443.21
A37508				$4,440.76	$4,440.76		$4,440.76
A37509				$4,438.31	$4,438.31		$4,438.31
A37510				$4,437.09	$4,437.09		$4,437.09
A37511				$5,513.00	$5,513.00		$5,513.00
A37512				$5,510.55	$5,510.55		$5,510.55
A37513				$5,508.11	$5,508.11		$5,508.11
A37514				$6,640.33	$6,640.33		$6,640.33
A37515				$4,510.53	$4,510.53		$4,510.53
A37516				$5,630.51	$5,630.51		$5,630.51
A37517				$6,543.63	$6,543.63		$6,543.63
A37523				$3,911.98	$3,911.98		$3,911.98
A37524				$3,525.19	$3,525.19		$3,525.19
A37525				$3,525.19	$3,525.19		$3,525.19
A37526				$3,525.19	$3,525.19		$3,525.19
A37527				$3,525.19	$3,525.19		$3,525.19
A37529				$6,323.31	$6,323.31		$6,323.31
A37530				$6,816.59	$6,816.59		$6,816.59
A37531				$6,918.18	$6,918.18		$6,918.18
A37532				$6,800.68	$6,800.68		$6,800.68
A37533				$6,679.50	$6,679.50		$6,679.50
A37534				$7,890.06	$7,890.06		$7,890.06
A37535				$6,756.61	$6,756.61		$6,756.61
A37536				$5,461.59	$5,461.59		$5,461.59
A37537				$5,511.78	$5,511.78		$5,511.78
A37538				$5,493.42	$5,493.42		$5,493.42
A37539				$5,630.51	$5,630.51		$5,630.51
A37540				$5,630.51	$5,630.51		$5,630.51
A37541				$5,630.51	$5,630.51		$5,630.51
A37542				$5,630.51	$5,630.51		$5,630.51
A37543				$5,875.31	$5,875.31		$5,875.31
A37544				$6,916.96	$6,916.96		$6,916.96
A37579				$15,046.92	$15,046.92		$15,046.92
A37580				$5,630.51	$5,630.51		$5,630.51
A37581				$5,630.51	$5,630.51		$5,630.51
A37582				$4,896.09	$4,896.09		$4,896.09
A37583				$4,896.09	$4,896.09		$4,896.09
A37584				$5,630.51	$5,630.51		$5,630.51
A37585				$5,630.51	$5,630.51		$5,630.51
A37586				$5,630.51	$5,630.51		$5,630.51
A37587				$5,630.51	$5,630.51		$5,630.51
A37588				$6,645.22	$6,645.22		$6,645.22
A37589				$8,303.78	$8,303.78		$8,303.78
A37590				$6,756.61	$6,756.61		$6,756.61
A37591				$6,756.61	$6,756.61		$6,756.61
A37592				$5,875.31	$5,875.31		$5,875.31
A37593				$6,756.61	$6,756.61		$6,756.61
A37594				$6,618.30	$6,618.30		$6,618.30
A37595				$16,716.49	$16,716.49		$16,716.49
A37597				$15,371.29	$15,371.29		$15,371.29
A37599				$6,055.24	$6,055.24		$6,055.24
A37600				$6,193.56	$6,193.56		$6,193.56
A37601				$5,385.70	$5,385.70		$5,385.70
A37602				$6,193.56	$6,193.56		$6,193.56
A37603				$6,193.56	$6,193.56		$6,193.56
A37604				$7,634.24	$7,634.24		$7,634.24
A37605				$6,670.93	$6,670.93		$6,670.93
A37606				$5,630.51	$5,630.51		$5,630.51
A37607				$5,630.51	$5,630.51		$5,630.51
A37608				$4,896.09	$4,896.09		$4,896.09
A37609				$6,732.13	$6,732.13		$6,732.13
A37610				$14,520.59	$14,520.59		$14,520.59
A37611				$16,938.04	$16,938.04		$16,938.04
A37613				$8,235.23	$8,235.23		$8,235.23
A37614				$8,017.35	$8,017.35		$8,017.35
A37615				$7,344.14	$7,344.14		$7,344.14
A37616				$7,537.54	$7,537.54		$7,537.54
A37617				$15,591.61	$15,591.61		$15,591.61
A37620				$7,023.45	$7,023.45		$7,023.45
A37621				$5,940.19	$5,940.19		$5,940.19
A37622				$5,951.20	$5,951.20		$5,951.20
A37623				$6,793.33	$6,793.33		$6,793.33
A37624				$5,630.51	$5,630.51		$5,630.51
A37625				$4,896.09	$4,896.09		$4,896.09
AVERAGE		**#DIV/0!**	**$0.00**	**$6,725.00**	**$6,725.00**	**#DIV/0!**	**$6,725.00**
MEDIAN		**#NUM!**	**$0.00**	**$6,003.22**	**$6,003.22**	**#NUM!**	**$6,003.22**
LOW		**$0.00**	**$0.00**	**$3,525.19**	**$3,525.19**	**$0.00**	**$3,525.19**
HIGH		**$0.00**	**$0.00**	**$16,938.04**	**$16,938.04**	**$0.00**	**$16,938.04**

City Council Regular

Date:	05/22/2023
Title:	Resolution to Extend Energy and Conservation Commission
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends approval of the Resolution to extend the Energy and Conservation Commission to a date of December 31, 2025, or when Commission members determine by majority vote that their work has been completed, whichever comes first.

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

The City Council passed and adopted Resolution 19-10794 creating an Energy and Conservation Commission (ECC). The duties of the ECC per Resolution 19-10794 are creating and implementing a comprehensive energy and conservation plan that includes: a) An inventory of water and wastewater treatment, waste removal and disposal, pollution and energy efficiency of City-owned-and managed facilities, transportation and equipment; and b) Specific goals and strategies to reduce energy consumption, pollution and waste by measurable amounts; and c) A timetable for accomplishing the outlined goals and strategies; and report the findings of the ECC to City Council on a semi-annual basis. To date the commission has completed a) and b) but has yet to complete c) and finalize the comprehensive energy and conservation plan.

Resolution 19-10794 also states that the ECC will expire at the end of 4 years which began on July 1, 2019. The ECC will expire on June 30, 2023, if action is not taken to extend the ECC.

ALTERNATIVES

City Council may:

- Approve the resolution to extend the ECC; or,
- Not approve the resolution. Not approving the resolution will cause the ECC to expire on June 30, 2023 with the duties of Resolution 19-10794 not fully completed.

FISCAL EFFECTS

There are no fiscal effects to extend the ECC date. The ECC is a volunteer commission.

Attachments

Resolution to Extend ECC
RES 19-10794

RESOLUTION 23-_____

A RESOLUTION EXTENDING THE DURATION OF A COMMISSION ON ENERGY AND CONSERVATION

WHEREAS, the City Council passed and adopted Resolution 19-10794 (Resolution) creating a Commission on Energy and Conservation (Energy and Conservation Commission) (ECC); and

WHEREAS, the duties of the ECC per the Resolution are creating and implementing a comprehensive energy conservation plan that includes:

7a. An inventory of water and wastewater treatment, waste removal and disposal, pollution and energy efficiency of City-owned-and managed facilities, transportation and equipment; and

7b. Specific goals and strategies to reduce energy consumption, pollution and waste by measurable amounts; and

7c. A timetable for accomplishing the outlined goals and strategies; and report the findings of the Commission to City Council on a semi-annual basis; and

WHEREAS, the Commission has completed duties 7a and 7b above to date but has yet to complete 7c and finalize the comprehensive energy conservation plan; and

WHEREAS, the Resolution indicates the Commission shall expire at the end of four (4) years or when the Commission members determine by majority vote that their work has been completed, whichever comes first; and

WHEREAS, the Resolution indicates the Commission shall consist of seven citizen members, and citizens shall apply to serve on the Commission and must have experience and a demonstrated interest in the fields of energy or conservation, and members will serve four-year terms beginning on July 1, 2019, expiring on June 30, 2023, when the Commission ends; and

WHEREAS, the Commission has undertaken the process of creating and implementing a comprehensive energy plan, and for the purposes of developing specific goals and strategies conducted extensive research on City projects and metrics in order to submit an application for certification to the LEED® for Cities (Leadership in Energy & Environmental Design), resulting in the City of Billings receiving a LEED® for Cities Gold Certification as the first city in Montana; and

WHEREAS, energy technology and potential national funding to help cities identify new energy and water conservation, alternate fuels, transportation, energy sources, and innovations are evolving and the City may benefit from ongoing citizen advisory input in these areas; and

WHEREAS, when the existing Commission and citizen members terms end June 30, 2023, this will eliminate any benefits from citizen advisory input on LEED for Cities, evolving energy technology, ways the City can manage resources effectively to reduce cost, identify potential funding sources to help with these efforts, goals and strategies; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. EXTENSION. The Commission on Energy and Conservation is allowed to continue for an additional two years, with the Commission ending on December 31, 2025, or Commission members determine by majority vote that their work has been completed, whichever comes first.
2. APPLICATION PROCESS. Citizen members shall apply to serve on the Commission and must have experience and a demonstrated interest in the fields of energy or conservation. Existing Commission members shall have the option to serve a second term as defined in the City Code and standard bylaws for the City commissions and boards.
3. APPOINTMENT OF TERMS. Each member shall be limited to two (2) consecutive four (4) year terms per Section 2-505 of the BMCC. However, when the Commission ends, members' terms end, even if this is before four (4) year terms have expired.
4. ALLOCATION OF STAFF TIME. City staff may be allocated to coordinate the City's ongoing and future energy and conservation efforts, including but not limited to, Commission facilitation, internal and external communications, and administrative duties.
5. COMMISSION ORGANIZATION. The Commission will continue to operate under the existing bylaws adopted that provide for meeting schedules, officers and their election, and other appropriate conditions for the conduct of its members.
6. DUTIES OF THE COMMISSION. Members will undertake and oversee the continued process of creating and implementing a comprehensive energy and conservation plan that includes:

   a. An inventory of water and wastewater treatment, waste removal and disposal, pollution and energy efficiency of City-owned-and-managed facilities, transportation and equipment; and

   b. Specific goals and strategies to reduce energy consumption, pollution and waste by measurable amounts; and

   c. A timetable for accomplishing the outlined goals and strategies; and report the findings of the Commission to City Council. on a semi-annual basis.

7. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the _____ day of _____, 2023.

CITY OF BILLINGS

By: _____
William A. Cole, Mayor

ATTEST:

By: _____
Denise R. Bohlman, City Clerk

RESOLUTION 19-10794

A RESOLUTION ESTABLISHING A COMMISSION ON ENERGY AND CONSERVATION

WHEREAS, the Billings City Council's Strategic Plan for Fiscal Years 2015-2019 specifies stewardship as a value, which includes planning and managing resources effectively, responsibly and efficiently; and

WHEREAS, the Mayor has proposed and the City Council has approved the establishment of a Commission on Energy and Conservation to coordinate the City of Billings' current policies and practices regarding energy consumption and resource conservation, to make recommendations to the City Council and City Administrator for future action; and

WHEREAS, the purpose of the Commission will be to consider ways to conserve energy including areas where the City can reduce the amount of money it spends on energy and ways to limit the City's impact on the environment; and

WHEREAS, the Commission may also recommend additional areas where City government could assist citizens in minimizing pollution and energy consumption; and

WHEREAS, the Commission will be responsible for conducting an inventory of water and wastewater consumption, waste removal and disposal, pollution and energy efficiency of City-owned and City-managed facilities, vehicles and equipment; and

WHEREAS, the cost of implementing energy conservation strategies will always be a consideration but should not necessarily limit the discussion, which could include water conservation, recycling, alternate fuels, alternate transportation, alternate energy sources, building and road construction, etc.; and

WHEREAS, the Commission shall consist of seven citizen members to be appointed by the Mayor and confirmed by the City Council; and

WHEREAS, the Commission may also include up to three ex-officio representatives of City departments, to be appointed by the Mayor and confirmed by the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. CREATION. There is hereby created the Commission on Energy and Conservation.

2. DURATION. The Commission shall expire at the end of four (4) years or when the Commission members determine by majority vote that their work has been completed, whichever comes first.

3. APPLICATION PROCESS. Citizen members shall apply to serve on the Commission and must have experience and a demonstrated interest in the fields of energy or conservation.

4. APPOINTMENT TERMS. All citizen members shall be appointed to four-year terms with all terms beginning on July 1, 2019.

5. ALLOCATION OF STAFF TIME. City staff may be allocated to coordinate the City's ongoing and future energy conservation efforts, including but not limited to, Commission facilitation, internal and external communications, and administrative duties.

6. COMMISSION ORGANIZATION. The Commission, upon creation, shall adopt bylaws providing for meeting schedules, officers and their election, and other appropriate conditions for the conduct of its members.

7. DUTIES OF THE COMMISSION. Members will undertake and oversee the process of creating and implementing a comprehensive energy conservation plan that includes:

a. An inventory of water and wastewater treatment, waste removal and disposal, pollution and energy efficiency of City-owned-and-managed facilities, transportation and equipment; and

b. Specific goals and strategies to reduce energy consumption, pollution and waste by measurable amounts; and

c. A timetable for accomplishing the outlined goals and strategies; and report the findings of the Commission to City Council on a semi-annual basis.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, on the 13th day of May, 2019.

CITY OF BILLINGS

By: William A. Cole
William A. Cole, Mayor

ATTEST:

SEAL
CITY OF BILLINGS
YELLOWSTONE COUNTY, MONTANA

By: Denise R. Bohlman
Denise R. Bohlman, City Clerk

City Council Regular

Date:	05/22/2023
Title:	Resolution Notifying Election Administrator of Mail Ballot
Presented by:	Chris Kukulski, City Administrator
Department:	City Hall Administration
Presentation:	No
Legal Review	Yes

RECOMMENDATION

Staff recommends that the City Council approve the attached Resolution requesting a mail ballot election for the 2023 municipal elections and the City's commitment to fund the return postage costs.

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

Municipal elections are held every two years on odd numbered years, therefore, 2023 is a municipal election year. The Primary election date for this election cycle is September 12, 2023, and the General election date is November 7, 2023. Pursuant to Montana Code Annotated (MCA) Section 13-19-104, a municipality may conduct a mail ballot election in coordination with the County Election Administrator. Pursuant to Section 13-19-202, MCA, a municipality may request the County Election Administrator to plan and conduct a mail ballot election through a Resolution approved by the governing body. Section 13-19-202(2), MCA, requires that this request must be made no later than 70 days before the election. The final decision on conducting a mail ballot election is within the sole discretion of the County Election Administrator under Section13-19-202(3), MCA. However, according to our County Election Administrator, K. V. "Ginger" Aldrich, local mail ballot elections historically have improved voter participation and have been less costly to conduct than traditional polling place elections. The Resolution attached to this memo requests the County Election Administrator to study and respond back to the Mayor and City Council concerning whether the mail ballot election is economically and administratively feasible as provided in Section13-19-202(2), MCA. The Election Administrator is required by Section 13-19-202(4), MCA, to respond back to the governing body with this information within five (5) days after receiving the Resolution. If the Election Administrator approves of a mail ballot, the Election Administrator shall prepare a written plan for conducting the mail ballot as required by Section 13-16-205, MCA.

ALTERNATIVES

City Council may:

- Approve the attached Resolution requesting the County Election Administrator to consider a mail ballot election; or,
- Disapprove the Resolution requesting a mail ballot election and the City will be responsible the expenses of a polling place election.

FISCAL EFFECTS

As reported by Yellowstone County Election Administrator, K. V. "Ginger" Aldrich, mail ballot elections result in greater voter participation than traditional polling place elections and are less costly for the municipality to conduct. Ms. Aldrich estimated that using the current number of registered voters as a reference, the cost of the 2023 mail ballot election will be approximately $105,000 for a Primary election, if needed, compared to the costs of a Primary election. For the General election, the costs would be the same. The FY2024 budget will need to be increased from $120,000 to $210,000 to cover the cost of both elections. If there is no Primary election, the budget will be adequate.

Attachments

DRAFT Resolution

RESOLUTION 23-

A RESOLUTION OF THE BILLINGS CITY COUNCIL NOTIFYING THE YELLOWSTONE COUNTY ELECTION ADMINISTRATOR OF THE CITY'S DESIRE TO CONDUCT THE 2023 CITY PRIMARY (IF HELD) AND THE 2023 GENERAL ELECTIONS BY MAIL BALLOT IN ACCORDANCE WITH SECTION 13-19-202, MONTANA CODE ANNOTATED

WHEREAS, voter turnout in Billings municipal elections has historically been low; and

WHEREAS, Montana law provides a method for conducting mail ballot elections for local elections; and

WHEREAS, mail ballot elections statistically increase voter turnout in elections; and

WHEREAS, the Yellowstone County Election Administrator, K. V. "Ginger" Aldrich, informed the City Council that the costs of conducting a mail ballot area always going to be less than the costs of conducting a polling place election; and

WHEREAS, mail ballot elections remove barriers that keep people from getting to the polls, give people more time to study candidates and issues, and has built-in safeguards that increase the integrity of the election process; and

WHEREAS, the City may hold a Primary Election on September 12, 2023, as required by Section 13-1-104(2), MCA; and

WHEREAS, Section 13-14-115(2), MCA, provides:

(a) The election administrator of the political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

i. The number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

ii. The number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) The election administrator may determine that a primary election for a nonpartisan county office need not be held if fewer than three candidates have filed for that office.

(c) If the election administrator determines that a primary election be held pursuant to subsection (2)(a) or (2)(b), the election administrator shall conduct the primary election only for the nonpartisan offices that have a sufficient number of candidates that have filed to be elected to that office.

(d) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), (2)(b) or (2)(c) for a nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office; and

WHEREAS, Section 13-14-115(3), MCA, states a governing body may require that a primary election be held if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held; and

WHEREAS, the City of Billings will hold a General Election on November 7, 2023, as required by Section 13-1-104(3), MCA; and

WHEREAS, pursuant to Section 13-19-104, MCA, such elections can be conducted by a mail ballot election and the Yellowstone County Election Administrator has determined that a mail ballot election conducted in accordance with the provisions of Title 13, Chapter 19, Parts 1-3, MCA, is in the best interests of the City and the electors thereof, and pursuant to Section 13-19-202, MCA, the City of Billings may notify the Yellowstone County Election Administrator of its intent to conduct a mail ballot election; and

WHEREAS, the Election Administrator shall prepare a written plan, including a timetable, for the conduct of the elections and shall submit it to the Secretary of State at least 60 days prior to the date set for the election in accordance with Section 13-19-205, MCA; and

WHEREAS, pursuant to Section 13-1-302, MCA, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

WHEREAS, the Office of the County Election Administrator will serve as the place of deposit for ballots within the City limits. Electors who wish to mark their ballot in-person may do so at the Office of the County Election Administrator and deposit their ballot with the election officials at that location; and

WHEREAS, the Election Administrator will have an ADA accessible voter interface device available for disabled electors to mark their ballot independently, privately, and securely at the Office of the County Election Administrator; and

WHEREAS, for any election conducted by mail, ballots must be mailed no sooner than the 20th day and no later than the 15th day before Election Day and all ballots must be mailed the same day in accordance with Section 13-19-207, MCA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, that the City Council of the City of Billings hereby notifies the Yellowstone County Election Administrator of the City's desire to conduct the 2023 City Primary (if held) and the 2023 General Election by mail ballot in accordance with Section 13-19-202, MCA; and

BE IT FURTHER RESOLVED THAT, except as provided in Section 13-19-204, MCA, the decision to conduct an election under the provisions of Section 13-19-202, MCA, is within the sole discretion of the Election Administrator; and

BE IT FURTHER RESOLVED THAT, the City Clerk is hereby directed to forward a certified copy of this resolution to the Yellowstone County Election Administrator in accordance with the provisions of Section 13-19-202, MCA; and

DRAFT

BE IT FURTHER RESOLVED THAT, within five (5) days of receiving this request, the Election Administrator shall respond to the Billings City Clerk in writing stating that this request is either granted or denied for reasons specified. If granted, the Election Administrator shall prepare a plan as provided in Section 13-19-205, MCA; and

APPROVED AND PASSED by the City Council of the City of Billings this 22nd day of May, 2023.

CITY OF BILLINGS

By: _____
William A. Cole, Mayor

ATTEST:

By: _____
Denise R. Bohlman, City Clerk

DRAFT

City Council Regular

Date:	05/22/2023
Title:	Third/Final Reading - Ordinance amending BMCC section 18-204
Presented by:	Gina Dahl
Department:	Legal
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends Council approve third and final reading of the ordinance amending section 18-204 of Billings Montana City Code prohibiting weapons and firearms in city buildings.

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

Montana is an "open carry" state and there are no state laws restricting or regulating open carry. Anyone may openly carry anywhere except within school buildings as prohibited by local school districts (MCA 45-8-361) and within a publicly owned and occupied building as prohibited by the local government (MCA 45-8-351).

SB 357 in 2019 directed LR130 be placed on the ballot. LR 130, which became effective on January 1, 2021, limited local government's ability to prevent or regulate unpermitted concealed weapons to only an occupied building under its jurisdiction.

HB 102, passed in the 2021 session and fully effective as of June 1, 2021, further limited local governments' ability to restrict both concealed and permitted concealed weapons. The legislation generally allows unpermitted concealed carry to any person who is eligible to possess a firearm under state or federal law anywhere in the state, restricted local governments' authority over permitted concealed weapons carriers, and provided limited exceptions to both.

HB 102 removed the existing list of people/places restricted from conceal carry and replaced with a new provision allowing persons with a permit to conceal carry anywhere in Montana except:

- detention facilities,
- federally owned buildings,
- school buildings,
- within a courtroom or an area of a courthouse in use by court personnel (by order of the judge), or
- on private property at the discretion of the owner or possessor (45- 8-328, MCA.)

Three limitations remain on unpermitted concealed carry:

1. A person must still undergo the federal background check and waiting period (45-8-330, MCA)
2. If the local government has restricted unpermitted concealed carry in publicly owned and occupied buildings within its jurisdiction, they cannot conceal carry in those facilities (45-8-351, MCA)
3. A person cannot conceal carry in portions of a building used for state or local government offices. State law still prohibits unpermitted concealed carry in those locations (45-8-328(a), MCA)

As a result of the legislation (LR-130, which was effective January 1, 2021), local governments may no longer:

- Restrict any carrying of firearms at public assemblies
- Restrict any carrying of firearms at parks
- Restrict any carrying of firearms on school grounds
- Restrict any carrying of firearms in public buildings that are not publicly owned and occupied.
- Restrict permitted concealed carry of firearms in publicly owned and occupied buildings

Council held a public hearing on March 27, 2023, and approved first reading of the ordinance amending BMCC section 18-204. Second reading of the ordinance was scheduled on April 10, 2023, and Council voted to postpone second reading to consider additional amendments sought by Councilmember Neese. Council directed the matter to the Council Operations Committee, which met on April 20, 2023. The Committee agreed to forward the following changes to the proposed ordinance:

1. Several recitals were added to the ordinance explaining the constitutional rights of individuals and the statutory authority and limitations of local governments.

2. Several definitions were added including:

    - "Building"
    - "City building" (instead of "city facility")
    - "Concealed weapon"
    - "Permitted concealed weapon"
    - "Unconcealed weapon"
    - "Unpermitted concealed weapon"

3. The prohibitions listed under subsection (b) were re-formatted into further subsections to provide clarity.
4. The subsection referring to "signage" was deleted.

BMCC section 2-233 currently requires that "when a prior ordinance or code section is amended, all new matter which is proposed to be enacted shall be underlined and all matter which is proposed to be omitted shall be set forth and structured in such manner as to remain legible." Therefore, the original version of 18-204 is attached as well as a red-lined version of the proposed ordinance amendment as recommended by the Council Operations Committee. The version presented on second reading as amended by the Council Operations Committee was approved on May 8, 2023.

STAKEHOLDERS
City staff, city council members, and all members of the public using city facilities.

ALTERNATIVES
City Council may:

- Approve;
- Amend; or,
- Not Approve

If Council does not approve the amendment, section 18-204 will not comport with state law regarding permitted concealed firearms.

FISCAL EFFECTS
There are no significant fiscal effects as a result of this amendment to city code.

SUMMARY
The City may restrict unconcealed/open carry and unpermitted concealed carry in publicly owned and occupied buildings within the City. The City may continue to restrict permitted concealed carry in certain areas of a public building or in courtrooms, detention facilities, etc.

Attachments

Current version of BMCC 18-204
Proposed Ordinance amending 18-204 - redlined
Proposed Ordinance amending 18-204 - clean copy

Sec. 18-204. Prohibiting weapons, firearms and explosives at city council proceedings.

(a) *Statement of authority and purpose.*

(1) Section 45-8-351, MCA authorizes cities to prevent and suppress the carrying of concealed or unconcealed weapons to public assemblies under its jurisdiction;

(2) Section 45-8-328 (1) (a), MCA prohibits the carrying of concealed weapons with or without a permit in any building owned or leased by a local government;

(3) Section 45-8-333, MCA prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and

(4) The security of city council proceedings and the safety of its participants are of paramount concern.

(b) *Definitions.*

(1) *Council proceedings* means all regularly scheduled meetings of the Billings City Council, all specially-called meetings of the city council and all agenda meetings of the city council wherever such meetings may be held.

(2) *Destructive device* means:

a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;

b. A bomb, grenade, explosive missile or similar device or a launching device therefore;

c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;

d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(3) *Firearm* means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer or any destructive device.

(4) *Law enforcement personnel means:*

a. Any sworn peace officer of the City of Billings;

b. Any sworn peace officer of the State of Montana;

c. Any officer of the United States Government authorized to carry a concealed weapon;

d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;

e. A person summoned to the aid of any of the persons named in subsections a. through d.;

f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;

g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;

h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(5) *Weapon* means a dirk, dagger, pistol, revolver, rifle, shotgun, firearm, slingshot, sword, cane, billy, knuckles made of any metal or hard substance, razor (not including a safety razor) or other deadly weapon or destructive device.

(c) *Prohibition of weapons, firearms, and destructive devices at city council meetings.* The carrying or possession of weapons, firearms or destructive devices at Billings city council proceedings by any person except law enforcement personnel is prohibited.

(d) *Signing.* Suitable signs giving notice that weapons, firearms and destructive devices are prohibited at city council proceedings will be posted in appropriate areas.

(e) *Penalties.* A person convicted of carrying or possessing weapons, firearms or destructive devices at city council proceedings shall be fined not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six (6) months or both.

(Ord. No. 98-5068, § 1, 9-28-98)

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE AMENDED BY REVISING SECTION 18-204

WHEREAS, the Montana Constitution, Article II, Section 12, declares the "right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons"; and

WHEREAS, the Montana legislature has prohibited local government units with self-government powers to exercise any power that applies to or affects the right to keep or bear arms in MCA 7-1-111(9); and

WHEREAS, the Montana legislature has expressly stated the policy of the state that the citizens of the state should be aware of, understand, and comply with any restrictions on the right to keep or bear arms that the people have reserved to themselves in Article II, section 12, of the Montana constitution, and that to minimize confusion the legislature withholds from local governments the power to restrict or regulate the possession of firearms in MCA 45-8-310; and

WHEREAS, the Montana legislature has created in MCA 45-8-328 a criminal offense for a person, other than a person issued a permit pursuant to MCA 45-8-321 or a person recognized pursuant to MCA 45-8-329, to carry a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in portions of a building used for state or local government offices and related areas in the building that have been restricted; and

WHEREAS, the Montana legislature has provided that a person with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state with limited exceptions provided in MCA 45-8-356; and

WHEREAS, the Montana legislature has, however, expressly provided that a city or local government unit has the power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction in MCA 45-8-351.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Section 18-204 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

Sec. 18-204. - Prohibiting weapons, firearms and explosives at city ~~council proceedings~~buildings.

~~*Statement of authority and purpose.*~~

~~Section 45-8-351, MCA authorizes cities to prevent and suppress the carrying of concealed or unconcealed weapons to public assemblies under its jurisdiction;~~

~~Section 45-8-328 (1) (a), MCA prohibits the carrying of concealed weapons with or without a permit in any building owned or leased by a local government;~~

~~Section 45-8-333, MCA prohibits the possession of explosives where such possession intimidates, terrifies or endangers another human being; and~~

~~The security of city council proceedings and the safety of its participants are of paramount concern. The city council proceedings are conducted in the City of Billings Municipal Court Courtroom.~~

(a) *Definitions.*

(1) ~~*Council proceedings* means all regularly scheduled meetings of the Billings City Council, all specially-called meetings of the city council and all agenda meetings of the city council wherever such meetings may be held.~~*Building* means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property and any part or parts of the foregoing as provided in MCA 50-60-101.

(2) *City building* is any city-owned and occupied building under the jurisdiction of the city where a governmental use, function, public service, or public event occurs or is held. A city building includes adjacent facilities related to the building, including exterior entrance and exit areas serving the building.

The use of a city building by city employees or members of the public, even if for limited periods of time, is considered occupation of the building for government purposes.

(3) *Concealed weapon* means a firearm that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon as provided in MCA 45-8-315 or as otherwise determined to be concealed in accordance with Montana law.

a. *Permitted concealed weapon* means a concealed weapon for which the person carrying the weapon has a permit issued pursuant to MCA 45-8-321 or is a person recognized pursuant to MCA 45-8-329.

b. *Unpermitted concealed weapon* means a concealed weapon for which the person carrying the weapon does not have a permit issued pursuant to MCA 45-8-321 nor recognized pursuant to MCA 45-8-329.

~~(1)~~(4) *Destructive device* means:

a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;

b. A bomb, grenade, explosive missile or similar device or a launching device therefore;

c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;

d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

~~(2)~~(5) *Firearm* means any weapon~~,~~ ~~(~~including a starter gun~~),~~ which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer ~~or any destructive device~~. "Firearm" includes, but is not limited to, a pistol, revolver, rifle, shotgun or machine gun as defined by MCA 45-8-302.

~~(3)~~(6) *Law enforcement personnel means:*

a. Any sworn peace officer of the City of Billings;

b. Any sworn peace officer of the State of Montana;

c. Any officer of the United States Government authorized to carry a concealed weapon;

d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;

e. A person summoned to the aid of any of the persons named in subsections a. through d.;

f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;

g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;

h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(7) *Other w~~W~~eapon* means a knife with a blade four or more inches long, dirk, dagger, ~~pistol, revolver, rifle, shotgun, firearm,~~ slingshot, sword, cane, billy, straight razor (not including a safety razor), throwing star, nun-chucks/nun-chuks, brass or metal knuckles ~~made of any metal or hard substance, razor, (not including a safety razor)~~ or other deadly weapon or "destructive device" as defined in MCA 45-8-332.

(8) *Unconcealed weapon* means a firearm that is not covered by the clothing or wearing apparel of the person carrying or bearing the weapon and is not otherwise considered to be concealed under Montana law. This is also known as "open carry".

(b) *Prohibition of ~~weapons,~~ firearms, other weapons, and destructive devices at city ~~council meetings~~buildings*.

(1) ~~The carrying or possession of weapons,~~Carrying an unconcealed weapon/firearm ~~–~~("open carry")~~firearms~~ by any person in a city building ~~or destructive devices at Billings city council proceedings by any person except law enforcement personnel~~ is prohibited.

(2) The possession of an unpermitted concealed firearm by any person in a city building is prohibited.

~~*(1)*~~*(3)* ~~-~~A person with a valid permit to carry a concealed firearm issued pursuant to MCA 45-8-321, or recognized pursuant to MCA 45-8-329, is prohibited from carrying a concealed firearm in the following restricted areas of city buildings as set forth in MCA 45-8-356:

i. a municipal courtroom in use by the court,
ii. other area in use by municipal court personnel pursuant to a court order,
iii. secure areas of a law enforcement facility owned and operated by the city, or
~~ii.~~iv. areas at or beyond a security screening checkpoint regulated by the Transportation Security Administration in a publicly owned, commercial airport.

(4) The possession of other weapons and destructive devices by any person in a city building is prohibited (open or concealed carry).

(5) Subsections (1) through (4) above do not apply to law enforcement personnel.

(c) *S~~creening.~~creening.* Screening for firearms and other weapons at city buildings is permissible. The city administrator may determine the circumstances and locations where screening is required and may establish standards for such screening~~*igning.* Suitable signs giving notice that weapons, firearms and destructive devices are prohibited at city council proceedings will be posted in appropriate areas~~.

The city may, in the discretion of its employees or officials acting within their official capacity, deny entrance into a city building to a person who violates or attempts to violate this Article.

The city may require a person to present proof of a valid permit to carry a concealed firearm in a city building. Refusing to provide a city employee or official proof of a valid permit to carry a concealed firearm is the basis for denial of entry to the city building.

(d) *Penalties.* A person convicted of violating this Article shall be fined not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six (6) months or both.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

***Section 3*. REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

***Section 4*. 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 the _____ day of _____, 2023.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2023.

CITY OF BILLINGS

BY:_____
William A. Cole, Mayor

Attest:

BY:_____
Denise R. Bohlman, City Clerk

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE AMENDED BY REVISING SECTION 18-204

WHEREAS, the Montana Constitution, Article II, Section 12, declares the "right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons"; and

WHEREAS, the Montana legislature has prohibited local government units with self-government powers to exercise any power that applies to or affects the right to keep or bear arms in MCA 7-1-111(9); and

WHEREAS, the Montana legislature has expressly stated the policy of the state that the citizens of the state should be aware of, understand, and comply with any restrictions on the right to keep or bear arms that the people have reserved to themselves in Article II, section 12, of the Montana constitution, and that to minimize confusion the legislature withholds from local governments the power to restrict or regulate the possession of firearms in MCA 45-8-310; and

WHEREAS, the Montana legislature has created in MCA 45-8-328 a criminal offense for a person, other than a person issued a permit pursuant to MCA 45-8-321 or a person recognized pursuant to MCA 45-8-329, to carry a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in portions of a building used for state or local government offices and related areas in the building that have been restricted; and

WHEREAS, the Montana legislature has provided that a person with a current and valid permit issued pursuant to 45-8-321 or recognized pursuant to 45-8-329 may not be prohibited or restricted from exercising that permit anywhere in the state with limited exceptions provided in MCA 45-8-356; and

WHEREAS, the Montana legislature has, however, expressly provided that a city or local government unit has the power to prevent and suppress the carrying of unpermitted concealed weapons or the carrying of unconcealed weapons to a publicly owned and occupied building under its jurisdiction in MCA 45-8-351.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Section 18-204 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

Sec. 18-204. - Prohibiting weapons, firearms and explosives at city buildings.

(a) *Definitions.*

(1) *Building* means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property and any part or parts of the foregoing as provided in MCA 50-60-101.

(2) *City building* is any city-owned and occupied building under the jurisdiction of the city where a governmental use, function, public service, or public event occurs or is held. A city building includes adjacent facilities related to the building, including exterior entrance and exit areas serving the building.

The use of a city building by city employees or members of the public, even if for limited periods of time, is considered occupation of the building for government purposes.

(3) *Concealed weapon* means a firearm that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon as provided in MCA 45-8-315 or as otherwise determined to be concealed in accordance with Montana law.

a. *Permitted concealed weapon* means a concealed weapon for which the person carrying the weapon has a permit issued pursuant to MCA 45-8-321 or is a person recognized pursuant to MCA 45-8-329.
b. *Unpermitted concealed weapon* means a concealed weapon for which the person carrying the weapon does not have a permit issued pursuant to MCA 45-8-321 nor recognized pursuant to MCA 45-8-329.

(4) *Destructive device* means:

a. An explosive or incendiary material or any other similar chemical substance including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except trace ammunition manufactured for use in shotguns;

b. A bomb, grenade, explosive missile or similar device or a launching device therefore;

c. A weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefore, other than a shotgun or shotgun ammunition;

d. A rocket, rocket-propelled projectile or similar device of a diameter greater than .60 inch or a launching device therefore and a rocket, rocket-propelled projectile or a similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

e. A breakable container which contains a flammable liquid with a flashpoint of one hundred fifty (150) degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(5) *Firearm* means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of any explosive; the frame or receiver of any such weapon; or any firearm muffler or firearm silencer. “Firearm” includes, but is not limited to, a pistol, revolver, rifle, shotgun or machine gun as defined by MCA 45-8-302.

(6) *Law enforcement personnel means:*

a. Any sworn peace officer of the City of Billings;

b. Any sworn peace officer of the State of Montana;

c. Any officer of the United States Government authorized to carry a concealed weapon;

d. Any member of the armed services or reserve forces of the United States or National Guard while in performance of their official duties;

e. A person summoned to the aid of any of the persons named in subsections a. through d.;

f. A probation and parole officer authorized to carry a firearm by the Montana Department of Corrections;

g. An agent of the Montana Department of Justice or a criminal investigator in a county attorney's office;

h. A person authorized by the Billings chief of police to carry or possess an unconcealed weapon on city property.

(7) *Other weapon* means a knife with a blade four or more inches long, dirk, dagger, slingshot, sword, cane, billy, straight razor (not including a safety razor), throwing star, nun-chucks/nun-chuks, brass or metal knuckles, or other deadly weapon or “destructive device” as defined in MCA 45-8-332.

(8) *Unconcealed weapon* means a firearm that is not covered by the clothing or wearing apparel of the person carrying or bearing the weapon and is not otherwise considered to be concealed under Montana law. This is also known as “open carry”.

(b) *Prohibition of firearms, other weapons, and destructive devices at city buildings.*

(1) Carrying an unconcealed weapon/firearm (“open carry”) by any person in a city building is prohibited.

(2) The possession of an unpermitted concealed firearm by any person in a city building is prohibited.

(3) A person with a valid permit to carry a concealed firearm issued pursuant to MCA 45-8-321, or recognized pursuant to MCA 45-8-329, is prohibited from carrying a concealed firearm in the following restricted areas of city buildings as set forth in MCA 45-8-356:

i. a municipal courtroom in use by the court,
ii. other area in use by municipal court personnel pursuant to a court order,
iii. secure areas of a law enforcement facility owned and operated by the city, or
iv. areas at or beyond a security screening checkpoint regulated by the Transportation Security Administration in a publicly owned, commercial airport.

(4) The possession of other weapons and destructive devices by any person in a city building is prohibited (open or concealed carry).

(5) Subsections (1) through (4) above do not apply to law enforcement personnel.

(c) *Screening.* Screening for firearms and other weapons at city buildings is permissible. The city administrator may determine the circumstances and locations where screening is required and may establish standards for such screening

The city may, in the discretion of its employees or officials acting within their official capacity, deny entrance into a city building to a person who violates or attempts to violate this Article.

The city may require a person to present proof of a valid permit to carry a concealed firearm in a city building. Refusing to provide a city employee or official proof of a valid permit to carry a concealed firearm is the basis for denial of entry to the city building.

(d) *Penalties.* A person convicted of violating this Article shall be fined not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed six (6) months or both.

Section 2. EFFECTIVE DATE. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 3. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 4. **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 the _____ day of _____, 2023.

PASSED, ADOPTED and APPROVED on second reading this _____ day of _____, 2023.

CITY OF BILLINGS

BY:_____
William A. Cole, Mayor

Attest:

BY:_____
Denise R. Bohlman, City Clerk

City Council Regular

Date:	05/22/2023
Title:	Payment of Claims for week of April 17, 2023
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of $1,818,597.90 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.

Attachments

CouncilMemo wk of 04172023

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	ACH	A & I Distr	Airport	$ 373.45	Antifreeze
04/17/2023	ACH	A & I Distr	Fleet	$ 2,454.41	3906701
04/17/2023	ACH	A & I Distr	Fleet	$ 1,392.86	3906701
04/17/2023	ACH	A & I Distr	Fleet	$ 647.28	3910403
04/17/2023	ACH	A & I Distr	Fleet	$ 1,392.86	3910403
04/17/2023	ACH	A & I Distr	Fleet	$ 562.39	3910403
04/17/2023	ACH	A & I Distr	Fleet	$ 833.25	3910403
04/17/2023	ACH	A & I Distr	Fleet	$ 207.28	3911949
04/17/2023	ACH	A & I Distr	Fleet	$ 1,636.26	3911949
04/17/2023	ACH	A & I Distr	Fleet	$ 562.39	3911949
04/17/2023	ACH	A & I Distr	Fleet	$ 701.93	3911949
04/17/2023	ACH	A & I Distr	Fleet	$ 818.13	3915091
04/17/2023	ACH	A & I Distr	Fleet	$ 13.38	3915091
04/17/2023	ACH	A & I Distr	Fleet	$ 1,392.86	3915091
04/17/2023	ACH	A & I Distr	Fleet	$ 501.20	5461386
04/17/2023	ACH	A & I Distr	Public Safety	$ 40.41	3910403
04/17/2023	ACH	A & I Distr	Public Safety	$ 40.41	3910403
04/17/2023	ACH	A & I Distr	Public Safety	$ 14.16	3912918
04/17/2023	ACH	A & I Distr	Public Safety	$ 14.14	3912918
04/17/2023	ACH	A & I Distr	Public Safety	$ 137.50	FIRE 5 - DEF (55 GALLON DRUM)
04/17/2023	ACH	A & I Distr	Solid Waste	$ 40.41	3910403
04/17/2023	ACH	A & I Distr	Solid Waste	$ 14.14	3912918
04/17/2023	ACH	A & I Distr	Solid Waste	$ 825.00	330GAL DEF Tote. Landfill.
04/17/2023	ACH	A & I Distr	Solid Waste	$ 825.00	330GAL DEF TOTE. Landfill.
04/17/2023	ACH	A & I Distr	Solid Waste	$ 2,764.45	Shop Supplies.
04/17/2023	ACH	A & I Distr	Solid Waste	$ 630.00	Shop Supplies. Graco Pump. Collections.
04/17/2023	ACH	A & I Distr	Street/Traffic	$ 40.40	3910403
04/17/2023	ACH	A & I Distr	Street/Traffic	$ 14.14	3912918
04/17/2023	ACH	A & I Distr	Street/Traffic	$ 177.57	3912919
04/17/2023	860728	Altitude Signal	Arterial Streets	$ 62,000.00	WO 22-99 Signal Equipment Purchase Agreement
04/17/2023	860731	Askin Const	Water	$ 123,352.55	WO 23-29 WTP Sediment Hauling
04/17/2023	860732	AT Architect	Public Safety	$ 4,972.50	FIRE 8: MECHANICAL ENGINEERING.
04/17/2023	860732	AT Architect	Public Safety	$ 6,545.00	FIRE STATION 8: REMODEL - ELECTRICAL ENGINEERING.
04/17/2023	860732	AT Architect	Public Safety	$ 1,360.00	FIRE STATION 8: REMODEL. ARCHITECTURAL DRAWINGS

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860732	AT Architect	Public Safety	$ 424.29	PLAN REVIEW - CITY OF BILLINGS
04/17/2023	860734	Bcs Scrip	City Ins Fund	$ 4,500.00	Healthy Is April BIO Event $50 Gift card
04/17/2023	860735	Big Bear Engine	Transit	$ 20,000.00	Remanufactured Powerplant Unit #1819 & Shipping
04/17/2023	860735	Big Bear Engine	Transit	$ 1,100.00	Remanufactured Powerplant Unit #1819 & Shipping
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 4,447.30	Jumbo low profile Storz w/presure gasket
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 402.35	GATED WYE, 2/5" NH X (2) 1.5" HN WITH FOLDING HANDLES
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 62.50	B-A 1.5" NH X 1" NH CONE REDUCER
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 805.35	BL-BGH TFT ULTIMATAIC 125 NOZZLE SERIES, 1"NH
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 1,171.30	H-2VPGI TFT AUTOMATIC NOZZLE W/GRIP, 2.5 NH, 100 PSI
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 831.35	HMDL-TO TFT AUTOMATIC NOZZLE, DUAL PRESSURE 1.5" NH
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 134.37	SHIPPING
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 363.35	TFT H-VOI BALL VALVE Q/GRIP 1.5" NH
04/17/2023	860736	Big Sky Fire Equipt	Public Safety	$ 78.08	ZICO UHH-1 HELMET HOLDER
04/17/2023	860742	Billings Tourism	Tourism BID #2	$ 23,122.00	Paid March Distributed April 2023
04/17/2023	860739	Blgs Community Cable	General	$ 49,172.50	April - June 2023 Quarterly Payment - Channel 7
04/17/2023	ACH	Border States Electric	Wastewater	$ 147.50	electrical components WRF
04/17/2023	ACH	Border States Electric	Wastewater	$ 285.33	electrical suppplies
04/17/2023	ACH	Border States Electric	Wastewater	$ 282.34	Overloads for HW Project
04/17/2023	ACH	Border States Electric	Wastewater	$ 3,643.00	Protection Relay for WRF Boxcar
04/17/2023	ACH	Border States Electric	Wastewater	$ 2,527.40	Secondary clarifier Heaters
04/17/2023	ACH	Border States Electric	Water	$ 517.02	Conduit for LSPS #2 L2-4. Plugs for demo
04/17/2023	ACH	Border States Electric	Water	$ 1,395.00	Enclosure for staples VFD Replacement
04/17/2023	860745	Brenntag Pacific	Wastewater	$ 5,917.67	chemical supplies
04/17/2023	860747	Cardinal Tracking	General	$ 3,600.00	2 additional Code Enforcement Handhelds
04/17/2023	860747	Cardinal Tracking	General	$ 1,130.40	2 additional Code Enforcement Handhelds
04/17/2023	860747	Cardinal Tracking	Parking	$ 109.75	131951_ORIS Returns for 1/1/2023-3/31/2023
04/17/2023	860747	Cardinal Tracking	Parking	$ 39.91	2 additional Code Enforcement Handhelds
04/17/2023	860747	Cardinal Tracking	Parking	$ 39.91	Crime Prevention Handheld for Volunteers
04/17/2023	860747	Cardinal Tracking	Public Safety	$ 2,930.40	Crime Prevention Handheld for Volunteers
04/17/2023	860756	Csi Shelving	Park Dist 1	$ 3,949.94	pallet rack frame and supplies for BOC shop - 17338
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 4.94	38-78841. Engine Replacement Parts Unit 1819
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 164.86	38-78841. Engine Replacement Parts Unit 1820
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 41.72	38-78841. Engine Replacement Parts Unit 1821
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 234.32	38-78841. Engine Replacement Parts Unit 1822

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 72.17	38-78841. Engine Replacement Parts Unit 1823
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 351.14	38-78841. Engine Replacement Parts Unit 1824
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 4.24	38-78841. Engine Replacement Parts Unit 1825
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 56.37	38-78841. Engine Replacement Parts Unit 1826
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 21.02	38-78841. Engine Replacement Parts Unit 1827
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 42.75	38-78965. Freight Turbo Charger Unit 1819
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 1,349.63	38-78965. Turbo Charger Unit 1819
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 4,648.72	38-78965. Turbo Charger Unit 1820
04/17/2023	860757	Cummins - Rocky Mt	Transit	$ 945.00	38-78965. Turbo Charger Unit 1821
04/17/2023	860757	Cummins - Rocky Mt	Wastewater	$ 413.88	38-77602 - VALVE KIT SOLENOID
04/17/2023	860759	Dell Computer	Court Grants	$ 396.78	Qty. 2 24" Monitors -Drug Treatment Court
04/17/2023	860759	Dell Computer	General	$ 964.61	OptiPlex i7, 16GB RAM, 512GB SSDTower only
04/17/2023	860759	Dell Computer	General	$ 396.78	Qty. 2 24" Monitors -Victim Witness Specialist
04/17/2023	860759	Dell Computer	P.W. Admin	$ 3,153.59	Qty. 2 Latitude 5540 i7, 16GB RAM, 1TB SSD , 1- dock
04/17/2023	860759	Dell Computer	Park Dist 1	$ 1,543.25	OptiPlex 5000, i7, 16GB RAM, 1TB SSD , 2-24" Monitors
04/17/2023	860759	Dell Computer	Planning	$ 67.79	Dell Replacement Laptop Battery -Tammy Deines
04/17/2023	860759	Dell Computer	Public Safety	$ 1,402.75	Dell Latitude 5530, i7, 16GB RAM, 1TB SSD laptop
04/17/2023	860759	Dell Computer	Public Safety	$ 1,649.71	Precision tower, i7, 16GB RAM, 1TB SSD
04/17/2023	860759	Dell Computer	Solid Waste	$ 617.87	Dock and monitors
04/17/2023	860759	Dell Computer	Solid Waste	$ 1,097.87	Optiplex 5000 SFF i7, 16GB, 1TB Tower only
04/17/2023	860759	Dell Computer	Street/Traffic	$ 4,629.75	Qty. 3 Optiplex SSF, Sound bars, 6-24" Monitors
04/17/2023	860759	Dell Computer	Wastewater	$ 1,234.60	Qty.2 Optiplex SSF, 2 sound bars, 4-24" monitors
04/17/2023	860759	Dell Computer	Water	$ 1,851.90	Qty.2 Optiplex SSF, 2 sound bars, 4-24" monitors
04/17/2023	860760	Dick Anderson Const	Stillwater Const	$ 87,515.75	City of Billings Law and Justice Center/City Hall Remodel
04/17/2023	860761	Dixie Petro-Chem	Water	$ 16,438.80	BULK CHLORINE
04/17/2023	860762	DOWL	Water	$ 18,681.25	WO 23-01 2023 Water and Sewer Main Replacement
04/17/2023	860764	DT Blgs Partners	Tax Incrmnt N27	$ 23,286.75	Annual DBP Operating Agreement FY2023 $279,441
04/17/2023	860764	DT Blgs Partners	Tax Incrmnt N27	$ 23,286.75	Annual DBP Operating Agreement FY2023 $279,441
04/17/2023	860766	EBSCO Industries	Library	$ 3,577.72	0499984
04/17/2023	860768	Education Foundation	CDBG	$ 3,887.40	CDBG-CV Grant / Backpack Meals Project
04/17/2023	ACH	Eldorado National CA	Transit	$ 160.76	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 262.37	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 5.11	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 96.96	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179

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04/17/2023	ACH	Eldorado National CA	Transit	$ 7.06	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 650.19	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 4.24	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 0.61	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179
04/17/2023	ACH	Eldorado National CA	Transit	$ 395.44	90790564. Accident Repair Parts Unit 1839. W/O 2023-2179.
04/17/2023	ACH	Eldorado National CA	Transit	$ 230.58	90790564. Freight Accident Repair Parts Unit 1839.
04/17/2023	ACH	Eldorado National CA	Transit	$ 262.37	90790808. Bumper End Unit 1842. W/O 2023-2225
04/17/2023	ACH	Eldorado National CA	Transit	$ 13.06	90790808. Freight Bumper End Unit 1842. W/O 2023-2225
04/17/2023	ACH	Eldorado National CA	Transit	$ 12.96	90791060. Fright Latch Kit Unit 1830. W/O 2023-2240
04/17/2023	ACH	Eldorado National CA	Transit	$ 27.18	90791060. Latch Kit Unit 1830. W/O 2023-2240
04/17/2023	ACH	Eldorado National CA	Transit	$ 11.49	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 5.30	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 17.10	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 5.91	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 262.37	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 382.82	90791075. Body Repair Parts Unit 1826. W/O 2023-2193
04/17/2023	ACH	Eldorado National CA	Transit	$ 227.42	90791075. Freight Body Repair Parts Unit 1826.
04/17/2023	860770	Elite Industrial	Water	$ 8,147.00	Area D Sump Pumps, WTP
04/17/2023	860773	Enterprise Rac -Mt/Wy	PD Program	$ 3,020.00	April, 2023 Invoice for January and February vehicle Rental.
04/17/2023	860774	EPACT Newtwork	General	$ 3,650.00	auto archiving enterprise package for rec - 2889
04/17/2023	860779	Freedom Outdoor Structure	Transit	$ 4,653.06	50% Deposit for 12x24 Shed for Tire storage at METroplex
04/17/2023	ACH	HDR	Arterial Streets	$ 16,900.00	WO 22-07 Mullowney Lane, Retainage Release
04/17/2023	ACH	HDR	Transit	$ 3,262.48	Consulting Engineering Services with Billing MET ICR.
04/17/2023	ACH	HDR	Wastewater	$ 7,432.41	Yellowstone River Water Quality Study; Payment 5
04/17/2023	860786	High Point Network	IT Resources	$ 982.00	Maintenance on F93F8M2 server for Streets -thru 12/12/2024
04/17/2023	860786	High Point Network	IT Resources	$ 9,316.00	Qty.2 EX3400-48P switches 10/100/1000 and support
04/17/2023	860786	High Point Network	Library	$ 245.00	223031 Firewall monthly service
04/17/2023	860789	InfoSend	P.W. Admin	$ 14,274.64	Service for 03/2023-03/29/2023
04/17/2023	860789	InfoSend	P.W. Admin	$ 3,752.91	Service for 03/2023-03/29/2023
04/17/2023	860787	I-State Truck	Public Safety	$ 69.26	C251351237.01
04/17/2023	860787	I-State Truck	Public Safety	$ 339.12	C251351237.01
04/17/2023	860787	I-State Truck	Public Safety	$ 178.80	C251351237.01
04/17/2023	860787	I-State Truck	Public Safety	$ 75.00	C251351237.02
04/17/2023	860787	I-State Truck	Public Safety	$ 339.12	C251351237.02

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04/17/2023	860787	I-State Truck	Solid Waste	$ 1,962.02	C251351266.01
04/17/2023	860787	I-State Truck	Solid Waste	$ (143.75)	C251351266.01
04/17/2023	860787	I-State Truck	Solid Waste	$ 143.75	C251352947.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 104.80	C251351237.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 1,020.65	C251351266.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 26.35	C251351701.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 242.32	C251351701.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 216.91	C251351744.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 30.00	C251351744.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ (71.88)	C251352648.01
04/17/2023	860787	I-State Truck	Street/Traffic	$ 71.88	C251352947.01
04/17/2023	860787	I-State Truck	Wastewater	$ 74.11	C251351686.01
04/17/2023	860792	Jacobs Engineering	Solid Waste	$ 15,518.83	WO 22-27 Landfill Gas Emissions Compliance
04/17/2023	860795	Junkermier,Clark,Campanella,Stevens	General	$ 3,000.00	FY2022 Audit Services- June 30, 2022 Audit
04/17/2023	860795	Junkermier,Clark,Campanella,Stevens	General	$ 11,490.00	FY2022 Audit Services- June 30, 2022 Audit
04/17/2023	860796	KB Commercial Products	Airport	$ 19,800.00	Chariot 3 iExtract 26 Duo Riding Carpet Extractor
04/17/2023	860800	Kone	Airport	$ 144.90	FY23 Elevator/Escalator Maintenance - IP9
04/17/2023	860800	Kone	Airport	$ 60.03	FY23 Elevator/Escalator Maintenance - Operations
04/17/2023	860800	Kone	Airport	$ 1,630.13	FY23 Elevator/Escalator Maintenance - Terminal
04/17/2023	860800	Kone	Parking	$ 38,950.56	P2 S Elevator- hydraulic piston, jack packing, new hydraulic oil.
04/17/2023	860803	Land Design	Park Dist 1	$ 5,457.94	master plan for cottonwood park
04/17/2023	860805	Madison Agency	Airport	$ 10,819.00	Amendment #1 Marketing & Selling Strategy
04/17/2023	860808	Marketing Specialties	Airport	$ 4,114.89	Invoice #092702. Tank Test at Burn Pit
04/17/2023	860819	Morgan Contractors	Airport	$ 16,932.80	Baggage Claim Restroom Remodel
04/17/2023	860821	Morrison Maierle	Airport	$ 8,902.82	AIP-73 Terminal Expansion - Eligible for Reimbursement
04/17/2023	860821	Morrison Maierle	Airport	$ 989.20	AIP-73 Terminal Expansion - Ineligible for Reimbursement
04/17/2023	860821	Morrison Maierle	Airport	$ 836.85	AIP-76 Terminal Expansion - eligible for local
04/17/2023	860821	Morrison Maierle	Airport	$ 24,394.44	Amendment #13 Terminal Expansion Project - Federal
04/17/2023	860821	Morrison Maierle	Airport	$ 2,293.04	Amendment #13 Terminal Expansion Project - Ineligible
04/17/2023	860821	Morrison Maierle	Airport	$ 2,710.49	Amendment #13 Terminal Expansion Project - Local
04/17/2023	860821	Morrison Maierle	Airport	$ 25,183.46	Amendment 5 Mid-Field Service Road Project - Federal
04/17/2023	860821	Morrison Maierle	Airport	$ 2,798.16	Amendment 5 Mid-Field Service Road Project - Local
04/17/2023	860821	Morrison Maierle	Airport	$ 18,871.62	Amendment 6 Commercial Aircraft Ramp-Schedule IV-Federal
04/17/2023	860821	Morrison Maierle	Airport	$ 2,096.85	Amendment 6 Commercial Aircraft Ramp-Schedule IV-Local

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04/17/2023	860821	Morrison Maierle	Airport	$ 2,620.24	FY 2023 On Call Services
04/17/2023	860821	Morrison Maierle	Wastewater	$ 34,030.29	WO 23-01 2023 Water/Sewer Replacement
04/17/2023	860814	MT Dakota Utilities	Airport	$ 129.36	788 689 5644 8. Concourse Kitchen
04/17/2023	860814	MT Dakota Utilities	General	$ 171.96	112 138 9381 8
04/17/2023	860814	MT Dakota Utilities	General	$ 197.98	703 760 1000 8
04/17/2023	860814	MT Dakota Utilities	General	$ 61.33	879 660 1000 8
04/17/2023	860814	MT Dakota Utilities	General	$ 475.61	902 360 1000 6
04/17/2023	860814	MT Dakota Utilities	Public Safety	$ 951.45	307 111 5825 0
04/17/2023	860814	MT Dakota Utilities	Public Safety	$ 518.76	668 670 1000 2
04/17/2023	860814	MT Dakota Utilities	Public Safety	$ 348.02	672 860 1000 3
04/17/2023	860814	MT Dakota Utilities	Public Safety	$ 1,684.27	819 360 1000 8
04/17/2023	860814	MT Dakota Utilities	Public Safety	$ 21.03	930 442 2308 4
04/17/2023	860814	MT Dakota Utilities	Water	$ 200.56	162 660 1000 4
04/17/2023	ACH	NorMont Equipt	Street/Traffic	$ 3,120.00	inv#29246emulsion
04/17/2023	ACH	NorMont Equipt	Street/Traffic	$ 153.10	inv#29246warning flags
04/17/2023	860829	NorthWestern Energy	Building	$ 26.04	1569631-3
04/17/2023	860829	NorthWestern Energy	Facilities	$ 6.00	3866815-8
04/17/2023	860829	NorthWestern Energy	Facilities	$ 160.50	3922089-2
04/17/2023	860829	NorthWestern Energy	General	$ 162.52	0712538-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,287.62	SILMD 10 Acct# 0712546-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,460.87	SILMD 100 Acct# 0712559-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,111.80	SILMD 107 Acct# 0712560-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 5,296.23	SILMD 109 Acct# 0712561-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 238.78	SILMD 113 Acct# 0712562-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,139.70	SILMD 114 Acct# 0712563-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 268.17	SILMD 115 Acct# 0712564-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 703.93	SILMD 116 Acct# 0712565-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,792.08	SILMD 117 Acct# 0712566-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 239.24	SILMD 118 Acct# 0712567-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 143.02	SILMD 119 Acct# 0712568-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,016.85	SILMD 121 Acct# 0712570-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 225.77	SILMD 122 Acct# 0712571-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 402.25	SILMD 123 Acct# 0712572-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,173.24	SILMD 124 Acct# 0712573-5

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04/17/2023	860830	NorthWestern Energy	Light Maint	$ 469.28	SILMD 125 Acct# 0712574-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 234.66	SILMD 126 Acct# 0712575-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 846.61	SILMD 127 Acct# 0712576-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 592.63	SILMD 128 Acct# 0712577-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 402.25	SILMD 129 Acct# 0712578-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 5,329.05	SILMD 13 Acct# 0721276-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 142.19	SILMD 130 Acct# 0712579-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,039.13	SILMD 131 Acct# 0712580-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 264.02	SILMD 133 Acct# 0712581-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 609.34	SILMD 134 Acct# 0712582-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 620.84	SILMD 135 Acct# 0712583-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 569.85	SILMD 136 Acct# 0712584-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 439.79	SILMD 137 Acct# 0712585-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 905.06	SILMD 138 Acct# 0712586-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 301.69	SILMD 139 Acct# 0712587-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,661.05	SILMD 14 Acct# 0721277-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 703.93	SILMD 143 Acct# 0712588-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 33.51	SILMD 144 Acct# 0712589-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 564.41	SILMD 145 Acct# 0712590-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 435.75	SILMD 146 Acct# 0712591-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 527.39	SILMD 147 Acct# 0712592-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,799.26	SILMD 149 Acct# 0712593-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 903.05	SILMD 150 Acct# 0712594-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 770.97	SILMD 151 Acct# 0712595-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 5,200.77	SILMD 152 Acct# 0712596-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 649.07	SILMD 153 Acct# 0712597-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,467.48	SILMD 154 Acct# 0712598-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 603.38	SILMD 155 Acct# 0712599-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,100.59	SILMD 157 Acct# 0712600-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 972.11	SILMD 158 Acct# 0712601-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,161.97	SILMD 159 Acct# 0712602-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 871.54	SILMD 160 Acct# 0712603-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,269.93	SILMD 161 Acct# 0712604-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 54.06	SILMD 162 Acct# 0712605-5

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04/17/2023	860830	NorthWestern Energy	Light Maint	$ 875.50	SILMD 163 Acct# 0712606-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 451.52	SILMD 164 Acct# 0712607-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,072.65	SILMD 165 Acct# 0712608-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 282.20	SILMD 167 Acct# 0712609-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,362.90	SILMD 17 Acct# 0712553-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 677.31	SILMD 171 Acct# 0712610-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 609.31	SILMD 172 Acct# 0712611-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,411.02	SILMD 173 Acct# 0712612-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,185.25	SILMD 174 Acct# 0712613-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 395.08	SILMD 175 Acct# 0712614-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 38.60	SILMD 176 Acct# 0712615-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 310.43	SILMD 178 Acct# 0712616-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 620.84	SILMD 179 Acct# 0712617-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 116.63	SILMD 18 Acct# 0712554-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 423.32	SILMD 180 Acct# 0712618-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,044.76	SILMD 181 Acct# 0712619-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 705.51	SILMD 182 Acct# 0712620-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,411.01	SILMD 183 Acct# 0712621-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 451.52	SILMD 184 Acct# 0712622-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 169.33	SILMD 185 Acct# 0712623-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 792.03	SILMD 186 Acct# 0712624-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 282.20	SILMD 187 Acct# 0712625-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 338.65	SILMD 188 Acct# 0712626-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 282.20	SILMD 189 Acct# 0712627-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,467.48	SILMD 190 Acct# 0712628-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 503.58	SILMD 191 Acct# 0712629-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 366.85	SILMD 192 Acct# 0712630-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 903.05	SILMD 193 Acct# 0712631-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 353.59	SILMD 194 Acct# 0712632-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 282.88	SILMD 195 Acct# 0712633-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 90.33	SILMD 196 Acct# 0712634-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 90.33	SILMD 197 Acct# 0712635-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 141.10	SILMD 198 Acct# 0712636-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 109.36	SILMD 200 Acct# 0712637-8

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04/17/2023	860830	NorthWestern Energy	Light Maint	$ 592.63	SILMD 201 Acct# 0712638-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 840.77	SILMD 202 Acct# 0712639-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 24.08	SILMD 203 Acct# 0712640-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 496.26	SILMD 204 Acct# 0712641-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 30.89	SILMD 205 Acct# 0712642-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 395.08	SILMD 206 Acct# 0712643-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 451.52	SILMD 207 Acct# 0712644-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 298.97	SILMD 208 Acct# 0712645-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 649.07	SILMD 209 Acct# 0712646-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 108.40	SILMD 210 Acct# 0712647-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 60.22	SILMD 211 Acct# 0712648-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 60.22	SILMD 212 Acct# 0712649-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 36.13	SILMD 213 Acct# 0712650-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 455.54	SILMD 214 Acct# 0712651-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 169.33	SILMD 216 Acct# 0712652-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 459.29	SILMD 217 Acct# 0712653-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 328.37	SILMD 220 Acct# 0712654-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 7.73	SILMD 221 Acct# 0712655-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 95.51	SILMD 222 Acct# 0712656-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 144.52	SILMD 223 Acct# 0712657-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,702.93	SILMD 224 Acct# 0712658-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 479.77	SILMD 225 Acct# 0712659-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 275.59	SILMD 226 Acct# 0712660-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 766.67	SILMD 227 Acct# 0712661-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 972.11	SILMD 228 Acct# 0712662-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 502.82	SILMD 229 Acct# 0712663-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,173.23	SILMD 230 Acct# 0712664-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 703.93	SILMD 231 Acct# 0712665-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,050.36	SILMD 232 Acct# 0712666-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,055.57	SILMD 233 Acct# 0712667-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 574.17	SILMD 234 Acct# 0712668-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 667.84	SILMD 235 Acct# 0712669-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 212.14	SILMD 236 Acct# 0712670-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 479.75	SILMD 237 Acct# 0712671-7

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 15.44	SILMD 238 Acct# 0712672-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 112.89	SILMD 239 Acct# 0712673-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 509.15	SILMD 240 Acct# 0712674-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 703.99	SILMD 241 Acct# 0712675-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 100.57	SILMD 242 Acct# 0712676-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 134.09	SILMD 244 Acct# 0712677-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 89.00	SILMD 245 Acct# 0712678-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 402.25	SILMD 246 Acct# 0712679-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,179.75	SILMD 247 Acct# 0712680-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,318.52	SILMD 249 Acct# 0718734-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 254.58	SILMD 250 Acct# 0719001-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 4,696.43	SILMD 251 Acct# 0718801-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 670.41	SILMD 252 Acct# 0719162-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,198.50	SILMD 253 Acct# 0719644-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 191.00	SILMD 254 Acct# 0719763-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 200.39	SILMD 255 Acct# 0720813-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,136.06	SILMD 257 Acct# 0720360-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,156.49	SILMD 258 Acct# 0720606-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,742.70	SILMD 259 Acct# 0720810-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 603.38	SILMD 261 Acct# 0720705-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,747.75	SILMD 262 Acct# 0720937-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,214.36	SILMD 263 Acct# 0720716-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 208.36	SILMD 264 Acct# 0721427-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 441.50	SILMD 265 Acct# 0721556-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 61.62	SILMD 266 Acct# 0721684-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 555.93	SILMD 270 Acct# 0906944-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,158.51	SILMD 271 Acct# 0995095-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,448.44	SILMD 272 Acct# 0905005-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 248.95	SILMD 273 Acct# 0926386-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 606.06	SILMD 276 Acct# 0961926-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,040.81	SILMD 277 Acct# 1058710-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 268.71	SILMD 278 Acct# 1087619-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 71.47	SILMD 279 Acct# 1124127-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 735.44	SILMD 280 Acct# 1045653-1

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 568.66	SILMD 283 Acct# 1172743-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 396.01	SILMD 285 Acct# 1206985-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 296.65	SILMD 286 Acct# 1296582-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 2,266.11	SILMD 288 Acct# 1303978-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 283.84	SILMD 289 Acct# 1685375-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 151.66	SILMD 290 Acct# 1433921-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 737.44	SILMD 292 Acct# 1481532-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 282.20	SILMD 293 Acct# 1481534-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 564.41	SILMD 294 Acct# 1481535-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 134.09	SILMD 295 Acct# 1481536-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,495.69	SILMD 296 Acct# 1481537-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 253.99	SILMD 297 Acct# 1481539-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 225.77	SILMD 298 Acct# 1481540-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 497.77	SILMD 300 Acct# 1662840-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 6,685.59	SILMD 301 Acct# 1687005-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 325.85	SILMD 302 Acct# 1607534-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,123.62	SILMD 305 Acct# 1695873-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 228.67	SILMD 306 Acct# 1740353-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 3,346.08	SILMD 307 Acct# 2049005-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 329.60	SILMD 308 Acct# 2072459-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 409.45	SILMD 309 Acct# 2001311-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 254.60	SILMD 310 Acct# 2060519-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 295.89	SILMD 311 Acct# 3014475-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 315.89	SILMD 312 Acct# 3146127-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 471.35	SILMD 315 Acct# 3305804-1
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,478.64	SILMD 316 Acct# 3291842-7
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 110.77	SILMD 317 Acct# 3253826-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 994.75	SILMD 318 Acct# 3372018-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 69.45	SILMD 320 Acct# 0712569-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 532.55	SILMD 321 Acct# 3338917-2
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 106.71	SILMD 322 Acct# 3402033-9
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 869.80	SILMD 323 Acct# 3597170-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 402.44	SILMD 324 Acct# 1246537-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 293.63	SILMD 325 Acct# 3587598-8

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 123.50	SILMD 326 Acct# 3840455-4
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 225.77	SILMD 327 Acct# 3810801-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 790.90	SILMD 328 Acct# 3894879-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 99.15	SILMD 329 Acct# 3939032-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 295.90	SILMD 330 Acct# 3951594-5
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 451.08	SILMD 8 Acct# 0712544-6
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 418.01	SILMD 9 Acct# 0712545-3
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 608.15	SILMD 95 Acct# 0712556-0
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 11,776.84	SILMD 97 Acct# 0712557-8
04/17/2023	860830	NorthWestern Energy	Light Maint	$ 1,305.79	SILMD 99 Acct# 0712558-6
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 6.00	0723049-3
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 12.74	0813489-2
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 26.34	0978917-3
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 6.00	1588262-4
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 10.35	1849408-8
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 25.91	1904944-4
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 39.91	1941243-6
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 6.00	3178260-0
04/17/2023	860829	NorthWestern Energy	Park Dist 1	$ 20.83	3241436-9
04/17/2023	860829	NorthWestern Energy	Parking	$ 78.20	3835890-9
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 6.76	0881455-0
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 0.55	1045813-1
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 1.25	1265177-4
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 7.38	1514388-6
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 1.25	1948667-9
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 5.32	2055817-7
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 0.70	3707234-5
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 0.70	3707235-2
04/17/2023	860829	NorthWestern Energy	Parks Maint	$ 0.70	3707236-0
04/17/2023	860829	NorthWestern Energy	Public Safety	$ 9.52	0712532-1
04/17/2023	860829	NorthWestern Energy	Public Safety	$ 419.66	0720817-6
04/17/2023	860829	NorthWestern Energy	Public Safety	$ 1,445.21	1183483-5
04/17/2023	860829	NorthWestern Energy	Street/Traffic	$ 8.14	0855404-0
04/17/2023	860829	NorthWestern Energy	Street/Traffic	$ 41.95	1045820-6

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860829	NorthWestern Energy	Street/Traffic	$ 0.96	3590004-2
04/17/2023	860829	NorthWestern Energy	Street/Traffic	$ 73.16	3648861-7
04/17/2023	860830	NorthWestern Energy	Street/Traffic	$ 13,926.60	Signal Bills 4.12.2023
04/17/2023	860829	NorthWestern Energy	Transit	$ 2,737.36	0100473-8. Monad Road. April 2023
04/17/2023	860829	NorthWestern Energy	Transit	$ 478.47	0719225-5
04/17/2023	860829	NorthWestern Energy	Water	$ 164.71	1142253-2
04/17/2023	860829	NorthWestern Energy	Water	$ 6.00	1160807-2
04/17/2023	860829	NorthWestern Energy	Water	$ 4.20	1346673-5
04/17/2023	860829	NorthWestern Energy	Water	$ 6.00	1867265-9
04/17/2023	860831	NS Corporation	Airport	$ 7,887.48	Invoice #0166259-IN. QTA Parts Inventory
04/17/2023	860828	NW Playground Equip	CDBG	$ 28,413.00	north park shelter-CDBG/CDBG-CV Project
04/17/2023	860835	Pierce Flooring	Airport	$ 15,077.47	Airport Carpet Installation/Replacement Project
04/17/2023	860836	Playspace Designs	CDBG	$ 33,016.35	CDBG-CV Public Facility Improvement Project- North Park
04/17/2023	860837	Policy Confluence	General	$ 5,500.00	Subscription fee for Polco Premium
04/17/2023	860841	River Oaks Communication	Airport	$ 1,225.50	City's Tel-com Atty
04/17/2023	860841	River Oaks Communication	General	$ 2,756.00	Review of Optimist Park Facilities Request
04/17/2023	860843	Rocky Mt Seamless	Airport	$ 2,832.00	Invoice #4717. Supply & Install Rain Gutters at IP-5
04/17/2023	860846	Sanderson Stewart	Arterial Streets	$ 10,123.91	Retainage Release Final
04/17/2023	860846	Sanderson Stewart	Planning	$ 5,378.50	Safe Routes to School - Phase II Invoice 54141
04/17/2023	860847	Scheels All Sports	Public Safety	$ 2,824.00	PRO FORM 5000 TREADMILL
04/17/2023	860849	Sign Products	Parking	$ 4,851.00	Replacement of Park 2 Canopy Faces
04/17/2023	860851	Sletten Const	Airport	$ 143,945.41	Restaurant Build Out-Amendment 3 To GMP- refundable
04/17/2023	860851	Sletten Const	Airport	$ 12,177.59	Restaurant Build Out-Amendment 3 To GMP - Ineligible Costs
04/17/2023	860853	Springline Const	Wastewater	$ 53,955.00	WO 23-36 1400 Montana Ave Sewer Service
04/17/2023	860861	Thomas Appraisal	Wastewater	$ 9,000.00	WO 23-07 Monad Road Sanitary Sewer Exte
04/17/2023	ACH	Town & Co Supply	Airport	$ 14,579.95	Invoice #435296. 3999 Gallons Dyed #1 - Operations
04/17/2023	ACH	Town & Co Supply	Airport	$ 10,561.42	Invoice #435466. 950 Gallons Premium Unleaded - Operations
04/17/2023	ACH	Town & Co Supply	Public Safety	$ 855.55	434533 FIRE 1: UNLEADED
04/17/2023	ACH	Town & Co Supply	Public Safety	$ 3,339.67	434533 FUEL: DIESEL, BLENDED
04/17/2023	ACH	Town & Co Supply	Transit	$ 18,442.87	435373. 6001 Gallons Dyed #2
04/17/2023	ACH	Town & Co Supply	Transit	$ 5,584.38	435649. 1890 Gallons Unleaded.
04/17/2023	860866	Us Bank	Facilities	$ 1,850.00	Refunding Certificates of Participation Series 2013
04/17/2023	860866	Us Bank	Tax Incrmnt N27	$ 400.00	Tax Increment Urban Renewal Revenue Bonds Series 2013A
04/17/2023	860866	Us Bank	Wastewater	$ 400.00	Sewer Revenue Bonds, Series 2017

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/17/2023	860867	Voegele Acquisition	Street/Traffic	$ 107.62	fertilizing trees north of rimrock and shiloh
04/17/2023	860867	Voegele Acquisition	Street/Traffic	$ 3,920.00	fertiize trees along shiloh from hesper to rimrock
04/17/2023	860868	Warren Transport	Bike Trl Donation	$ 20,592.00	WO 21-38 Schedule II Skyline Trail (Marathan Loop)
04/17/2023	860868	Warren Transport	Bike Trl Donation	$ 215,635.86	WO 21-38 Schedule II Skyline Trail (Marathan Loop)
04/17/2023	860872	Ylwstne Valley Elec	Radio	$ 144.96	4179004 Fox/tank 800 Mhz Radio Tower's electric service
04/17/2023	860872	Ylwstne Valley Elec	Solid Waste	$ 46,050.00	WO 20-46..3041 HillCrest Rd - Compost Fa

City Council Regular

Date:	05/22/2023
Title:	Payment of Claims for week of April 24, 2023
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of $2,047,730.25 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.

Attachments

CouncilMemo wk of 04242023

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/24/2023	860874	5 Star Industries	Street/Traffic	$ 7,300.00	rolloff container per attached
04/24/2023	860874	6 Star Industries	Street/Traffic	$ 1,500.00	freight on roll off
04/24/2023	860875	A-1 Landscaping	Building	$ 75.00	Snow Plow Services for March, 2023; Planning
04/24/2023	860875	A-1 Landscaping	CDBG	$ 75.00	Snow Plow Services for March, 2023; Planning
04/24/2023	860875	A-1 Landscaping	Facilities	$ (1,859.76)	Repair of Card Reader for Facilities
04/24/2023	860875	A-1 Landscaping	Facilities	$ 1,085.00	Snow Plow Services for March, 2023; Operations Center
04/24/2023	860875	A-1 Landscaping	Facilities	$ 350.00	Snow Plow Services for March, 2023; Stillwater Building
04/24/2023	860875	A-1 Landscaping	Facilities	$ 285.00	Snow Plow Services for March, 2023; Yellowstone Valley Animal Shelter
04/24/2023	860875	A-1 Landscaping	General	$ 75.00	Snow Plow Services for March, 2023; Planning
04/24/2023	860875	A-1 Landscaping	Library	$ 240.00	Snow Plow Services for March, 2023; Library
04/24/2023	860875	A-1 Landscaping	Library	$ 375.00	Snow Plow Services for March, 2023; Library
04/24/2023	860875	A-1 Landscaping	Parking	$ 80.00	Snow Plow Services for March, 2023; Library
04/24/2023	860875	A-1 Landscaping	Parking	$ 2,690.00	Snow Plow Services for March, 2023; Parking
04/24/2023	860875	A-1 Landscaping	Parking	$ 200.00	Snow Plow Services for March, 2023; Parking
04/24/2023	860875	A-1 Landscaping	Parking	$ 815.00	Snow Plow Services for March, 2023; Parking
04/24/2023	860875	A-1 Landscaping	Parking	$ 1,900.00	Snow Plow Services for March, 2023; Parking
04/24/2023	860875	A-1 Landscaping	Parking	$ 2,015.00	Snow Plow Services for March, 2023; Parking
04/24/2023	860875	A-1 Landscaping	Planning	$ 75.00	Snow Plow Services for March, 2023; Planning
04/24/2023	860875	A-1 Landscaping	Urban Renew	$ 1,200.00	Snow Plow Service for March, 2023; Community Development
04/24/2023	860877	Aerzen USA	Wastewater	$ 3,270.00	Installation of Motor for #5 Blower
04/24/2023	860878	Allstates Coating	Street/Traffic	$ 1,795.20	inv#2023-1830white 5 gal pails
04/24/2023	860878	Allstates Coating	Street/Traffic	$ 19,167.50	inv#2023-1830white paint totes
04/24/2023	860878	Allstates Coating	Street/Traffic	$ 23,562.00	inv#2023-1830yellow paint totes
04/24/2023	860882	Askin Const	Sidewalk Const	$ 16,262.79	WO 22-21 Brewington Drive Reconstruction; Payment 1
04/24/2023	860882	Askin Const	St Maint Dist	$ 29,738.85	WO 22-21 Brewington Drive Reconstruction; Payment 1
04/24/2023	860882	Askin Const	Storm Sewer	$ 69,781.83	WO 22-21 Brewington Drive Reconstruction; Payment 1
04/24/2023	860883	AT & T Corp	Airport	$ 817.55	Airport
04/24/2023	860883	AT & T Corp	Airport	$ 16.48	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Building	$ 45.14	Building Manager
04/24/2023	860883	AT & T Corp	Building	$ 507.80	PW-Building Cell Phones
04/24/2023	860883	AT & T Corp	Building	$ 386.10	PW-Building Surfaces
04/24/2023	860883	AT & T Corp	CDBG	$ 145.48	Comm Dev
04/24/2023	860883	AT & T Corp	Court Grants	$ 167.14	Muni Court DC
04/24/2023	860883	AT & T Corp	Engineering	$ 174.20	Engineering Tablets

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/24/2023	860883	AT & T Corp	Engineering	$ 204.83	PW-Engineering Cell Phones and MiFi
04/24/2023	860883	AT & T Corp	Facilities	$ 130.96	Facilities BOC
04/24/2023	860883	AT & T Corp	Facilities	$ 31.28	Facilities BOC/CH
04/24/2023	860883	AT & T Corp	Facilities	$ 93.84	Facilities BOC/CH
04/24/2023	860883	AT & T Corp	Facilities	$ 49.60	Facilities City Hall
04/24/2023	860883	AT & T Corp	Facilities	$ 90.28	Facilities Managers
04/24/2023	860883	AT & T Corp	Fleet	$ 45.44	Motor Pool
04/24/2023	860883	AT & T Corp	General	$ 95.57	City Attorney -Legal
04/24/2023	860883	AT & T Corp	General	$ 546.78	Code Enforcement
04/24/2023	860883	AT & T Corp	General	$ 45.14	FINANCE
04/24/2023	860883	AT & T Corp	General	$ 45.14	Human Resources
04/24/2023	860883	AT & T Corp	General	$ 135.54	Legal Dept -Domestic Violence
04/24/2023	860883	AT & T Corp	General	$ 248.05	PRPL - Recreation Division
04/24/2023	860883	AT & T Corp	General	$ 86.60	REC Seasonal
04/24/2023	860883	AT & T Corp	General	$ 104.52	Rec Tablets
04/24/2023	860883	AT & T Corp	IT Resources	$ 50.17	IT Department -On call Phone
04/24/2023	860883	AT & T Corp	Library	$ 197.92	Library
04/24/2023	860883	AT & T Corp	Library	$ 107.14	Library Out Reach
04/24/2023	860883	AT & T Corp	P.W. Admin	$ 25.93	PWBLKNP OFFICE -60/40
04/24/2023	860883	AT & T Corp	P.W. Admin	$ 38.90	PWBLKNP OFFICE -60/40
04/24/2023	860883	AT & T Corp	Park Dist 1	$ 507.17	Parks Dept.
04/24/2023	860883	AT & T Corp	Park Dist 1	$ 653.75	PRPL Parks Tablets
04/24/2023	860883	AT & T Corp	Parking	$ 77.63	Parking Division Meter Maintenance
04/24/2023	860883	AT & T Corp	Parking	$ 270.84	Parking Phones and scanner
04/24/2023	860883	AT & T Corp	Parking	$ 225.70	Parking Phones and scanner
04/24/2023	860883	AT & T Corp	PD Program	$ 160.56	CCSIU Toughbook
04/24/2023	860883	AT & T Corp	PD Program	$ 45.40	Domestic Violence
04/24/2023	860883	AT & T Corp	Phone System	$ 40.14	IT Department -On call Phone
04/24/2023	860883	AT & T Corp	Phone System	$ 65.02	IT iPads
04/24/2023	860883	AT & T Corp	Phone System	$ 3.47	Metro Cell Account
04/24/2023	860883	AT & T Corp	Phone System	$ 67.49	TeleComm Manager
04/24/2023	860883	AT & T Corp	Planning	$ 62.46	PLANNING
04/24/2023	860883	AT & T Corp	Public Safety	$ 272.14	Animal Control Cell Phones
04/24/2023	860883	AT & T Corp	Public Safety	$ 240.84	Animal Control -MDT

Check Date	Check#	Name	Fund Name	Amount	Item Desc
04/24/2023	860883	AT & T Corp	Public Safety	$ 292.12	Comm. Center 9-1-1
04/24/2023	860883	AT & T Corp	Public Safety	$ 40.14	Detective Chartier -Toughbook
04/24/2023	860883	AT & T Corp	Public Safety	$ 1,339.08	Fire Department Cell Phones
04/24/2023	860883	AT & T Corp	Public Safety	$ 134.79	Fire EMS Cell Phone
04/24/2023	860883	AT & T Corp	Public Safety	$ 40.14	Fire iPads -Assistant chiefs new iPads
04/24/2023	860883	AT & T Corp	Public Safety	$ 617.78	Fire iPads -Assistant chiefs new iPads
04/24/2023	860883	AT & T Corp	Public Safety	$ 799.46	Fire iPads -Assistant chiefs new iPads
04/24/2023	860883	AT & T Corp	Public Safety	$ 214.34	Fire iPads -Assistant chiefs new iPads
04/24/2023	860883	AT & T Corp	Public Safety	$ 85.54	ICAC -Campbell and Spare
04/24/2023	860883	AT & T Corp	Public Safety	$ 1,495.96	MDT Fire
04/24/2023	860883	AT & T Corp	Public Safety	$ 3,910.00	Police Department Cell Phone
04/24/2023	860883	AT & T Corp	Public Safety	$ 3,845.20	Police MDT Toughbooks and Loaner MDT's
04/24/2023	860883	AT & T Corp	Public Safety	$ 240.84	Police MDT Toughbooks and Loaner MDT's
04/24/2023	860883	AT & T Corp	Public Safety	$ -	Police -Resource Officers
04/24/2023	860883	AT & T Corp	Public Safety	$ 287.20	Yellowstone County Cellular Charges -Three cradlepoints -Fire Dept
04/24/2023	860883	AT & T Corp	Solid Waste	$ 99.53	SOLID WASTE
04/24/2023	860883	AT & T Corp	Solid Waste	$ 339.55	SOLID WASTE
04/24/2023	860883	AT & T Corp	Street/Traffic	$ 372.55	School Flashers
04/24/2023	860883	AT & T Corp	Street/Traffic	$ 726.16	Street Traffic iPads
04/24/2023	860883	AT & T Corp	Street/Traffic	$ 43.34	Street Traffic iPads
04/24/2023	860883	AT & T Corp	Transit	$ 56.70	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Transit	$ 11.39	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Transit	$ 50.22	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Transit	$ 44.96	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Transit	$ 112.92	MET Supervisor Cell Phones
04/24/2023	860883	AT & T Corp	Transit	$ 445.09	MET Transit Tablets
04/24/2023	860883	AT & T Corp	Transit	$ 645.35	MET Transit Tablets
04/24/2023	860883	AT & T Corp	Wastewater	$ 180.56	PW Environmental
04/24/2023	860883	AT & T Corp	Wastewater	$ 292.58	PWBELKNAP-DIST COLL CELL PHONES 60/40
04/24/2023	860883	AT & T Corp	Wastewater	$ 477.17	PWBLKNP Electricians -Phones
04/24/2023	860883	AT & T Corp	Wastewater	$ 27.80	PWBLKNP STORES -75/25
04/24/2023	860883	AT & T Corp	Wastewater	$ 10.02	PWBLNP-WWTRMNT1 Wastewater Treatment Plant and iPads
04/24/2023	860883	AT & T Corp	Wastewater	$ 2,512.77	PWBLNP-WWTRMNT1 Wastewater Treatment Plant and iPads
04/24/2023	860883	AT & T Corp	Wastewater	$ 920.25	PWBLNP-WWTRMNT1 Wastewater Treatment Plant and iPads

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04/24/2023	860883	AT & T Corp	Wastewater	$ 313.18	PW-Distribution Collection Tablets 60/40
04/24/2023	860883	AT & T Corp	Wastewater	$ 69.68	PW-Environmental
04/24/2023	860883	AT & T Corp	Water	$ 438.86	PWBELKNAP-DIST COLL CELL PHONES 60/40
04/24/2023	860883	AT & T Corp	Water	$ 1,048.17	PWBELKNAP-WT Water Treatment
04/24/2023	860883	AT & T Corp	Water	$ 472.64	PWBLKNP COMM-METER CityWorks/Neptune
04/24/2023	860883	AT & T Corp	Water	$ 201.85	PWBLKNP MTRSHOP CELL PHONE AND IPADS
04/24/2023	860883	AT & T Corp	Water	$ 392.04	PWBLKNP MTRSHOP CELL PHONE AND IPADS
04/24/2023	860883	AT & T Corp	Water	$ 83.42	PWBLKNP STORES -75/25
04/24/2023	860883	AT & T Corp	Water	$ 469.78	PW-Distribution Collection Tablets 60/40
04/24/2023	860885	Automon, LLC	Court Grants	$ 6,615.00	AutoMon Yearly Renew Contract
04/24/2023	860891	Blgs Area Chamber	General	$ 10,000.00	2023 CPTED Course
04/24/2023	860894	Blgs Precast Enterprise	Street/Traffic	$ 6,600.00	storm sewer supplies
04/24/2023	860900	Brenntag Pacific	Wastewater	$ 6,048.29	chemical supplies
04/24/2023	860900	Brenntag Pacific	Wastewater	$ 10,773.62	Sodium hypochlorite for filament control in process
04/24/2023	ACH	Burns & McDonnell Eng	Water	$ 222,011.19	WO 19-42 West End Water Treatment Plant Project
04/24/2023	860918	CXT Incorporated	CDBG	$ 105,355.00	pre-manufactured restroom-North Park-using CDBG-CV funds
04/24/2023	860919	Desert Mt Corp	Street/Traffic	$ 4,915.50	ice slicer
04/24/2023	860919	Desert Mt Corp	Street/Traffic	$ 4,838.94	ice slicer
04/24/2023	860919	Desert Mt Corp	Street/Traffic	$ 4,831.17	ice slicer
04/24/2023	860921	DOWL	Tax Incrmnt N27	$ 34,355.37	WO 23-11 Downtown 2-Way Street Conversion; Payment 4
04/24/2023	860921	DOWL	Water	$ 49,361.25	WO 22-44 Zone 1 Water Storage Improvements; Payment 8
04/24/2023	860923	Downtown Blgs BID	Parks Maint	$ 5,000.00	FY23 3 quarter PMD jan23-Mar23 (7823)
04/24/2023	860923	Downtown Blgs BID	Parks Maint	$ 5,000.00	FY23 PMD 4 quarter apr 23- jun 23 (7824)
04/24/2023	860923	Downtown Blgs BID	Parks Maint	$ 5,000.00	FY23 quarter 1 PMD July 22-Sept 22 (7821)
04/24/2023	860923	Downtown Blgs BID	Parks Maint	$ 5,000.00	FY23 quarter 2 PMD Oct 22-Dec 22 (7822)
04/24/2023	860925	Duval Ford	Capital Replace	$ 45,838.00	ERP SUV REPLACEMENT, FIRE UNIT #4082, 2-NEW
04/24/2023	860925	Duval Ford	Capital Replace	$ 45,838.00	ERP SUV REPLACEMENT, FIRE UNIT #4082, 2-NEW
04/24/2023	860925	Duval Ford	Capital Replace	$ 45,838.00	ERP SUV REPLACEMENT, FIRE UNIT #4082, 2-NEW
04/24/2023	860928	Facilities Management	Facilities	$ 4,286.52	FMX Annual Subscription Fee/Subscription Add On Fee - 2 additional
04/24/2023	860928	Facilities Management	Transit	$ 4,286.52	FMX Annual Subscription Fee/Subscription Add On Fee - 2 additional
04/24/2023	860932	Fisher's Technology	Airport	$ 60.09	Invoice #1152291. Copy Machine Maintenance
04/24/2023	860932	Fisher's Technology	CDBG	$ 221.29	3.10.23 - Fisher's Tech - Invoice #1142529
04/24/2023	860932	Fisher's Technology	CDBG	$ 88.08	4.3.23 - Fisher's Tech - Duplication Expenses - Invoice #1152293
04/24/2023	860932	Fisher's Technology	CDBG	$ 62.12	Duplication Expenses - Fisher's Tech - 2.1.23 - Invoice #1127834

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04/24/2023	860932	Fisher's Technology	Central Services	$ 186.46	1142528 Copy Fund- FEQ29993
04/24/2023	860932	Fisher's Technology	Central Services	$ 43.17	1143646 Copy Fund- FEW18853
04/24/2023	860932	Fisher's Technology	Central Services	$ 1.24	1143647 Police- FEQ19719 & Copy Fund- FEQ18854
04/24/2023	860932	Fisher's Technology	Central Services	$ 122.90	1145145 Copy Fund- FEQ21542
04/24/2023	860932	Fisher's Technology	Central Services	$ 891.70	1152294 Copy Fund- FEQ19169, 19205, 19204, 33999, 36136, 19207
04/24/2023	860932	Fisher's Technology	Central Services	$ 18.37	1154589 Copy Fund- FEQ27712
04/24/2023	860932	Fisher's Technology	Central Services	$ 41.15	1155166 Copy Fund- FEQ27713
04/24/2023	860932	Fisher's Technology	Central Services	$ 184.14	1155167 Copy Fund- FEQ29993
04/24/2023	860932	Fisher's Technology	Engineering	$ 8.45	Contract base rate charge for this billing period
04/24/2023	860932	Fisher's Technology	Engineering	$ 4.93	contract cover charges on three invoices
04/24/2023	860932	Fisher's Technology	General	$ 130.93	charges for copier services - 1152292
04/24/2023	860932	Fisher's Technology	General	$ 130.92	charges for copier services - 1152292
04/24/2023	860932	Fisher's Technology	General	$ 160.31	monthly copier charges -1155168
04/24/2023	860932	Fisher's Technology	Library	$ 50.81	1152290 Library copier charges
04/24/2023	860932	Fisher's Technology	Park Dist 1	$ 130.93	charges for copier services - 1152292
04/24/2023	860932	Fisher's Technology	Public Safety	$ 2.13	1143144 Police- FEQ33964 Evidence
04/24/2023	860932	Fisher's Technology	Public Safety	$ 97.01	1143647 Police- FEQ19719 & Copy Fund- FEQ18854
04/24/2023	860932	Fisher's Technology	Public Safety	$ 117.28	1146199 Police- FEQ35508, 35509, & 35510
04/24/2023	860932	Fisher's Technology	Public Safety	$ 286.66	1155165 Police- FEQ29967
04/24/2023	860932	Fisher's Technology	Public Safety	$ 14.30	BW COPIES: 911 CENTER COPIER
04/24/2023	860932	Fisher's Technology	Public Safety	$ 77.77	COLOR COPIES: 911 CENTER COPIER
04/24/2023	860932	Fisher's Technology	Solid Waste	$ 54.81	Contract overage charge 2/18/2023 - 3/17/2023. Landfill.
04/24/2023	860932	Fisher's Technology	Solid Waste	$ 190.81	Contract overage charge 3/1/2023 - 3/31/2023. Collections.
04/24/2023	860932	Fisher's Technology	Transit	$ 134.81	Invoice #1150301. Copy Machine Maintenance
04/24/2023	860932	Fisher's Technology	Water	$ 62.12	MA14076-01 monthly bill..02/28/2023-03/3
04/24/2023	860938	Guardian Security	Library	$ 11,094.06	980 March 2023
04/24/2023	ACH	HDR	Engineering	$ 283.16	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Light Maint	$ 73.29	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	P.W. Admin	$ 808.70	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Solid Waste	$ 329.81	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Storm Sewer	$ 901.14	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Street/Traffic	$ 1,110.19	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Wastewater	$ 1,212.63	WO 20-33 Public Works GIS Services
04/24/2023	ACH	HDR	Water	$ 3,609.56	WO 20-33 Public Works GIS Services

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04/24/2023	860947	Iaff	Payroll Clearing	$ 5,019.46	Payroll Summary
04/24/2023	860950	Integrated Info Solution	IT Resources	$ 6,150.00	IBM 9406-520sn/7054D One year coverage 4/1/2023-3/31/2024
04/24/2023	860957	Justice Systems	General	$ 10,000.00	Case Management Collection Module Implementation
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 91.36	BASIC STORAGE DRAWER TOPPER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 91.36	BASIC STORAGE DRAWER TOPPER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 81.57	CHARGE GUARD-SELECT, CIRCUIT PROTECTION/TIMER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 81.57	CHARGE GUARD-SELECT, CIRCUIT PROTECTION/TIMER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 52.07	CUP2-1001, SELF-ADJUSTING DOUBLE CUP HOLDER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 341.13	HAVIS CONSOLE, DASH MOUNT INUT, MID-HEIGHT ANGLED
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 341.13	HAVIS CONSOLE, DASH MOUNT INUT, MID-HEIGHT ANGLED
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 416.00	HEAVY DUTY DASH MOUNT WITH BRACKETS INCLUDED
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 416.00	HEAVY DUTY DASH MOUNT WITH BRACKETS INCLUDED
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 1,204.68	LARGE MODULAR STORAGE DRAWER WITH HEAVY DUTY LOCKS
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 1,204.68	LARGE MODULAR STORAGE DRAWER WITH HEAVY DUTY LOCKS
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 318.81	PKG-TAB-APP15, DOCK iPAD 5TH GENERATION
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 318.81	PKG-TAB-APP15, DOCK iPAD 5TH GENERATION
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 1,005.69	REAER STORAGE BOX, PREMIUM RAIDED FOLD-UP CARGO PLATE
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 1,005.69	REAER STORAGE BOX, PREMIUM RAIDED FOLD-UP CARGO PLATE
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 52.07	SELF-ADJUSTING DOUBLE CUP HOLDER
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 418.44	SHIPPING COSTS: MRT/EMS RESPONSE UNITS
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 209.22	SHIPPING COSTS: MRT/EMS RESPONSE UNITS
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 131.34	SIDE MOUNT ARMREST
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 131.34	SIDE MOUNT ARMREST
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 277.99	UNDER EQUIPMENT TRAY
04/24/2023	860962	Kent D. Bruce Co	Capital Replace	$ 277.99	UNDER EQUIPMENT TRAY
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 91.36	BASIC DRAWER TOPPER
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 81.57	CHARGE GUARD SLECT CIRCUIT PROTECTION/TIMER
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 734.81	DASH MOUNT WITH ASST BRACKETS
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 524.54	HAVIS CONSOLE C-VS-1210-INUT, MID-HEIGHT ANGLED CONSOLE
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 1,204.68	LARGE MODULAR SGORAGE DRAWER
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 1,005.69	PREMIUM RAISED FOLD-UP CARGO PLATE
04/24/2023	860962	Kent D. Bruce Co	Public Safety	$ 277.99	UNDER EQUIPMENT TRAY FOR CRISIS RESPONSE UNIT
04/24/2023	860968	Lesman Iron Works	Light Maint	$ 884.00	repair of street light pole at 1200 grand
04/24/2023	860968	Lesman Iron Works	Light Maint	$ 559.00	repair of street light pole at 1338 broadwater

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04/24/2023	860968	Lesman Iron Works	Light Maint	$ 826.00	repair of street lights at 1st ave S and S 34th
04/24/2023	860968	Lesman Iron Works	Light Maint	$ 961.00	repair pole at 2222 broadwater
04/24/2023	860968	Lesman Iron Works	Public Safety	$ 144.00	FABRICATE SUCTION STRAINER FOR TENDER 5
04/24/2023	860968	Lesman Iron Works	Wastewater	$ 305.00	Centrifuge #1 and #2 main Drive Motors t
04/24/2023	860974	Marketing Specialties	Public Safety	$ 13,743.18	FIRE 5: Underground tank monitor, leak detection & Printer
04/24/2023	860986	MFPE	Payroll Clearing	$ 2,800.78	Payroll Summary
04/24/2023	860980	Midland Implement	General	$ 38.94	186268001 - FUEL FILTER
04/24/2023	860980	Midland Implement	Capital Replace	$ 118,385.73	2 large area mowers-toro groundsmaster 5900 16'
04/24/2023	860982	Montana CSED	Payroll Clearing	$ 4,008.29	Payroll Summary
04/24/2023	860933	Montana Shed Center	Transit	$ 4,653.06	Remaining Balance on 12x24 Shed for Tire storage at METroplex
04/24/2023	860991	Moulton Bellingham	General	$ 14,692.50	Houser WWFF 151616 DJ
04/24/2023	860991	Moulton Bellingham	General	$ 1,932.50	Stillwater Lease 151617 DJ
04/24/2023	860991	Moulton Bellingham	General	$ 135.00	Stone v COB 151730 GF
04/24/2023	860992	MPPA	Payroll Clearing	$ 3,957.66	Payroll Summary
04/24/2023	860984	MT Dakota Utilities	Airport	$ 149.11	160 723 3573 6. USDA. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 1,912.07	179 053 7751 5. New Concourse A. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 301.47	185 580 1000 7. TSA. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 93.16	229 573 1000 0. Detail Bay 1 Hertz. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 206.63	283 116 0655 3. Alpine. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 2,064.85	285 580 1000 6
04/24/2023	860984	MT Dakota Utilities	Airport	$ 270.68	295 580 1000 4. Aero Interiors. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 72.07	329 573 1000 9. Detail Bay 3 Enterprise. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 68.88	429 573 1000 8. Detail Bay 4 Avis/Budget. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 74.52	529 573 1000 7. Detail Bay 5 Avis/Budget. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 7,527.46	595 580 1000 1
04/24/2023	860984	MT Dakota Utilities	Airport	$ 110.94	629 573 1000 6. Detail Bay 2 National/Alamo. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 1,277.04	706 580 1000 7
04/24/2023	860984	MT Dakota Utilities	Airport	$ 1,892.81	889 373 1000 6. Car Wash. April 2023
04/24/2023	860984	MT Dakota Utilities	Airport	$ 744.40	889 373 1000 6. Mud Wash. April 2023
04/24/2023	860984	MT Dakota Utilities	Engineering	$ 200.68	595 373 1000 1
04/24/2023	860984	MT Dakota Utilities	Facilities	$ 5,581.04	375 963 4481 4
04/24/2023	860984	MT Dakota Utilities	Facilities	$ 3,038.91	929 780 1000 4
04/24/2023	860983	MT Dakota Utilities	Fleet	$ 6,211.73	5112023
04/24/2023	860983	MT Dakota Utilities	Fleet	$ 7.73	5112023

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04/24/2023	860984	MT Dakota Utilities	General	$ 349.32	437 780 1000 9
04/24/2023	860984	MT Dakota Utilities	Library	$ 3,964.18	219 924 4851 0
04/24/2023	860984	MT Dakota Utilities	P.W. Admin	$ 50.16	595 373 1000 1
04/24/2023	860984	MT Dakota Utilities	Park Dist 1	$ 121.99	501 473 1000 2
04/24/2023	860984	MT Dakota Utilities	Parking	$ 115.92	303 725 2591 2
04/24/2023	860984	MT Dakota Utilities	Parking	$ 21.03	717 353 1000 6
04/24/2023	860984	MT Dakota Utilities	Parking	$ 69.70	799 152 1209 0
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 24.21	062 907 9494 7
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 1,238.84	169 233 1000 3
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 70.44	514 117 0478 9
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 500.81	533 653 1000 1
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 62.90	602 589 7178 1
04/24/2023	860984	MT Dakota Utilities	Public Safety	$ 776.64	885 880 1000 4
04/24/2023	860984	MT Dakota Utilities	Transit	$ 1,334.74	962 880 1000 0
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 10,187.76	293 780 1000 2
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 5,093.88	293 780 1000 2
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 5,093.88	293 780 1000 2
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 64.38	596 733 1000 5
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 62.18	713 064 3190 0
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 63.75	735 453 1000 2
04/24/2023	860984	MT Dakota Utilities	Wastewater	$ 63.75	843 879 2205 1
04/24/2023	860984	MT Dakota Utilities	Water	$ 64.48	076 225 9180 3
04/24/2023	860984	MT Dakota Utilities	Water	$ 73.76	373 580 1000 9
04/24/2023	860984	MT Dakota Utilities	Water	$ 73.76	373 580 1000 9
04/24/2023	860984	MT Dakota Utilities	Water	$ 116.72	541 380 1000 1
04/24/2023	860984	MT Dakota Utilities	Water	$ 65.34	921 580 1000 6
04/24/2023	860993	MT Dept of Rev-CGR	Airport	$ 152.30	Airport Carpet Installation/Replacement Project
04/24/2023	860993	MT Dept of Rev-CGR	Airport	$ 1,589.20	Airport Carpet Installation/Replacement Project
04/24/2023	860993	MT Dept of Rev-CGR	Airport	$ 171.04	Baggage Claim Restroom Remodel
04/24/2023	860993	MT Dept of Rev-CGR	Airport	$ 1,453.99	Restaurant Build Out-Amendment 3 To GMP - Eligible For Reimbursement
04/24/2023	860993	MT Dept of Rev-CGR	Airport	$ 123.01	Restaurant Build Out-Amendment 3 To GMP - Ineligible Cost
04/24/2023	860993	MT Dept of Rev-CGR	Bike Path/Tr	$ 208.00	WO 21-38 Warren Trans_Weave Const Contract
04/24/2023	860993	MT Dept of Rev-CGR	Bike Path/Tr	$ 2,178.14	WO 21-38 Warren Trans_Weave Const Contract
04/24/2023	860993	MT Dept of Rev-CGR	Facilities	$ 50.50	Maintenance and Repair at the Stillwater Building

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04/24/2023	860993	MT Dept of Rev-CGR	Parking	$ 393.44	P2 S Elevator, replace hydraulic piston & jack packing, new hydraulic oil.
04/24/2023	860993	MT Dept of Rev-CGR	Parking	$ 49.00	Replacement of Park 2 Canopy Faces
04/24/2023	860993	MT Dept of Rev-CGR	Public Safety	$ 138.82	FIRE 5: Underground tank monitor, leak detection & Printer
04/24/2023	860993	MT Dept of Rev-CGR	Sidewalk Const	$ 164.27	WO 22-21 Brewington Drive Reconstruction
04/24/2023	860993	MT Dept of Rev-CGR	Solid Waste	$ 3,995.30	WO 22-37 Landfill Drop-Off Building Repairs -Construction
04/24/2023	860993	MT Dept of Rev-CGR	St Maint Dist	$ 300.39	WO 22-21 Brewington Drive Reconstruction
04/24/2023	860993	MT Dept of Rev-CGR	Stillwater Const	$ 884.00	City of Billings Law and Justice Center/City Hall Remodel
04/24/2023	860993	MT Dept of Rev-CGR	Storm Sewer	$ 704.87	WO 22-21 Brewington Drive Reconstruction
04/24/2023	860993	MT Dept of Rev-CGR	Wastewater	$ 192.75	WO 20-11 Lake Hills Lift Station Rehabilitation- Final
04/24/2023	860993	MT Dept of Rev-CGR	Wastewater	$ 545.00	WO 23-36 1400 Montana Ave Sewer Service- FINAL
04/24/2023	860989	MT State Firemen	Payroll Clearing	$ 5,143.20	Payroll Summary
04/24/2023	860995	Napa-MET	Transit	$ (77.00)	3977-472103. Core Deposit
04/24/2023	860995	Napa-MET	Transit	$ 22.00	3977-472555. P/S Filters
04/24/2023	860995	Napa-MET	Transit	$ 88.45	3977-472562. ATF
04/24/2023	860995	Napa-MET	Transit	$ 9.77	3977-472562. Oil Line Fittings Unit 1841. W/O 2023-2204
04/24/2023	860995	Napa-MET	Transit	$ 6.86	3977-472562. Oil Line Fittings Unit 1841/ W/O 2023-2204
04/24/2023	860995	Napa-MET	Transit	$ (105.88)	3977-472575. Lift Supports Unit 1833. W/O 2023-2241
04/24/2023	860995	Napa-MET	Transit	$ (105.88)	3977-472575. Lift Supports Unit 1833. W/O 2023-2241
04/24/2023	860995	Napa-MET	Transit	$ (82.36)	3977-472575. Lift Supports Unit 1833. W/O 2023-2241
04/24/2023	860995	Napa-MET	Transit	$ (6.86)	3977-472662. Adapter Unit 1841. W/O 2023-2204
04/24/2023	860995	Napa-MET	Transit	$ 522.18	3977-473548. Rear Brake Drums
04/24/2023	860995	Napa-MET	Transit	$ 59.79	3977-473778. Water Pump Belt
04/24/2023	860995	Napa-MET	Transit	$ 54.00	3977-473871. Batteries Unit 1888. W/O 2023-2250
04/24/2023	860995	Napa-MET	Transit	$ 264.10	3977-473871. Batteries Unit 1888. W/O 2023-2250
04/24/2023	860995	Napa-MET	Transit	$ (54.00)	3977-473884. Core Return Unit 1888. W/O 2023-2250
04/24/2023	860995	Napa-MET	Transit	$ 257.90	3977-474057. Front Brake Rotors Unit 1877. W/O 2023-2254
04/24/2023	860995	Napa-MET	Transit	$ 79.10	3977-474227. Fiber Glass Adhesive Unit 1826. W/O 2023-2193
04/24/2023	860995	Napa-MET	Transit	$ 11.17	3977-474227. Masking Tape Unit 1826. W/O 2023-2193
04/24/2023	860995	Napa-MET	Transit	$ 37.98	3977-474446. Seam Sealer Unit 1826. W/O 2023-2193
04/24/2023	860995	Napa-MET	Transit	$ 8.78	3977-474569. Dust Caps Unit 1877. W/O 2023-2254
04/24/2023	860995	Napa-MET	Transit	$ 10.62	3977-474621. Dust Cap
04/24/2023	860995	Napa-MET	Transit	$ 78.43	3977-474670. A/C Belt
04/24/2023	860995	Napa-MET	Transit	$ 5.31	3977-475127. Dust Cap
04/24/2023	860995	Napa-MET	Transit	$ 47.62	3977-475127. Fuel Filter

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04/24/2023	860995	Napa-MET	Transit	$ 90.84	3977-475127. Oil Filters
04/24/2023	860995	Napa-MET	Transit	$ 9.95	3977-475127. Oil Seal
04/24/2023	860995	Napa-MET	Transit	$ 40.04	3977-475174. 1 7/8 Ball for Small Trailer
04/24/2023	860995	Napa-MET	Transit	$ (47.62)	3977-475183. Fuel Filter
04/24/2023	860995	Napa-MET	Transit	$ 60.26	3977-475210. Seat Belt Unit 1874. W/O 2023-2259
04/24/2023	860995	Napa-MET	Transit	$ 7.09	3977-475415. PM Parts Unit 1859. W/O 2023-2267
04/24/2023	860995	Napa-MET	Transit	$ 6.04	3977-475415. PM Parts Unit 1859. W/O 2023-2267
04/24/2023	860995	Napa-MET	Transit	$ 4.08	3977-475415. PM Parts Unit 1859. W/O 2023-2267
04/24/2023	860995	Napa-MET	Transit	$ 57.71	3977-475478. CAC Hose Unit 1832. W/O 2023-2221
04/24/2023	860995	Napa-MET	Transit	$ 2.66	3977-475483. Fuel Filter Unit 1859. W/O 2023-2267
04/24/2023	860995	Napa-MET	Transit	$ 56.99	4124-310834. Clear Coat Unit 1876. W/O 2023-2192
04/24/2023	860995	Napa-MET	Transit	$ 25.64	4124-310834. Hardener Unit 1876. W/O 2023-2192
04/24/2023	860995	Napa-MET	Transit	$ 47.49	4124-310834. Paint Unit 1876. W/O 2023-2192
04/24/2023	860995	Napa-MET	Transit	$ 2,440.00	Invoice #3977-472094. Hydraulic Jack
04/24/2023	ACH	Northwest Pipe	Facilities	$ 37.79	Inv. 7902802 4" Heavyweight No-Hub Coupling
04/24/2023	ACH	Northwest Pipe	Public Safety	$ 15.00	7898731
04/24/2023	ACH	Northwest Pipe	Public Safety	$ 15.00	7898731
04/24/2023	ACH	Northwest Pipe	Public Safety	$ 13.81	7910071
04/24/2023	ACH	Northwest Pipe	Solid Waste	$ 5.02	7897378
04/24/2023	ACH	Northwest Pipe	Solid Waste	$ 10.68	7897378
04/24/2023	ACH	Northwest Pipe	Solid Waste	$ 15.00	7898731
04/24/2023	ACH	Northwest Pipe	Solid Waste	$ 120.00	7910530
04/24/2023	ACH	Northwest Pipe	Street/Traffic	$ 15.00	7898731
04/24/2023	ACH	Northwest Pipe	Wastewater	$ 181.23	AssetWorks PWBEL
04/24/2023	ACH	Northwest Pipe	Wastewater	$ 26.64	connector inset
04/24/2023	ACH	Northwest Pipe	Wastewater	$ 267.09	UV Sump Pump WWTP
04/24/2023	ACH	Northwest Pipe	Water	$ 49.07	1"PVC SCH80 Slip Cap, 1 1/2" PCV SCH80 S
04/24/2023	ACH	Northwest Pipe	Water	$ 5,012.28	1-1/2" EU2A1F1 MACH10 METER
04/24/2023	ACH	Northwest Pipe	Water	$ 5,012.28	1-1/2" EU2A1F1 MACH10 METER
04/24/2023	ACH	Northwest Pipe	Water	$ 5,012.28	1-1/2" EU2A1F1 MACH10 METER
04/24/2023	ACH	Northwest Pipe	Water	$ 1,670.76	1-1/2" EU2A1F1 MACH10 METER
04/24/2023	ACH	Northwest Pipe	Water	$ 157.84	1-1/2" TD METER FLANGES
04/24/2023	ACH	Northwest Pipe	Water	$ 330.51	12" X 15" SH CI-FC REPAIR CLAMP - F1-1350 X 15-SH
04/24/2023	ACH	Northwest Pipe	Water	$ 186.00	3" TRU-FLO CASE GASKET - 8341-312

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04/24/2023	ACH	Northwest Pipe	Water	$ 10,107.00	3/4" T10 2BD 4 WHEEL - REGISTER HEADS R62F21
04/24/2023	ACH	Northwest Pipe	Water	$ 17,748.00	5/8" E-CODER WALL CU.FT. - METER W/RECPT
04/24/2023	ACH	Northwest Pipe	Water	$ 10,705.47	8" METER
04/24/2023	ACH	Northwest Pipe	Water	$ 61.64	BONNET GASKETS - K8109 - FOR K11 & K81 HYDRANTS
04/24/2023	ACH	Northwest Pipe	Water	$ 105.84	Filters, Air Supply Line, Filter Gallery
04/24/2023	ACH	Northwest Pipe	Water	$ 282.97	K81 UPPER STEM WITH FERRULE - K81 HYDRANT
04/24/2023	ACH	Northwest Pipe	Water	$ 1,334.82	MAIN VALVE RUBBER 5-1/4" FOR K11 & K81 - K8131 & K1137
04/24/2023	ACH	Northwest Pipe	Water	$ 281.36	METER SHOP ANTENNA
04/24/2023	ACH	Northwest Pipe	Water	$ 117.67	O-RING UPPER SEAT - K8126A (442658P F/5-1/4")
04/24/2023	ACH	Northwest Pipe	Water	$ 69.84	PO Water Plant High Service Flowmeter, z
04/24/2023	ACH	Northwest Pipe	Water	$ 24.48	PW Water Plant Filter's
04/24/2023	ACH	Northwest Pipe	Water	$ 39,642.00	R-900 ENHANCED WALL RR - MIU 13341-200
04/24/2023	ACH	Northwest Pipe	Water	$ 105.16	RECTOR SEAL PIPE THREAD COMPOUND
04/24/2023	ACH	Northwest Pipe	Water	$ 3,876.90	REG E-CODER PIT 1-1/2" RH2F41
04/24/2023	ACH	Northwest Pipe	Water	$ 140.76	Willet Pump Gaskets
04/24/2023	ACH	Northwest Pipe	Water	$ 13.74	WTP H2-4 Flush lines
04/24/2023	861000	NorthWestern Energy	Airport	$ 1,500.48	0100483-7. Runway Lights. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 1,847.72	0100484-5. ARFF Facility. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 143.60	1647695-4. De Icer. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 596.70	1669567-8. TSA. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 1,763.27	1993430-6. Car Wash. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 421.47	2001846-1. Mud Wash. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 515.87	2001848-7. Detail Bay 1 Hertz. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 333.05	2001855-2. Detail Bay 2 National/Alamo. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 138.78	2001862-8. Detail Bay 3 Enterprise. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 434.45	2001865-1. Detail Bay 4 Avis/Budget. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 101.45	2001867-7. Detail Bay 5 Thrifty/Dollar. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 91.44	3085107-5. Employee Parking. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 363.55	3446396-8. USDA. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 1,125.74	3477231-9. Parking Zone. April 2023
04/24/2023	861000	NorthWestern Energy	Airport	$ 11.47	3733186-5. Airport Storage. April 2023
04/24/2023	861000	NorthWestern Energy	Facilities	$ 2,105.41	0975808-7
04/24/2023	861000	NorthWestern Energy	Facilities	$ 747.27	1160802-3
04/24/2023	861000	NorthWestern Energy	Facilities	$ 4,664.71	1160804-9

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04/24/2023	861000	NorthWestern Energy	Facilities	$ 2,877.73	1269391-7
04/24/2023	861000	NorthWestern Energy	General	$ 45.65	0712387-0
04/24/2023	861000	NorthWestern Energy	General	$ 127.91	0712536-2
04/24/2023	861000	NorthWestern Energy	General	$ 51.44	0720818-4
04/24/2023	861000	NorthWestern Energy	General	$ 186.14	0720821-8
04/24/2023	861000	NorthWestern Energy	Park Dist 1	$ 343.18	0925496-2
04/24/2023	861000	NorthWestern Energy	Park Dist 1	$ 11.35	1836666-6
04/24/2023	861000	NorthWestern Energy	Public Safety	$ 909.05	0871546-8
04/24/2023	861000	NorthWestern Energy	Solid Waste	$ 2,756.69	3252194-0
04/24/2023	861000	NorthWestern Energy	Street/Traffic	$ 0.42	1740357-7
04/24/2023	861000	NorthWestern Energy	Street/Traffic	$ 0.70	1748896-6
04/24/2023	861000	NorthWestern Energy	Wastewater	$ 76,964.19	0100591-7
04/24/2023	861000	NorthWestern Energy	Wastewater	$ 1,141.02	0100606-3
04/24/2023	861000	NorthWestern Energy	Wastewater	$ 200.88	389 62nd St Lift Entrance. March 2023
04/24/2023	861000	NorthWestern Energy	Wastewater	$ 486.71	822 Shiloh Crossing BLVD Lift
04/24/2023	861000	NorthWestern Energy	Water	$ 1,044.10	0100485-2
04/24/2023	861000	NorthWestern Energy	Water	$ 6,198.33	0100540-4
04/24/2023	861000	NorthWestern Energy	Water	$ 3,423.05	0100606-3
04/24/2023	861000	NorthWestern Energy	Water	$ 86,717.28	0100606-3
04/24/2023	861000	NorthWestern Energy	Water	$ 4,207.79	0722264-9
04/24/2023	861000	NorthWestern Energy	Water	$ 2,924.30	0723040-2
04/24/2023	861000	NorthWestern Energy	Water	$ 52.50	0723059-2
04/24/2023	861000	NorthWestern Energy	Water	$ 568.00	1116452-2
04/24/2023	861000	NorthWestern Energy	Water	$ 3,685.07	5809 Canyonwood Dr, 3/2023
04/24/2023	860999	NW Playground Equipt	Park Dist 1	$ 255,366.13	playground equipment for Castle Rock park
04/24/2023	861004	Pierce Flooring	Airport	$ 157,331.03	Airport Carpet Installation/Replacement Project
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 88.20	P0975312 - AIR FILTER - AT191102
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 88.20	P0975312 - AIR FILTER - AT191102
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 397.22	P0975312 - FILTER ELEMENT - AT411949
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 397.22	P0975312 - FILTER ELEMENT - AT411949
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 2,382.90	W3721412 - LABOR - X998498
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 300.41	W3721412 - PARTS - X998498
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 304.20	W3740712 - LABOR - X923799
04/24/2023	ACH	RDO Equipt	Solid Waste	$ 755.38	W3740712 - PARTS - X923799

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04/24/2023	861013	Rimrock Foundation	Court Grants	$ 3,782.14	23 March Rimrock Treatment Services
04/24/2023	861013	Rimrock Foundation	Court Grants	$ 6,764.63	23 March Rimrock Treatment Services
04/24/2023	861027	State Chemical	Airport	$ 2,802.80	Super Cool-Ade Treatment for Cooling Towers, Lubricant
04/24/2023	861029	Steiner Thuesen PLLC	Park Dist 1	$ 1,266.50	W.O.22-08 Central Park Tennis Court 1
04/24/2023	861029	Steiner Thuesen PLLC	Park Dist 1	$ 9,320.20	WO 23-31 Millice Park Irrigation System Replacement
04/24/2023	861029	Steiner Thuesen PLLC	Park Dist 1	$ 6,138.20	WO 23-32 Gorham park Irrigation System Replacement
04/24/2023	861029	Steiner Thuesen PLLC	Park Dist 1	$ 6,138.20	WO 23-33 Grandview Park Irrigation System Replacement
04/24/2023	861036	Terri Porta Fine Art	Planning	$ 3,000.00	MOBILIZE THE MAGIC T Porta
04/24/2023	861036	Terri Porta Fine Art	Planning	$ 1,383.00	MOBILIZE THE MAGIC Terri Porta
04/24/2023	861042	Tire-Rama	Solid Waste	$ 1,275.00	Tire alignment and purchase. Collections.
04/24/2023	861042	Tire-Rama	Solid Waste	$ 2,790.50	Tire purchase and repair. Collections.
04/24/2023	861042	Tire-Rama	Solid Waste	$ 840.50	Tire repair and purchase. Collections.
04/24/2023	861042	Tire-Rama	Solid Waste	$ 2,300.00	Tire repair. Dismount/mount. Collections.
04/24/2023	ACH	Town & Co Supply	Public Safety	$ 589.10	434746 DIESEL FUEL
04/24/2023	ACH	Town & Co Supply	Public Safety	$ 580.73	434746 UNLEADED FUEL
04/24/2023	ACH	Town & Co Supply	Public Safety	$ 653.72	434748: FIRE 1 - DIESEL
04/24/2023	ACH	Town & Co Supply	Public Safety	$ 690.19	434748: FIRE 1 UNLEADED
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ (1,103.50)	BLBO0020013 -LABOR CREDIT BLWO0223555
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ (44.14)	BLBO0020013 -PARTS CREDIT BLWO0223555
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 974.80	BLCS0805913 -EDGE - 100-6668
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 160.32	BLCS0805916 -BOLT - 5P-8823
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 393.00	BLCS0805916 -END EDGE - 3G-6395
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 83.16	BLCS0805916 -NUT - 3K-9770
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 832.38	BLCS0806323 -CARTRIDGE AS - 593-1532
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 832.38	BLCS0806323 -CARTRIDGE AS - 593-1532
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 316.14	BLCS0806323 -FILTER-CAB A - 578-1844
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 316.14	BLCS0806323 -FILTER-CAB A - 578-1844
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 1,396.34	BLW00222821
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 921.83	BLW00222822
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 3,082.47	BLW00222939 - GASKET
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 2,914.68	BLW00222940 - GASKET
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 2,807.14	BLW00222944
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 959.09	BLW00223042
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 2,052.00	BLWO0223328 -LABOR - 17G00218

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04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 618.66	BLWO0223328 -PARTS - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 1,103.50	BLWO0223555 -LABOR - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 44.14	BLWO0223555 -PARTS - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 1,026.00	BLWO0223558 -LABOR - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 41.04	BLWO0223558 -PARTS - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 1,823.50	BLWO0223560 -LABOR - 17G00218
04/24/2023	ACH	Tractor & Equipt	Solid Waste	$ 2,781.15	BLWO0223560 -PARTS - 17G00218
04/24/2023	ACH	Tractor & Equipt	Wastewater	$ 1,750.00	Trench Box Rental...03/24/2023-04/21/202
04/24/2023	861047	Verizon Wireless	Engineering	$ 27.32	PW-Engineering
04/24/2023	861047	Verizon Wireless	Fleet	$ 106.50	Motor Pool
04/24/2023	861047	Verizon Wireless	General	$ 162.73	City Administrator
04/24/2023	861047	Verizon Wireless	General	$ 40.01	Tina Hoeger Laptop
04/24/2023	861047	Verizon Wireless	General	$ 27.32	Victoria Hill -Laptop
04/24/2023	861047	Verizon Wireless	Park Dist 1	$ (18.11)	PRPL-PARKS
04/24/2023	861047	Verizon Wireless	PD Program	$ 415.23	CCSIU Cell/PTT
04/24/2023	861047	Verizon Wireless	PD Program	$ 80.02	CCSIU RAVEN
04/24/2023	861047	Verizon Wireless	Phone System	$ 80.02	WRF Cradle Point
04/24/2023	861047	Verizon Wireless	Public Safety	$ 120.03	Fire MDT
04/24/2023	861047	Verizon Wireless	Public Safety	$ 268.32	Fire MDT
04/24/2023	861047	Verizon Wireless	Public Safety	$ 520.13	MDT Toughbooks
04/24/2023	861047	Verizon Wireless	Public Safety	$ 40.01	MDT Toughbooks
04/24/2023	861047	Verizon Wireless	Public Safety	$ 71.03	Police Bait Car
04/24/2023	861047	Verizon Wireless	Public Safety	$ 80.02	Police iPads
04/24/2023	861047	Verizon Wireless	Public Safety	$ 10.02	Police MiFi
04/24/2023	861047	Verizon Wireless	Solid Waste	$ -	PW Dozer Trimble Dozer
04/24/2023	861047	Verizon Wireless	Solid Waste	$ 109.28	PW-Solid Waste
04/24/2023	861047	Verizon Wireless	Solid Waste	$ 118.51	PW-SW-ON CALL Solid Waste On Call
04/24/2023	861047	Verizon Wireless	Solid Waste	$ 23.72	PW-SW-ON CALL Solid Waste On Call
04/24/2023	861047	Verizon Wireless	Solid Waste	$ 524.52	Solid Waste Tablets -Routware
04/24/2023	861047	Verizon Wireless	Street/Traffic	$ -	PW-Streets City Works
04/24/2023	861047	Verizon Wireless	Street/Traffic	$ 174.67	PW-Streets- iPads
04/24/2023	861047	Verizon Wireless	Street/Traffic	$ 197.14	PW-STRT TRFC Streets
04/24/2023	861047	Verizon Wireless	Transit	$ 309.02	MET AVL
04/24/2023	861047	Verizon Wireless	Transit	$ 1,120.28	MET Max Transit

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04/24/2023	861047	Verizon Wireless	Transit	$ 970.30	MET Max Transit
04/24/2023	861047	Verizon Wireless	Wastewater	$ 400.10	MET Tablets
04/24/2023	861047	Verizon Wireless	Water	$ (21.14)	PW Belknap Meter Shop
04/24/2023	861047	Verizon Wireless	Water	$ 27.32	PWBLKNP Water Treatment
04/24/2023	861047	Verizon Wireless	Water	$ 94.65	PWBLNP Comm-Meter CityWorks/Neptune
04/24/2023	861047	Verizon Wireless	Water	$ 40.01	PWBLNP Comm-Meter CityWorks/Neptune
04/24/2023	861049	Voegele Acquisition	Street/Traffic	$ 1,368.16	fertilization of trees along zimmerman from poly to broadwater
04/24/2023	861049	Voegele Acquisition	Street/Traffic	$ 550.00	fertilizing trees on 27th street
04/24/2023	861049	Voegele Acquisition	Street/Traffic	$ 1,614.12	fertilizing trees on king ave west b/t 32nd and shiloh
04/24/2023	861050	W Municipal Const	Wastewater	$ 19,083.34	WO 20-11 Lake Hills Station Rehabilitation
04/24/2023	861055	Ylwstn Co News	Airport	$ 195.50	Airport
04/24/2023	861055	Ylwstn Co News	CDBG	$ 148.30	Community Development
04/24/2023	861055	Ylwstn Co News	Engineering	$ 979.80	Engineering
04/24/2023	861055	Ylwstn Co News	Facilities	$ 186.30	Facilities
04/24/2023	861055	Ylwstn Co News	General	$ 77.00	Administration
04/24/2023	861055	Ylwstn Co News	General	$ 43.70	Administration
04/24/2023	861055	Ylwstn Co News	General	$ 48.20	Finance
04/24/2023	861055	Ylwstn Co News	Library	$ 19.20	Library
04/24/2023	861055	Ylwstn Co News	P.W. Admin	$ 33.90	Public Works
04/24/2023	861055	Ylwstn Co News	Park Dist 1	$ 19.20	Parks & Rec
04/24/2023	861055	Ylwstn Co News	Parking	$ 29.40	Parking
04/24/2023	861055	Ylwstn Co News	Planning	$ 303.90	City/County Planning
04/24/2023	861055	Ylwstn Co News	Planning	$ 9.80	Planning
04/24/2023	861055	Ylwstn Co News	Planning	$ 39.20	Planning
04/24/2023	861055	Ylwstn Co News	Public Safety	$ 14.70	Animal Control
04/24/2023	861055	Ylwstn Co News	Public Safety	$ 19.20	Police
04/24/2023	861055	Ylwstn Co News	Solid Waste	$ 266.00	Engineering
04/24/2023	861055	Ylwstn Co News	Solid Waste	$ 96.00	Solid Waste
04/24/2023	861055	Ylwstn Co News	Tax Incrmnt S	$ 14.70	Planning
04/24/2023	861055	Ylwstn Co News	Transit	$ 9.60	Airport
04/24/2023	861056	Ylwstn Electric	Airport	$ 2,849.00	Invoice #BIL7097. Media Badges
04/24/2023	861057	Ylwstn Valley An Shelter	Public Safety	$ 27,025.00	city contract

City Council Regular

Date:	05/22/2023
Title:	New City Hall Project - Bid Package No. 2 Award Contract Amendment
Presented by:	John Caterino, Facilities Manager
Department:	City Hall Administration
Presentation:	Yes
Legal Review	Yes

RECOMMENDATION

Staff recommends approval of Bid Package #2 contract amendment with Dick Anderson Construction for $19,823,910.07.

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

The City has a contract with Dick Anderson Construction to perform as Construction Manager at Risk (CMAR) for the New City Hall renovation project. Dick Anderson advertised Bid Package #2 following the State required procurement process on behalf of the City. The bid package was advertised in *Yellowstone County News a*nd the City website on 03/24/2023, 03/31/2023, and 04/07/2023.

Bids were opened on 04/13/2023.

Bid Package #2 includes construction divisions 01-1 final cleaning, 03-1 cast-in-place concrete, 04-1 masonry, 06-1 carpentry and miscellaneous specifications sections, 07-2 thermal insulation, 08-1 doors frames & hardware, 08-2 aluminum-framed systems, 08-3 overhead/specialty doors, 09-1 metal stud framing and gypsum board assemblies, 09-3 flooring & tile, 09-4 suspended ceilings & acoustical treatments, 09-5 painting & wall coverings, 10-1 specialties, 10-3 signage, 11-2 residential appliances, 12-1 cabinets & countertops, 12-2 custom wood finishes, 12-3 window treatments, 14-1 elevators, 31-1 earthwork, 32-1 landscaping & irrigation.

Bid Package #2 is the last component of the GMP (guaranteed maximum price) of the CMAR process.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

The award of this contract will result it a total contract price of $22,220,134.00.

Attachments

Dick Anderson GMP Amendment

AIA® Document G701® – 2017

Change Order

PROJECT: *(Name and address)*
City of Billings Law and Justice Center / City Hall Remodel
316 N. 26th Street
Billings, Montana

CONTRACT INFORMATION:
Contract For: General Construction

Date: April 19. 2022

CHANGE ORDER INFORMATION:
Change Order Number: 2

Date: May 8, 2023

OWNER: *(Name and address)*
City of Billings
P.O. Box 1178
Billings MT 59103

ARCHITECT: *(Name and address)*
Johnson Laffen Galloway Architects, Ltd
416 E. Main Ave.
Bismarck, ND 58501

CONTRACTOR: *(Name and address)*
Dick Anderson Construction
P.O. Box 31511
Billings, MT 59107

THE CONTRACT IS CHANGED AS FOLLOWS:
(Insert a detailed description of the change and, if applicable, attach or reference specific exhibits. Also include agreed upon adjustments attributable to executed Construction Change Directives.)
Delete the executed GMP Amendment Exhibit A dated 12/1/2022 and replace with the attached revised executed Exhibit A - Guaranteed Maximum Price Amendment with attachments. (Adds the work of Bid Pack 2 including Alternates No.2 and 5). Add the work of PCCO-2 (ASI-1 through ASI-4, ASI-6 (shoring steel) and Aluminum Canopy), See attached documents.

The original Guaranteed Maximum Price was	$	2,209,299.00
The net change by previously authorized Change Orders	$	186,924.93
The Guaranteed Maximum Price prior to this Change Order was	$	2,396,223.93
The Guaranteed Maximum Price will be increased by this Change Order in the amount of	$	19,823,910.07
The new Guaranteed Maximum Price including this Change Order will be	$	22,220,134.00

The Contract Time will be unchanged by ( ) days.
The new date of Substantial Completion will be August 31, 2024

NOTE: This Change Order does not include adjustments to the Contract Sum or Guaranteed Maximum Price, or the Contract Time, that have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Johnson Laffen Galloway Architects, Ltd	Dick Anderson Construction	City of Billings
ARCHITECT *(Firm name)*	**CONTRACTOR** *(Firm name)*	**OWNER** *(Firm name)*
SIGNATURE	**SIGNATURE**	**SIGNATURE**
Nick Lippert, Project Manager	Kevin Hintt, Vice President-Billings	William A. Cole, Mayor
PRINTED NAME AND TITLE	**PRINTED NAME AND TITLE**	**PRINTED NAME AND TITLE**
DATE	**DATE**	**DATE**

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User Notes: (3B9ADA4F)

Change Order Number 2 - Summary

ITEM		COST	NOTES:
Attached, revised A133 Amendment Exhibit A incorporating the following:			
1	$	19,559,613.00	Bid Package #2 per attached DAC Master Estimate (with allowances listed)
2	$	49,090.00	Add work of Alternate No. 2: Add interior rain leader piping for future installation of overflow roof drains.
3	$	30,152.00	Add work of Alternate No. 5: Add increased gas piping size.
4	$	185,055.07	Add the work of ASI-1 through 4, ASI-6 for additional steel required for shoring, and recreation of original aluminum canopy grille at main entrance.
Change Order No. 2 Total:	**$**	**19,823,910.07**	

AIA® Document A133® – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated , is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the Nineteenth day of March in the year 2022 (the "Agreement")
(In words, indicate day, month, and year.)

for the following **PROJECT:**
(Name and address or location)

City of Billings Law and Justice Center / City Hall Remodel
316 North 26th Street, Billings, Montana

THE OWNER:
(Name, legal status, and address)

City of Billings
P.O. Box 1178
Billings, MT 59103

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Dick Anderson Construction, Inc.
P.O. Box 31511
Billings, MT 59107

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Twenty Two Million, Two Hundred Twenty Thousand, One Hundred Thirty Four Dollars ($ $22,220,134.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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User Notes: (1110462574)

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

Refer to attached Exhibit 1

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates
§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
No. 2: add interior rain leader piping	$49,090.00
No. 5: add increased gas piping size.	$30,152.00

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
See attached Exhibit 1		See Exhibit 1

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)
none		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

[ ] The date of execution of this Amendment.

[X] Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

November 28, 2022

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion
§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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User Notes: (1110462574)

[ ] Not later than ( ) calendar days from the date of commencement of the Work.

[X] By the following date: August 31, 2024, provided material and equipment components are delivered and ready for installation by all suppliers by dates required by the Construction Manager's schedule. These include but are not limited to: (i) electrical panels and gear by April 1, 2024; and (ii) air handling units by January 6, 2024. In the event any materials or equipment are not delivered and ready for installation by dates required by the Construction Manager's schedule for any reason beyond the reasonable control of the Construction Manager, the Contract Time will be adjusted according to the actual delivery dates through the Change Order process. The Construction Manager shall report to the Owner monthly on the delivery status of materials and equipment components subject to this provision.

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

See Exhibit 2 – Project Manual Table of Contents

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

See Exhibit 3 – Index of Contract Drawings

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

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Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
See Exhibit 1	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

See Exhibit 1

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

Bid Pack 1, dated 9/23/22
Bid Pack 1, Addendum No. 1, dated 10/07/2022
Bid Pack 1, Addendum No. 2, dated 10/19/2022
Change Order No. 1, dated 5/8/2023
ASI-1 through ASI-4, ASI-6 (shoring steel), Aluminum Canopy per A304
Bid Pack 2, dated 03/17/2023
Bid Pack 2, Addendum No. 1, dated 03/17/2023
Bid Pack 2, Addendum No. 2, dated 03/22/2023
Bid Pack 2, Addendum No. 3, dated 03/29/2023
Bid Pack 2, Addendum No. 4, dated 04/06/2023
See Exhibit 4 (previous GMP amendment dated 12/01/2022)
General Conditions of the Contract for Construction A201-2017, dated 05/22/2023.

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

See Exhibit 5 – Project Directory

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
William A. Cole Mayor	Kevin Hintt Vice President – Billings
(Printed name and title)	*(Printed name and title)*

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	Description		Quantity	Unit	Price	Amount Dollars	Cents
	01-0 General Conditions	**(Page 2)**				889,520	00
	01-1 Final Cleaning	**(Page 2)**				36,400	00
	03-1 Cast-in-Place Concrete	**(Page 2)**				20,896	00
	04-1 Masonry	**(Page 2)**				32,440	00
	05-1 Struct Steel Fab	**(Page 2)**				0	00
	06-1 Misc. Carpentry	**(Page 2)**				638,265	00
	07-1 Thermal Insulation	**(Page 2)**				129,750	00
	07-4 Applied Fire Protection	**(Page 2)**				33,000	00
	08-1 Doors & Hardware	**(Page 2)**				713,754	00
	08-2 Aluminum-Framed Systems	**(Page 2)**				531,999	25
	08-3 Overhead/Specialty Doors	**(Page 2)**				51,774	00
	09-1 Metal Stud Framing & Gypsum Board Assemblies	**(Page 2)**				1,586,140	00
	09-3 Flooring & Tile	**(Page 2)**				1,243,051	32
	09-4 Susp Ceilings & Ac Treatments	**(Page 2)**				591,117	50
	09-5 Painting & Wall Covering	**(Page 2)**				225,000	00
	09-6 Wall Coverings	**(Page 2)**				52,307	00
	10-1 Specialties	**(Page 3)**				255,545	00
	10-4 Folding Panel Partitions	**(Page 3)**				19,754	00
	12-1 Cabinets & Countertops	**(Page 3)**				558,859	00
	12-2 Custom Wood Finishes	**(Page 3)**				1,021,800	00
	12-3 Window Treatments	**(Page 3)**				96,617	00
	21-1 Fire Sprinkler	**(Page 3)**				427,499	00
	22-1 Plumbing	**(Page 3)**				1,521,341	00
	23-1 HVAC	**(Page 3)**				2,816,289	00
	26-1 Electrical	**(Page 3)**				3,393,998	00
	31-1 Sitework	**(Page 3)**				38,914	00
	32-1 Landscape	**(Page 3)**				71,000	00
		Subtotal				16,997,031	00
	Insurance: Builder's Risk BY OWNER					0	00
	Insurance: OCP NOT REQUIRED					0	00
	Insurance: General Liability	0.800%				135,976	00
	ALLOWANCE: Fire Proofing Patch at Steel Structure					20,000	00
	ALLOWANCE: Fire Proofing existing rated walls					5,000	00
	ALLOWANCE: Seal cracks in existing foundation					10,000	00
	ALLOWANCE: Building Signage & Monument Signs					200,000	00
	ALLOWANCE: Re-install Art Panels					20,000	00
	ALLOWANCE: Exterior soffit repairs					20,000	00
	ALLOWANCE: Wall patching at material lift openings					8,000	00
	ALLOWANCE: Concrete Patching(RFI #8)					15,000	00
	ALLOWANCE: Sidewalk Repair/Patching					7,500	00
	ALLOWANCE: Elevator Cab Stainless Steel					50,000	00
	ALLOWANCE: Art installation coordination					50,000	00
	ALLOWANCE: Floor leveling					10,000	00
	ALLOWANCE: Winter Conditions & Snow Removal					20,000	00
	ALLOWANCE: Move existing City Sculpture					15,000	00
	ALLOWANCE: Commissioning					35,000	00
	Construction Contingency	5.000%				856,650	00
	Bond: Payment & Performance					99,440	00
	Margin: GC on bid (main Contract)	4.250%				789,420	00
	Montana 1% GRT	1.000%				195,596	00
	Estimate Total					**19,559,613**	**00**

City Council Regular

Date:	05/22/2023
Title:	Public Hearing and Resolution Adopting Water and Wastewater Rates and Fees
Presented by:	Jennifer Duray
Department:	Public Works
Presentation:	Yes
Legal Review	Yes

RECOMMENDATION

Staff recommends that the City Council conduct a public hearing and approve the proposed resolution adopting the water and wastewater rate and fee schedule effective July 1, 2023.

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

Public Works engaged AE2S Nexus to conduct a cost of service rate study to review and recommend appropriate water and wastewater user rates, the resale rate for the County Water District of Billings Heights, and wholesale rates for Lockwood Water and Sewer District, Phillips 66 Billings Refinery, and Exxon Refinery, as well as calculate the System Development Fees (SDFs) for water and wastewater. The methodology used in the study follows industry standard approaches and recommends rates for each class of customer. The rates allow the Public Works Department to adequately recover costs in proportion to the cost of providing service for each customer class. The rates also reflect the addition of $1 million of water funds and $1 million of wastewater funds to set aside for pipe extensions in both FY24 and FY25. The following is a summary of the rates and fees proposed for FY24 and FY25:

1. Increase the water minimum monthly fees for all water customers by 2% in both FY24 and FY25.
2. Increase the volumetric rate for residential, seasonal and multi-family water customers by 12% in both FY24 and FY25.
3. Increase the volumetric rate for non-residential water customers and bulk water resellers by 12% in FY24 and 8% in FY25.
4. The resale rate for the County Water District of Billings Heights will not increase in FY24. However, the FY25 rate will increase by approximately 48.8%.
5. Increase private fire protection charges to reflect the current costs of services by increasing the fee by 6% in FY24 and FY25.
6. Increase the wastewater minimum monthly fees by an average of 4.6% in FY24 and 6.2% in FY25.
7. Increase the wastewater volumetric rate by 6.6% in FY24 and 6.2% in FY25.
8. Adjust the volume charge, fixed monthly fee, and SDF for Lockwood Water and Sewer District, Exxon Refinery, and Phillips 66 Billings Refinery to reflect the current costs of services.
9. Change the residential water SDF methodology to reflect the nexus between lot sizes and impact to the water system. This change results in a flat rate per unit, up to 4 units, for the indoor component and a tier rate structure for the outdoor component based on lot size.
10. There will be no change to the non-residential water SDF and the irrigation SDF will increase minimally by 0.4%.
11. Decrease the Billings wastewater SDF by an average of 10.2% and the Lockwood SDF by 11.2%.
12. Increase various miscellaneous waster and wastewater fees to reflect current cost of services.

The attached resolution specifies the proposed rates and fees. A comparison of current versus proposed rates is also attached. A public hearing is required per MCA 69-7-111 and if the current proposed resolution is approved, rates will be effective July 1, 2023 and July 1, 2024 as indicated.

ALTERNATIVES

City Council may:

- Approve the recommended resolution;
- Approve an amended resolution; or
- Not approve a resolution. If Council does not approve a resolution specifying rates and fees for FY24 and FY25, the rates and fees will continue at current levels, leaving insufficient revenues in the water and wastewater funds to pay for planned debt service for the west end project or sustain the adopted capital improvement program.

FISCAL EFFECTS

The proposed rate and fee adjustments will generate approximately $2.4 million in water revenues in FY24 and an additional $3.7 million in FY25, as well as $2.2 million in wastewater revenues in FY24 and an additional $2 million in FY25.

Attachments

Resolution
Rate and Fee Comparison

RESOLUTION 23-

A RESOLUTION SPECIFYING WATER AND WASTEWATER RATE AND FEE SCHEDULE ADJUSTMENTS ENACTED PURSUANT TO TITLE 69, CHAPTER 7, MONTANA CODE ANNOTATED.

WHEREAS, water and wastewater cost of service studies have been completed and water and wastewater rate and fee schedules have been prepared for the municipal water and wastewater utility that would generate adequate funds to operate the utilities, as well as require each customer class of the utilities to pay its fair share of the cost of operating the water and wastewater systems; and

WHEREAS, the cost-of-service studies anticipate a need for extension, repair, improvement, and continued operation and maintenance of existing and proposed water and wastewater system facilities for the providing of water and wastewater services to inhabitants of the City of Billings, Montana; and

WHEREAS, under Title 69, Chapter 7 of the Montana Code Annotated, the City of Billings is authorized to regulate the City's municipal water and wastewater utility and to change water and wastewater rates, fees, and charges as may be deemed by the City Council to be reasonable and just, and

WHEREAS, it is essential to the public health, welfare, and safety of the inhabitants of the City of Billings and its environs to provide an adequate public water and wastewater system and to provide adequate funding to meet the cost of constructing, maintaining, and operating the same;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. That the following schedule of rates, fees, and charges are found to be just, reasonable, and necessary for the continued sound operation of the water and wastewater utilities and that the proposed rates, fees, and charges are approved, adopted, and published as the rates, fees, and charges of the City of Billings, Montana water and wastewater utilities, effective July 1, 2023 and July 1, 2024.

WATER RATE AND FEE SCHEDULES

Schedule I METERED WATER MONTHLY VOLUME CHARGES

Customers within the City

Customer Class	Effective 7/1/23 $ per kGal	Effective 7/1/24 $ per kGal
Residential		
Tier 1 (0-10,000 Gallons)	$ 4.35	$ 4.87
Tier 2 (11,000-32,000 Gallons)	$ 5.20	$ 5.82
Tier 3 (33,000-75,000 Gallons)	$ 6.76	$ 7.57
Tier 4 (> 75,000 Gallons)	$ 10.15	$ 11.37
Non-Residential	$ 3.68	$ 3.97
Bulk Water Resellers	$ 4.55	$ 4.91
Seasonal	$ 6.14	$ 6.88
Multi-Family	$ 4.27	$ 4.78

Customers outside the City

Customer Class	Effective 7/1/23 $ per kGal	Effective 7/1/24 $ per kGal
Residential		
Tier 1 (0-10,000 Gallons)	$ 4.49	$ 5.03
Tier 2 (11,000-32,000 Gallons)	$ 5.39	$ 6.04
Tier 3 (33,000-75,000 Gallons)	$ 7.03	$ 7.87
Tier 4 (> 75,000 Gallons)	$ 10.53	$ 11.79
Non-Residential	$ 3.91	$ 4.22
Resale	$ 2.97	$ 4.42

Schedule II MINIMUM MONTHLY WATER CHARGES

Customers within the City

Meter Size	Effective 7/1/23	Effective 7/1/24
3/4"	$ 8.60	$ 8.75
1"	$ 9.75	$ 9.95
1-1/2"	$ 11.80	$ 12.05
2"	$ 16.85	$ 17.20
3"	$ 52.55	$ 53.60
4"	$ 68.45	$ 69.80
6"	$ 102.65	$ 104.70
8"	$ 140.30	$ 143.10
10"	$ 204.40	$ 208.50

Customers outside the City

Meter Size	Effective 7/1/23	Effective 7/1/24
3/4"	$ 9.35	$ 9.55
1"	$ 10.60	$ 10.80
1-1/2"	$ 12.80	$ 13.05
2"	$ 18.40	$ 18.75
3"	$ 57.10	$ 58.25
4"	$ 74.40	$ 75.90
6"	$ 111.60	$ 113.85
8"	$ 152.50	$ 155.55
10"	$ 226.65	$ 231.20

Schedule III PRIVATE FIRE PROTECTION CHARGES

Connection Size	Inside City Effective 7/1/23	Inside City Effective 7/1/24
1-1/4"	$ 32.60	$ 34.55
1-1/2"	$ 43.50	$ 46.10
2"	$ 69.70	$ 73.90
3"	$ 174.00	$ 184.45
4"	$ 304.55	$ 322.80
6"	$ 695.90	$ 737.65
8"	$ 1,217.85	$ 1,290.90
10"	$ 1,913.60	$ 2,028.40
12"	$ 2,755.75	$ 2,921.10
14"	$ 3,750.80	$ 3,975.85

	Outside City Effective 7/1/23	Outside City Effective 7/1/24
1-1/4"	$ 33.15	$ 35.15
1-1/2"	$ 44.10	$ 46.75
2"	$ 70.55	$ 74.80
3"	$ 176.45	$ 187.05
4"	$ 308.65	$ 327.15
6"	$ 705.60	$ 747.95
8"	$ 1,234.75	$ 1,308.85
10"	$ 1,940.35	$ 2,056.75
12"	$ 2,794.00	$ 2,961.65
14"	$ 3,803.00	$ 4,031.20

WATER SPECIAL FEES AND CHARGES

Schedule IV	**Effective 7/1/23**	**Effective 7/1/24**
1.) Application for extension of the water distribution system of the City	$ 200.00	$ 200.00
2.) Application for water service line installation permits	$ 130.00	$ 135.00
3.) Special agreements	$ 140.00	$ 140.00
4.) Water meter accuracy test fee		
(a) Small meter (in shop)	$ 70.00	$ 70.00
(b) Large meter (in field)	$ 230.00	$ 260.00
(c) Hydrant meter rental ($/day)	$ 5.50	$ 5.50
5.) Construction meter setting and removal fee ($/meter)	$ 70.00	$ 70.00
6.) Fireflow fee ($/hydrant)	$ 120.00	$ 120.00
7.) Turn-on/Turn-off charge		
(a) Normal working hours	$ 40.00	$ 40.00
(b) Outside normal working hours	$ 100.00	$ 100.00
8.) Water main tapping fee		
(a) Two-inch diameter tap or smaller ($/tap each visit)	$ 155.00	$ 160.00
(b) Over two-inch diameter tap ($/tap each visit)	$ 360.00	$ 365.00
9.) Flushing, testing, and chlorinating fee ($ each visit)	$ 160.00	$ 160.00
--Water for flushing, testing, and chlorinating charged at current seasonal rate per kGal		
10.) Delinquent service charge		
(a) Normal working hours	$ 80.00	$ 80.00
(b) After 5:00 p.m. weekdays	$ 120.00	$ 120.00
(c) Weekends/Holidays	$ 260.00	$ 260.00
11.) NSF/Returned item fee	$ 25.00	$ 25.00
12.) Late payment interest charge (%/month)	1.5%	1.5%
13.) Water service line/fireline repair program fee ($/month)	$ 1.30	$ 1.30

Schedule V — WATER SYSTEM DEVELOPMENT FEES

Residential

	Tier by Lot Size (sq ft)	**Outdoor Component**	**Indoor Per Unit (up to 4 Units)**
		Effective 7/1/23	
All Meter Sizes	< 5,400	$ 630	$ 1,390
	5,400 to 8,600	$ 1,270	
	8,601 to 11,800	$ 1,865	
	> 11,800	$ 4,895	

Meter or Service Line Size	Non-Residential (Including Multi-Family above 4 units)	Irrigation
	Effective 7/1/23	
3 / 4" or less (1 EDU)	$ 8,925	$ 11,075
1"	$ 15,140	$ 18,775
1 1 / 2 "	$ 30,270	$ 37,550
2"	$ 48,435	$ 60,090
3"	$ 96,875	$ 120,175
4"	$ 151,370	$ 187,780

For connections to the water system with meters larger than 4 inches or when the unique usage characteristics of a large water user may require, the City will forecast the demands on an average day basis. The System Development Fee (SDF) will be calculated as follows: SDF = (ADD * 8.52) * 1.04

Where:

ADD is the projected average day demand of the new user in gallons per day,

8.52 equals the unit cost of the existing system buy-in component plus the unit cost of the development related new facility component and .04 equals the administrative fee.

Schedule I WASTEWATER MONTHLY VOLUME CHARGES

Customer Class	Effective 7/1/23 $ per kGal	Effective 7/1/24 $ per kGal
Customers within the City		
Residential	$ 5.41	$ 5.75
Large Residential	$ 5.41	$ 5.75
Commercial-Domestic Strength	$ 5.41	$ 5.75
Customers outside the City	$ 5.41	$ 5.75

Schedule IA MINIMUM MONTHLY WASTEWATER CHARGES

Customers within the City

Meter Size	Effective 7/1/23	Effective 7/1/24
3/4"	$ 7.40	$ 7.85
1"	$ 9.40	$ 10.00
1-1/2"	$ 11.55	$ 12.25
2"	$ 12.10	$ 12.85
3"	$ 19.50	$ 20.70
4"	$ 73.95	$ 78.50
6"	$ 94.10	$ 99.90
8"	$ 141.15	$ 149.90
10"	$ 194.95	$ 206.95

Customers outside the City

Meter Size	Effective 7/1/23	Effective 7/1/24
3/4"	$ 8.15	$ 8.65
1"	$ 10.30	$ 11.00
1-1/2"	$ 12.70	$ 13.45
2"	$ 13.30	$ 14.10
3"	$ 21.40	$ 22.75
4"	$ 81.35	$ 86.35
6"	$ 103.50	$ 109.90
8"	$ 155.25	$ 164.90
10"	$ 214.45	$ 227.65

Schedule IB — LOCKWOOD WASTEWATER MONTHLY CHARGES

Lockwood Sewer District	Effective 7/1/23	Effective 7/1/24
Volume Charge	$1.425/kGal	$1.475/kGal
Fixed Monthly Fee	$ 28,789	$ 30,036
Surcharge Fee	6%	6%

Schedule IC — PHILLIPS 66 WASTEWATER MONTHLY CHARGES

Phillips 66 Billings Refinery	Effective 7/1/23	Effective 7/1/24
Volume Charge	$0.865/kGal	$0.895/kGal
Fixed Monthly Fee	$ 33,837	$ 35,244
Surcharge Fee	6%	6%

Schedule ID — EXXONMOBIL WASTEWATER MONTHLY CHARGES

ExxonMobil Refinery	Effective 7/1/23	Effective 7/1/24
Volume Charge	$0.626/kGal	$0.648/kGal
Fixed Monthly Fee	$ 30,055	$ 31,346
Surcharge Fee	6%	6%

Schedule II WASTEWATER EXTRA STRENGTH SURCHARGE

Unit Charges	Effective 7/1/23	Effective 7/1/24
X = BOD ($/lb)	$ 0.9019	$ 0.9019
Y = TSS ($/lb)	$ 0.5811	$ 0.5811
Z = TKN ($/lb)	$ 1.7217	$ 1.7217

WASTEWATER SPECIAL FEES AND CHARGES

Schedule III	Effective 7/1/23	Effective 7/1/24
1.) Application for extension of the wastewater collection system of the City	$ 200.00	$ 200.00
2.) Application for sanitary sewer service permits:		
(a) Domestic users service line installation permit	$ 130.00	$ 135.00
(b) Industrial users permit	$ 2,500.00	$ 2,800.00
3.) Special agreements	$ 140.00	$ 140.00
4.) Septage disposal permit fee ($/1,000 gallons)	$ 61.12	$ 61.12
5.) Delinquent service charge		
(a) Normal working hours	$ 80.00	$ 80.00
(b) After 5:00 p.m. weekdays	$ 120.00	$ 120.00
(c) Weekends/Holidays	$ 260.00	$ 260.00
6.) NSF/Returned item fee	$ 25.00	$ 25.00
7.) Late payment interest charge (%/month)	1.5%	1.5%

Schedule IV WASTEWATER SYSTEM DEVELOPMENT FEES

	Effective 7/1/23	
Meter or Service Line Size	City Service Area	Lockwood Service Area
3/4” or less (*1EDU)	$ 2,800	$ 1,270
1”	$ 8,600	$ 3,895
1-1/2"	$ 24,970	$ 11,315
2"	$ 43,100	$ 19,530
3"	$ 111,830	$ 50,670
4"	$ 261,800	$ 118,630

For connections to the wastewater system with meters larger than 4 inches or when the unique usage characteristics of a large wastewater user may require, the City will forecast the requirements for the flow, Biochemical Oxygen Demand (BOD), and Total Suspended Solids (TSS) to determine the number of Equivalent Dwelling Units (EDUs). The System Development Fee (SDF) will be calculated as follows:

($6.83 * Flow * (0.596 + (BOD * 0.1538/ 200) + (TSS *0.153/200) + (TKN * 0.972/55))) * 1.04

Where:

BOD is the projected BOD loading of the new user's effluent in milligrams per liter, and
TSS is the projected TSS loading of the new user's effluent in milligrams per liter, and
TKN is the projected TKN loading of the new user's effluent in milligrams per liter.

The constants used in the above formula are:

$ 6.83 equals the unit cost of the existing system buy-in component plus the unit cost of the development related new facility component.

0.596 equals the proportion of the City's wastewater facilities allocated to the flow parameter in its cost-of service analysis.

0.1538 equals the proportion of the City's wastewater facilities allocated to the BOD parameter in its cost-of service analysis.

0.153 equals the proportion of the City's wastewater facilities allocated to the TSS parameter in its cost-of service analysis.

0.972 equals the proportion of the City's wastewater facilities allocated to the TKN parameter in its cost-of service analysis.

1.04 represents the administrative charge.

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2. That this Resolution is to be immediately filed in the City Clerk's Office and that the decision adopting the adjusted rates shall be final ten days after such are so filed.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 22nd day of May 2023.

CITY OF BILLINGS

By: _____
William A. Cole, Mayor

ATTEST:

By: _____
Denise R. Bohlman, City Clerk

Water and Wastewater Rate and Fee Comparison

METERED WATER MONTHLY VOLUME CHARGES

Customer Class	Within the City			
	Volume	Current Rate	Effective 07/01/2023	Effective 07/01/2024
Residential				
Tier 1	0-10,000 Gallons	$3.88	$4.35	$4.87
Tier 2	11-32,000 Gallons	$4.64	$5.20	$5.82
Tier 3	33-75,000 Gallons	$6.04	$6.76	$7.57
Tier 4	> 75,000 Gallons	$9.06	$10.15	$11.37
Non-Residential		$3.29	$3.68	$3.97
Bulk Water Resellers		$4.06	$4.55	$4.91
Seasonal		$5.48	$6.14	$6.88
Multi-family		$3.81	$4.27	$4.78

Customer Class	Outside the City			
	Volume	Current Rate	Effective 07/01/2023	Effective 07/01/2024
Residential				
Tier 1	0-10,000 Gallons	$4.01	$4.49	$5.03
Tier 2	11-32,000 Gallons	$4.81	$5.39	$6.04
Tier 3	33-75,000 Gallons	$6.28	$7.03	$7.87
Tier 4	> 75,000 Gallons	$9.40	$10.53	$11.79
Non-Residential		$3.49	$3.91	$4.22
Resale		$2.97	$2.97	$4.42

MINIMUM MONTHLY WATER CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2023	Effective 07/01/2024	Current Fee	Effective 07/01/2023	Effective 07/01/2024
3/4"	$8.45	$8.60	$8.75	$9.15	$9.35	$9.55
1"	$9.55	$9.75	$9.95	$10.40	$10.60	$10.80
1-1/2"	$11.55	$11.80	$12.05	$12.55	$12.80	$13.05
2"	$16.50	$16.85	$17.20	$18.05	$18.40	$18.75
3"	$51.50	$52.55	$53.60	$56.00	$57.10	$58.25
4"	$67.10	$68.45	$69.80	$72.95	$74.40	$75.90
6"	$100.65	$102.65	$104.70	$109.40	$111.60	$113.85
8"	$137.55	$140.30	$143.10	$149.50	$152.50	$155.55
10”	$200.41	$204.40	$208.50	$222.20	$226.65	$231.20

PRIVATE FIRE PROTECTION CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2023	Effective 07/01/2024	Current Fee	Effective 07/01/2023	Effective 07/01/2024
1 ¼”	$30.75	$32.60	$34.55	$31.25	$33.15	$35.15
1 ½”	$41.05	$43.50	$46.10	$41.60	$44.10	$46.75
2"	$65.75	$69.70	$73.90	$66.55	$70.55	$74.80
3"	$164.15	$174.00	$184.45	$166.45	$176.45	$187.05
4"	$287.30	$304.55	$322.80	$291.20	$308.65	$327.15
6"	$656.50	$695.90	$737.65	$665.65	$705.60	$747.95
8"	$1,148.90	$1,217.85	$1,290.90	$1,164.85	$1,234.75	$1,308.85
10"	$1,805.30	$1,913.60	$2,028.40	$1,830.50	$1,940.35	$2,056.75
12”	$2,599.75	$2,755.75	$2,921.10	$2,635.85	$2,794.00	$2,961.65
14”	$3,538.50	$3,750.80	$3,975.85	$3,587.75	$3,803.00	$4,031.20

WATER SPECIAL FEES AND CHARGES

	Current Fee	Effective 07/01/2023	Effective 07/01/2024
Application for extension of the water distribution system of the City	$190.00	$200.00	$200.00
Application for water service line installation permits	$125.00	$130.00	$135.00
Special agreements	$130.00	$140.00	$140.00
Water meter accuracy test fee			
Small meter	$65.00	$70.00	$70.00
Large meter	$200.00	$230.00	$260.00
Hydrant meter rental ($/day)	$5.50	$5.50	$5.50
Construction meter setting and removal fee	$65.00	$70.00	$70.00
Fireflow fee	$112.00	$120.00	$120.00
Turn-on/Turn-off charge - Normal working hours	$36.00	$40.00	$40.00
Turn-on/Turn-off charge - After hours	$100.00	$100.00	$100.00
Water main tapping fee			
Two-inch diameter tap or smaller	$155.00	$155.00	$160.00
Over two-inch diameter tap	$355.00	$360.00	$365.00
Flushing, testing, and chlorinating fee	$155.00	$160.00	$160.00
Delinquent service charge			
1) Normal working hours	$80.00	$80.00	$80.00
2) After 5:00 p.m. weekdays	$120.00	$120.00	$120.00
3) Weekends/Holidays	$260.00	$260.00	$260.00
NSF/Returned item fee	$25.00	$25.00	$25.00
Late payment interest charge (%/month)	1.50%	1.50%	1.50%
Water service line/fireline repair program fee ($/month)	$1.30	$1.30	$1.30

WATER SYSTEM DEVELOPMENT FEES

Residential			
Current	Effective 07/01/2023		
All Meter Sizes	Tier by Lot Size (sq ft)	Outdoor Component	Indoor Per Unit (Up to 4 Units)
$2,950	< 5,400	$630	$1,390
	5,400 to 8,600	$1,270	
	8,601 to 11,800	$1,865	
	> 11,800	$4,895	
With 4% Administration Charge			

Meter or Service Line Size	Non-Residential (Including Multi-Family above 4 units)		Irrigation	
	Current Fee	Effective 07/01/2023	Current Fee	Effective 07/01/2023
3/4" or less (1 EDU)	$8,925	8,925	$11,030	$11,075
1"	$15,140	$15,140	$18,705	$18,775
1 1/2"	$30,270	$30,270	$37,415	$37,550
2"	$48,435	$48,435	$59,875	$60,090
3"	$96,875	$96,875	$119,720	$120,175
4"	$151,370	$151,370	$187,075	$187,780
With 4% Administration Charge				

WASTEWATER MONTHLY VOLUME CHARGES

Customer Class	Within the City		
	Current Rate	Effective 07/01/2023	Effective 07/01/2024
Residential	$5.08	$5.41	$5.75
Large Residential	$5.08	$5.41	$5.75
Commercial	$5.08	$5.41	$5.75
Public Buildings	$5.08	$5.41	$5.75
	Outside the City		
All Users	$5.08	$5.41	$5.75

MINIMUM MONTHLY WASTEWATER CHARGES

	Within the City			Outside the City		
Meter Size	Current Fee	Effective 07/01/2023	Effective 07/01/2024	Current Fee	Effective 07/01/2023	Effective 07/01/2024
3/4"	$7.05	$7.40	$7.85	$7.75	$8.15	$8.65
1"	$9.00	$9.40	$10.00	$9.90	$10.30	$11.00
1-1/2"	$11.05	$11.55	$12.25	$12.15	$12.70	$13.45
2"	$11.55	$12.10	$12.85	$12.70	$13.30	$14.10
3"	$18.65	$19.50	$20.70	$20.50	$21.40	$22.75
4"	$70.65	$73.95	$78.50	$77.70	$81.35	$86.35
6"	$89.95	$94.10	$99.90	$98.95	$103.50	$109.90
8"	$134.90	$141.15	$149.90	$148.40	$155.25	$164.90

10"	$186.30	$194.95	$206.95	$204.95	$214.45	$227.65

LOCKWOOD WATER AND SEWER DISTRICT WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2023	Effective 07/01/2024
Volume Charge	$1.513/kGal	$1.425/kGal	$1.475/kGal
Fixed Monthly Fee	$25,239	$28,789	$30,036
Surcharge Fee	6%	6%	6%

PHILLIPS 66 BILLINGS REFINERY WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2023	Effective 07/01/2024
Volume Charge	$0.625/kGal	$0.865/kGal	$0.895/kGal
Fixed Monthly Fee	$14,032	$33,837	$35,244
Surcharge Fee	6%	6%	6%

EXXONMOBIL WASTEWATER MONTHLY CHARGES

	Current Fee	Effective 07/01/2023	Effective 07/01/2024
Volume Charge	$0.597/kGal	$0.626/kGal	$0.648/kGal
Fixed Monthly Fee	$29,741	$30,055	$31,346
Surcharge Fee	6%	6%	6%

WASTEWATER EXTRA STRENGTH SURCHARGE

Unit Charges	Current Fee	Effective 07/01/2023	Effective 07/01/2024
X = BOD ($/lb)	$0.9019	$0.9019	$0.9019
Y = TSS ($/lb)	$0.5811	$0.5811	$0.5811
Z = TKN ($/lb)	$1.7217	$1.7217	$1.7217

WASTEWATER SPECIAL FEES AND CHARGES

	Current Fee	Effective 07/01/2023	Effective 07/01/2024
Application for extension of the wastewater collection system of the City	$190.00	$200.00	$200.00
Application for domestic service line installation permit	$125.00	$130.00	$135.00
Application for industrial users permit	$2,250.00	$2,500.00	$2,800.00
Special Agreements	$130.00	$140.00	$140.00
Septage disposal permit fee ($/1,000 gallons)	$61.12	$61.12	$61.12
Delinquent service charge			
1) Normal working hours	$80.00	$80.00	$80.00

2) After 5:00 p.m. weekdays	$120.00	$120.00	$120.00
3) Weekends/Holidays	$260.00	$260.00	$260.00
NSF/Returned item fee	$25.00	$25.00	$25.00
Late payment interest charge (%/month)	1.50%	1.50%	1.50%

WASTEWATER SYSTEM DEVELOPMENT FEES

Meter or Service Line Size	City Service Area		Lockwood Service Area	
	Current Fee	Effective 07/01/2023	Current Fee	Effective 07/01/2023
3/4" or less (1 EDU)	$3,120	$2,800	$1,430	$1,270
1"	$9,575	$8,600	$4,385	$3,895
1-1/2"	$27,795	$24,970	$12,740	$11,315
2"	$47,985	$43,100	$21,990	$19,530
3"	$124,485	$111,830	$57,050	$50,670
4"	$291,435	$261,800	$133,570	$118,630
With 4% Administration Charge				

City Council Regular

Date:	05/22/2023
Title:	Zone Change 1029 - Text Amendments - Neighborhood Districts, Fence Materials and Sign Code
Presented by:	Nicole Cromwell
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

The Zoning Commission recommends approval on a 3-0 vote, including the findings of the 10 review criteria, amendments to the following:

- Neighborhood and Mixed Residential zone district garage location and building and siting requirements; and
- Fence materials in commercial and residential zone districts

The Zoning Commission recommends approval on a 2-1 vote including the findings of the 10 review criteria amendments to the following:

- Sign Code including a recommended amendment to the proposed 700-foot separation distance from a residence district for a new billboard in a CMU2 zone district, be reduced to 500 feet

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

In February 2021, the City Council adopted a new zoning code and zoning map for the entire city. The Council directed staff to continually monitor the new code to ensure the text of the regulations was working as intended and any corrections or housekeeping changes could be made. The Council also directed staff to monitor the implementation to consider any substantive changes to adjust the code, so it continues to provide support to the development goals of the adopted Growth Policy and general policies of Billings.

Planning staff brought forward a bundle of code corrections and amendments last year (June 2022). Those amendments were approved by the Council. Planning staff has been working on more substantive amendments to the code based on staff experience implementing the new code, information from professionals who use the code, and from the Council in its reviews of zoning applications. These substantive amendments include adjustments to the Neighborhood building and siting standards, the sign code, the Planned Neighborhood Development (PND) process, open space requirements for PNDs and multifamily developments, zoning at annexation as well as the right to rebuild residential structures in mixed-use and commercial zone districts. These adjustments are not indicators of a "broken" set of regulations. Just as a new car or truck has a break-in period, so do new codes and regulations. As a completely new code, the need to monitor for glitches or "pain points" is important. These adjustments are just part of breaking in a new code. Planning staff believes this set of amendments should be the last significant adjustments needed for a few years. Planning staff and the City Council should re-visit the zoning and other land development codes regularly and when a new Growth Policy is adopted.

The City Council took action to initiate these amendments for review, public hearings and adoption at its meeting on April 24. The City Council's action was to begin the process of public review and adoptions. The City Council will act on the specific amendments once the Zoning Commission provides a recommendation and once the Council holds a public hearing. The number of amendments requires these to be brought forward in phases. This first phase will include changes to the Neighborhood Districts building and siting standards, the code section on fence materials and the sign code. Planning staff has worked with several stakeholders over the last several months to craft the draft amendments. This report will describe each amendment and will include just one set of findings for the review criteria for all four ordinances. Each ordinance by city regulation may only address a single comprehensive subject, must have a public hearing and recommendation from the Zoning Commission and then must be voted on by the City Council at two separate meetings through a first and second reading.

Neighborhood Districts - Building and Siting Standards - Section 27-300 and 27-1802

The intent of the new districts for residential areas of the city was to ensure new development was maintaining similar development patterns that were successful in Billings and to allow more housing choices in every new neighborhood. There are seven residential zone districts, and five of those districts have building and siting standards that are

"form" oriented requirements such as roof pitch, percent of windows and doors on a front facade, build-to zones (not setbacks) as well as location of parking and attached garages.

As staff, builders and developers have implemented the new code there were several areas identified that were unclear, or were too rigid to accommodate building styles and good development patterns. For example, in the five districts where build-to zones are required, the code is silent on what percentage of the front facade is required to be within the build-to zone. Staff has interpreted the code requirement to mean 100% of the front facade. This allows little facade variation that results in less visual appeal on the street frontage. Staff is proposing to specify what percentage of the facade and what facade elements must be in the build-to zone. The range of the build-to zone is also relatively small - between 8 and 20 feet generally. Setting a certain percentage for the front facade in the build-to zone and expanding the build-to zone will allow more variation in building design without allowing buildings to be set too far back from the street.

Staff has found some of the requirements for build-to zones and roof pitch are not clearly the norm in many neighborhoods. For example, neighborhoods south of Grand Avenue close to downtown have every type of roof style including flat and parapet roofs. Staff is proposing to relax the roof pitch standards to allow more flexibility. Staff has found the code is also too stringent for infill projects by requiring an owner to match the existing setbacks of adjacent homes (build-to zone averaging). Many of these first and second neighborhoods in Billings have large front setbacks, or only a second home at the back of the lot where the "front" house was destroyed. This provision has a good intent but as applied has unintentionally pushed new residences or additions further back from the street frontage than necessary or intended. Developed neighborhoods also have more utility lines - gas, power, water and sewer - that cross through backyards than newer developments. Sometimes the only way to add on to an existing home in these areas is on the front. Staff is proposing to change this from a mandatory requirement to a choice by the owner to expand the maximum build-to zone. The default will be the build-to zone as listed in the district table.

Staff has also encountered difficulty with the requirement to place any accessory building in a rear yard. Many corner lots are developed with no "rear" yard - the space behind the residence between the property line and the home. Most only have a side adjacent to street yard to place an accessory building. The City Board of Adjustment has already heard two variances requesting an accessory building in the street side yard. Staff is proposing to adjust this requirement to allow a street side yard for accessory structures and a side yard with Administrative Relief approval.

One of the goals of the new code was also to provide predictability along with the right amount of flexibility to encourage innovation in building style and architecture. Staff has developed amendments that will address these issues within the neighborhood zone districts. Staff has also drafted an amendment to allow some front facing garage doors in mixed residential districts. This part of code only allows rear or side street access to an attached garage in any of the mixed residential districts. There are some examples of homes and multifamily buildings built in the last 30 years that have no "occupied" building space on the ground-floor visible from the street - the facade is all garage doors. In order to counter this development style, the code was written to limit the width of garage entries that face the street in neighborhood zones (by percentage) and prohibits them in mixed residential zones. There are some builders that have always built multifamily dwellings with detached or rear entry garages, but many others are serving a market that demands a front entry garage - or at least a side entry attached garage. There are a couple of examples where this has been done so the garage is not the dominate feature of the front facade. This proposed ordinance is based on these good examples, and would amend the code to allow some front facing garage doors in the NX1 and NX2 zone district with guidelines in place.

Fence Materials - Section 27-1209

The city last amended the allowable fence materials in 2004. At the time, the city allowed architectural metal panels only in the industrial zone districts. These are typically used in conjunction with a shop building with the same metal siding and do not appear to be out of place in the industrial area development pattern. The code did not specify any design requirements for the use of the material, but the city believed at the time it was not an acceptable material in any zone district except for industrial zones.

In the last 5 to 10 years, the use of corrugated metal panel material has been used in the Billings area and marketed as the most durable fence type where hail is a common occurrence every spring and summer. Any fence permit presented with this material has been denied by Planning staff. This however has not stopped homeowners and contractors from installing this fence material without a permit. In most cases, the use of the material has been done in good fashion and few complaints have been received about these fences. Staff recently held an administrative hearing with the Board of Adjustment on a corrugated metal fence in a neighborhood district that was installed at least 6 years ago. A complaint was received last fall and the fence was made from material normally used for grain bins or other agricultural buildings (see photo attachments). During research for the hearing, staff found there are quite a few (more than a dozen) locations where similar fences do fit in within neighborhoods and commercial areas. These fences have a wide range of colors and finishes and are generally framed with materials other than metal. This diminishes the "industrial" look of the material.

Staff is proposing to amend the code to add this material to the list of approved materials in residential and commercial zones. The amendment includes some design standards for the use of the material including framing the panels and to use material with a non-reflective coating. In addition, the code amendment would allow owners to propose other fence materials through the Administrative Relief process rather than a special review with the City Council.

Sign Code - Section 27-1400

The new sign code took 7 different sign codes and melded them into one new code that applies across all zone districts. In addition, the new code reduced most attached wall signs to a third of the previous code allowance and placed a maximum area for all wall signs on any length of a street facade. The code is matched to the new building and siting standards for the mixed use and commercial zone districts. When a building is close to the street frontage, overly large attached wall signs are unnecessary and out of place. The new code also made the building owner responsible for dividing the amount of wall signage between tenants. In order to encourage conformity with the new code, alterations to existing nonconforming signs is strictly limited.

Staff has found the literal application of the new sign code requirements especially for existing signs on buildings that are not located close to the street frontage, to be difficult especially since most landowners make tenants responsible for their own signage. The Board of Adjustment has processed three sign variances in the last 6 months related to this issue of wall signs. In the 2 decades preceding the new sign code, only a dozen sign code variances were processed. Some of this may have been due to the previous code's generous amount of sign area.

A recent application to construct a new digital billboard sign revealed to staff the weakness of the sign code for separating these signs from residential areas. This makes areas in West Billings and some areas of Billings Heights acceptable even though the impact from such locations is clearly not in line with the stated sign code policy or the Growth Policy for the city. Staff is proposing to increase this separation requirement and to include county zones that allow residential uses in the separation requirement.

Staff met with sign companies and landowners on their concerns. Staff is proposing to amend the section on how nonconforming signs might be altered without violating the code, assign wall sign area based on leased tenant space on the street frontage and remove the responsibility for landowners to distribute signage across multiple tenants.

STAKEHOLDERS

Planning staff worked with several groups of stakeholders over the last two years while implementing the new zoning code including the Home Builders Association, Billings Area Realtors, architects, engineers, planners and property owners. The amendments were produced through this collaborative effort of testing and applying the code requirements. These amendments and future code changes in phases 2 and 3, were created using their input and ideas. Planning staff shared the draft amendments with the stakeholders through direct email, placed a legal and posted the drafts on the Planning division's webpage. After the posting of the legal ad and prior to this Zoning Commission hearing, staff has not received any comments on the draft changes. Individual landowner notifications are not required for these text amendments.

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation and testimony from Doug Wild from the Home Builders Association (HBA), Kelly Strobel and Allie Carley of Lamar Montana, an outdoor advertising company. In addition, the Zoning Commission received three letters of comment on the proposed text amendments including emails from Lamar Montana regarding the sign code changes, Danny Wrywas of Absolute Fence regarding the fence material changes, and Lilly Corning of Corning Companies regarding sign code changes. The letters of comment are attached.

Staff presented the text amendments one at a time to allow public comment on each change. The first amendment concerns the allowance for front-load garages in the mixed residential zone districts. The ordinance would allow some front-load garages in the NX1 and NX2 zone districts with some siting requirements. Staff explained some conflicts may occur with the city code regarding curb cuts (Section 6-1208). Planning has started discussion with the Engineering Division about how to resolve this conflict. Doug Wild from the HBA stated he was in favor of the amendment and found it to be a good compromise solution.

The next ordinance addresses the building and siting requirements for neighborhood districts and mixed residential districts. The current code requires 100% of the front facade for new buildings in N1, N2, NX1-3 districts to be within the build-to range at the front of a lot. The build-to range for some districts is narrow and does not allow flexibility for facade variations. The amendment would specify the elements and percent of the front facade required to be in the build-to range including front doors, 60% of the ground-floor window area and 60% of the width of the new structure. In addition, roof types and roof pitches in the N1 and N2 districts do not contribute to the character of these districts. Staff has found these regulations to be more than required to accomplish good neighborhood design. Accessory

building locations have also been adjusted to allow a street side yard location and not just a rear yard. Staff is also proposing to eliminate the requirement to match a block-face average build-to setback. Staff proposes to make the build-to averaging an option for builders. This ordinance also includes some changes to Section 27-1800 for definitions and measurements to conform the changes. Mr. Wild also stated his support for these proposed.

The third ordinance is related to fence materials, specifically metal panels (un-corrugated or corrugated) are proposed to be added as an allowed fence material in commercial and residential zone districts. The material has become more common as more durable and its ability to withstand hail damage and lasts longer than other common fence materials. The ordinance specifies metal panels must be framed and coated with non-reflective materials.

The final ordinance concerns changes to the sign code. The proposal includes changes to the nonconforming sign section that would allow existing business to change and update their signs so long as the nonconforming aspect of the sign is not increased. New businesses would need to install a conforming sign. The next set of changes in the code will allow a specific amount of wall sign area for each tenant in a building. The current code requires the building owner to allocate this wall sign area across the tenants in the building. This is not a tenable approach to sign budgeting for wall signs. Most building owners do not track tenant signage other than to require the tenant to get permits and comply with sign code. The code amendment keeps the maximum area for any single wall sign regardless of building frontage.

The final part of the sign code amendment is related to billboard signs or off-premise signs. The existing code section is built off a moratorium on new off-premise signs put in place in 1999. This moratorium allowed existing sign owners to receive a sign face "credit" whenever a non-conforming billboard sign was removed. The sign face credits do not expire and can be used by the owner to install a new billboard sign in a conforming location. Lamar Montana has accrued the most sign face credits since the moratorium was put in place. Lamar does look for new locations whenever the market and traffic volumes on arterial streets meet minimum requirements for outdoor advertising. The current billboard sign code allows these types of signs in Corridor Mixed Use 2 (CMU2), Heavy Commercial (CX), Light and Heavy Industrial (I1 and I2), and on boulevard streets in the EBURD zones. In the CMU2 zone only, there is a minimum separation to a residential zone of 200 feet. If a sign is less than 200 feet, but at least 150 feet from a residential district can be allowed by special review approval. Lamar applied last year for a location of a new back-to-back digital billboard in a parking space in front of the Den on Grand Avenue. The location met the 200-foot rule since the code does not include County zone districts that allow residential use. The West End Task Force learned of the proposed new billboard sign and the application was withdrawn by Lamar. This area of Billings is on the urban/rural interface and there are not many structures or developments to contain the visibility of these types of signs. Staff chose the 700-foot distance to match the distance of two city blocks. In addition, staff is proposing to add County zones that allow residential uses and Planned Development zones that allow residential zones as districts to include in the spacing requirement. Kelly Strobel of Lamar Montana, stated he doubts the staff direction came from the City Council and believes the existing language is protective of the residential neighborhoods in Billings. He stated they applied for a new sign in front of the Den and then the West End Task Force got wind of the new location. Mr. Strobel stated the permit was withdrawn, but he was questioning why the sign was not approved. Allie Carley from Lamar stated the 700-foot separation will be detrimental to their business and to other businesses in the community that rely on billboards for advertising. She stated the Commission should vote to deny this amendment. She stated Lamar is interested in cleaning up the old billboards and converting them to digital sign faces. She stated the amendment will tie their hands by making most of their signs nonconforming.

Staff provided clarification on how nonconforming signs can be updated and what is meant by "rebranding". Staff explained the right to continue a nonconforming aspect of a sign for an existing business. Rebranding will not include a company name change since that would be a new business. Rebranding is the creation of a new look and feel for an established product or company. It typically includes changes to a market strategy that include color, design and images. Staff provided information on billboard signs, spacing, and process for identifying nonconforming billboard signs.

The Zoning Commission closed the public hearing. The Zoning Commission members chose to vote on each individual ordinance for its recommendation to the City Council.

- On the ordinance concerning front-load garages in the NX1 and NX2 zones, Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved on a 3-0 vote.
- For the ordinance for building and siting standards in Neighborhood and Mixed Residential zone districts, Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved in a 3-0 vote.
- For the ordinance on fence materials, Commission member Trina White made a motion to recommend approval and adoption of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved in a 3-0 vote.

- For the ordinance on sign code amendments, Commission member David Goss made a motion to recommend approval and adoption of the 10 review criteria. There was no second of this motion. A new motion was made by Vice Chair Greg McCall to recommend approval with an amendment to reduce the 700-foot separation to 500 feet for new billboard signs in CMU2 zones and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member David Goss and approved on a 2-1 vote with Commission member Trina White voting against the motion.

ALTERNATIVES

The City Council may take one of the following actions:

- Approve and adopt the findings of the ten review criteria for all proposed ordinances included with Zone Change 1029; or,
- Approve with specific changes to the draft ordinances for Zone Change 1029; or
- Deny one or more of the draft ordinances and adopt different findings of the ten review criteria for Zone Change 1029; or,
- Delay action on the zone change ordinances for up to 30 days.

FISCAL EFFECTS

Adoption of code amendments may affect the Planning Division budget. Municode is the official codification company for Billings. Every amendment to the code has a fee that has usually been assessed and paid for by a department or division. However, the City Code is not particular to one Division or Department. It is utilized by many City staff and is designed to benefit and protect all City residents. It is appropriate and accurate for the cost sharing of codification costs for zoning code updates through the general fund.

SUMMARY

Before making a decision on the proposed zone change, City Council shall consider the proposed findings of the ten review criteria.

1) Whether the new zoning is designed in accordance with the growth policy;
The proposed Zoning Amendments are consistent with the 2016 Billings Growth Policy Statement and Growth Guidelines:

Growth Policy Statement:

In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists or can be extended within a fiscally constrained budget and with consideration given to increased tax revenue from development. The City will prosper with strong neighborhoods with their own unique character that are clean, safe, and provide a choice of housing and transportation options.
Growth Guidelines:

Essential Investments (relating to public and private expenditures to public values)

- Infill development and development near existing City infrastructure may be the most cost-effective

Place Making (enhance, maintain, preserve and improve existing public places):

- Public and private partnerships are valuable for creating enhanced entryways into Billings

Community Fabric (attractive, aesthetically pleasing, uniquely Billings)

- Attractive street scapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

Strong Neighborhoods (livable, safe, sociable and resilient neighborhoods)

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income level
- Safe and livable neighborhoods can be achieved through subdivision design walkable access to public spaces
- Implementation of the Infill Policy is important to encourage development of underutilized properties

Home Base (healthy, safe and diverse housing options)

- A mix of housing types that meet the needs of a diverse population is important
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

Mobility and Access (transportation choices in places where goods and services are accessible to all)

- Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors
- Safe and accessible transportation systems benefit everyone's quality of life

Prosperity (promoting equal opportunity and economic advancement)

- A diversity of available jobs can ensure a strong Billings' economy
- Successful businesses that provide local jobs benefit the community
- Retaining and supporting existing businesses helps sustain a healthy economy

Since the growth policy is a general guiding document that contemplates the overall vision and growth of the community, these amendments that better tailor the regulations to meet local needs are not contrary to the document. The code amendments address the parts of the code that have created challenges or are too general. These amendments will allow the code to be adjusted to meet the community goals and match the expectations of the City Council, community developers, neighborhood builders and citizens. The proposed code amendments will allow the city to better meet the needs of all its residents, businesses and visitors now and into the future. These amendments will integrate nicely into the existing a code, and when working as a whole, will meet the intent of the growth policy.

2) Whether the new zoning is designed to secure from fire and other dangers;
The zoning amendments will not change the code in a way that will create safety concerns related to fire and other dangers. Once integrated, these amendments will not prevent the code from providing adequate building separations and density limits to provide security from fire and other dangers. Considering the nature of these specific amendments, this criteria does not directly relate to most amendments, more specifically, do not relate to wall signs and fence materials, but is more so applicable to the amendments related to garage location in the NX districts. The alteration of the code still allows for appropriate setbacks and site requirements to ensure security of fire and other dangers.

3) Whether the new zoning will promote public health, public safety and general welfare;
Public health, public safety and the general welfare will be promoted by the proposed zoning code amendments and the existing code as a whole. These amendments do not drastically alter the originally adopted code which was found to have met the criteria for promoting public health, safety and general welfare. The proposed adjustments to the neighborhood zone districts will allow more creativity and flexibility in building design in Billings' first and second neighborhoods, as well as Billings' new neighborhoods where more housing choices will be available. The fence material and wall sign amendments are also not contrary to promoting public health, safety and general welfare. The amendments work in coordination with the code as a whole to ensure the minimum standards for health, safety and welfare are being met.

4) Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements;
Transportation: The existing zoning code and these amendments as a whole should help the city provide safer transportation modes including non-motorized travel and safer routes to school. Sprawling development patterns of homogenous land uses separated by miles from different land uses is an unsustainable development pattern. It unnecessarily increases vehicle trips, drives up demand for parking spaces, wider and more abundant high speed arterial streets, contributes to air pollution and unhealthy life-styles. The existing code and the amendments will allow flexibility with design standards so small multifamily apartments can provide similar conveniences such as covered parking accessible from the street, without compromising traffic safety.
Water & Sewer: The proposed code amendments should have no effect on city water and sewer services.
Schools and Parks: Schools and parks should not be effected by these code amendments.

5) Whether the new zoning will provide adequate light and air;
The proposed zoning code amendments, as does the current zoning, provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. The portions of the zoning code that pertain to adequate light and air are similar to criteria 2 and 3 which specify setback requirements, height requirements, and other siting requirements. The amendment that is most related to this criteria is related to the garage location of the NX1 and build-to area. The proposed amendments still regulate the siting requirements to provide for adequate light and air.

6) Whether the new zoning will effect motorized and non-motorized transportation;

The proposed zoning amendments will not directly effect motorized or non-motorized transportation. Several zone districts, and now in limited circumstances, the NX1 and NX2 districts will allow for front facing garages. This is not inconsistent with the safety of motorized and non-motorized transportation. The guidance on when front facing garages are allowable and limited and designed in such a way to still allow for eyes on the street and promote safety principles.

7) Whether the new zoning will promote compatible urban growth;
The zoning amendments will promote compatibility with urban growth through adjustments to add flexibility, new materials for fencing and new signs for older commercial buildings without compromising the intent of the new code. The zoning code as a whole, is compatible with the City's growth policy and vision for the community as it grows. These amendments should integrate nicely and continue to provide residents and business owners design options as they move forward with housing, signs and fencing.

8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;
All of the amendments have been considered in a way that continues to carry out the intent of the zoning code as a whole and considers how garage location, wall signs and fence materials can have greater options yet still integrate in existing built environments. Neither garage location, wall sign signage and the addition of a fence material type should be considered intrusive to new or existing neighborhoods. Garages were previously built in the front of most housing types in Billings, and while the amendments will allow for this location it does provide guidance on how to lessen the dominance of the garage and still focus on the living units. Further, the wall sign allowances consider scale developments in a way the existing code does not currently contemplate. These amendments will better suit existing business needs in existing developments while still lessing overall sign clutter and dominance over time. Finally, the addition of certain types of metal to be used in combination with framing will not create compatibility issues with neighborhoods. There are existing examples where fences built to the intent of this amendment have integrated seamlessly into neighborhoods. Generally, these amendments are consistent with existing fabric of both commercial and residential neighborhoods.

9) Whether the new zoning will conserve the value of buildings;
In general, the code amendments should conserve the value of buildings throughout the City and the amendments do not alter the code in a way that would decrease values. In particular, some adjustments may ease some nonconformity burdens.

10) Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.
The code amendments when working with the code as a whole encourage appropriate and compatible uses, design and siting of land in Billings.

Attachments

Draft Ordinance Garage Entry in NX zone
Draft Ordinance Build to Zone and Siting Elements in N districts
Draft Amendment for Fence Materials
Draft Sign Code Ordinance
Building and Siting Elements Background
Front Garage Entry Background
Example drawings of front load garages
Corrugated Metal Panel Fencing Billings 2023
Comments received by the Zoning Commission

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Sections 27-307 and 27-308 related to the location and entry of attached garages, 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.** The text of Section 27-307 be amended to allow the location of an attached garage in the front half of a principal structure and allow the garage entry on the front façade in the NX1 zone district.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-307 is amended as follows:

Sec. 27-307. NX1 district.

The following site and structure regulations apply to any lot in the NX1 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.6, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(4). See article 27-1800 for definitions and information on how to measure the following regulations:

Table 27-300.6. Site and Structure Regulations.

		Single or Multi-Unit Building	Side-by-Side Attached Units	REFERENCES
A.	BUILDING SITING			
2	Maximum Front Building Width (feet) **within the Build-to Zone**	~~60~~ **80**	~~80~~ **100**, 4 units; 120, 4 units on side street	See subsection 27-307.D for fee simple side-by-side attached units.

DRAFT April 12 2023

11	Attached Garage Location Allowed Garage Entrance	~~Rear half of the building~~ **Any**; Rear or side adjacent to street façade ~~only~~ **preferred** **Front or side load allowed See Sec. 27-307.D**	**See Section 27-307.D for Front Garage Entry limitations**

D. *Supplemental regulations.*

6. Garage Front Façade Entry – Where no alley, carriage lane or rear access system exists or is planned, a street-facing single-wide garage entry door of 10 feet in width or less within the build-to zone, per dwelling unit, is allowed with the following limitations:

(a) For multi-unit or side-by-side structures, no more than two 10-foot wide garage doors are side-by-side; and
(b) Side-by-side garage entries shall share one drive approach no more than 25 feet in width; and
(c) Shared drive approaches for side-by-side garage entries will be spaced at least 40 feet apart; and
(d) Front entry garages shall not be more than 40% of the front façade within the build-to zone; and
(e) Front entry garage doors shall be setback at least 8 feet behind the front door.

Section 4. **DESCRIPTION.** The text of Section 27-308 be amended to allow the location of an attached garage in the front half of a principal structure and allow the garage entry on the front façade in the NX2 zone district.

Section 5. **ZONE TEXT AMENDMENT.** The text of Section 27-308 is amended as follows:

Sec. 27-308. NX2 and NX3 district.

The following site and structure regulations apply to any lot in the NX2 and NX3 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.7, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(5). See article 27-1800 for definitions and information on how to measure the following regulations:

Table 27-300.7. Site and Structure Regulations.

		Multi-Unit Building	Side-by-Side Units	REFERENCES
A.	BUILDING SITING			
11	Attached Garage Location Allowed Garage Entrance	~~Rear half of the building~~; **Any** Rear or street-side façade only **in NX3 and preferred in NX2** **Front or side load allowed in NX2 zone See Sec. 27-308.D**		**See Section 27-308.D. for Front Garage Entry limitations in NX2 zone**

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D. *Supplemental regulations.*

6. Garage Front Façade Entry – Where no alley, carriage lane or rear access system exists or is planned, a street-facing single-wide garage entry door of 10 feet in width or less within the build-to zone, per dwelling unit, is allowed in the NX2 zone with the following limitations:

(a) For multiunit or side-by-side structures, no more than two 10-foot wide garage doors are side-by-side; and
(b) Side-by-side garage entries shall share one drive approach no more than 25 feet in width; and
(c) Shared drive approaches for side-by-side garage entries will be spaced at least 40 feet apart; and
(d) Front entry garages shall not be more than 40% of the front façade within the build-to zone; and
(e) Front entry garage doors shall be setback at least 8 feet behind the front door.

Section 6. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 7. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 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.

PASSED by the City Council on first reading this 22nd day of May 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

DRAFT April 12 2023

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Sections 27-304, 27-305, 27-306, 27-307, 27-308 and 27-1802 related to Build-To Zones, Build-to Averaging and Building Elements in Build-to Zones, 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.** The text of Section 27-304 be amended to allow a greater build-to range, require certain building elements to be within that build-to range, and to allow build-to zone averaging to apply as an option and not a requirement in the N1 zone district.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-304 is amended as follows:

Sec. 27-304. N1 district.

The following site and structure regulations apply to any lot in the N1 district. Refer to 27-303 for general regulations applicable to all districts and Table 27-300.3, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(1). See article 27-1800 for definitions and information on how to measure the following regulations.

Table 27-300.3. Site and Structure Regulations.

			REFERENCES
A.	BUILDING SITING		
3	Front Build-to Zone (feet) **BTZ**	8—~~20~~ **25**; ~~match~~ block face average **allowed** **1) 60% of Front Façade width** **2) Front Door**	See article 27-1800 for block face averaging instructions.

Draft April 12 2023

	Façade Elements Required in Build-to Zone	**3) 60% of ground floor window area**	**See article 27-1800 for description of façade elements**
4	Street-Side Build-to Zone (feet)	5—~~15~~ **20**	
7	Accessory Building Yard Location	Rear**/Street Side Yard**	**Administrative Relief may be granted for side yard location See Sec. 27-1614**
11	Attached Garage Entrance Location	Rear, side, or street-side façade; front façade allowed maximum of no more than 40% of the facade **within the Front BTZ**	
C.	WINDOWS, FRONT DOOR, ROOF		
15	Front Door Location Entrance Treatment	Front Façade **within the BTZ** See subsection 27-303.J for Front Entrance	See subsection 27-304.D for 2-unit buildings.
16	Permitted Roof Types **Roof Types Allowed with Administrative Relief**	Pitched, tower permitted **Any other Roof Type**	See article 27-1800 for definition of roof types and exception for other allowed roof types. See article 27-1500 for existing buildings.
	~~Minimum pitch, less than 2 stories~~	~~4:12 (rise:run)~~	
	~~Minimum pitch, 2 or more stories~~	~~3:12 (rise:run)~~	

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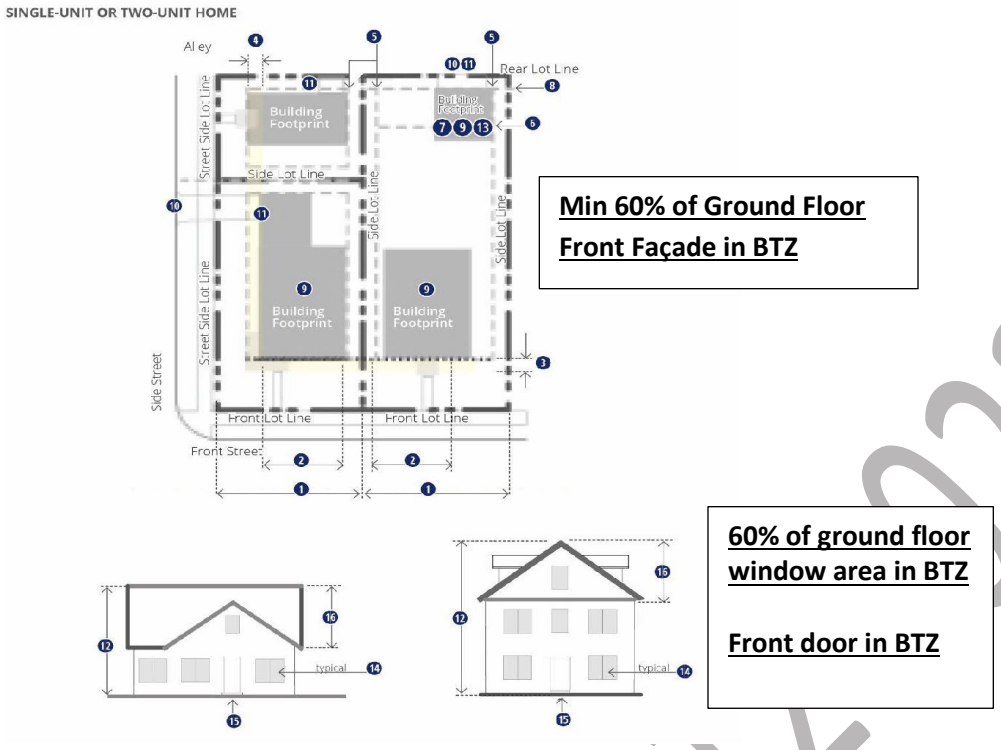


Figure 27-300(1). N1 district diagrammatic plans and elevations.

Section 4. **DESCRIPTION.** The text of Section 27-305 be amended to allow a greater build-to range, require certain building elements to be within that build-to range, and to allow build-to zone averaging to apply as an option and not a requirement in the N2 zone district.

Section 5. **ZONE TEXT AMENDMENT.** The text of Section 27-305 is amended as follows:

Sec. 27-305. N2 district.

The following site and structure regulations apply to any lot in the N2 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.4, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(2). See article 27-1800 for definitions and information on how to measure the following regulations.

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Table 27-300.4. Site and Structure Regulations.

			REFERENCES
A.	BUILDING SITING		
1	Minimum Lot Width (feet) per principal building Maximum Lot Width (feet) per principal building	50 120	See subsection 27-305.D for 2-unit buildings. See article 27-1500 existing lots of record. **Lots on cul-de-sacs or flag lots are exempt from min lot width**
3	Front Build-to Zone (feet) **BTZ** **Façade Elements Required in Front Build-to Zone**	10—~~20~~ **32**; ~~match~~ block face average **allowed** **1) 60% of Front Façade width** **2) Front Door** **3) 60% of ground floor window area**	See article 27-1800 for block face averaging instructions. **See article 27-1800 for description of façade elements** **Lots on cul-de-sacs or flag lots are exempt from BTZ requirements**
4	Street-Side Build-to Zone (feet)	10—~~15~~ **25**	
7	Accessory Building Yard Location	Rear**/Street Side Yard**	**Administrative Relief may be granted for side yard location See Sec. 27-1614**
11	Attached Garage Entrance Location	Any façade; front façade limited to no more than 50% of façade **within the Front BTZ**	
B.	HEIGHT		
12	Principal Building: Maximum Height (stories)	~~1.5;~~ 2 stories ~~on maximum 60% of footprint except as provided in subsection 27-305.D~~	
	Maximum Height (feet)	27	
C.	WINDOWS, FRONT DOOR, ROOF		
15	Front Door Location	Street Façade **within the Front BTZ**	See section 27-305.D for 2-unit buildings.
16	Permitted Roof Types **Roof Types Allowed with Administrative Relief**	~~Low p~~ **P**itched, flat **Any other Roof Type**	See article 27-1800 for definition of roof types and exception for other allowed roof types.
	~~Maximum pitch~~	~~3:12 (rise:run)~~	
	~~Minimum pitch~~	~~6:12 (rise:run), except as provided in subsection 27-305.D~~	

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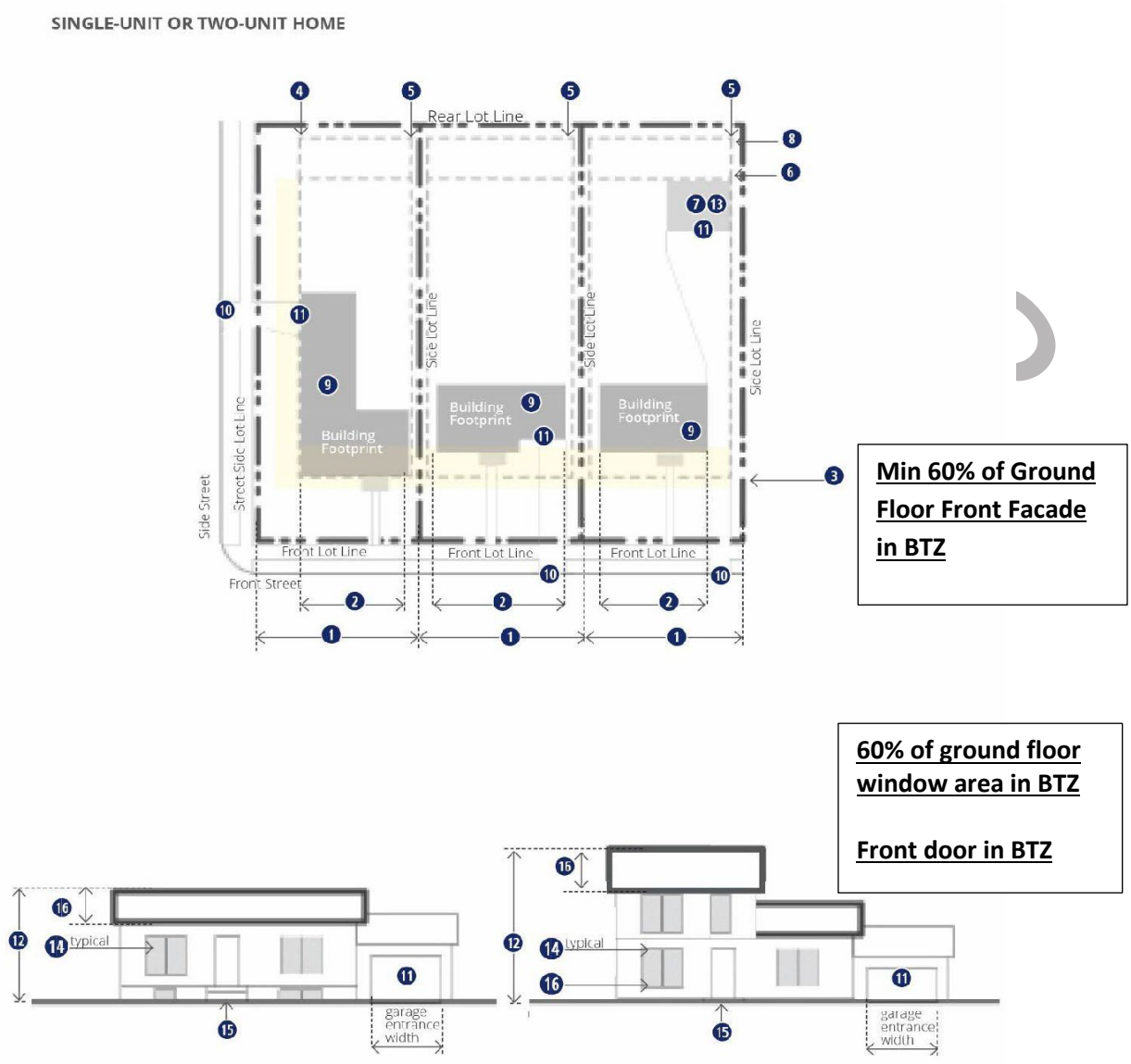


Figure 27-300(2). N2 district diagrammatic plans and elevations.

D. *Supplemental regulations.*

2. The following standards apply to two-unit buildings:

(a) *Configuration.* Allowed configurations include the following: side-by-side per below, stacked units, front and rear units, all located in the principal building; two (2) principal buildings on one lot; or a principal building with an accessory building (see article 27-1000).

(1) Garage entrances located on the front façade are limited to no more than fifty (50) percent of the front façade width **within the Build-to Zone**.

(2) Up to two (2) front door entrances are permitted on the street façade (Table 27-300.4.C).

~~(3) Principal buildings may have two (2) stories for the entire footprint of the structure.~~

~~(4) Roofs may exceed the 6:12 maximum roof pitch.~~

Section 6. **DESCRIPTION.** The text of Section 27-306 be amended to allow an accessory building in a street side yard or in a side yard with administrative relief.

Section 7. **ZONE TEXT AMENDMENT.** The text of Section 27-306 is amended as follows:

Sec. 27-306. N3 district.

The following site and structure regulations apply to any lot in the N3 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.5, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(3). See article 27-1800 for definitions and information on how to measure the following regulations:

Table 27-300.5. Site and Structure Regulations.

			REFERENCES
A.	BUILDING SITING		
7	Accessory Building Yard Location	Rear**/Street Side Yard**	**Administrative Relief may be granted for side yard location See Sec. 27-1614**

Section 8. **DESCRIPTION.** The text of Section 27-307 be amended to allow a greater build-to range, require certain building elements to be within that build-to range, and to allow build-to zone averaging to apply as an option and not a requirement in the NX1 zone district.

Section 9. **ZONE TEXT AMENDMENT.** The text of Section 27-307 is amended as follows:

Sec. 27-307. NX1 district.

The following site and structure regulations apply to any lot in the NX1 district. Refer to section 27-303 for general regulations applicable to all districts and Table 27-300.6, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(4). See article 27-1800 for definitions and information on how to measure the following regulations:

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Table 27-300.6. Site and Structure Regulations.

		Single or Multi-Unit Building	Side-by-Side Attached Units	REFERENCES
A.	BUILDING SITING			
3	Front Build-to Zone (feet) **Façade Elements Required in Front Build-to Zone**	8—20, ~~match~~ block face average **allowed** **1) 60% of Front Façade width** **2) Front Door** **3) 60% of ground floor window area**		See article 27-1800 for block face averaging instructions. See definitions for front and street-side. See subsection 27-307.D for through lots. Refer to subsection 27-1802 for visibility at intersections. See subsection 27-303.K for arterial setback regulations. **See article 27-1800 for description of façade elements**
4	Street-Side Build-to Zone (feet)	8—15		
7	Accessory Building Yard Location	Rear**/Street Side Yard**	Rear**/Street Side Yard**	**Administrative Relief may be granted for side yard location See Sec. 27-1614**
C.	WINDOWS, FRONT DOORS, ROOF			
15	Front Door Façade Location & Number of Doors	1 on street façade per building **within the Front BTZ**	1 per unit on street facade **within the Front BTZ**	See subsection 27-307.D for multiple buildings on a courtyard.
	Entrance Treatment	See subsection 27-303.J for Front Entrance		
16	Permitted Roof Types **Roof Types Allowed with Administrative Relief**	Parapet, pitched; tower permitted **Any other Roof Type**		See article 27-1800 for definition of roof types and exception for other allowed roof types.

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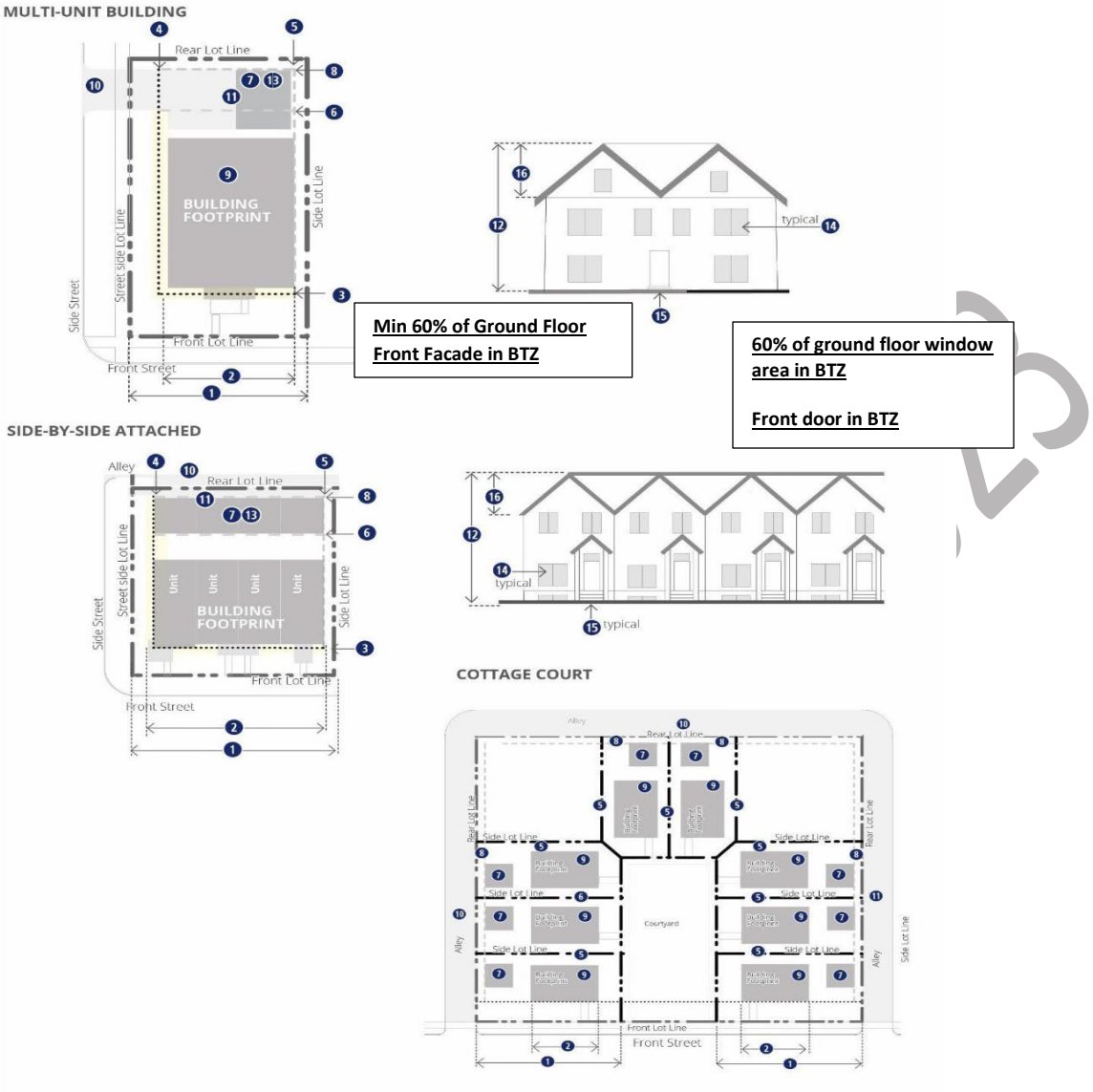


Figure 27-300(4). NX1 district diagrammatic plan.

Section 10. **DESCRIPTION.** The text of Section 27-308 be amended to allow a greater build-to range, require certain building elements to be within that build-to range, and to allow build-to zone averaging to apply as an option and not a requirement in the NX2/NX3 zone district.

Section 11. **ZONE TEXT AMENDMENT.** The text of Section 27-308 is amended as follows:

Sec. 27-308. NX2 and NX3 district.

The following site and structure regulations apply to any lot in the NX2 and NX3 district. Refer to section 27-303 for general regulations applicable to all districts and

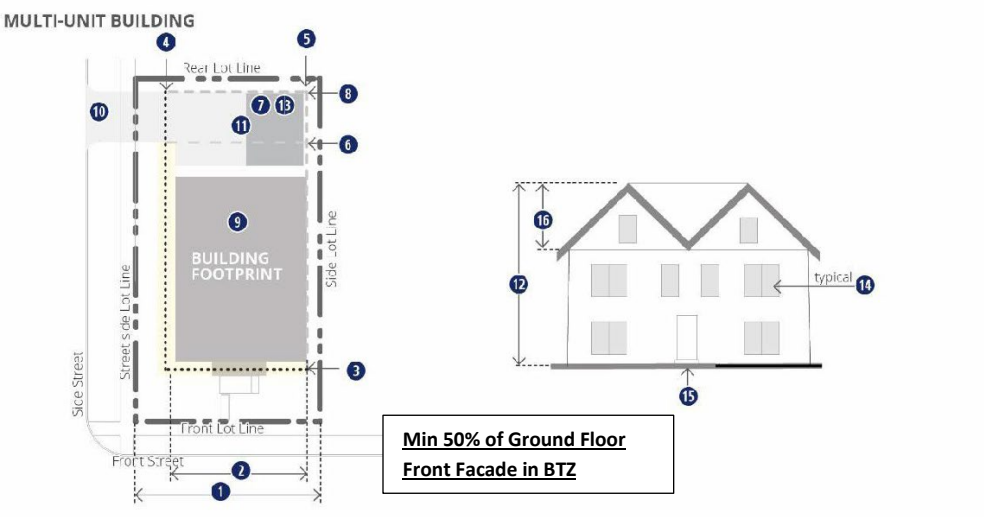
Table 27-300.7, below, for regulations specific to this district, keyed to illustrations in Figure 27-300(5). See article 27-1800 for definitions and information on how to measure the following regulations:

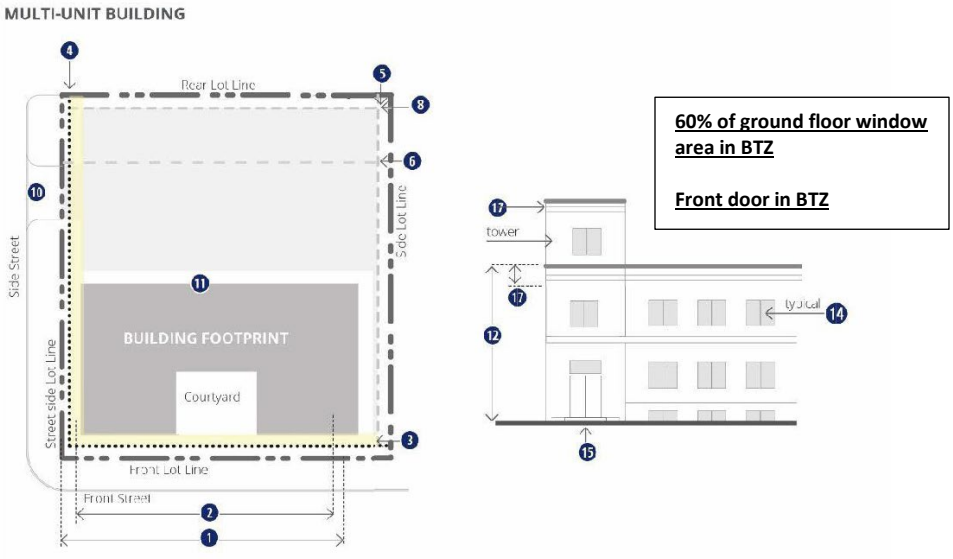
Table 27-300.7. Site and Structure Regulations.

		Multi-Unit Building	Side-by-Side Units	REFERENCES
A.	BUILDING SITING			
2	Maximum Building Width (feet)		172 feet on any frontage **in the BTZ**	See subsection 27-307.D for fee simple row building units
3	Front Build-to Zone (feet) **Façade Elements Required in Front Build-to Zone**	10—20 **1) 50% of Front Façade width** **2) Front Door** **3) 60% of ground floor window area**		See definitions for front and street-side. See subsection 27-303.K for arterial setback regulations. See subsection 27-307.D for through lots. Refer to section 27-1802 for visibility at intersections.
4	Street-Side Build-to Zone (feet)	5—15		
7	Accessory Building Yard Location	Rear**/Street Side Yard**	Rear**/Street Side Yard**	**Administrative Relief may be granted for side yard location See Sec. 27-1614**
B.	HEIGHT			
12	Principal Building:			See article 27-1800 for definition of half story.
	Minimum Height (stories)	~~2~~ **1**	~~1.5~~ **1** for NX2; 2 for NX3	
	Maximum Height (stories)	3 for NX2; 4 for NX3	2.5 for NX2; 3 for NX3	
C.	WINDOWS, FRONT DOOR, ROOF			
15	Front Door Façade Location & Number of Doors	1 per building on street façade **within the Front BTZ**	1 per unit on street facade **within the Front BTZ**	See article 27-1800 for multiple buildings on a courtyard.
	Entrance Treatment	See subsection 27-303.J for Front Entrance		

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16	Permitted Roof Types **<u>Roof Types Allowed with Administrative Relief</u>**	Parapet, pitched, flat; tower permitted **<u>Any other Roof Type</u>**	See article 27-1800 for definition of roof types and exception for other allowed roof types.





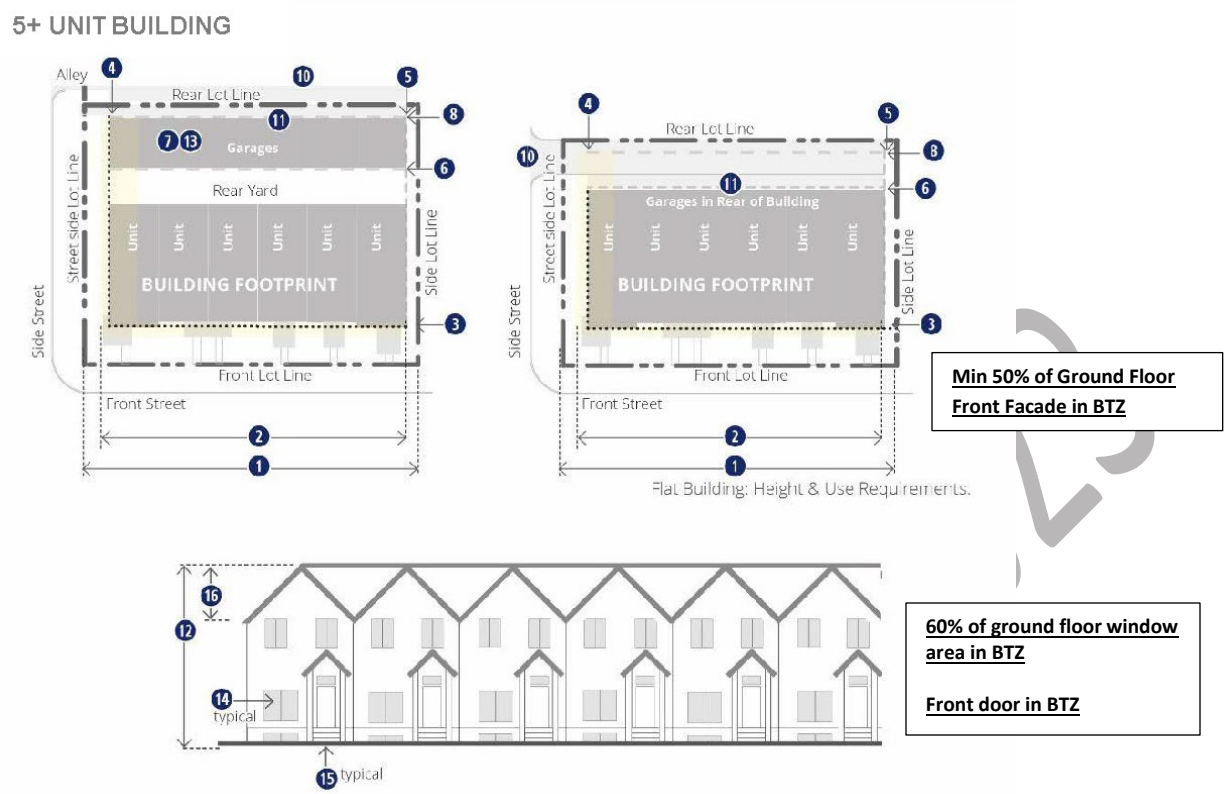


Figure 27-300(5). NX2 and NX3 district diagrammatic plans.

Section 12. **DESCRIPTION.** The text of Section 27-1802 be amended to include new language and descriptions to match the amended Sections 27-304, 27-305, 27-307 and 27-308.

Section 13. **ZONE TEXT AMENDMENT.** The text of Section 27-1802 is amended as follows:

Sec. 27-1802. - Measurements and associated terms.

……

B. Building and parking siting measurements and terms.

1. Building coverage, maximum. The maximum percentage of a yard or lot permitted to be covered by building**s** and any other structures with a roof.

2. Build to corner. Buildings are required to be located within the intersection of the front and street-side build-to zones at street corners.

3. Build-to zones. The build-to zone, when required, is designated separately for each street frontage, front and street-side, in the site and structure regulations table for each district. **Façade elements such as front door(s), windows on the ground floor and a**

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percentage of the front façade must be within the build-to zone as shown in the site and structure regulations table for each district. Front or side street facades setback equal to or more than twice the maximum build-to zone in the district are not considered part of the front or street side façade.

(a) Definition. An area in which **all or a percentage of** the front or street side facade of a building shall be placed; it may or may not be located directly adjacent to a lot line. The zone dictates the minimum and maximum distance a structure may be placed from a lot line. **The area between the minimum and maximum is called the Build-to Range.** Refer to Figure 27-1800-3.

……..

(d) Build-to zone (BTZ) averaging. **An owner may choose to increase the maximum build-to zone to better match existing development patterns.** The ~~front setback~~ **build-to zone** average **maximum setback** shall be calculated as follows:

(1) Measurement. The average of the front setbacks of the next two (2) lots on each side of the lot on the same side of the street. If any applicable lots are vacant, the minimum front setback or build-to zone from the site and structure regulations of the district shall be used in the calculation.

(2) Corner lots. For corner lots, the average of the front setbacks of the next two (2) lots adjacent to the lot with the same street frontage as the lot in question. If any applicable lots are vacant, the minimum front build-to zone shall be used in the calculation.

Section 14. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 15. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 16. **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 22nd day of May 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June 2023.

Draft April 12 2023

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1029, Text Amendment for Build to Zones, Neighborhood Districts

Draft April 12 2023

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Section 27-1209 FENCE MATERIALS IN COMMERCIAL AND RESIDENTIAL ZONES PROCESS, 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.** The text of Section 27-1209 be amended to add allowed fence materials and clarify how such materials may be used in commercial and residential zones.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-1209 is amended as follows:

Sec. 27-1209. - Fences, walls and hedges.
E. Materials.
1. Residential and commercial zones.
(a) Generally. All fences in residential, and commercial zoning districts shall be constructed from materials which are commonly used for fencing.
(1) Commonly used fence materials include wood **including wood composites**, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work**, and corrugated or uncorrugated metal panels framed in wood, vinyl, composite, brick or stone**. **Metal panels shall be coated with a non-reflective material.**
(2) Prohibited materials: Railroad ties, intact wood pallets, tires, ~~or~~ rubble **or reflective metal panels**.
(3) Salvaged material that do not meet one of the commonly used fence materials identified above are generally prohibited except as provided in this section. Salvaged material may be used for fencing where:
(i) The appearance of the completed fence is substantially similar to and consistent with the design of a fence constructed of commonly-used materials,
(ii) The salvaged material fence is constructed according to generally applicable fence construction standards, and
(iii) The salvaged material is in good repair and capable of long-term maintenance by the property owner.
(4) Materials not listed **may be submitted for Administrative Relief.** ~~are subject to special review~~.

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(b) Bufferyard fencing. Required bufferyard fencing may be constructed of any of the materials identified in subsection E.1(a) along with powder-coated or vinyl coated chain link fence.
(1) Where an opaque screening fence is required between uses—such as residential next to heavy commercial or industrial—solid vinyl, wood **including wood composites** or similar solid fencing, or powder-coated or vinyl-coated chain link fence with opaque (solid) inserts shall be installed.
(2) An existing fence of the proper height and materials that is located on the property line where a bufferyard fence is required may be retained. Where an existing fence is not compliant with this section, the property owner who is required to install the bufferyard fence shall replace the existing fence with a compliant fence.
2. Industrial zones. All fences in industrial zoning districts shall be constructed from materials commonly used for fencing and shall not be constructed from railroad ties, intact wood pallets, rubble, or salvaged material.
(a) Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work, finished or coated steel or aluminum building panels.
(b) Barbed wire is only permitted where an eight-foot tall fence is permitted. The barbed wire must be placed on top of the fence and must be located a minimum of eight (8) feet from the ground. Electric fencing is not permitted.
(c) Materials not listed **may be submitted for Administrative Relief.** ~~are subject to special review~~.

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 _____day of May 2023.

PASSED, ADOPTED and APPROVED on second reading this ___day of June 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

Draft April 12 2023

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1029, Text Amendment for Fence Materials

Draft April 12 2023

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING Sections 27-1403, 27-1407, and 27-1409
related to signs and nonconforming signs, 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.** The text of Section 27-1403 Nonconforming signs be amended to clarify the language and allow some minor nonconforming signs to be replaced without increasing the nonconformity of the sign.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-1403. Nonconforming signs, is amended as follows:

Sec. 27-1403. Nonconforming signs.

B. *Classification of nonconformities.* There are two (2) types of legal, nonconforming signs: major and minor. Signs with multiple nonconforming elements are classified in the category of the most significant nonconformity.

1. *Major nonconforming signs.* Major nonconforming signs are those signs for which the nonconformity generates a nuisance per se, violates city sign policy, or is incompatible with adjacent signs and/or the adopted guiding principles such that public policy favors their elimination from the zone if they are discontinued, abandoned, or destroyed. Major nonconforming signs include:

(a) Off-premises signs**, unless permitted as a conforming off-premise sign through Section 27-1409**;

.....

(g) Signs approved with a variance **on or before January 1, 2010,** that permits any issue included in this major nonconformity list.

C. *Major nonconformities.*

1. *Alterations.*

(a) A major nonconforming sign or sign structure may not be altered in any way that increases any nonconformity. A proposed change to any nonconforming aspect of a major nonconforming sign **for a new business**

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shall require the entire sign to be brought into conformance with this article.

(b) General repairs, maintenance, **updates and rebranding for an existing business** and change to advertising copy that does not include replacing a static sign with an EMD are not considered alterations.

2. *Replacement.*

(a) A major nonconforming sign that is voluntarily replaced **for a new business** shall be replaced with a conforming sign.

(b) A major nonconforming sign that loses its nonconforming status per subsection 27-1403.F shall be replaced with a conforming sign.

D. *Minor nonconformities.*

1. *Alterations.*

(a) A minor nonconforming sign may be altered **for an existing business** in a manner that conforms to this zoning code while still maintaining the nonconforming elements. For example, a sign that is two (2) feet over the height limit for the zone district may be altered provided the height is not increased.

(b) General repairs, maintenance, **updates and rebranding for an existing business** and change to advertising copy that does not include replacing a static sign with an EMD are not considered alterations.

2. *Replacement.*

(a) A minor nonconforming sign that is voluntarily replaced ~~shall~~ **may** be replaced with a conforming sign.

(b) A minor nonconforming sign that loses its nonconforming status per subsection 27-1403.F shall be replaced with a conforming sign.

…….

F. *Loss of nonconforming status.* A nonconforming sign shall lose its nonconforming designation and be required to come into compliance with this article if any of the following apply:

1. Any portion of the ~~primary~~ **freestanding** sign structure is replaced.

2. The ~~primary structure~~ **principal structure** on the site is replaced, renovated in a manner that expands the building footprint by more than fifty (50) percent, or when the sign is required to be moved to accommodate building replacement or expansion in compliance with the zone district regulations.

……..

Section 4. **DESCRIPTION.** The text of Section 27-1407. Sign regulations by zone district, be amended to clarify the language in reference to attached wall signs.

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Section 5. **ZONE TEXT AMENDMENT.** The text of Section 27-1407 is amended as follows:

Sec. 27-1407. Sign regulations by zone district.

…….

B. *Neighborhood office, neighborhood mixed-use, and EBURD RSV.*

1. *Applicability.* The standards in this section shall apply to the following districts: NO, NMU, and EBURD RSV.

2. *Maximum total permitted sign area.*

(a) *Attached **wall** signs.* Twenty (20) percent of total wall area of a ~~public~~ street-facing wall, **or** ~~to~~ a max of one hundred (100) square feet**,** ~~.~~ **or to a max of 1.5 square feet of sign area per linear foot of building frontage whichever is less. This maximum wall sign area is allocated on a per tenant basis. See Sec. 27-1407.B.4 for wall signs on building facades that do not face a street.**

(b) *Freestanding signs.* ~~Sixty (60)~~ **Thirty-two (32)** square feet unless otherwise provided in Table 27-1400.4. Table 27-1400.1, Permitted Number of Permanent Freestanding Signs applies.

3. *Summary tables.* Tables 27-1400.3 and 27-1400.4 identify the types of signs permitted in the NO and NMU districts, subject to the regulations identified in the table and this article.

Table 27-1400.3. Attached signs NO, NMU, and EBURD RSV.

Sign Type	Number	Height (max., ft.)	Sign Area per Sign (max., sf.)	Illumin.	Additional Standards
Awning	1 per awning	n/a	n/a	Internal or external	Subsection 27-1405.B, Awning Signs
Canopy	1 per canopy	n/a	n/a	Internal or external	Subsection 27-1405.B, Canopy Signs
Projecting	1 per street frontage	Same as wall [1]	32	Internal or external	Subsection 27-1405.B, Projecting Signs
Wall	1 per tenant per street frontage	Same as wall [1]	~~32 [2]~~ **100**	Internal or external	Subsection 27-1405.B, Wall Signs **27-1407.B.2(a)**
Window	n/a	Limited to architect. distinct window area	Subsection 27-1405.B, Window Signs	No	Subsection 27-1405.B, Window Signs

Notes:

[1] May not project above wall on which located.

~~[2] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.~~

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Table 27-1400.4. Freestanding signs NO, NMU, and EBURD RSV.

Sign Type	Number	Height (max., ft.)	Sign Area per Sign (max., sf.)	Setback (min., ft.)	Illumin.	Additional Standards
Access Point	1 per vehicle access	3	2	0 [1]	Internal or external	Subsection 27-1405.A, Access Point Signs
Monument	1 per street frontage	8	32	5 [1]	Internal or external	Subsection 27-1405.A, Monument Signs
Monument, Multitenant [2]	1 per street frontage	8	Same as monument plus 10 sf per tenant up to 6 tenants (base + 60 sf max)	5 [1]	Internal or external	Subsection 27-1405.A, Monument Signs
Pedestrian-Scale Freestanding	1 per street frontage	Single pole: 8 Double pole: 5	8	2 [1]	Internal or external	Subsection 27-1405.A, Pedestrian-Scale Signs
Structural Canopy	1 per street frontage	2 feet above canopy	n/a	Canopy: zone district standards	Internal or external; static EMD	Subsection 27-1405.A, Structural Canopy Signs
Notes:						
[1] From all property lines; must comply with clear vision areas per subsection 27-1802.H.						
[2] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.						

4. *District specific standards.*

   (a) Where signs are linked to a use category, a description of the category can be found in article 27-1000, Use Standards.

   (b) Residential uses and structures within an NO, NMU, or EBURD RSV district are permitted the same signage as neighborhood residential districts as provided in Table 27-1400.2.

   (c) EMD signs are not permitted in NO, NMU, or EBURD RSV districts.

   (d) Tenant signage in multitenant structures shall be ~~allocated to~~ **calculated for** each tenant ~~unit~~ based on the front wall area of the individual unit. Tenants with side, rear, or alley entrances are permitted wall signage on the wall with their primary public entrance only.

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C. *Corridor mixed-use and EBURD RSVMS.*

1. *Applicability.* The standards in this section shall apply to the following districts: CMU1, CMU2, and EBURD RSVMS.

2. *Maximum total permitted sign area.*

(a) *Attached **wall** signs.* Twenty (20) percent of total wall area **of a street facing wall, or** a max of two hundred fifty (250) square feet~~.~~ **, or 2 square feet of sign area per linear foot of building frontage, whichever is less. This maximum wall sign area is allocated on a per tenant basis. See Sec. 27-1407.C.4 for wall signs on building facades that do not face a street.**

(b) *Freestanding signs.*

(1) Table 27-1400.1, Permitted Number of Permanent Freestanding Signs applies.

(2) Table 27-1400.5, Maximum sign area for freestanding signs is as follows:

Table 27-1400.5. Freestanding Sign Maximum Area in CMU1, CMU2, and EBURD RSVMS.

Zone District and Number of Businesses	Street Frontage 0—300 linear feet	Street Frontage Greater than 300 linear feet
CMU1 One Tenant	50 s.f.	50 s.f.
CMU1 Multiple Tenants [1]	+ 10 s.f. sign area per additional tenant up to 6 tenants (110 s.f.)	+ 10 sf sign area per additional tenant up to 6 tenants (110 s.f.)
CMU2 One Tenant	80 sf	140 s.f.
CMU2 Multiple Tenants [1]	+ 20 s.f. sign area per additional tenant up to 6 tenants (200 s.f.)	+ 10 s.f. sign area per tenant up to 10 tenants (240 s.f.)
CMU2 Shopping Center [1]	375 s.f.	375 s.f.
Notes:		
[1] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.		

3. **Summary tables.** Tables 27-1400.6 and 27-1400.7 identify the types of signs permitted in these districts, subject to the regulations identified in the table and this article.

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Table 27-1400.6. Attached Signs in CMU1, CMU2, and EBURD RSVMS.

Sign Type	Number	Height (max., ft.)	Sign Area per Sign (max., sf.)	Illumin.	EMD	Additional Standards
Awning	1 per awning	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Awning Sign
Canopy	1 per canopy	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Canopy Sign
Projecting	1 per tenant	Same as wall	48	Internal or external	n/a	Subsection 27-1405.B, Projecting Sign
Wall	1 per tenant per street frontage	Same as wall	Subsection C.2.(a), above ~~[1]~~	Internal or external	Static; Max 40% of sign area	Subsection 27-1405.B, Wall Sign
Window	n/a	architect. distinct window area	Subsection 27-1405.B, Window Signs	No	n/a	Subsection 27-1405.B, Window Signs
Notes						
~~[1] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.~~						

4. *District specific standards.*

   (a) Where signs are linked to a use category, a description of the category can be found in article 27- 1000, Use Standards.

   (b) Tenant signage in multitenant structures shall be ~~allocated to~~ **calculated for** each tenant ~~unit~~ based on the front wall area of the individual unit. Tenants with side, rear, or alley entrances are permitted wall signage on the wall with their primary public entrance.

D. *CBD and DX.*

1. *Applicability.* The standards in this section shall apply to the CBD and DX zone district.

2. *Maximum total signage.*

   (a) *Attached **wall** signs.*

   (1) *Buildings under ten (10) stories.* Ten (10) percent of the wall area up to a max of two hundred fifty (250) square feet. **This maximum wall sign area is allocated on a per tenant basis. See Sec. 27-1407.D.4 for wall signs on building facades that do not face a street.**

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(2) *Buildings ten (10) stories and taller.* Ten (10) percent of wall area with no maximum.

(b) *Freestanding signs.* 0.5 square foot per lineal foot of street frontage to a max of fifty (50) square feet unless otherwise provided in Table 27-1400.9. Table 27-1400.1, Permitted Number of Permanent Freestanding Signs **applies.** ~~: urban standards apply.~~

3. *Summary tables.* Tables 27-1400.8 and 27-1400.9 identify the types of signs permitted in these districts, subject to the regulations identified in the table and this article.

Table 27-1400.8. Attached Signs in CBD and DX.

Sign Type	Number	Height (max., ft.) [1]	Sign Area Max per Sign (sf)	Illumin.	EMD	Additional Standards
Awning	1 per awning	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Awning Signs
Canopy	1 per canopy	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Canopy Signs
Projecting	1 per street frontage	May not extend beyond roofline	48 sf	Internal or external	n/a	Subsection 27-1405.B, Projecting Signs
Roof	1 per premises	4 ft. above roofline	x	Internal or external	Animated; Max 40% of sign face	Subsection 27-1405.B, Roof Sign
Under awning or canopy signs	1 per tenant	Below awning or canopy	x	Internal or external	n/a	Buildings with awnings or canopies over the right-of-way
Wall	1 per tenant per street frontage	Same as wall	Subsection D.2(a) above ~~[2]~~	Internal or external	Animated; Max 40% of sign face	Subsection 27-1405.B, Wall Sign
Window	n/a	Limited to architect. distinct window area	Subsection 27-1405.B, Window Signs	No	n/a	Subsection 27-1405.B, Window Signs

Notes:

[1] Attached signs on taller structures, except for roof signs, shall be located at or below the 10th story of the building.

~~[2] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.~~

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Table 27-1400.9. Freestanding Signs in CBD and DX.

Sign Type	Number	Height (max., ft.)	Sign Area per Sign (max., sf)	Setback (min., ft.)	Illumin.	EMD	Additional Standards
Access Point	1 per vehicle access	3	6	0 [2]	Internal or external	n/a	Subsection 27-1405.A, Access Point Sign
Monument; Monument, Multitenant	1 per street frontage; Table 27-1400.1	8	50 per side; plus 4 sf sign area per tenant up to 6 tenants (24 sf) [1]	0 [2]	Internal or external	Animated, max 40% of sign area	Subsection 27-1405.A Monument Sign
Pedestrian-Scale Freestanding	1 per street frontage; Table 27-1400.1	Single Pole: 8; Double Pole 5	12 per side	0 [2]	Internal or external	Animated, max 40% of sign area	Subsection 27-1405.A, Ped.-Scale Freestand Sign
Structural Canopy	1 per street frontage	2 feet above canopy	n/a	0 [2]	Internal	Static, max 40% of sign area	Subsection 27-1405.A, Structural Canopy Sign
Notes:							
[1] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.							
[2] From all property lines; must comply with clear vision areas per subsection 27-1802.H.							

4. *District specific standards.*

(a) Where signs are linked to a use category, a description of the category can be found in article 27- 1000, Use Standards.

(b) Tenant signage in multitenant structures shall calculated for each tenant based on the front wall area of the individual unit. Tenants with side, rear, or alley entrances are permitted wall signage on the wall with their primary public entrance.

E. *Commercial, industrial, and EBURD CW, 13th St., and IS.*

1. *Applicability.* The standards in this section shall apply to the following districts: CX, I1, I2, and EBURD CW, 13th St. and IS.

2. *Maximum total signage.*

(a) *Attached **wall** signs.* Two (2) square feet per lineal foot of building frontage to a max. of two hundred fifty (250) square feet. **This maximum wall sign area is allocated on a per tenant basis. See Sec. 27-1407.E.4 for wall signs on building facades that do not face a street.**

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(b) *Freestanding signs.* One square foot per lineal foot of street frontage to a max. of ~~two hundred fifty (250)~~ **one hundred (100)** square feet unless otherwise provided in Table 27-1400.11. Table 27-1400.1, Permitted Number of Permanent Freestanding Signs applies.

3. *Summary table.* Tables 27-1400.10 and 27-1400.11 identify the types of signs permitted in these districts, subject to the regulations identified in the table and this article.

Table 27-1400.10. Attached Signs Commercial, Industrial, and EBURD CW, 13th, and IS.

Sign Type	Number	Height (max., ft.)	Sign Area Max per Sign (sf)	Illumin.	EMD	Additional Standards
Awning	1 per awning	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Awning Sign
Canopy	1 per canopy	n/a	n/a	Internal or external	n/a	Subsection 27-1405.B, Canopy Sign
Projecting	1 per tenant	Same as wall	48	Internal or external	n/a	Subsection 27-1405.B, Projecting Sign
Roof [1]	1 per premises	4 ft above roofline	250	Internal or external	n/a	Subsection 27-1405.B, Roof Sign
Wall	1 per tenant per street frontage	Same as wall	Subsection E.2(a) above, ~~[2]~~	Internal or external	Static; Max. 40% of sign face	Subsection 27-1405.B, Wall Sign
Window	n/a	Limited to architect. distinct window area	Subsection 27-1405.B, Window Signs	No	n/a	Subsection 27-1405.B, Window Signs
Notes:						
[1] Permitted in lieu of a wall sign.						
~~[2] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.~~						

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Table 27-1400.11. Freestanding Signs Commercial, Industrial, and EBURD CW, 13th St., and IS.

Sign Type	Number	Height (max., ft.)	Sign Area per Sign (max., sf)	Setback (min., ft.)	Illumin.	EMD	Additional Standards
Access Point	1 per vehicle access	3	6	0 [1]	Internal or external	n/a	Subsection 27-1405.A, Access Point Sign
Monument	1 per street frontage; Table 27-1400.1	8	100 per side	5 [1]	Internal or external	Static; Max 40% of sign face	Subsection 27-1405.A Monument Sign
Multitenant Monument [2]	1 per street frontage; Table 27-1400.1	8	100 plus 10 sf per tenant up to 6 tenants; 160 max	5 [1]	Internal or external	Static; Max 40% of sign face	Subsection 27-1405.A Monument Sign
Shopping Center Monument	1 per street frontage	8	375	5 [1]	Internal or external	Static; Max 40% of sign face	Subsection 27-1405.A, Monument Sign
Pole	1 per street frontage; Table 27-1400.1	25 [3]	100 per side	5 [1]	Internal or external	Static; Max. 40% of sign face	Subsection 27-1405.A, Pole Sign
Structural Canopy	1 per street frontage	2 feet above canopy	n/a	5 [1]	Internal	Static; Max 40% of sign face	Subsection 27-1405.A, Structural Canopy Sign

Notes:

[1] From all property lines; must comply with clear vision areas per subsection 27-1802.H.

[2] Distribution of this signage across multiple tenancies is the responsibility of the property owner. Extra signage will not be permitted once the maximum signage identified here has been met.

[3] The maximum height of pole signs within 660 feet of and oriented to the interstate or interstate frontage right-of-way is 40 feet.

4. *District specific standards.*

(a) Where signs are linked to a use category, a description of the category can be found in article 27- 1000, Use Standards.

(b) Tenant signage in multitenant structures shall be calculated for each tenant based on the front wall area of the individual unit. Tenants with side, rear, or alley entrances are permitted wall signage on the wall with their primary public entrance.

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Section 6. **DESCRIPTION.** The text of Section 27-1409 Off-premise/billboard signs be amended to increase the separation distance between residential zones and any replacement billboard sign in the CMU2 zone district.

Section 7. **ZONE TEXT AMENDMENT.** The text of Section 27-1409 is amended as follows:

Sec. 27-1409. Off-premises/billboard signs.

C. *Location standards following compliance with subsection 27-1409.B.* All replacement billboards shall be located in accordance with the following standards:

1. *Zoning districts.*

(a) Replacement billboards shall be permitted as an allowed use in heavy commercial (CX), ~~controlled~~ **light** industrial (I1), and heavy industrial (I2) zoning districts and on boulevard street types in EBURD zone districts.

(b) Billboards shall be permitted as an allowed use in corridor mixed use 2 (CMU2) zoning district provided that the structure is ~~two hundred (200)~~ **five hundred (500)** feet or more from a residential zoning district. **This distance shall be measured as a radius from the proposed location of the off-premise sign. A residential zone district includes any Planned Development zone that allows residential uses, and any county zone district that allows residential uses.**

(c) A special review shall be required for all billboards to be located in a CMU2 zone if the structure is less than ~~two hundred (200)~~ **five hundred (500)** feet but greater than ~~one hundred fifty (150)~~ **three hundred (300)** feet from a residential zoning district.

(d) Billboards may be permitted in the CBD through section 27-1623, Special review uses.

(e) No new billboards shall be permitted on, directed to, or within two hundred (200) feet of the following corridors regardless of the applicable zoning:

(f) 27th Street from I-90 to Airport Road (excluding 27th Street North from Montana Avenue to 6th Avenue North).

(g) Highway 3 (Airport Road) from Alkali Creek Road west to the city limits.

(h) Shiloh Road from I-90 to Rimrock Road.

(i) Yellowstone River.

(j) Any historic district registered on the National Register of Historic Places.

Section 8. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 9. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

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Section 10. **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 22nd day of May 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1029, Text Amendment for Sign Code

DRAFT April 12 2023

Build-to Zones

Build-to Ranges

Build-to Averaging

Sections 27-304 (N1), 305 (N2), 307 (NX1) & 308 (NX2/NX3)

Section 27-1802 – Measurements

- Build-to Zone – 100% percent of street-facing façade required in the build-to range – N1, N2, NX zones
    - Staff recommending less than 100% in build-to range, define elements required in build-to range
- Build-to Ranges – 8-20 feet N1; 10-20 feet N2 and NX zones
    - Staff recommending adjustments to increase range combined with percent adjustment above
- Build-to Averaging – required in N1, N2 and NX1
    - Staff recommending the build-to averaging be optional only to increase the build-to zone beyond maximum range

Build-To Zone, and Block Face Averaging or Build-To Zone Averaging – Sections 27-304, 305, 307 and 308; Section 27-1802 - Measurements

The prior zoning (1972-2021) imposed minimum front setbacks but no maximums in all zone districts as well as minimum lot area for each residence on those lots. The minimum front setback in general was 15-20 feet and the minimum lot area for most districts averaged from 7,000 to 9,600 square feet per residence. Many neighborhoods were built with larger setbacks and much larger lots than required and diminished the walkability of neighborhoods and the ability of residents from noticing activity on the street from inside their homes. The previous zoning code also allowed any type of entry to face the street. In some neighborhoods, street facades are almost entirely garage doors with frotn entries setback as much as 100 feet from the sidewalk. This resulted in a dispersed city with low walkability in many neighborhoods and with some built-in safety issues.



In the zoning code update, we kept two of our zones with minimum setbacks (but no maximum) - RMH and N3. The other districts are intended to counter the dispersion method of building neighborhoods. These zone districts – N1, N2 and NX – require a "range" on the front where all (100%) of the front building façade should be placed for new construction. The range varies from district to district but is generally 10 to 20 feet from the property line inward. The range is small, so articulation of front facades is difficult to manage with the 100% requirement that any street-facing façade be within the build-to range. The build-to range is not working as it was intended even with the flexibility of the allowed averaging for existing neighborhoods.

In order to handle in-fill, renovations, and re-builds in existing N1, N2 and NX zones, the code includes a requirement for averaging of the required build-to range. For example, in Gorham Park most of dwellings in this N2 district are 25 to 40 feet from the front property line. The build-to zone averaging requirement would require new buildings or additions to take the setbacks on two lots to each side of the building lot and average those four setbacks to create a required setback. This provision is also not working as intended for building additions since it is a requirement and not optional.

Issues and Options

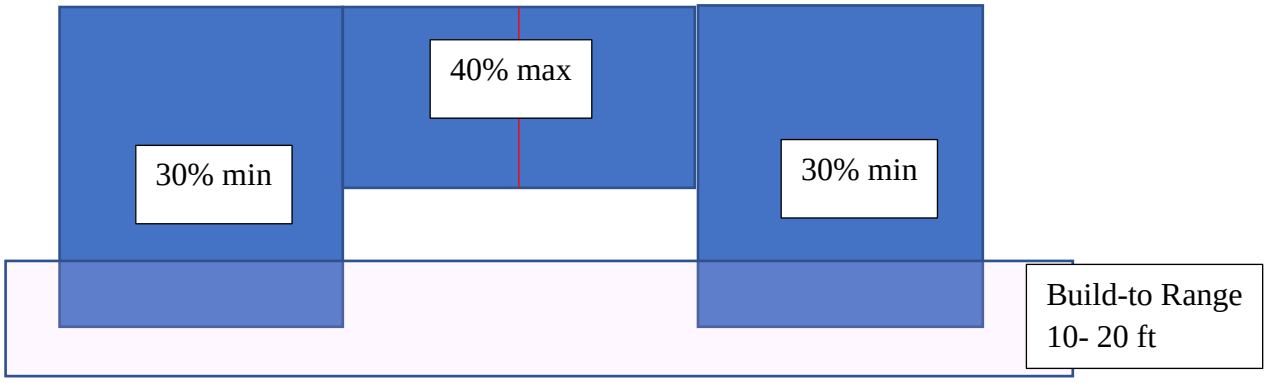
A. Build-to Zone: How much (%) of the front façade is required to be in the build-to zone in the N or NX zone districts?

The code does not specify a percentage and so the assumption in applying the code is "100%" of the front building façade must be in the required build-to range. In districts where there is a minimum front lot line coverage (CMU, NMU, DX, CBD, EBURD) the answer is provided through this percentage. No minimum front lot line coverage is specified for any N or NX zone districts.

Proposed Solution:

- ***Adopt a percent of the front building façade that must be in the build-to range***. This allows more variations in the front façade without requiring a variance from the build-to range. Some communities that have used the build-to range have adopted a percentage for how much of the street façade must be within this build-to range rather than requiring 100%. These include Salt Lake City, Kansas City, and Cincinnati. This percentage should be in the range of 60 to 80 percent

of the front façade depending on the zone. For example, a lot 80 feet in width in an N2 zone could have a new residential building up to 70 feet wide that faces the street. If the code is amended to require 60% of this building width to be within the build-to range, 42 feet of the residence would have to be within 10 to 20 feet of the front property line. The remaining 28 feet could be further back from the front property line. This would accommodate a driveway and allow the garage entrance to be setback further than 20 feet without the need for administrative relief or a variance. The N1 and NX zones could function the same way. This percentage would also allow for the side-by-side duplex dwellings in the N2 zones that have the common wall between attached garages. The garages would be further back – outside of the build-to zone - so the structure has a shallow U-shape.



B. Build-to Zone Averaging: As applied, some in-fill buildings and renovations would not be allowed to be in the standard build-to range (10 ft to 20 ft) based on "missing front buildings" on adjacent lots or larger-than-normal existing setbacks on adjacent lots.

The Block Face Averaging (term used in the district table) and the Build-To Zone Averaging (term in the Measurements and Definitions section) are used somewhat interchangeably within the code. The term as written in Section 27-1802.B(3) (Build-To Zone Averaging) should be the term we use throughout. The Tables can be updated to use this term. Both ways to measure – the Build-To Zones and the Build-To Zone Averaging – use "mandatory" language. The word "**shall**" is used for the definition of a Build-To Zone. The word "**shall**" is used to describe how the Build-To Zone Average is measured.

27-1802.B.3.(d)

Build-to zone (BTZ) averaging. The front setback average shall be calculated as follows:
(1) Measurement. The average of the front setbacks of the next two (2) lots on each side of the lot on the same side of the street. If any applicable lots are vacant, the minimum front setback or build-to zone from the site and structure regulations of the district shall be used in the calculation.
(2) Corner lots. For corner lots, the average of the front setbacks of the next two (2) lots adjacent to the lot with the same street frontage as the lot in question. If any applicable lots are vacant, the minimum front build-to zone shall be used in the calculation.

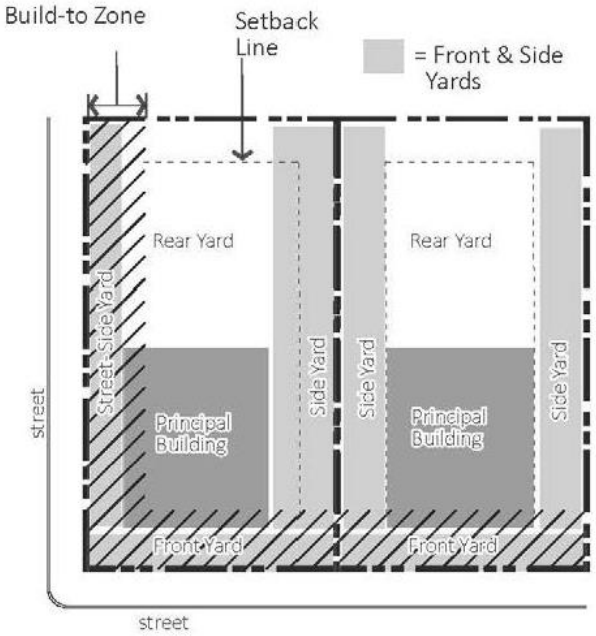
The code requires the use of the BTZ Averaging in any zone with adjacent developed lots. A new neighborhood in an N2 zone district would have to meet the minimum (10 feet) and maximum build-to (20 feet) since there are few adjoining lots with structures on either side of the proposed building. For an in-fill, re-fill or when building a front addition, the Build-to Zone Averaging could make these projects not possible. To use the minimum build-to range, the adjacent lot or lots need to be vacant. However, many lots in N1 or N2 neighborhoods are simply missing the front house and are not vacant. The old code

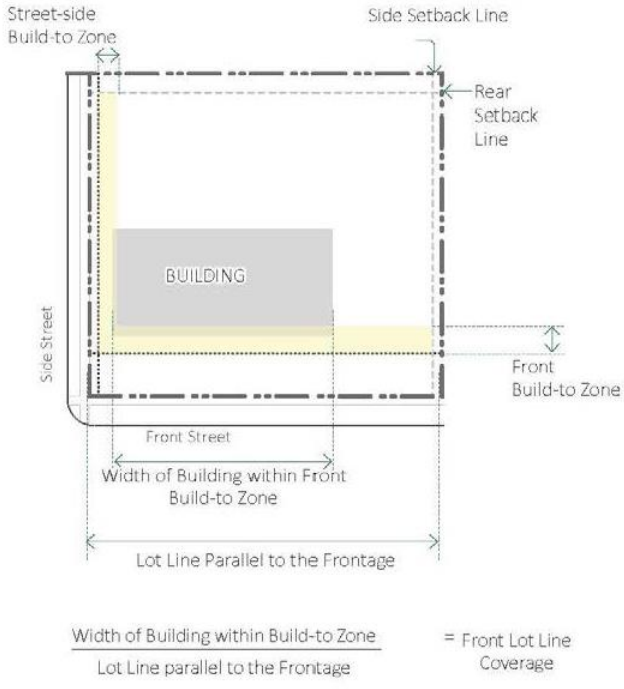
relied on minimum lot area for housing density, so when homes were damaged or destroyed many could not be re-built. Also, remodels and additions to homes are usually planned based on how existing utilities are laid out. Many N1 and N2 neighborhoods have many utilities that run through rear yards to alleys making additions to the rear of a building (rather than the front) more difficult.

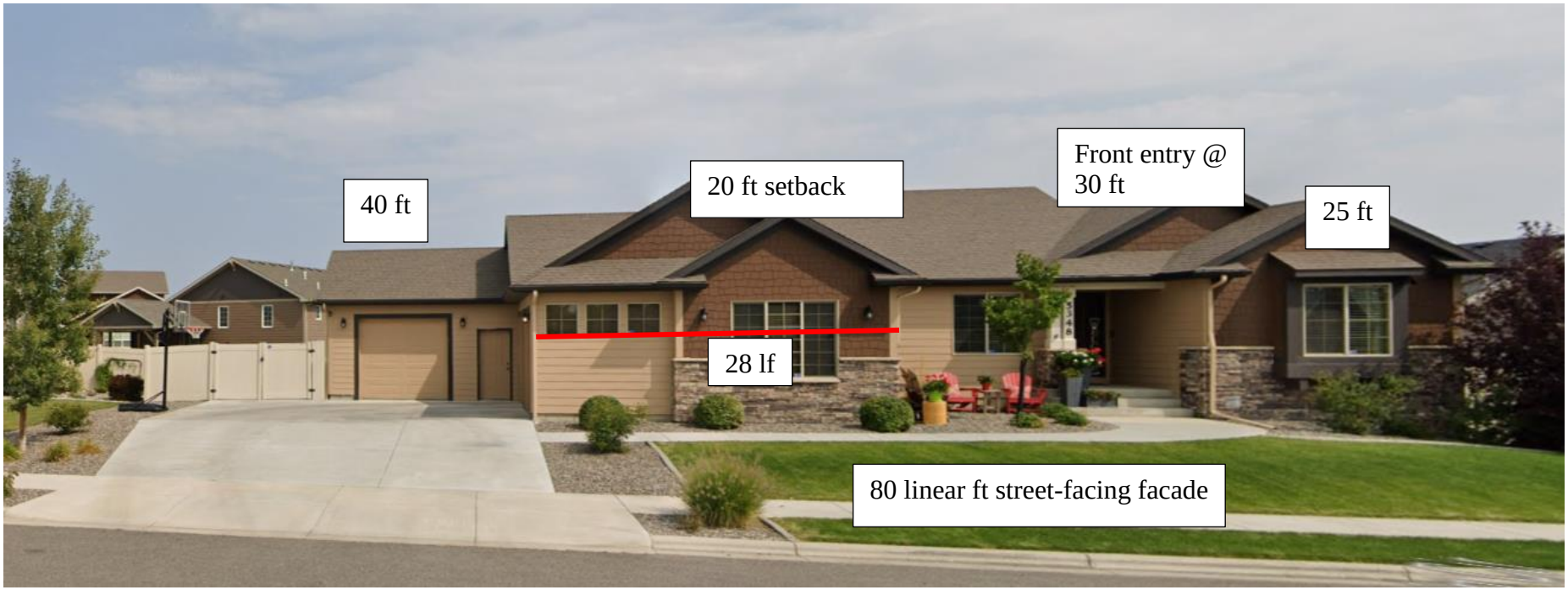
The block face averaging is not normally used in other jurisdictions except to grant a smaller setback than required. For example in our previous zoning code, the R-70 zone required a minimum 20 foot front setback. If we had block face averaging in place, we could allow less than the 20 foot setback if the block face average resulted in less than 20 feet. Most jurisdictions that have form-based or form-oriented zone districts do not apply a block face averaging scheme. The form district is intended to capture the predominate character of the neighborhood so block face averaging is not necessary. The district requirements for N1, N2 and NX zones have these form-oriented requirements.

Proposed solution:

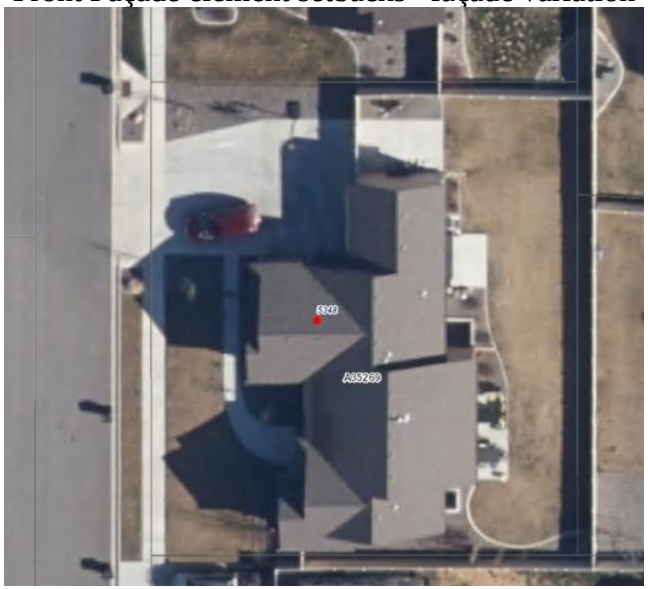
- ***Allow – but not require - Build-to Zone Averaging only for increases to the maximum Build-to range.*** This would allow newer neighborhoods that are still building out (that started out under the previous zoning code) to follow the existing setback patterns without requesting Administrative Relief or variances from the Build-to Zone. It would allow Billings' original neighborhoods to renovate and in-fill vacant lots by using the standard Build-To ranges for those areas. The build-to range for the N1, N2 and NX zones was based on the predominate existing pattern of residential development. Following the character of the neighborhood is not intended to make sure everything lines up identically. Staff recommends this option with additional details including adjustments to existing build-to ranges. Combined with the proposed adjustments to the percent of building facades required in the build-to zone, this will ease challenges with the new code, and allow building and site design to have more flexibility without eroding the intention of the code requirements – safe and walkable neighborhoods.







Front Façade element setbacks– façade variation



Residential Neighborhoods

Garage Entry and Location

- Sections 27-307 (NX1) & 27-308 (NX2/NX3)

Current Code: Requires Garage entry from side or rear and located in the rear half of the principal structure



Side-by-side mutlifamily in Billings

Front load garages – NX and other N zones

The Code update in 2021, included siting and building standards for neighborhood districts that specified where attached garage door openings can be place in relation to the exterior property lines. The N districts all allow garage door openings to face the front street but limit the percentage of garage door opening on the street-facing building façade. This is to ensure we have "eyes on the street" for public safety and to increase the walkability of neighborhood streets. Streets that are merely lined with garage doors – and no living spaces – are uninviting places to walk and can be dangerous for vulnerable pedestrians such as young children or older adults. The NX – Mixed Residential – zone districts and all of the commercial Mixed Use districts require the attached garage entrance to be on the side, side adjacent or rear façade of the structure. Parking lots and detached parking structures are also required to not face front streets. There are some local examples of side-by-side attached dwellings with street facing garage doors that exhibit designs that meet the intent of the new zoning code – ensuring safety and walkability of local neighborhood streets. Other jurisdictions with codes that limit garage door openings on front streets have some flexibility built into the code to allow for some use along front streets.

Recommended Solution:

Allow limited numbers and widths of front façade attached garages in the NX zones. The code can be

amended to allow a limited number or width of front-load attached garages. Here is some draft language:

"*Where no alley or rear access system exists or is planned, a single-wide garage entry door of 10 feet in width or less, per dwelling unit facing the front street is allowed in the NX1 and NX2 zone districts with the following limitations:*

1) *The garage door entry is setback least eight feet or more from the front façade of the living area of the dwelling; and*
2) *No more than two 10-foot wide garage doors are side-by-side; and*
3) *Side-by-side garage entries shall share one driveway no more than 25 feet in width; and*
4) *Shared driveways for side-by-side garage entries will be spaced at least 40 feet apart.*

In the NX3 zone district a single-wide garage entry door of 10 feet in width or less per dwelling unit facing the front street is allowed only for side-by-side units in one principal structure and only for side-by-side unit structures with 12 or fewer units. The same limitations in 1 through 4 apply."



Example of side-by-side units with shared driveways and side-by-side single garage doors between units.

The attached garages are setback further than the front façade about 8 to 10 feet.

Here is an example of what we do not want to encourage:

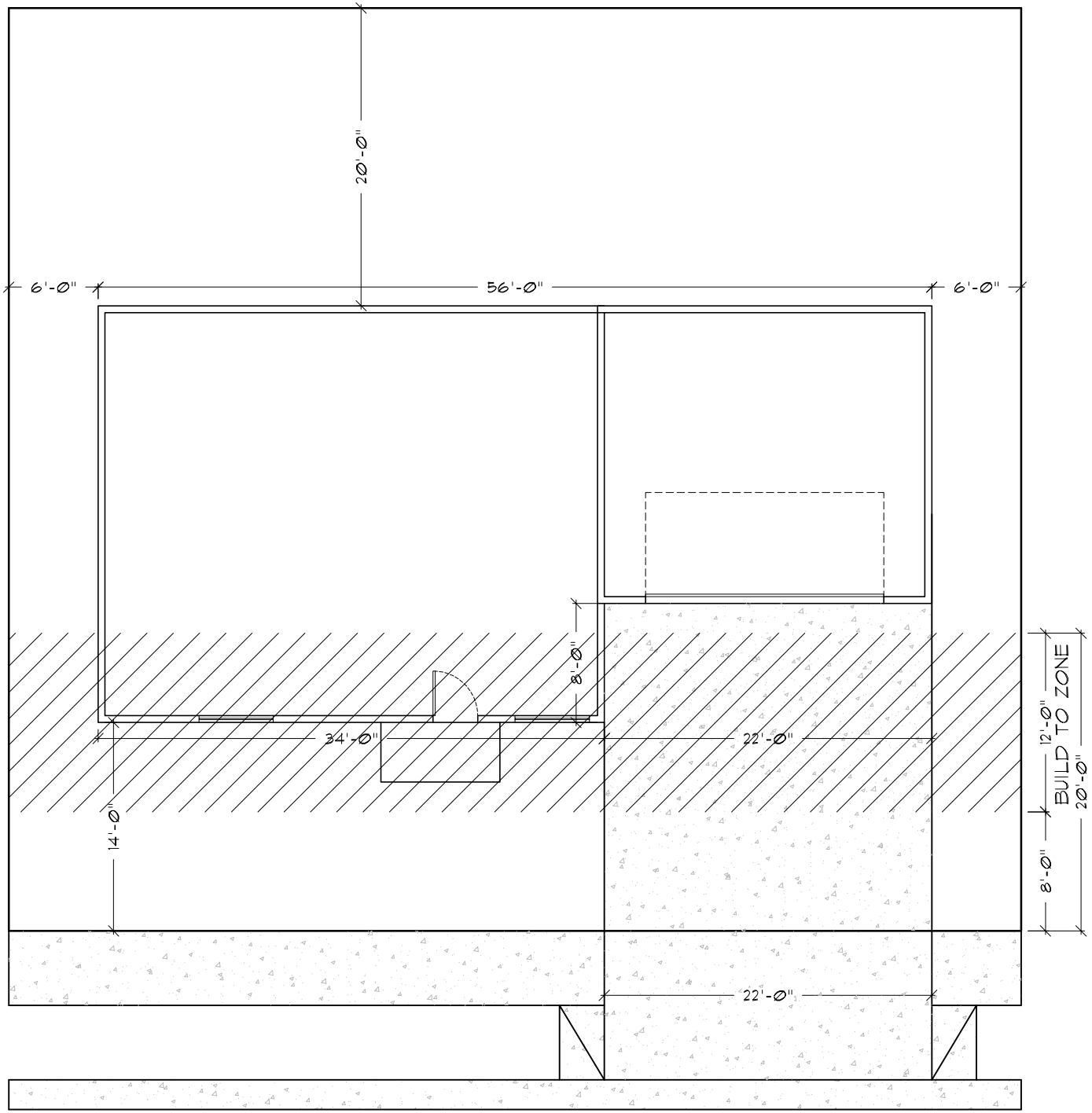


These are five side-by-side units. You cannot see the front door of the townhomes from the street and if you leave the garage door open accidently, you would never know.

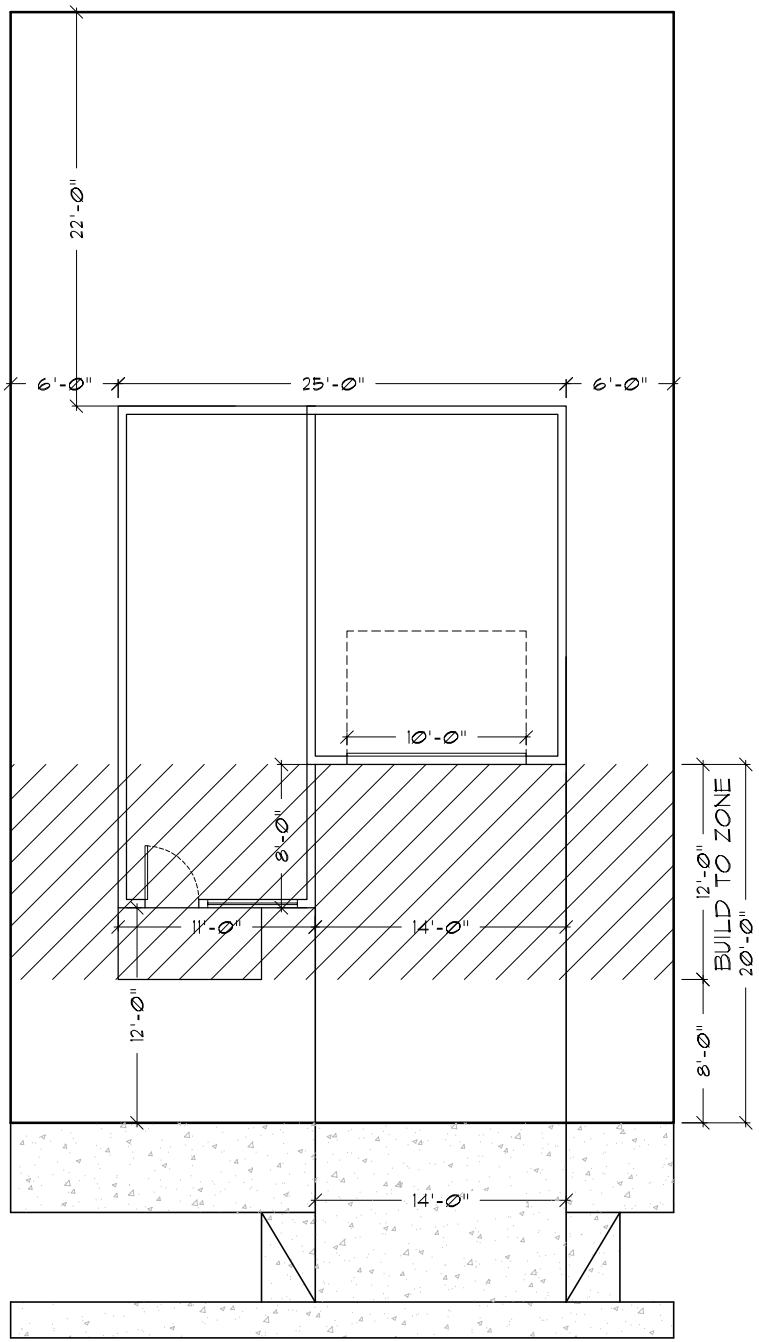


These are several duplexes on a cul-de-sac

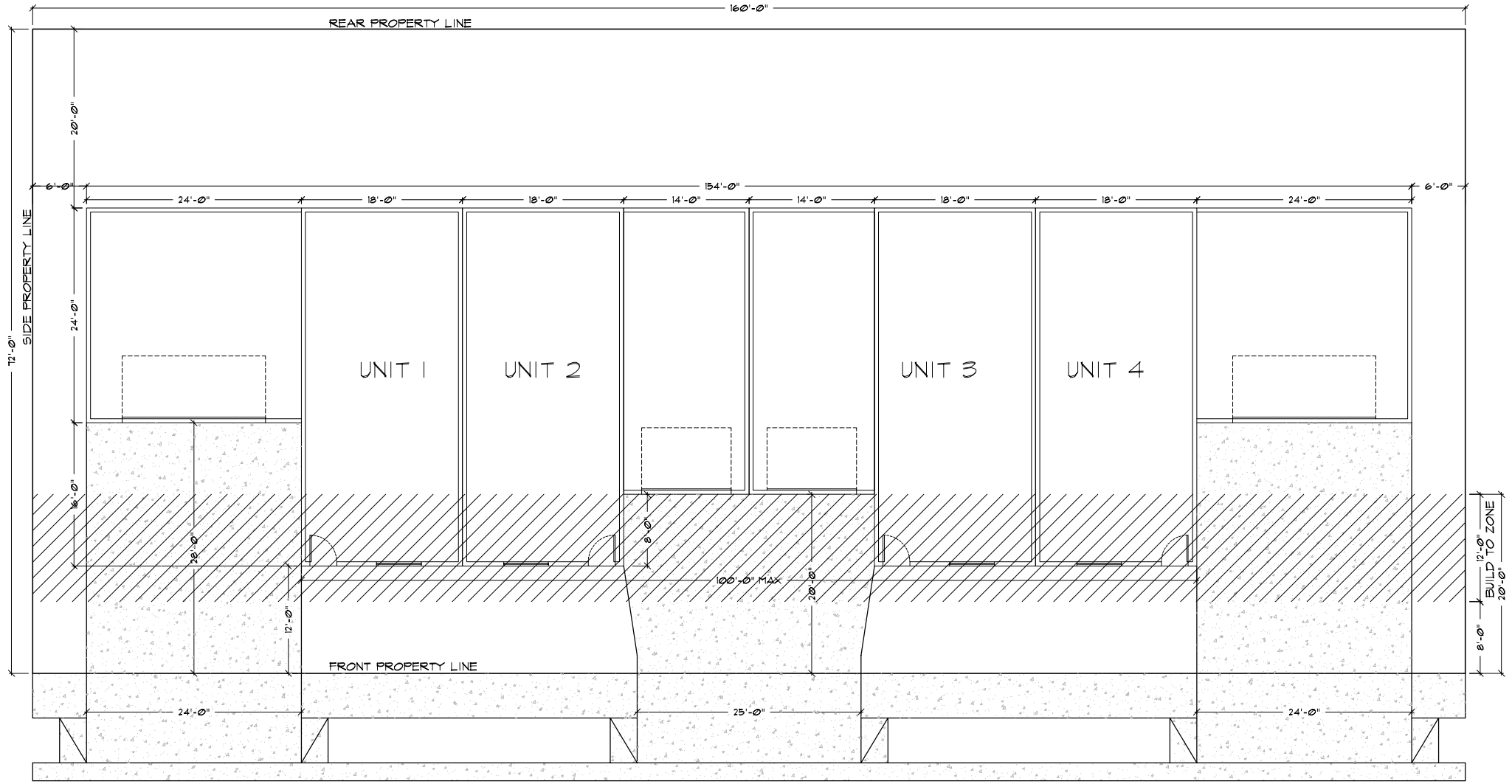
All of these townhomes were built during the same time period 2006-2007. The townhomes with garag dominate front facades appraise much lower than the non-dominate garage townhomes.



NXI SINGLE 2 CAR FRONT LOAD GARAGE



NX1 SINGLE 1 CAR FRONT LOAD GARAGE



NX1 4-PLEX FRONT LOAD GARAGE OPTION



BILLINGS



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03/23/2023 07:08


03/23/2023 07:08


03/23/2023 07:09


03/23/2023 07:08

From: Danny Wyrwas <dwyrwas@gmail.com>
Sent: Friday, April 21, 2023 4:24 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>
Subject: Re: [EXTERNAL] code 27-1209

Dear Billings City Zoning Committee.
It has come to my attention that the Billings City council voted to add corrugated steel to the list of approved fence materials, which was drafted April 12, 2023. I understand that the public hearing on this matter is to be held on May 2nd.

I'd like to go on the record: I, DannyWyrwas, am in full support of corrugated steel being added to the list of approved fence materials in Billings. Fencing is a construction trade and like all trades they evolve. Corrugated steel is a new technology in the fencing industry that is garnering a huge following because of its strength, versatility and unique beauty.

Thank you and have a great day
Daniel E Wyrwas
Absolute Fence Inc.
Elevate Leadership & Business Consulting Inc.
dwyrwas@gmail.com
406-672-5060

From: Lilly Corning <Lilly@corningcompanies.com>
Sent: Wednesday, April 26, 2023 2:33 PM
To: Cromwell, Nicole <CromwellN@billingsmt.gov>; Jason Fitzgerald, AIA <Jason@Cd-mt.com>
Cc: Plecker, Monica <PleckerM@billingsmt.gov>; Friday, Wyeth <FridayW@billingsmt.gov>
Subject: [EXTERNAL] Re: Updated draft of the Sign Code Text amendments

Hi Nicole,

I was just reviewing this again with a tenant and think that it remains a little unclear. Specifically in revised Section E.2.a which reads:

"*Attached wall signs. Two (2) square feet per lineal foot of building frontage to a max. of two hundred fifty (250) square feet. This maximum wall sign area is allocated on a per tenant basis. See Sec. 27-1407.E.4 for wall signs on building facades that do not face a street.*"

I think that it still could be read in a way that suggests that the max is 250 ft for the entire building, regardless of the number of tenants. Perhaps to further clarify, it could instead say:

"*Attached wall signs. Two (2) square feet* ***of attached wall signage*** *per lineal foot of building frontage of* ***Tenant's Premises,*** *to a max. of two hundred fifty (250) square feet* ***per tenant***"

As you know, our goal is to make it tied to the lineal frontage of the Tenant's Premises rather than the building as a whole.

Thanks,
Lilly

From: Allison Carley <ACarley@lamar.com>
Sent: Tuesday, May 2, 2023 12:25 PM
To: daniel.jacob.brooks@gmail.com; mylarson@yahoo.com; greg@mccalldevelopment.com; dgg954@gmail.com; trina@trinawhite.com
Cc: Kelly Strobel <kstrobel@lamar.com>; Plecker, Monica <PleckerM@billingsmt.gov>; Cromwell, Nicole <CromwellN@billingsmt.gov>; Friday, Wyeth <FridayW@billingsmt.gov>
Subject: [EXTERNAL] 5-2-23 City Zoning Commission meeting

Good Afternoon.

I hope you are all having a great week so far.

Attached you will find a letter as well as concerns regarding the proposed ordinance changes up for discussion at today's meeting. We have also attached the current regulations pertaining to the proposed changes, for your convenience.

Thank you for your consideration and we look forward to the meeting.

--

LAMAR
Allie Carley / Vice President & General Manager
M: 605.380.9206

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May 2, 2023

City Zoning Commision
Billings, MT

To Whom It May Concern,

Historically, Lamar Outdoor Advertising has come from a position of working with the cities where we operate our business whenever there have been proposed changes to sign codes; the City of Billings has been no exception.

Our primary concern with this zoning code rewrite is the fact that the City Planning Department has put in a 700' radial spacing from residential zoned districts; which includes any planned development zoned areas that allow residential use and any city/county zoned districts that allow residential use. Radial spacing is not the norm per industry standards nationwide and on average spacing is closer to 150 linear feet.

Attached you will find the proposed ordinance changes. Highlighted in red, you will see the concerns that will affect that outdoor industry as a whole. We have provided questions as well as examples of how the proposed changes will affect the Billings market.

We appreciate the City Zoning Commissions consideration of our concerns regarding the proposed code changes. If adopted, not only will these changes significantly impact our industry but they will also impact numerous local businesses and the many charitable organizations we promote and support on a daily basis.

Thank you again for your consideration.

Lamar of Montana

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING Sections 27-1403, 27-1407, and 27-1409
related to signs and nonconforming signs, 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.** The text of Section 27-1403 Nonconforming signs be amended to clarify the language and allow some minor nonconforming signs to be replaced without increasing the nonconformity of the sign.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-1403. Nonconforming signs, is amended as follows:

Sec. 27-1403. Nonconforming signs.

- What is the reason behind the Two Categories (Major and Minor) Nonconforming signs? Billboards should be allowed to be brought into conformance.

- See attached the 3 pages of Sec. 27-1403 Nonconforming Signs

B. *Classification of nonconformities.* There are two (2) types of legal, nonconforming signs: major and minor. Signs with multiple nonconforming elements are classified in the category of the most significant nonconformity.

1. *Major nonconforming signs.* Major nonconforming signs are those signs for which the nonconformity generates a nuisance per se, violates city sign policy, or is incompatible with adjacent signs and/or the adopted guiding principles such that public policy favors their elimination from the zone if they are discontinued, abandoned, or destroyed. Major nonconforming signs include:

(a) Off-premises signs**, unless permitted as a conforming off-premise sign through Section 27-1409**;

……

Section 7. **ZONE TEXT AMENDMENT.** The text of Section 27-1409 is amended as follows:

Sec. 27-1409. Off-premises/billboard signs.

C. *Location standards following compliance with subsection 27-1409.B.* All replacement billboards shall be located in accordance with the following standards:

1. *Zoning districts.*

(a) Replacement billboards shall be permitted as an allowed use in heavy commercial (CX), ~~controlled~~ **light** industrial (I1), and heavy industrial (I2) zoning districts and on boulevard street types in EBURD zone districts.

- CMU1 and CMU2 used to be categorized as “CC” which was Community Commercial; of which billboards were allowed. Now that they are split, why are they not allowed in CMU1 but allowed in CMU2? Per the way the ordinance reads, it does not state implicitly whether they are allowed or not. Is it just a prediction they are not allowed?

Example #1 - We have a nonconforming location at Buffalo Wild Wings, due to the size of the structure. This location (used to be zoned “CC” Community Commercial before recode). We applied to bring the sign into conformance by reducing the size by 280 sq. feet total and converting it to a back to back digital billboard. We were denied because said property is zoned as CMU1.

Example #2 - We have multiple locations heading down from N. 27th, all of which have been a topic of discussion for years. We ideally would like to remove all locations and replace them with a back to back digital. This was approved once prior by the city, however, the property was zoned as public. To which our permit was denied by the MDOT as billboards were not allowed on public zone property. With the property now zoned as CMU1, it is predicted that billboards are not allowed and we cannot bring these locations into conformance.

(a) Billboards shall be permitted as an allowed use in corridor mixed use 2 (CMU2) zoning district provided that the structure is ~~two hundred (200)~~ **seven hundred (700)** feet or more from a residential zoning district. **This distance shall be measured as a radius from the proposed location of the off-premise sign. A residential zone district includes any Planned Development zone that allows residential uses, and any c ounty zone district that allows residential uses.**

The 200' spacing from residential, is part of the current regulations, and has been for 30+ years. Where did 700' radial spacing from residential come from and why the need for said change?

(c) A special review shall be required for all billboards to be located in a CMU2 zone if the structure is less than ~~two hundred (200)~~ **seven hundred (700)** feet but greater than ~~one hundred fifty (150)~~ **three hundred (300)** feet from a residential zoning district.

This above spacing reference will also be affected. What is the reason behind this change as well?

(d) Billboards may be permitted in the CBD through section 27-1623, Special review uses.

(e) No new billboards shall be permitted on, directed to, or within two hundred (200) feet of the following corridors regardless of the applicable zoning:

(1) 27th Street from I-90 to Airport Road (excluding 27th Street North from Montana Avenue to 6th Avenue North).
(2) Highway 3 (Airport Road) from Alkali Creek Road west to the city limits.
(3) Shiloh Road from I-90 to Rimrock Road.
(4) Yellowstone River.
(5) Any historic district registered on the National Register of Historic Places.

Existing Code Sec. 27-1403. Nonconforming signs.

A. *Nonconforming signs.* Where a lawful sign exists at the effective date of this article, or amendment of this article, that would be illegal under the terms of this article, the use of such sign may be continued so long as it remains otherwise lawful, subject to the provisions of this section.

B. *Classification of nonconformities.* There are two (2) types of legal, nonconforming signs: major and minor. Signs with multiple nonconforming elements are classified in the category of the most significant nonconformity.

1. *Major nonconforming signs.* Major nonconforming signs are those signs for which the nonconformity generates a nuisance per se, violates city sign policy, or is incompatible with adjacent signs and/or the adopted guiding principles such that public policy favors their elimination from the zone if they are discontinued, abandoned, or destroyed. Major nonconforming signs include:

   (a) Off-premises signs;

   (b) Dangerous signs;

   (c) Signs that exceed the maximum height or size permitted in the zone district by more than twenty (20) percent;

   (d) Nonconforming setback that encroaches on or over a public right-of-way, clear vision area, or public access easement;

   (e) Signs with nonconforming illumination;

   (f) Nonconforming sign types; and

   (g) Signs approved with a variance that permits any issue included in this major nonconformity list.

2. *Minor nonconforming signs.* Minor nonconforming signs are any nonconforming signs that are not classified as major nonconforming signs. Minor nonconforming signs include but are not limited to:

   (a) Signs that exceed the maximum height or size permitted in the zone district by twenty (20) percent or less;

   (b) Nonconforming setback that does not encroach on or over a right-of-way; and

   (c) Nonconforming separation.

C. *Major nonconformities.*

1. *Alterations.*

   (a) A major nonconforming sign or sign structure may not be altered in any way that increases any nonconformity. A proposed change to any nonconforming aspect of a major nonconforming sign shall require the entire sign to be brought into conformance with this article.

   (b) General repairs, maintenance, and change to advertising copy that does not include replacing a static sign with an EMD are not considered alterations.

2. *Replacement.*

   (a) A major nonconforming sign that is voluntarily replaced shall be replaced with a conforming sign.

   (b) A major nonconforming sign that loses its nonconforming status per subsection 27-1403.F shall be replaced with a conforming sign.

D. *Minor nonconformities.*

1. *Alterations.*

   (a) A minor nonconforming sign may be altered in a manner that conforms to this zoning code while still maintaining the nonconforming elements. For example, a sign that is two (2) feet over the height limit for the zone district may be altered provided the height is not increased.

   (b) General repairs, maintenance, and change to advertising copy that does not include replacing a static sign with an EMD are not considered alterations.

2. *Replacement.*

   (a) A minor nonconforming sign that is voluntarily replaced shall be replaced with a conforming sign.

   (b) A minor nonconforming sign that loses its nonconforming status per subsection 27-1403.F shall be replaced with a conforming sign.

E. *Sign removal for public purposes.* Any nonconforming sign temporarily removed by a public utility company, the city, or any governmental agency to accommodate repair, maintenance, or expansion operations may be replaced, provided that there is no change in size, height, or location of the sign. If any sign is moved as a direct result of a governmental or utility project, it may be relocated to a position determined by the city engineer to be appropriate in relation to the project, and such a sign shall not be considered nonconforming for the reason of applicable separation standards. No permit shall be required for such replacement.

F. *Loss of nonconforming status.* A nonconforming sign shall lose its nonconforming designation and be required to come into compliance with this article if any of the following apply:

1. Any portion of the primary sign structure is replaced.
2. The primary structure on the site is replaced, renovated in a manner that expands the building footprint by more than fifty (50) percent, or when the sign is required to be moved to accommodate building replacement or expansion in compliance with the zone district regulations.
3. A major nonconforming sign is removed, relocated, or replaced for any reason except towards compliance with this article.
4. If more than fifty (50) percent of a nonconforming sign is damaged by any means, as measured by total replacement cost of both the sign and structure prior to such destruction, and the sign type is no longer permitted in the zone district, it shall be considered destroyed and shall not be brought back into service or use except in conformity with the provisions of this article.
5. The sign is voluntarily replaced in compliance with this article.
6. The sign is abandoned pursuant to subsection 27-1410.C.

G. *Maintenance and repair.*

1. A nonconforming sign is subject to all requirements of this article regarding safety, maintenance, and repair.
2. Temporary removal of any portion of a sign for repairs or general maintenance shall not be considered to be in violation of this section, provided that no alterations are made to the sign or sign structure. Should such sign or sign structure be moved permanently for any reason and over any distance whatsoever, it shall thereafter conform to all regulations for the district in which it is located after it has been moved or relocated.
3. Maintenance shall not include the conversion of a nonconforming sign to an electronic message display sign. Any such conversions may only be made to a conforming sign and shall be subject to the permitting and fee requirements set forth in this article.

H. *Records.* In addition to initial and construction inspections, signs may be inspected periodically by the planning and community services department to ensure continued compliance with this article.

(Ord. No. 21-5748 , § 3(Exh. A), 1-25-21)

Existing Code Sec. 27-1409. Off-premises/billboard signs.

Purpose and intent. The purpose of this section is to regulate the impact of billboards on the community; to improve the appearance of major corridors and gateways; to enhance the urban design of the greater downtown area and the west end; to ensure compatibility between billboards and adjacent land uses; and to limit the impact that billboards have on sign clutter in the community. The city recognizes that billboards are a necessary and appropriate advertising medium, and that there are acceptable and viable locations for billboards within the community.

It is the intent of this subsection to address the following specific concerns regarding the impact of billboards upon the community:

1. The citizens of Billings, and others visiting or traveling through the city are very concerned about the urban design and visual integrity of the city.
2. Billboards may be often incongruous with the city's natural setting and features due to their large-scale figures, numbers, letters, and colors.

3. A billboard may dominate the view from vehicles and interfere with the occupants' enjoyment of the city's natural setting and features.

4. A high concentration of billboards may create traffic safety problems and distract attention away from public safety signs.

5. Billboards of excessive size or height should be downsized within a reasonable period of time.

6. Billboards are incompatible with residential uses.

7. The I-90, Highway 3, Main Street, 27th Street, other gateways, and Shiloh Road are major entryways to the city which are of particular importance in terms of urban design and public perception to citizens, visitors, and tourists.

8. The downtown area defined in the Downtown Strategic Plan is an area in which urban design significantly influences the health and vitality of the total community.

B. *No new off-premises/billboard signage pending removal of non-conforming signs.*

1. *New billboards prohibited.* No off-premises/billboard sign shall be constructed or erected in any district after the date of the enactment of this subsection 27-1409.B. [previous code subsection 27-706(b), adopted by Ord. No. 99-5107, enacted Nov. 22, 1999].

2. *Billboard replacement provisions.*

(a) For each nonconforming off-premises/billboard sign face removed a replacement conforming off- premises/billboard sign face may be erected. Replacement off-premises/billboard sign face(s) shall comply with all of the applicable regulations contained herein.

(b) When all nonconforming off-premises/billboard signs within the city have been removed pursuant to this section, then additional off-premises/billboard signs may be constructed in accordance with the regulations contained herein.

C. *Location standards following compliance with subsection 27-1409.B.* All replacement billboards shall be located in accordance with the following standards:

1. *Zoning districts.*

(a) Replacement billboards shall be permitted as an allowed use in heavy commercial (CX), controlled industrial (I1), and heavy industrial (I2) zoning districts and on boulevard street types in EBURD zone districts.

(b) Billboards shall be permitted as an allowed use in corridor mixed use 2 (CMU2) zoning district provided that the structure is two hundred (200) feet or more from a residential zoning district.

(c) A special review shall be required for all billboards to be located in a CMU2 zone if the structure is less than two hundred (200) feet but greater than one hundred fifty (150) feet from a residential zoning district.

(d) Billboards may be permitted in the CBD through section 27-1623, Special review uses.

(e) No new billboards shall be permitted on, directed to, or within two hundred (200) feet of the following corridors regardless of the applicable zoning:

(1) 27th Street from I-90 to Airport Road (excluding 27th Street North from Montana Avenue to 6th Avenue North).

(2) Highway 3 (Airport Road) from Alkali Creek Road west to the city limits.

(3) Shiloh Road from I-90 to Rimrock Road.

(4) Yellowstone River.

(5) Any historic district registered on the National Register of Historic Places.

2. *Locations standards.*

(a) Billboards shall be set back twenty (20) feet from the front property line.

(b) No billboard shall be placed on the roof of any building or structure.

3. *Spacing standards.* Billboards shall be required to have the following spacing requirements:

   (a) Billboards located in CMU2 shall have a minimum spacing of a 1,000-foot radius from any other billboard.

   (b) Billboards located in CX, I1, I2, and EBURD shall have a minimum spacing of six hundred (600) linear feet from any other billboard.

   (c) No billboard shall be placed within one hundred fifty (150) feet of any neighborhood residential zone.

4. *Area, height, face, and pole standards.* All replacement billboards (and new billboards when permitted) shall conform to the following standards:

   (a) *Sign area:* New and replacement billboards faces and supporting framework shall not exceed the following sign areas:

      (1) Generally: Two hundred fifty (250) square feet.

      (2) Located within the interstate corridor: Four hundred eighty (480) square feet.

   (b) *Height, maximum:*

      (1) Thirty-five (35) feet above the road grade to which the billboard reads.

      (2) The minimum distance between grade and the bottom of the billboard shall be fifteen (15) feet.

   (c) *Faces:*

      (1) There shall be no more than a total of two (2) faces per supporting structure.

      (2) All structures must be single face, back-to-back, or "v" type of construction. Stacked faces are prohibited.

   (d) *Pole construction:* All structures must be of single pole construction.

5. *Special review requirements for off-premises/billboard signs in CMU2 and CBD.* The following criteria will be used in reviewing the proposed structure:

   (a) The location and placement of the sign will not endanger motorists or pedestrians and does not interfere with the clear vision triangle at street, railroad, or street driveway intersections.

   (b) The signs will not cover or blanket any prominent view of a structure or facade of historical or architectural significance.

   (c) The sign will not obstruct views of users of adjacent buildings to side yards. This requirement does not include views of distant vistas.

   (d) The sign cannot be seen from religious assemblies, schools, the Yellowstone River or any city, county, or state park; or, if it can be seen it must be located at two hundred fifty (250) feet from the boundaries of such places.

   (e) The height of signs located in undeveloped areas (no buildings within 300-foot radius) shall not exceed twenty-six (26) feet above grade. The minimum clearance of a sign shall be at least fifteen
   (15) feet.

   (f) The sign's lighting will not cause hazardous or unsafe driving conditions for motorists and will not glare, reflect, or spill onto adjacent business or residential areas.

6. *Lighting and display.*

   (a) Static lighting shall comply with subsection 27-1406.A or the EMD provisions in this section.

   (b) Electronic message display (EMD) lighting shall comply with subsection 27-1405.C and the following:

      (1) A billboard EMD may be allowed on any off-premises/billboard sign face provided it conforms to all of the standards and requirements of the city sign code including the

limitation on replacement of nonconforming off-premises billboard signs in subsection 27- 1409(b) and the maintenance and repair requirements of section 27-1410.

(2) A billboard EMD does not need to be incorporated in a freestanding or wall sign pursuant to subection 27-1405.C, the EMD may be used as the only sign area on the billboard sign face.

7. *Landscaping.* The provisions of subsection 27-1406.B, Landscaping, apply to new and replacement billboards.

8. *Discontinuance.* The city may order the removal of any billboard, without compensation, upon which the advertising or other message has been discontinued for more than sixty (60) continuous days. The owner shall either advertise upon or remove the billboard within thirty (30) days of written notification by the city.

(Ord. No. 21-5748 , § 3(Exh. A), 1-25-21)

City Council Regular

Date:	05/22/2023
Title:	Zone Change 1023- Wicks Lane and Bitterroot Drive from N1 to NX1- 1st Reading
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Zoning Commission recommends approval and adoption of the findings of the 10 review criteria for Zone Change 1023.

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

City Zone Change 1023 -- Wicks Lane and Bitterroot Dr -- A zone change request from Mid-Century Neighborhood (N2) to Mixed Residential 1 (NX1) on C/S 515, Parcel 14A1, a 1.11 acre parcel of land.
Presented by Karen Husman, Planner I

APPLICATION DATA

OWNER: HWT Const., LLC
LEGAL DESCRIPTION: C/S 515, Parcel 14A1
CURRENT ZONING: N2
EXISTING LAND USE: vacant land
PROPOSED USE: Multi family 4-plexes
SIZE OF PARCEL: 1.111 acres

CONCURRENT APPLICATIONS:

None

SURROUNDING ZONING AND LAND USE:

NORTH: Zoning: N1
Land Use: Residential single
SOUTH: Zoning: N1
Land Use: Residential single family
EAST: Zoning: NX1
Land Use: Residential multi-family (Condo/Townhomes)
WEST: Zoning: N1
Land Use: Residential single family

The proposed zoning would allow development of one to four unit structures at an intersection of two arterial streets. The current zoning of N2 allows one and two unit residential dwellings. There are other multi unit properties in the area and throughout this neighborhood, including Moose Hollow condominium development consisting of six duplex dwellings on the southeast corner of Wicks Lane and Bitterroot Drive. The properties to the north and directly east are single family residential. There two duplex dwellings two parcels east of the subject property. A Master Site Plan review will be required with the number of dwelling units proposed with three structures.

STAKEHOLDERS

Planning staff notified the surrounding owners, published a legal ad and posted the property as required by the zoning regulations. A pre-application neighborhood meeting was held on February 28, 2023, at the East Wesleyan Church at 625 Mattson Lane.

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation. There were four residents in attendance, three were speaking in opposition to the recommended zone change and one resident stated that development of the parcel would improve the property including new sidewalks along Bitterroot and Wicks Lane. Stewart Wheeler and Jill Bogas, the two property owners of the adjacent property to the west and south of the subject property (1536 Wicks Lane), were concerned about the potential additional traffic that four multi-unit structures would generate and concerned about a probability that the trash enclosure and dumpster for the

development may be located right next to their property line. Gorden Boese a resident living at 806 Mossman Drive, was concerned that the additional traffic on Wicks Lane would be detrimental to the neighborhood. Doug Wild a resident living at 4712 Audubon Way, was in favor of development on this vacant parcel and said he felt that development of the property would improve the area, including improvements to the intersection at Wicks and Bitterroot, as well as sidewalks. Mr. Wild also pointed out that it can be developed as duplex dwellings under the current zoning potentially having the same impact the proposed development would have.

Zoning Commissioner Goss asked staff for clarification on how many duplexes could be potentially constructed on the lot. Nicole Cromwell, Zoning Coordinator, explained the parcel is just over one acre of land with two arterial street frontages and so could potentially have under the current zone of N2 (in the N2 Zone the number of structures allowed is based on street frontage) up to approximately ten duplexes, however that number of buildings would not be feasible for the lot. She said that it would not likely be an appreciable increase in the possible density on the property, but the new zone would give options for different typ of housing than just a duplex.

Zoning Commission member Trina White made a motion to recommend approval of the zone change and adoption of the findings of the 10 review criteria. The motion was seconded by Zoning Commission member David Goss and was approved on a unanimous vote.

ALTERNATIVES

The City Council may:

- Recommend approval and adoption of the findings of the ten review criteria for Zone Change 1023; or,
- Recommend denial and adopt different findings of the ten review criteria for Zone Change 1023; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

FISCAL EFFECTS

Approval or denial of the proposed zone change will not have an effect on the Planning Division budget.

SUMMARY

Prior to any decision the City Council shall consider the following:

1. Is the new zoning designed in accordance with the Growth Policy?
The proposed zone change does conform to the following guidelines of the 2016 Growth Policy:

Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Neighborhoods that are safe and attractive and provide essential services are much desired

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

Essential Investments

- Infill development and development near existing City infrastructure may be the most cost-effective

The proposed zoning would allow development of a vacant parcel into multifamily housing. The proposed zone is consistent with the City's Growth Policy and increases density without adding a large demand on city services. This will provide additional housing choices and provide a buffer between an arterial intersection and the adjacent residential development to the west and south of the property. Per Section 27-300.D; the NX1 district is intended to continue the character of the first neighborhoods with single-family, two-family, and small-scale multiple-family homes with 3 to 4 units. Multiple-family homes are intended to match the scale of the neighborhood single-family homes with characteristics such as building width, parking and garage location, roof design, and doors and windows on the front facades. The NX1 zone is a preferred zone district along arterial streets in line with this intersection that connects two principal arterial streets at Wicks Lane and Bitterroot Drive.

2. Is the new zoning designed to secure from fire and other dangers?
The new zoning requires minimum build-to zones, open and landscaped areas, and building separations. Section 27-307 under table 27-300.6 outlines the requirements for the required building siting. The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

3. Whether the new zoning will promote public health, public safety and general welfare?
Similar to criteria 1: NX1 district is intended to continue the character of the first neighborhoods with single-family, two-family, and small-scale multiple-family homes with 3 to 4 units. Multiple-family homes are intended to match the scale of the neighborhood single-family homes with similar massing characteristics. The proposed zoning (NX1) would allow the owner to ensure development is not intrusive to neighboring property, and still allow compatible uses with the adjacent N2 zoning. NX1 like all zones, requires minimum setbacks to allow for adequate separation between structures and adequate light and air. This parcel is presently vacant therefore any new structure(s) will be required to meet the standards required by Section 27-307 under table 27-300.6. Public health and public safety will be promoted by the proposed zoning.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: The proposed zoning itself will have little impact on the surrounding transportation systems. Impact on traffic will depend on the number of residents and drivers on the site after development. The NX1 Zone is intended to be along arterial corridors. Wicks Lane and Bitterroot Drive are arterial streets designed to handle the potential additional traffic.
Water and Sewer: The property has City water and sewer services. The City Public Utilities has accounted for the possible increase in service demand for water and sewer services on this single infill parcel. The change to NX1 zoning would facilitate a review of the potential impacts of additional residential services.
Schools and Parks: The proposed zoning itself should not affect Schools and parks, this will depend on the family dynamics of new residents. Schools and parks should not be negatively affected by the proposed zoning. The School district had provided no comments on this zone change.
Fire and Police: The subject property is served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

5. Will the new zoning provide adequate light and air?
Similar to criteria 2 and 3, the proposed NX1 zone, like all zones, requires minimum setbacks to allow for adequate separation between structures and adequate light and air. This parcel is presently vacant therefore any new structure(s) will be required to meet the standards required by Section 27-300.6 under the NX1 zone. The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. Additionally, the new zone requires specific landscaping and bufferyards adjacent to public streets as well as parking lot landscaping enhancing the aesthetic and healthy environment.

6. Will the new zoning effect motorized and non-motorized transportation?
The new zoning itself will not impact motorized and non-motorized transportation. Once developed, there will be minimal increased volume to the transportation network, both motorized and non-motorized. Off-street parking for the units will be provided. Sidewalks will be installed as part of the requirements for developing City lots and maintained for pedestrian connectivity. The two principle arterial streets are designed to easily handle the potential additional traffic.

7. Will the new zoning promote compatible urban growth?
The proposed zoning is compatible with the adjacent zoning and existing urban growth in the vicinity. This area consists of single and multifamily housing, and the NX1 zone will provide compatible residential development. The proposed zoning will allow infill development of an underutilized parcel into desired housing.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?
The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. The proposed zoning will allow infill development of a vacant parcel into desired residential growth. The NX1 zone is compatible with the surrounding N2 and is considered suitable for the particular uses. The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. Per Section 27-300.D; the NX1 district is intended to continue the character of the first neighborhoods with single-family, two-family, and small-scale multiple-family homes with 3 to 4 units. Multiple-family homes are intended to match the scale of the neighborhood single-family homes with characteristics such as building width, parking and garages location, roof design, and doors and windows on the front facades. The NX1 zone is a preferred zone district along arterial streets in line with this intersection that connects two principal arterial streets at Wicks Lane and Bitterroot Drive.

9. Will the new zoning conserve the value of buildings?
The proposed zoning will allow infill development of a vacant parcel into desired housing. This is an appropriate location for the zoning to allow additional density that is compatible with adjacent uses. The new zoning is not expected to alter the value of any buildings in the area. Any development of the property will need to meet the site development requirements in the zoning code, including landscaping, screening, building heights and setbacks. A Master Site Plan will be required with the number of units and structures proposed.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed zoning will allow infill development of a vacant parcel into desired housing growth. This is an appropriate location for the zoning to allow additional density that is compatible with adjacent uses. The parcel directly east across Bitterroot Drive is currently several multifamily structures. The proposed zoning will allow infill development of a vacant parcel into desired housing growth. This is an appropriate location for the zoning to allow additional density that is compatible with adjacent uses.

Attachments

Letter of Opposition - Darrell O. Mann
Zoning Map & Site Photos
Application & Applicant Letter
Neighborhood Meeting Info
History
Site Plan
Ordinance ZC 1023

(1)

RECEIVED
MAY 09 2023
PLANNING & COMMUNITY SERVICES DEPARTMENT

DATED - 5-8-23

TO, THE BILLINGS, MT PLANNING DIVISION, AND THE BILLINGS, MT CITY COUNSEL.

I DARRELL O. MANN, 1535 WICKS LN, BILLINGS, MT 59105, DO NOT WANT A ZONE CHANGE TO THE PARCEL ACROSS WICKS LN FROM MY HOME, CITY ZONE CHANGE 1023 FROM MID-CENTURY NEIGHBORHOOD (NZ) TO MIXED RESIDENTIAL 1 ([redacted] NX1) ON C/S 515, PARCEL 1441) WICKS + BITTERROOT

REASONS; IN MY OPINION THIS CHANGE will mean, MORE People TO LIVE ON THIS PARCEL. IF A MULTY-MANY FAMILY UNITS ARE Allow TO Be BUILT, I feel THIS will ADD TO THE TRAFFIC AND NOISE PROBLEM THAT HAS Been FOR A LONG TIME, AND STILL ON going even TODAY, I've CALLED THE Billings POLICE TO MONITOR THIS Problem, DISPATCHERS COMMENT - 5-6-23, Well we've GOT A LOT going ON IN Billings, Right NOW. THESE MULTY-FAMILY UNITS seem TO ATTRACK A CRIMINAL TYPE of PERSON OR PERSONS, ARE NOT PROPERLY MAINTAIN INSIDE AND OUTSIDE. IN THE FUTURE will Be AN EYE SORE WITH A BAD REPUTATION, WHICH will Bring DOWN MY Property VALUE, AND HARDER TO Sell. CITY COUNSEL, I SIT IN MY LIVING ROOM, WATCH TV, AND PART OF THE VOICES ON TV I CAN'T Hear, Because of THE Traffic, NOISE, MUSCLE CARS, LOUD TRUCKS, MOTORCYCLES, LITTLE CARS WITH ODD MUFFLERS, ETC, WOULD YOU LIKE THIS?

TURN TO PAGE (2)

(2)

DATED - 5-8-23

Decision

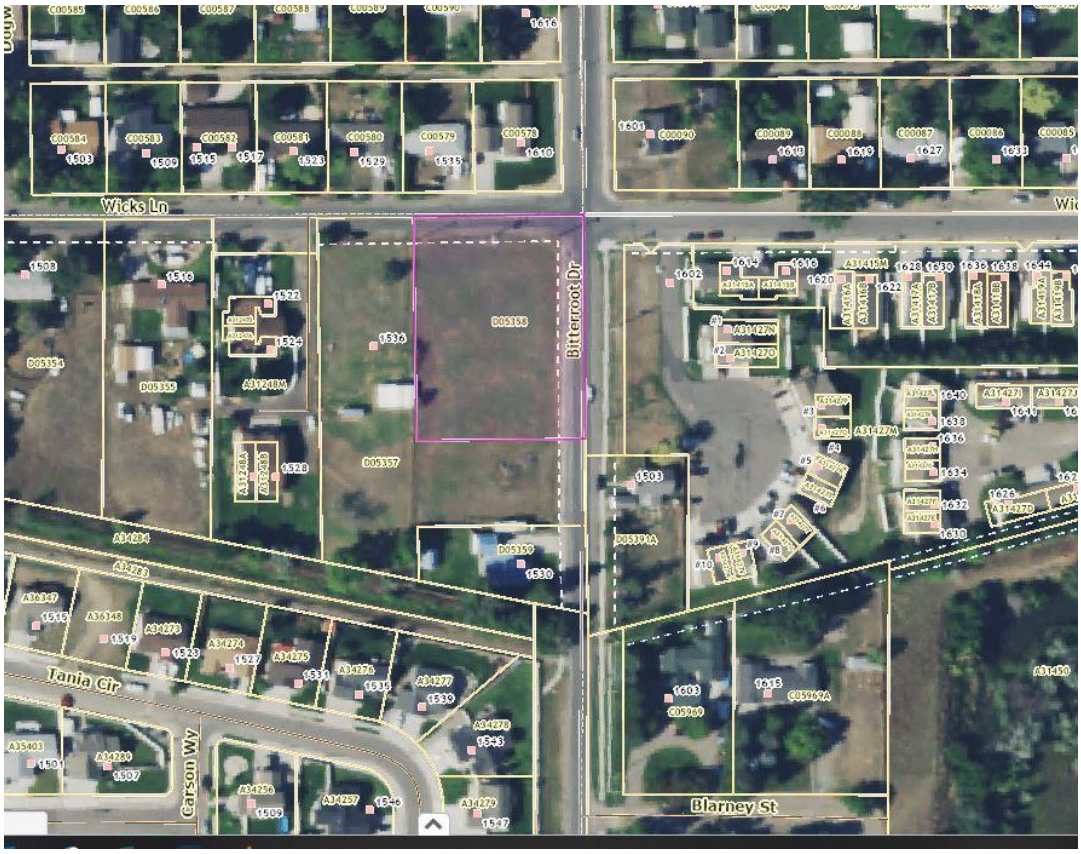
So, IN YOUR [redacted], please don't APPROVE THIS ZONE CHANGE;
WHO: HWT CONSTRUCTION, LLC, JEFF WOISCHLAGER, AGENT
WHAT: CITY ZONE CHANGE 1023 - FROM MID-CENTURY NEIGHBORHOOD (N2) TO MIXED RESIDENTIAL 1 (NX1) ON C/S 515, PARCEL 14A1, (WICKS LN + BITTERROOT) - ANY QUESTIONS, Feel Free TO CONTACT me;

Danell O'Mann
1535 Wicks LN
Billings, MT 59105
406-694-5251

RECEIVED
MAY 09 2023
PLANNING & COMMUNITY SERVICES DEPARTMENT

Zoning Map & Site Photos







South



West on Wicks



South East



North West



East



South west across subject property

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #_____ - Project #_____**

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning N2-MID-CENTURY NEIGHBORHOOD

Proposed Zoning: NX-1- MIXED RESIDENTIAL 1-4 UNITS

TAX ID# D05358 CITY ELECTION WARD 2

Legal Description of Property: COS 515 PARCEL: 14A1

Address or General Location (If unknown, contact City Engineering):

Size of Parcel (Area & Dimensions): 1.111 ACRES

Present Land-Use: VACANT LAND

Proposed Land-Use: MIXED RESIDENTAIL 1-4 UNITS

Covenants or Deed Restrictions on Property: Yes_____ No X

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): HWT CONSTRUCTION LLC Joshua Tolentino
(Recorded Owner)

(Address)

honoluluwt2013@gmail.com
(Phone Number) (email)

Agent(s): A-Line Drafting and Design, Jeff Wollschlager
(Name)

(Address) 406-321-2280 alinedrafting@gmail.com
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: _____ Date: 02/14/23
(Recorded Owner)

Date Stamp

2-28-23

Wicks and Bitterroot Zone change request.

Subject: C.O.S. 515, PARCEL 14A1, AM (21)

Chairperson of the Board of Adjustment:

We are requesting a Zoning change to said lot positioned on the Southwest corner of Wicks and Bitterroot. We are requesting a zone change from N2 to NX1. The requested Zone change would allow Multifamily living with structure with 1-4 units each. This would be the same zoning as the existing lot across Bitterroot to the East. This lot is located at a busy intersection. This lot with the current zoning requires a Principal Building to have a 10-20 feet front Build to zone. This would not be ideal at a busy intersection for a single family residence. This zone change would allow Three, four-plex structures on this lot. This would create a buffer from the busy intersection and the surrounding N2-Zoning. With a Zone change all requirements of NX-1 Zoning will apply.

Owners Representative



Jeff Wollschlager

A-Line Drafting and Design

406-321-2280

Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning**: N2

2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

   N2 change to NX-1

3. **Subject Property Map**: please attach to this form
4. **Legal Description of Property**:
   COS 515 PARCEL: 14A1

5. **Neighborhood Task Force Area**: Yes /// No . If Yes, Name of Task Force and mailing address of Chairperson: Heights Task Force, Frank Ewalt

6. **Roster of persons who attended the pre-application neighborhood meeting**: please attach to this form
7. **A copy of the meeting notice.** please attach to this form
8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form
9. **The undersigned affirm the following:**
   1) The pre-application neighborhood meeting was held on the 28th day of Febuary, 2023.
   2) The zone change application is based on materials presented at the meeting.

Owner (s): Joshua Tolentino Telephone: 406-850-4331

Address: Email: honoluluwt2013@gmail.com

Agent (s): Jeff Wollschlager Telephone: 406-321-2280

Address: Email: alinedrafting@gmail.com

3-2-23

Neighborhood meeting Zoning change request.

PROJECT#: PZX-23-00028

PROPERTY ADDRESS: BITTERROOT DR
TOWNSHIP: 01 N RANGE: 26 E SECTION: 23
CERTIFICATE OF SURVEY: 515 PARCEL: 14A1
FULL LEGAL: S23, T01 N, R26 E, C.O.S. 515, PARCEL 14A1, AM (21)

Neighborhood meeting:

Meeting commenced at 5:10 pm Feb 28th @ 625 Mattson Ln, Billings, MT 59105.

-See attached Attendance list.

I informed the attendants of the zone change request allowing 1-4 unit living structures on this lot with the potential of up to three structures.

Comments:

Wheeler/ Bogas: 1536 Wicks Lane. Immediate neighboring property. Objects to Zone change. Concerned on type of renters. Asked if it will be low-income housing. Will there be background checks. Concerned of number of potential units and demographic of renters. Vehicle parking/traffic was also a concern.

Callahan, Sean: Concerned about parking. Will there be low income or sober living units?

Pam Ellis: Concerned about format of neighborhood meeting letter. It did not say who the owner's are or the representative's business or information. Said she will contact "Nichole" about that.

Shayne Hinz: Mentioned he was just curious.

Jacquilin Garcia, 836 Dorothy Lane: Objects to zoning change not knowing what type of renters will occupy units.

Frank Ewalt: Objected. "No more zoning changes"

Amber Dunn, 832 Dorothy Lane: Objects. "Not next to N2 zoning"

Meet adjourned at 5:35.

Sincerely,



Jeff Wollschlager

Agent/ Representative

2-17-23

Zoning change request.

PROJECT#: PZX-23-00028

PROPERTY ADDRESS: BITTERROOT DR
TOWNSHIP: 01 N RANGE: 26 E SECTION: 23
CERTIFICATE OF SURVEY: 515 PARCEL: 14A1
FULL LEGAL: S23, T01 N, R26 E, C.O.S. 515, PARCEL 14A1, AM (21)

(Southeast corner of the intersection of Wicks and Bitterroot)

To whom it may concern,

A neighborhood meeting is scheduled for the 28th day of February at 5 PM. The location of the meeting will be held at East Wesleyan Church. Located at 625 Mattson Ln, Billings, MT 59105. We are proposing a Zone change from N2-Mid-Century Neighborhood to an NX-1-Mixed residential 1. The zoning change will allow 1–4-unit structures on this lot. We are proposing three structures to be located on this lot.

The purposes of a neighborhood meeting are to: inform neighboring property owners of the details of a proposed development, identify how the developer intends to meet the standards contained in this zoning code, and to allow the applicant to receive preliminary public comment on the proposal.

Sincerely,



Jeff Wollschlager

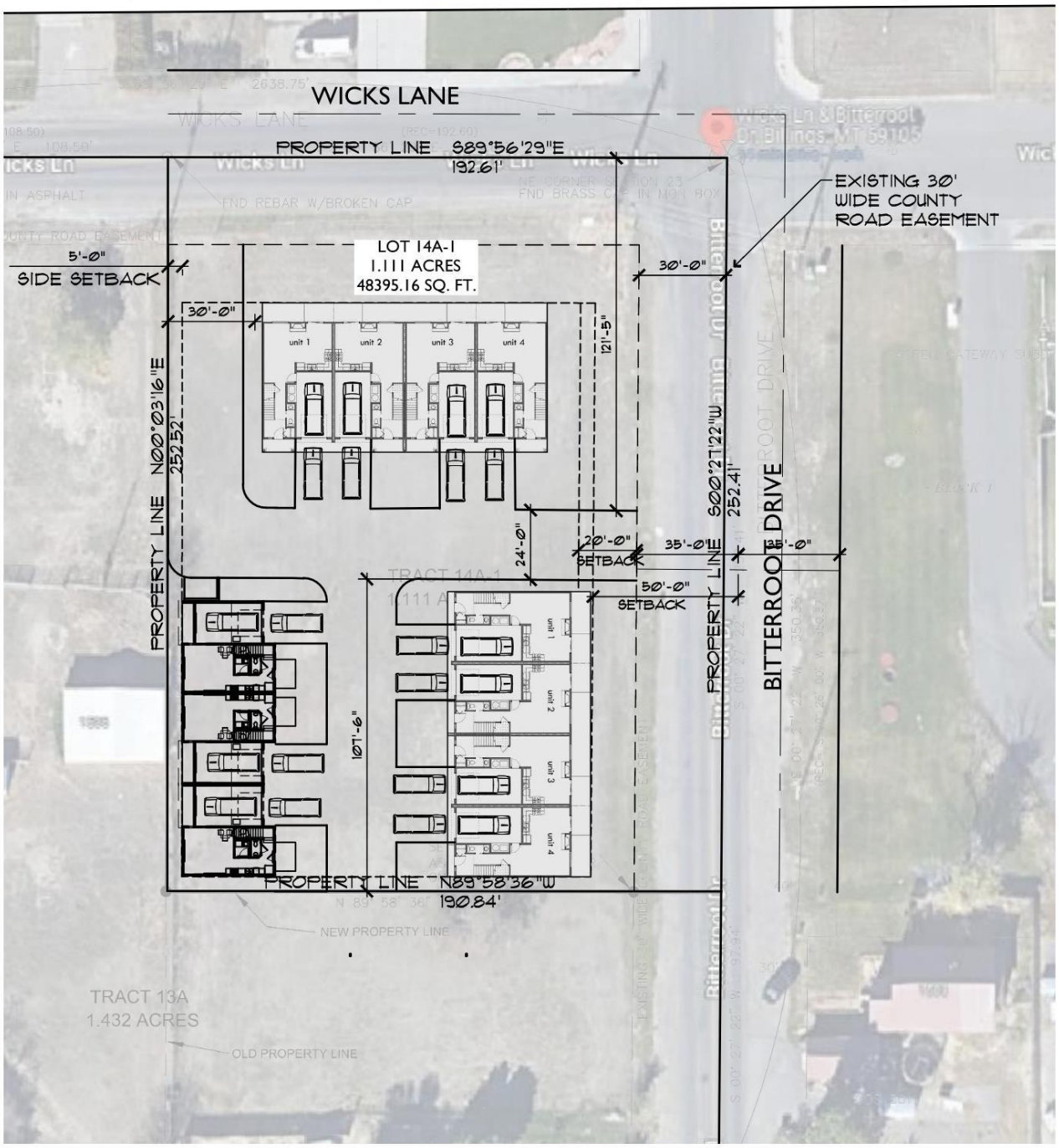
Agent/ Representative

PRE-APP NEIGHBORHOOD MEETING FOR ZONE CHANGE
ATTENDANCE : 2-28/23

NAME	NOTES
Amber Dunn	
STUART wheeler	
JILL Bogas	
Sean Callahan	
Jacque Garcia	
FRANK EWALT	
Pam Ellis	
Shegne Hinz	

Chart of Zoning History

SUBJECT PROPERTY	Application	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
CS 515 Parcel 14A1	NA				
SURROUNDING PROPERTY	**Application**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
636 Logan Lane	County ZC 30	12/1974	R-60 to HC	Y	
1327 Main St	County ZC 68	11/1975	R-60 to HC	Y	Four Seasons Shopping Center
1005 Main St	City ZC 275	11/1979	RMH to HC	Y	Now CX
1001 Main St	City ZC 905	12/2012	RMH to HC	Y	Now CX
1005 Main St	City ZC 910	8/2013	RMH to HC	Y	Now CX
429 Josephine Dr	County ZC 203	9/1978	RMF to CC	Y	Now CX & RMH
430 Josephine Dr	City ZC 490	11/1985	RMF to CC	No	
430 Josephine Dr	City ZC 967	8/2018	RMF to CC	Yes	Now CMU1
491 Hilltop and 811-819 Lake Elmo Dr	City ZC 622	9/1997	RMF to CC	Y	Now CMU1 & NX2
527 Lake Elmo Drive	City ZC 1013	6/2022	N2 to NMU	Y	New office space In existing home


WICKS LANE
PROPERTY LINE S89°56'29"E
192.61'
EXISTING 30'
WIDE COUNTY
ROAD EASEMENT
LOT 14A-1
1.111 ACRES
48395.16 SQ. FT.
5'-0"
SIDE SETBACK
30'-0"
30'-0"
unit 1
unit 2
unit 3
unit 4
121'-5"
PROPERTY LINE N00°03'16"E
252.52'
S00°27'22"W
252.41'
PROPERTY LINE
BITTERROOT DRIVE
24'-0"
20'-0"
SETBACK
35'-0"
35'-0"
50'-0"
SETBACK
TRACT 14A-1
1.111 ACRES
107'-6"
PROPERTY LINE N89°58'36"W
190.84'
NEW PROPERTY LINE
TRACT 13A
1.432 ACRES
OLD PROPERTY LINE

SITE PLAN

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THE ZONE CLASSIFICATION ON C/S 515
Parcel 14A1 Amended, 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.** **C/S 515 Parcel 14A1 Amended,** is presently zoned **Mid-Century Neighborhood (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 C/S 515 Parcel 14A1,** is hereby changed from **Mid-Century Neighborhood (N2)** to **Mixed Residential 1 (NX1) on C.O.S. 515, PARCEL 14A1 Amended,** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Mixed Residential 1 (NX1)** 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 22th day of May, 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June, 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1023 – C.O.S. 515, PARCEL 14A1, AM

City Council Regular

Date:	05/22/2023
Title:	Zone Change 1024- Central Ave. N3 to NX1- 1st Reading
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Zoning Commission recommends approval and adoption of the findings of the 10 review criteria for Zone Change 1024.

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

City Zone Change 1024 -- 3100 Block of Central Avenue -- A zone change request from Suburban Neighborhood (N3) to Mixed Residential 1 (NX1) on Central Acres 5th Filling, Block 9, Lot 1, a 13,072 square foot parcel of land. Tax ID: C01861
Presented by Karen Husman, Planner I

APPLICATION DATA

OWNER: Double Deuce Ventures
AGENT: Leona Lee
LEGAL DESCRIPTION: Central Acres 5th Filling, Block 9, Lot 1
CURRENT ZONING: N3
EXISTING LAND USE: Vacant Land
PROPOSED USE: Residential multi-family duplex
SIZE OF PARCEL: 13,072 sf

CONCURRENT APPLICATIONS:

None

SURROUNDING ZONING AND LAND USE:

NORTH: Zoning: N2
Land Use: Residential single family
SOUTH: Zoning: P2
Land Use: Faith Evangelical Church
EAST: Zoning: NX1
Land Use: Residential multi-family (4-unit dwelling)
WEST: Zoning: N3
Land Use: Residential single family

The proposed zoning would allow a vacant parcel to change to NX1 allowing infill development with multifamily housing. There are other similar multi unit properties in the area and throughout this neighborhood, including a four-unit dwelling on the parcel to the east of the subject property, and on the property northeast. Hunters Point apartments is to the southeast. The applicant is proposing construction of the duplex (two-unit dwelling) on the property. The NX1 zone allows 1-4 unit structures.

STAKEHOLDERS

Planning staff notified the surrounding owners, published a legal ad and posted the property as required by the zoning regulations. A pre-application neighborhood meeting was held on March 3, 2023, at the Faith Evangelical Church at 3145 Sweet Water Drive.

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation and testimony from the applicant Leona Lee, Double Deuce Ventures. Karen Husman, Planner, said there was a Letter and Petition submitted to staff after the staff report was completed. She explained that there were ten signatures on the petition, and that none of the ten property owners were within the 150 foot radius requirement for a valid protest petition, so the letter simply was for ten residents opposing the zone change. There were three members of the public who spoke in opposition to the proposed zone change. Jason Tittle a resident living at 22 31st Street West, said he

was present to support the four owners of the Meadow Vista Townhome four-plex to the east of the subject property, as well as the property owner directly adjacent the subject property to the west. He said the property owners were in opposition to the zone change, stating concerns that more traffic using the alley would negatively impact the neighborhood who use the alley for access. He explained that their property only has vehicular access from the alley, they do not have access from Central Avenue or from 31st Street West. Toni Donahue, a resident living at 24 31st Street West (also the four-plex to the east), concurred with Jason Tittle. Jerry Voto, a resident living at 3128 Lynn Avenue, said he is the resident that submitted the letter with the petition in opposition to the zone change. He said in addition to the items listed in the letter, the residents who signed the petition were in opposition because the additional traffic would negatively affect their properties on Lynn Avenue. He suggested they build a parking lot on the property to accommodate the shopping center to the west and the multifamily to the east. No other testimony was received.

Zoning Commission member Greg McCall explained that during the process of updating the zoning code, there were discussions about having a zone district only allowing single family housing. He said the discussions were concerning the availability of housing and if it were feasible and appropriate to have a zoning district only allow single family dwellings. He said they eventually settled on the N3 zone to be restricted to single family only. Commissioner Goss stated that there is currently a bill before legislature (Senate Bill 323) that if passed will require all residential zoning districts in the state of Montana to allow multi-family (duplex) housing, and if approved it will eliminate our ability to restrict N3 zones to single family housing. Mr. McCall said N3 zoning is an awkward zone on Cental Avenue and he did not feel a single family would be appropriate for this infill lot. Zoning Commission Member Trina White concurred, and added that this lot would be better suited for a duplex rather than a single family or a four-plex.

Zoning Commission member Trina White made a motion to recommend approval of the zone change and adoption of the findings of the 10 review criteria. The motion was seconded by Zoning Commission member David Goss and was approved on a unanimous vote.

ALTERNATIVES

The City Council may:

- Recommend approval and adoption of the findings of the ten review criteria for Zone Change 1024; or,
- Recommend denial and adopt different findings of the ten review criteria for Zone Change 1024; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

FISCAL EFFECTS

Approval or denial of the proposed zone change will not have an effect on the Planning Division budget.

SUMMARY

Prior to any decision, the City Council, shall consider the following:

1. Is the new zoning designed in accordance with the Growth Policy?
The proposed zone change does conform to the following guidelines of the 2016 Growth Policy:
Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
- Neighborhoods that are safe and attractive and provide essential services are much desired

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

The proposed zoning would allow development of a vacant parcel to be developed into multifamily housing. The proposed zone is consistent with the City's Growth Policy and increases density without adding a large demand on city services. The Growth Policy supports infill development and this parcel would be developed in line with the surrounding neighborhoods. Under the current N3 zone district only single family dwellings are allowed, a change to the NX1 zone will allow development of this vacant parcel into more than one dwelling unit. The applicant is proposing two dwelling units (one duplex dwelling) and would be an appropriate transition from the adjacent fourplex to the east and the single family to the west on this arterial street. The Growth Policy encourages infill development and

encourages a mixture of housing choices. The new zone is compatible with the adjacent developed parcels.

2. Is the new zoning designed to secure from fire and other dangers?
The new zoning requires minimum build-to zones, open and landscaped areas, and building separations (found in section 27-307 of the zoning code) The new zoning, as do all zoning districts, provides adequate building separations and density limits to provide security from fire and other dangers.

3. Whether the new zoning will promote public health, public safety and general welfare?
The proposed zoning (NX1) would allow the owner to ensure development is not intrusive to neighboring property and still allow compatible uses with the adjacent N1, N3 and NX1 zoning. The site and structure regulations found in 27-300.6 in the NX1 district promote the minimum standards to ensure public health and safety and promote general welfare. Public health and public safety will be promoted by the proposed zoning.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: The proposed zoning itself will have little impact on the surrounding transportation systems. Impact on traffic will depend on the number of residents and drivers on the site after development. The NX1 Zone is intended to be along arterial corridors. Central Ave. is an arterial street designed to handle the potential additional traffic.
Water and Sewer: The property has City water and sewer services. The City Public Utilities has accounted for the possible increase in service demand for water and sewer services on this single infill parcel. The change to NX1 zoning would facilitate a review of the potential impacts of additional residential services.
Schools and Parks: The proposed zoning itself should not affect Schools and parks, this will depend on the new residents. Schools and parks should not be negatively affected by the proposed zoning. The School district had provided no comments on this zone change.
Fire and Police: The subject property is served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

5. Will the new zoning provide adequate light and air?
Similar to criteria 2 and 3, the proposed NX1 zone, like all zones, requires minimum setbacks to allow for adequate separation between structures and adequate light and air. This parcel is presently vacant therefore any new structure(s) will be required to meet the standards required by Section 27-300.6 under the NX1 zone. The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning effect motorized and non-motorized transportation?
The new zoning itself will not impact motorized and non-motorized transportation. Once developed, there will be minimal increased volume to the transportation network, both motorized and non-motorized, off-street parking for the units will be provided. The sidewalk along the Central Ave. is already in place across the south side of the property, this will be updated and maintained promoting pedestrian safety.

7. Will the new zoning promote compatible urban growth?
The proposed zoning is compatible with the adjacent zoning and existing urban growth in the vicinity. The proposed zoning will allow infill development of an underutilized parcel.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?
The proposed zoning will allow infill development of a vacant parcel into desired residential growth. The NX1 zone is compatible with the surrounding N1, N3 and NX1 and is considered suitable for the particular uses. The proposed zoning does consider the character of the district and the suitability of the property for the proposed use.

9. Will the new zoning conserve the value of buildings?
The new zoning is not expected to alter the value of any buildings in the area. Any development of the property will need to meet the site development requirements in the zoning code. For the NX1 zone, this includes building heights, setbacks, and window and door facade coverage.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed zoning will allow infill development of a vacant parcel into desired housing growth. This is an appropriate location for the zoning to allow additional density that is compatible with adjacent uses. The parcel directly adjacent to the east is a four unit residential dwelling, and there are several other multi unit developed properties in the area. This infill parcel developing as a two unit parcel will encourage an appropriate transition between a parcel developed with a fourplex and a parcel with a single family dwelling.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Neighborhood Meeting Info
Opposition Letter
Ordinance ZC 1024

Zoning Map & Site Photos







North



South



East



West



Southwest towards the Faith Church



Southeast toward Hunter’s Point

APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #** 1024 **- Project #** PZX-23-00036

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning N3

Proposed Zoning: NX1

TAX ID# C01861 CITY ELECTION WARD 5

Legal Description of Property: Central Acres Subd 5th filing Block: 9 Lot: 1 S01, T01S, R25E, Block 9 Lot 1

Address or General Location (If unknown, contact City Engineering): East of 3109 Central

Size of Parcel (Area & Dimensions): 105'X125' : 13,072 sq feet

Present Land-Use: Vacant Lot

Proposed Land-Use: Duplex Building

Covenants or Deed Restrictions on Property: Yes_____ No X

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Double Deuce Ventures

(Recorded Owner) 4115 Kaitlin Court Billings MT 59101

(Address) 406-697-6665 ddvmt@gmail.com

(Phone Number) (email)

Agent(s): _____

(Name)

(Address)

(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: Leona Lee Date: 2-22-2023

(Recorded Owner)

RECEIVED
FEB 22 2023
PLANNING & COMMUNITY SERVICES DEPARTMENT

To whom it may concern

Location of property:

Central Acres Subdivision: Block 9, Lot 1

Vacant lot just off Central Ave and 31st

Double Deuce Ventures is requesting a zoning change from the City of Billings. The current property is zoned, N3 suburban neighborhood, we wish to have it rezoned NX1, mixed residential one.

We are requesting your presence at Faith Evangelical Church on Friday the 3rd of March at 5:30pm.

Meeting location:

Faith E Church

3145 Sweet Water Drive

Billings, Mt 59102

Thank you.

Leona Lee

Double Deuce Ventures

Billings Mt 59101

406-534-3010

Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning**: N3
2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

Change from N3 to NX1 to build duplex

3. **Subject Property Map**: please attach to this form
4. **Legal Description of Property**:

Central Acres Subd 5th Filing Block: 9 Lot: 1
SO1, T01 S, R25 E, Block 9, Lot 1

5. **Neighborhood Task Force Area**: Yes /// No . If Yes, Name of Task Force and mailing address of Chairperson:

6. **Roster of persons who attended the pre-application neighborhood meeting**: please attach to this form
7. **A copy of the meeting notice.** please attach to this form
8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form
9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 3rd day of March, 2023

2) The zone change application is based on materials presented at the meeting.

Owner (s): Leona Lee Telephone: 406-697-4970

Address: 4115 Kaitlin Crt Email: aqddvmt@gmail.com
Billings MT 59101

Agent (s): _____ Telephone: _____

Address: _____ Email: _____

To whom it may concern

Location of property:

Central Acres Subdivision: Block 9, Lot 1

Vacant lot just off Central Ave and 31st

Double Deuce Ventures is requesting a zoning change from the City of Billings. The current property is zoned, N3 suburban neighborhood, we wish to have it rezoned NX1, mixed residential one.

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Meeting location:

Faith E Church

3145 Sweet Water Drive

Billings, Mt 59102

Thank you.

Leona Lee

Double Deuce Ventures

Billings Mt 59101

406-534-3010

Meeting notes on Central Acres re-zoning meeting

Meeting came to order at 5:30 PM at

Faith E Church

3145 Sweet Water Drive

Billings, Mt 59102

Brian Lee started of the meeting with greeting the parties in attendance. He explained how the current zoning and the proposed zoning. He also mentioned the idea he has for the structure that we are wanting to build on the property.

The friends and neighbors asked questions about the process and how the land would be developed.

We closed the meeting at 6:20 pm.

ZC 1024

APRIL 27, 2023

TO WHO IT MAY CANCERN:

Our protest is with two more rentals units on our block. There are presently two 4plexes on the block, plus another one on St. Johns, on the north side of the block.

Also we have three houses that are rentals and there two more homes that may become rentals when their owners move or die.

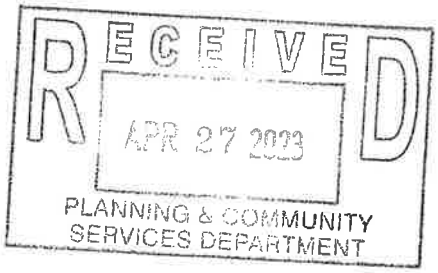
The last item of rentals is the land east of 31st street, between Central and St. Johns streets is already zoned for multiplexes (6 to 10 acres).

Finally, the rental neighbors we already have are NOT NEIGHBORLY. We visit with them when they move onto the block, but they do not return any visits. My wife has given our closest renter with young kids some toys that our grandkids have outgrown, and still no visits or relationships. I have given these neighbors veggies from our garden, not only no thank you, they didn't even open the door. Over the intercom they asked me to just leave them on the step and they would get them later.

RENTAL NEIGHBORS ARE NOT NEIGHBORLY. Not one rental neighbor has visited us or invited us to their home, with one exception. We have install a security system in our home because we do not know who is living in the neighborhood. Yes, we are concern for our welfare, because of all the rentals in the neighborhood.

G. A. Voto

Gerald Voto



RECEIVED
APR 27 2023
PLANNING & COMMUNITY
SERVICES DEPARTMENT

April 17, 2023

To who it may concern;

We the undersign protest the zone change for the property on block 9, lot 1, central acres.

There are two multiplexes and three rentals on the block already. Having another will just increase the use of the alley and increase neighbors who just come and go without being neighborly, (we never know who they are).

We authorize Jerry Voto to speak for us at both meetings, city zoning and city council.

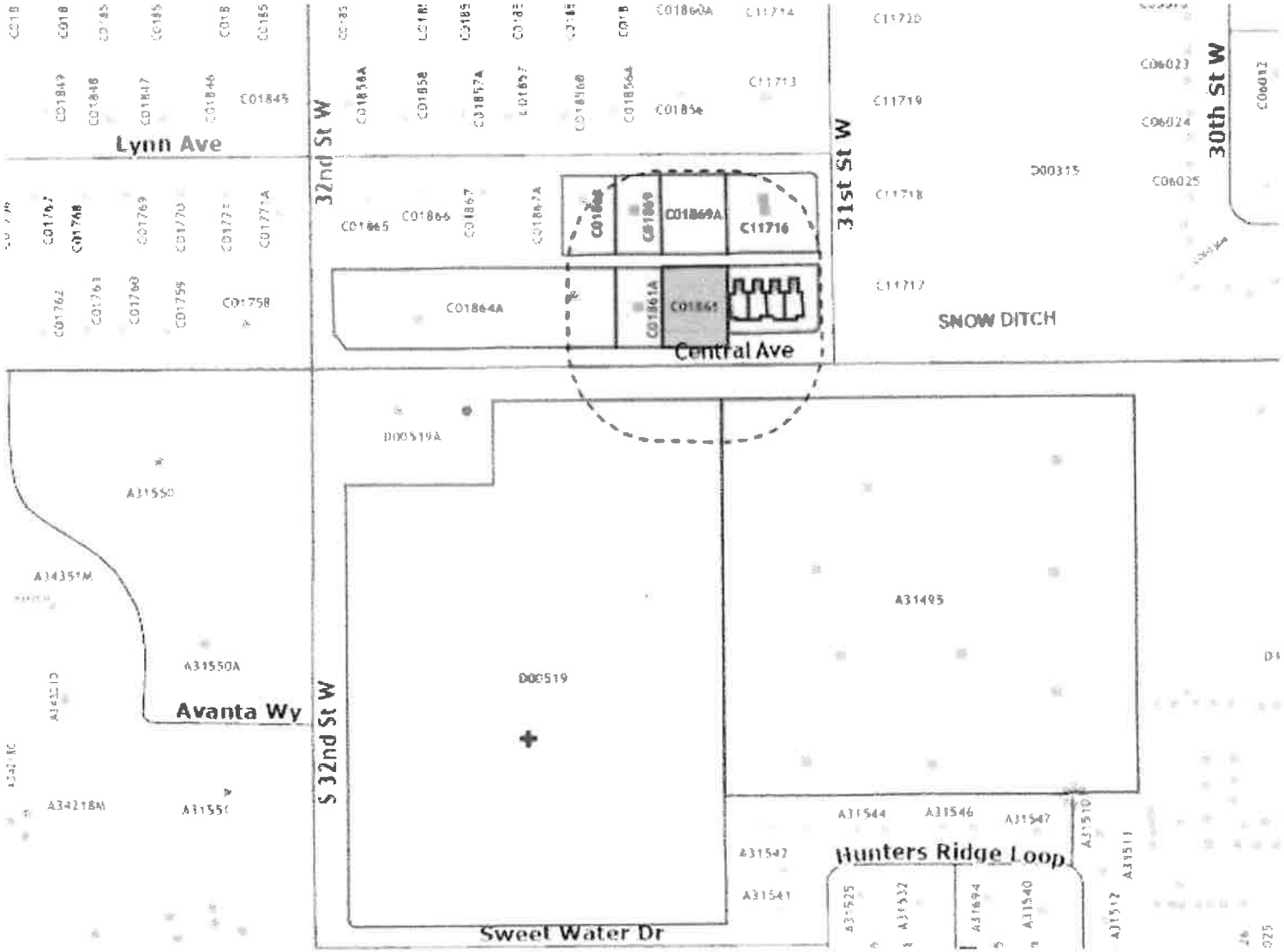
NAME	SIGNATURE	ADDRESS
G. J. VOTO	G. J. Voto	3128 LYNN AVE
F.E. DAHL	F.E. Dahl	3134 Lynn Ave
Bruce O'Banion		3121 Lynn Ave
Jennie Mezich	Fannie Mezich	3135 Lynn Ave.
Marlis Brodsack	M Brodsack	3141 Lynn Ave.
MICHAEL GUY		3144 LYNN AVE
Shawn Johannes		3129 Lynn AVE.
Tiffany Johannes		3129 Lynn Ave.
Corina Zackowski	Corina Zackowski	3115 Lynn Ave
Lois Coey	Lois Coey	3103 Lynn Ave.

10 Signatures

Owner name	Tax Code	Legal Description	Address
CENTRAL AVENUE CENTER LLC	C01864A		3133 CENTRAL AVE
BRADLEY, KYHL T & JENNIFER N	C01861A		3109 CENTRAL AVE
DOUBLE DEUCE VENTURES LLC	C01861		
MEADOW VISTA CONDOMINIUM	C11715M		22 31ST ST W
BERNHARDT, CAROL M & TODD A	C11715		16 31ST ST W
LAVACHEK, KEITH	C11715A		18 31ST ST W
TITTLE, JASON P	C11715B		22 31ST ST W
DONAHUE, TONI M	C11715C		24 31ST ST W
ASPEN GROUP, LLC	C11716		3102 LYNN AVE
WILKERSON, TIFFANY	C01869A		3104 LYNN AVE
SAMEL, GREGORY B	C01869		3110 LYNN AVE
LAURENT T PALMATIER TRUST	C01868		3116 LYNN AVE
FAITH EVANGELICAL CHURCH OF N AMERICA	D00519		3145 SWEET WATER DR
HUNTERS POINTE APARTMENTS LLC	A31495		3040 CENTRAL AVE

14 properties within 150 foot Radius

0 property owners Signatures within 150' area


Lynn Ave
32nd St W
31st St W
30th St W
Central Ave
SNOW DITCH
Avanta Wy
S 32nd St W
Hunters Ridge Loop
Sweet Water Dr
C01869A
C11716
C01864A
C01861
C01861A
D00519
D00519A
A31550
A31550A
A31495
A31544
A31546
A31542
A31541
A31540

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE ZONE CLASSIFICATION ON Central Acres 5th Filling, Block 9, Lot 1 & 30' VACATED 31ST STREET WEST, BE AMENDED

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

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

Section 2. **DESCRIPTION.** **Central Acres 5th Filling, Block 9, Lot 1 & 30' VACATED 31ST STREET WEST,** is presently zoned **Suburban Neighborhood (N3),** 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 **Central Acres 5th Filling, Block 9, Lot 1 & 30' VACATED 31ST STREET WEST,** is hereby changed from **Suburban Neighborhood (N3)** to **Mixed Residential 1 (NX1) on Central Acres 5th Filling, Block 9, Lot 1 & 30' VACATED 31ST STREET WEST,** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Mixed Residential 1 (NX1)** 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 22th day of May, 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June, 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1024- Central Acres 5th, Block 9, Lot 1 & 30' VACATED 31ST STREET WEST

City Council Regular

Date:	05/22/2023
Title:	Resolution Approving Annexation 23-03
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends the City Council hold a public hearing. In this case, a joint public hearing that considers both the annexation and associated zone change 1025. Upon completion of the hearing, staff recommends the City annex the petitioned property with the staff recommended conditions of approval.

NOTE: Though a joint hearing is being held, individual action will need to be taken on each item.

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

KLJ Engineering on behalf of Ned and Van Zimmerman submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located North of Rimrock Road and East of 54th Street West. The land being annexed is described as being Parcels of Land situated in the SW 1/4 of Section 29, and the NW 1/4 of Section 32, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows: Tract 2B of Amended Tract 2 of Certificate of Survey No. 1834, recorded November 25th, 1997, under Document No. 1900549 on file and of record in the office of the Yellowstone County Clerk and Recorder. Including adjacent Right-Of-Way of Rimrock Road. Said annexation containing 32.928 gross acres and 30.608 net acres, more or less.

The property is currently zoned N3 (Single Family Residential) and is located in the county. This is a zoning district recognized by the City, however this property is currently undergoing a rezone to PND (Zone Change 1025), in compliance with the zoning code which requires properties to annex as a Planned Neighborhood Development.

It is the City's custom to have staff prepare a brief analysis of predicted impacts to services and facilities. Staff finds the proposed annexation complies with the adopted Annexation Policy criteria as follows:

1. The area is located within the City's Annexation Petition Area on its Limits of Annexation Map.
2. The City is able to provide adequate city services within a time period mutually agreed to by the property owners requesting annexation and the city.
3. Existing or proposed public improvements within the area to be annexed will meet City standards. The Subdivision Improvement Agreement, which is a condition of approval, will outline public improvements required of the developer as part of developing the property. The only way this property could be developed in the city not according to adopted policies and regulations would require action from City Council or the Board of Adjustment to grant variances allowing deviations from adopted codes.
4. All property owners within the area to be annexed must sign a Waiver of Right to Protest future Special Improvement Districts. A standalone waiver is required as a condition of approval for this annexation. The waiver is good in perpetuity and is not subject to the 20-year limitation as identified in the Montana Subdivision and Platting Act.
5. If annexed, any proposed land use will comply with the zoning. This property is currently being rezoned as a PND (Planned neighborhood Development) through Zone Change 1025
    1. Residential densities planned for development within the area to be annexed must meet an overall average density of at least 4-7 dwelling units per acre. 54 West Subdivision will have 66 residential lots on 16.21 acres of land, with a mixture Single Family and Duplex friendly zoning, which equates to approximately 4 dwelling units per acre.
6. The proposed land use within the area to be annexed shall conform to the goals of the City of Billings Growth Policy. This parcel is most in line with the following:
    1. Strong Neighborhoods
        1. Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels
        2. Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, goodwill and social interaction
        3. Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale streetlights, street trees and walkable access to public spaces

4. Neighborhoods that are safe and attractive and provide essential services are much desired
5. Implementation of the Infill Policy is important to encourage development of underutilized properties

2. Home Base
    1. A mix of housing types that meet the needs of a diverse population is important
    2. The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development
    3. Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
    4. Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings
    5. Public safety and emergency service response are critical to the well-being of Billings' residents
    6. Homes that are safe and sound support a healthy community

Departmental Response: City and County Departments were given the opportunity to comment on this annexation. City departments responded favorably and detailed responses are provided below. The County Public Works Department did not respond to this annexation request.

- Water and Sanitary Sewer: Public water and sanitary sewer service is available to the property proposed for annexation. The Developer will be responsible for the design and construction of connections to the sanitary sewer main and a water main in 54th Street West along the frontage of the above-described property.
- Storm water: Any development will be compliant with the adopted Stormwater Management Manual.
- Transportation: The Developer Tract will be accessed from 54th Street West. The 37-foot-wide right-of-way half-width along 54th Street West will be dedicated to the City of Billings.
- Fire Stations: The Billings Fire Department currently serves the subject property through the Billings Urban Fire Service Area agreement. The Billings Fire Department will continue to serve the property upon annexation. As this and additional annexations are built out, additional fire department resources will be needed to meet and maintain our high level of service due to the increased call volume and burden on our department these annexations create. The nearest fire station is Station #7, located at 1501 54th St West, approximately 1.0 road miles or 2-3 minutes driving time to the subject property.
- Parks: No Parkland or Trails will be required as part of this annexation.
- School facilities: School District #2 provides service to students within this subdivision from elementary to high school (Arrowhead Elementary School, Ben Steele Middle School, and West High School). School District #2 provided comment for this annexation petition that West High School (2113 Enrolled / 1731 Maximum) and Ben Steele Middle School (781 Enrolled / 750 Maximum) are over capacity, and Arrowhead Elementary (437 Enrolled / 460 Maximum) is just under capacity. Additional conversations not specific to this annexation between City Administration and School District #2 Administration suggest the capacity issues are currently not something that should deter growth. School District #2 is in a process in the next year to evaluate its sub-district areas that serve each school as part of its ongoing work to manage capacity.

General City Services: These are the City services that are provided to all residents and businesses in the City, such as police and fire protection, street and storm drain maintenance, and garbage collection and disposal. The service providers that responded did not object to the annexation of this property, however the Fire Department in its comments above did note its concerns as additional property is annexed into the City.

- Transit: The annexed area is not directly serviced by a MET Route. The nearest route, MET Route 24, currently operates through the intersection of Poly Drive and Rehberg Ln, which is the nearest accessible point to the property. This intersection is approximately 3.26 miles from the proposed annexation location via roadway. MET does not anticipate that fixed-route service would operate in the area until more significant commercial and/or residential growth necessitated transit service in the area.
- Police: This proposed development is adjacent to established city limits and will not require an adjustment in schedules or staffing at this time. There is sufficient ingress/egress to the area. Despite recent passage of a safety levy, continued annexation and development will affect our ability to deliver service without commensurate resources.
- Public Utilities: The Public Works-- Distribution and Collection Division had no concerns with the annexation request.
- Public Works -Street and Traffic Division: The Street and Traffic Division stated that it has no concerns with serving the property.
- Public Works-Solid Waste: The Solid Waste Division had no concerns with annexing the property, but pointed out that State Law allows the property owner to choose what garbage hauler may service the property after it is in the City.
- Ambulance Service: The City does not provide ambulance service, however it does dictate the level of service provided by American Medical Response (AMR). By City ordinance, 90% of ambulance calls must be answered within 8 minutes. Depending on factors at any given time such as traffic and congestion, this property may be

within the area of acceptable response time.
- Legal and Finance: General Fund services, such as the Legal and Finance Departments should not be negatively impacted by this annexation.
- Other Departments: City/County services including Library, Planning, and Environmental Health are only slightly affected by the annexation since they will continue to serve the property whether it is in the City or the County. The Planning Division staff supports the annexation because it is consistent with the Limits of Annexation map and the criteria of the annexation policy has been met. Further, coordination with other departments does not raise concerns that cannot be mitigated. These decisions have a cumulative affect, therefore, City Council is being provided with a recommendation of approval.

STAKEHOLDERS

Annexation by petition does not require notification of adjoining landowners; however, it does require that the City Council conduct a public hearing, advertise the hearing, and post the property with information on the annexation petition and public hearing. Notice of the public hearing was posted on the property and was advertised in the Yellowstone County News.

ALTERNATIVES

The City Council may

- Approve,
- Conditionally approve or
- Deny the petition for annexation.

Denial of the petition will mean the City Council cannot consider other agenda items related to this property regarding the zone change and ward boundary ordinance. On April 1, 2023, the annexation petition was submitted to the Planning Division by the owner's agent. On May 22, 2023, the City Council is scheduled to take action on the petition.

FISCAL EFFECTS

This application has no impact on the Planning Division Budget.

SUMMARY

Attachments

Annexation Resolution
Limits of Annexation Map

RESOLUTION NO. 23 -

A RESOLUTION APPROVING PETITION FOR ANNEXATION AND ANNEXING TERRITORY TO THE CITY.

WHEREAS, one hundred percent (100%) of the freeholders who constitute more than fifty percent (50%) of the resident freeholder electors have petitioned the City for annexation of the territory hereinafter described; and

WHEREAS, the territory was described in the Petition as required by law; and

WHEREAS, annexation of said territory would be in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

1. TERRITORY ANNEXED. Pursuant to Petition filed as provided M.C.A., Title 7, Chapter 2, Part 46, the following territory is hereby annexed to the City of Billings:

Parcels of Land situated in the SW 1/4 of Section 29, and the NW 1/4 of Section 32, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tract 2B of Amended Tract 2 of Certificate of Survey No. 1834, recorded November 25th, 1997, under Document No. 1900549 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Including adjacent Right-Of-Way of Rimrock Road.

Said annexation containing 32.928 gross acres and 30.608 net acres, more or less.

(# 23-03) See Exhibit "A" Attached

2. CONDITIONS. The annexation is approved, subject to the following conditions:

- Within 45 working days and prior to site development, a Subdivision Improvement Agreement shall be approved as part of a Preliminary Plat approval for Fifty Four West Subdivision.

- Within 14 working days, a standalone Waiver of Right to Protest, granted in perpetuity, shall be signed by the developer and filed with the Yellowstone County Clerk and Recorder upon the City's approval of the annexation.

If the above conditions are not satisfied as set forth herein, the annexation will not be effective and any subsequent requests for annexation of the property legally described within this resolution shall be processed as a new petition for annexation.

3. EFFECTIVE DATE. This resolution to annex the above-described territory shall be effective immediately upon satisfaction of all conditions. If the above condition(s) are not satisfied, this resolution shall be null and void and shall have no effect.

4. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 46, have been duly and properly followed and taken.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 22nd day of May, 2023.

CITY OF BILLINGS:

BY: _____

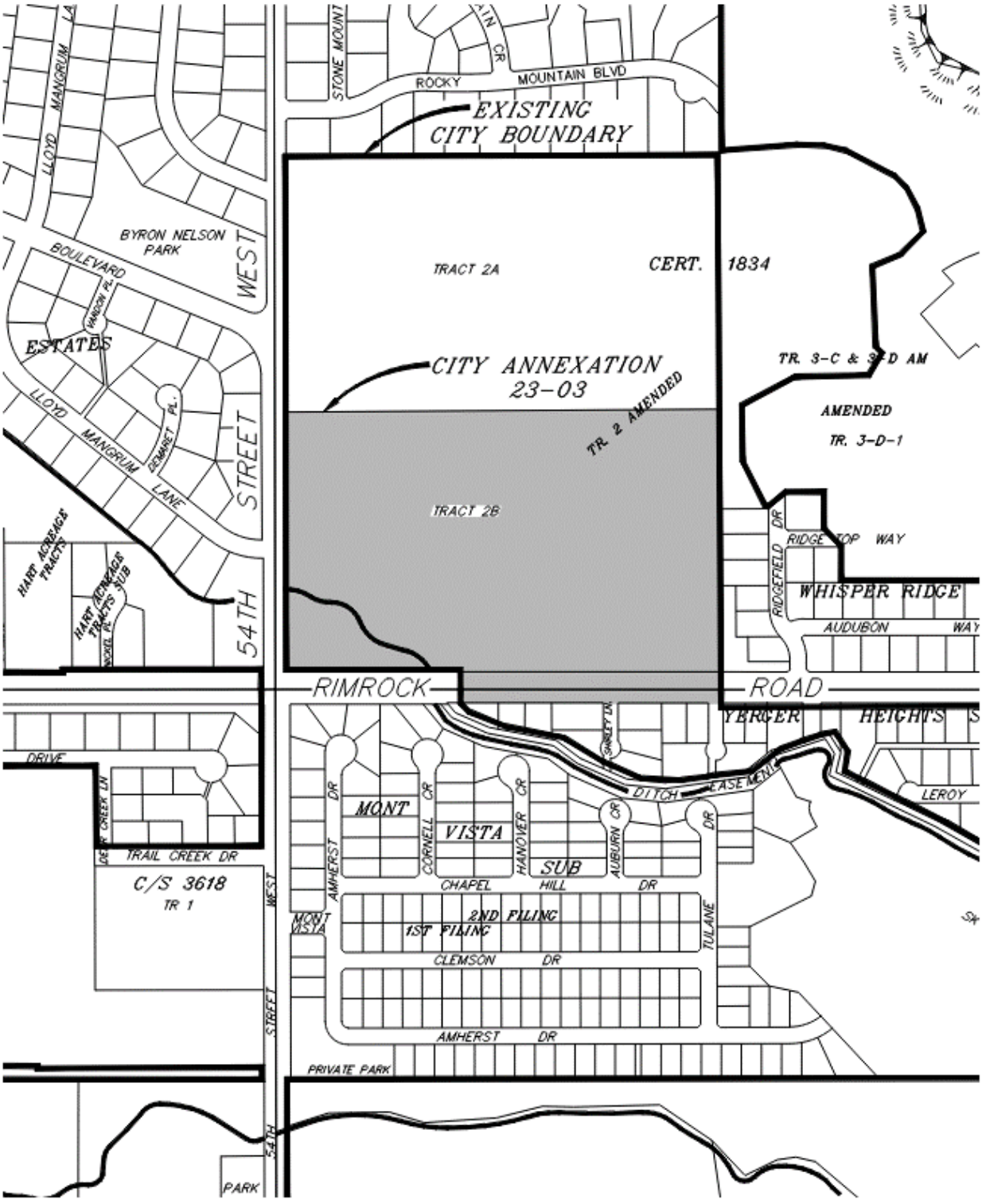
William A. Cole, Mayor

ATTEST:

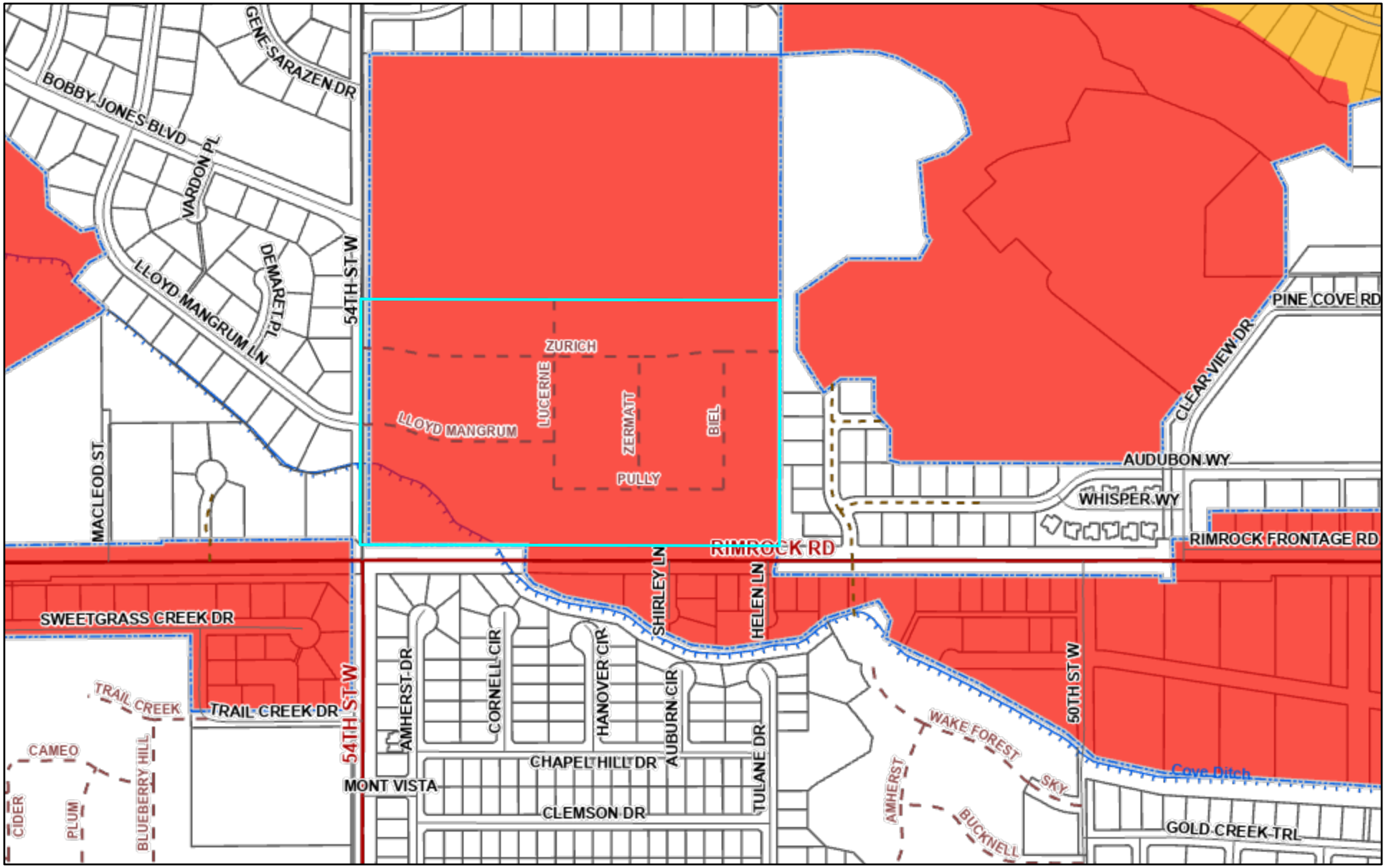
BY: _____

Denise R. Bohlman, City Clerk
(# 23-03)

EXHIBIT "A"


EXISTING CITY BOUNDARY
CITY ANNEXATION 23-03
TRACT 2A
CERT. 1834
TRACT 2B
TR. 2 AMENDED
TR. 3-C & 3-D AM
AMENDED TR. 3-D-1
ROCKY MOUNTAIN BLVD
STONE MOUNTAIN CIR
LLOYD MANGRUM LA
BYRON NELSON PARK
BOULEVARD
WEST
HANSON PL
ESTATES
LLOYD MANGRUM LANE
DEMARET PL
STREET
54TH
HART ACREAGE TRACTS
HART ACREAGE TRACTS SUB
RIDGE TOP WAY
RIDGEFIELD DR
WHISPER RIDGE
AUDUBON WAY
RIMROCK ROAD
YERGER HEIGHTS
SHIRLEY DR
DITCH EASEMENT
LEROY
DRIVE
DEER CREEK LN
TRAIL CREEK DR
C/S 3618
TR 1
MONT VISTA
AMHERST DR
CORNELL CR
HANOVER CR
AUBURN CR
CHAPEL HILL DR
SUB
2ND FILING
1ST FILING
TULANE
CLEMSON DR
AMHERST DR
PRIVATE PARK
PARK

Limits of Annexation Map



4/26/2023, 12:43:45 PM

1:8,530

0 0.05 0.1 0.2 mi

0 0.07 0.15 0.3 km

Limits of Annexation

- City Annexation Petition Area
- Long Range Urban Planning Area

Streams, Ditches, Canals

- Canal or Ditch
- Tax Parcels

- Billings City Limits

Road Centerline

- ARTERIAL
- COLLECTOR
- STREET
- PROPOSED ROAD

Web AppBuilder for ArcGIS

City Council Regular

Date:	05/22/2023
Title:	Zone Change 1025 - Fifty-Four West Subdivision PND-1st Reading
Presented by:	Karen Husman
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Zoning Commission recommends approval and adoption of the findings of the ten review criteria for Zone Change 1025, a Neighborhood PND zone change type from Suburban Neighborhood (N3) to Mid-Century Neighborhood (N2), Suburban Neighborhood (N3) and Public 1 (P1) through a Planned Neighborhood Development (PND). A concurrent annexation and subdivision are in progress and are to be acted upon in coordination with this item at this meeting.

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

City Zone Change 1025 : A zone change request from Suburban Neighborhood (N3) to Mid-Century Neighborhood (N2), Suburban Neighborhood (N3) and Public 1 (P1) through a Planned Neighborhood Development (PND) process on C/S 1834, Tract 2B, a 30.6 acre parcel of land. A pre-application neighborhood meeting was held on March 20, 2023, at the subject property. There is a concurrent petition for annexation and subdivision preliminary plat application also being considered at this meeting. Tax ID: D12427.

This zone change request is for a new neighborhood to be developed on the north side of Rimrock Road and east of 54th Street on a parcel located on the northeast corner of the intersection. This is a Neighborhood PND type that requires at least two "N" zone districts along with a 2% minimum of Public 1 (open space). The PND process is a zoning tool to help guide the coordination of annexation, subdivisions, and master planning for new city neighborhoods. This PND tool allows developers to process all the zoning with the City Council, phase the annexation of the property (if necessary but not applicable to this development), and coordinate both of these processes with subdivision or master site plan review. The tool applies a level of certainty to all stakeholders, including the surrounding property owners.

This zone change is for a Neighborhood PND type and includes neighborhood residential zoning N2 and N3, and Open Space (P1) district. The majority of lots will be designated N3 with the N2 zone nearest to the south center of the development. There will be a linear park strip between the N2 lots and Rimrock Road and continuing west and expanding the P1 zoned area to the corner of 54th Street and Rimrock Road. The PND regulation 27-800 do not allow the designation of N1, N2 or N3 directly adjacent on an arterial street such as Rimrock Road. The proposed PND includes an added P1 park strip along the Rimrock Road right-of-way to comply with this N district requirement.

APPLICATION DATA

OWNER: Ned Zimmerman, Van Zimmerman
AGENT: KLJ, Travis Copper
LEGAL DESCRIPTION: C/S 1834, Tract 2B
ADDRESS: 54th St. W and Rimrock Rd.
CURRENT ZONING: Suburban Neighborhood (N3) (County)
EXISTING LAND USE: Agriculture - vacant land
PROPOSED USE: New city residential neighborhood
SIZE OF PARCEL: 30.6 acres

CONCURRENT APPLICATIONS:

Petition for Annexation and 54 West Major Subdivision preliminary plat

SURROUNDING ZONING AND LAND USE:

NORTH: Zoning: Suburban Neighborhood (N3)
Land Use: vacant land
SOUTH: Zoning: N2, N3 & PD
Land Use: Residential Zone/ vacant land
EAST: Zoning: N3
Land Use: Residential
WEST: Zoning: N3
Land Use: Residential Subdivision

This area of Billings has experienced a great deal of growth and development in the past decade. This includes Mont Vista Planned Development zone to the south of Rimrock Road with customized zoning for specific parcels. Housing demand has reached a high level while supply of all types of housing choices has not kept up with the demand. The 2010 Census indicated Billings has a demand for housing in areas closer to city services. Developers have made robust investments in properties near the edge of Billings and the number of annexed developments have increased in the last 3 years. The demand for housing supports the requested zone change and annexation on this parcel. The surrounding development (Yellowstone Club Estates) to the west, (Yellowstone Ridge Sub.) to the north and (Whisper Ridge Sub.) to the east are designed with similar single family housing choices as the proposed development.

There are challenges to an area of urban development that is on the edge of the city limits. These challenges include ensuring the adjacent county property owners and uses can coexist as much as possible with the new urban neighborhood residents and uses. In this case the development will be promoting a similar development pattern that exists in the surrounding City and County parcels. The 2016 Billings Growth Policy goals and policies support the proposed neighborhood PND. The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The proposed zone change supports these goals. The 2016 Billings Growth Policy supports a broad range of housing choices, encourages more walkable neighborhoods with connectivity to other transportation options, and building the community fabric through urban designed public spaces. The proposed zone change supports these goals.

STAKEHOLDERS

The applicant and agent conducted a pre-application neighborhood meeting on March 20, 2023, and 35 residents of the area attended the meeting. The meeting was held at the proposed location. A summary of the meeting is included as an attachment. A PND zone change process requires notification of all owners within 1/4-mile of the subject property. The list for this zone change included 475 owners. Concurrent annexation and subdivision preliminary plat are being coordinated through the process with this zone change.

As part of the PND zone change process, the applicant is also required to hold a pre-application Concept Review meeting with city staff to address any concerns with the street layout, zone districts, access, parks, utilities and similar infrastructure provisions. Staff was generally supportive of the proposed street layout and distribution of the zone districts. However, staff was concerned that the linear park strip would promote rear yards with fences along Rimrock Road. There were discussions between planning staff as to how this design could address safety and landscaping in terms of a landscape buffer and possible restriction on fence height to create a more aesthetically pleasing area along Rimrock Road. Staff has worked through the subdivision review process to try and address these concerns within the confines of the current subdivision regulations as these are not able to be mitigated with the zone change process.

The Zoning Commission conducted a public hearing on May 2, 2023, and received the staff recommendation and testimony from the applicant's agent, Steve Grabel, KLJ Engineering. Commission member Greg McCall asked for clarification of the P1 district parcel and what was intended for it. Steve said it would be open space and that the strip along Rimrock Road would serve as a buffer between the properties and the pedestrian path that runs along Rimrock and there would be a portion of the P1 dedicated parkland as a privately maintained park. Commission Member David Goss asked where the access would be to the P1 areas. He pointed out there appears to be only one access to the P1 from the cul-de-sac to the east of the N2 zone. Steve said there is an access point planned for the east cul-de-sac that will open up to the P1 along Rimrock for use of the bike pedestrian path. He said there is a plan for fencing along the south side of the lots.

Monica Plecker, Planning Division Manager, said that this application for annexation is currently being review and the subdivision preliminary plat has already gone to the Planning Board for consideration and that Board held the required public hearing for the subdivision. She clarified details that came from the preliminary plat application - they would be putting a fence along the property line adjacent to the P1 strip along Rimrock Road. She said part of the subdivision regulations allow requiring additional landscaping, so the Planning Board has recommended approval of a landscaping strip along the south property line of the parcels along Rimrock Road to soften the feel of those backyard fences that are set back off of Rimrock Road and given the proximity of Rimrock it would not be at risk of creating a tunnel like effect. She explained the landscape requirement is for street trees every forty feet as well as six ornamental grasses in between, which should help to soften the presence of the fences that will be visible from Rimrock Road. She said the developer is planning to have stormwater facilities located in the P1 area at 54th and Rimrock and there is also a ditch that runs through the same area that will be fenced for safety. She said even though they have indicated they intend to use some of the P1 space for Parkland they are also intending to use some of it for stormwater purposes. She closed with the explanation of requirements for parkland and that the City requires developments within a mile of Cottonwood Park to contribute a cash amount. She said the PND requires 2% that will be provided with a portion of the P1, and the remaining balance would be a cash contribution for the remaining amount.

There were five members of the public who were present for this application, three were in opposition and two were in favor. Pat Curry, resident that lives at 5412 Gene Sarazen Dr., was in favor of the proposal and said he felt the applicant has a reputation for creating a nice development, however, he had concerns with the added traffic at the intersection of 54th and Rimrock. He said they are proposing two access points onto 54th Street that would negatively affect the residents in the area, and they should reduce the access to one and add an access point onto Rimrock Road. Commission member Greg McCall clarified for the public that the majority of issues that are being brought to the board tonight so far do not necessarily pertain to zoning and can not be addressed with the zone change application. He said there will be opportunities to voice concerns about the subdivision and traffic, etc. but it can not be addressed with this hearing.

Christie Vassar, a resident who lives at 5358 Amherst Dr., said she was opposed to the zone change because it would allow duplexes, and she felt it should be all single family homes. She was also opposed to their plan eradicating the prairie dogs that live on the land. She also inquired about what was necessary to submit a formal petition against the zone change. Nicole Cromwell, Zoning Coordinator, said she would need to submit a petition against the zone change to the Planning Division office by 5:00 PM, Friday, May 19, prior to the scheduled City Council meeting May 22, 2023. Commission member Greg McCall explained the PND requires a percentage of the development to be N2 zone, and this applicant is providing the minimum required for the PND application. Gary Polk, a resident who lives at 5028 Rimrock Rd., said he felt progression is good, and he supported development, however, he also felt it was the responsibility of the City to make sure the roadways can handle the traffic, and currently the amount of traffic does not allow an easy traffic flow when entering onto Rimrock Road. Doug Wild, a resident who lives at 4712 Audubon said that he was in favor the application. Dustin Bretz, a resident who lives at 5407 Rimrock Road, said he had mixed feelings about the project, he supported the zone change, but was concerned about the additional traffic. No other testimony was received.

Zoning Commission member David Goss made a motion to recommend approval of the zone change and adoption of the findings of the 10 review criteria. The motion was seconded by Zoning Commission member Trina White and was approved on a unanimous vote.

ALTERNATIVES

The City Council may:

- Recommend approval and adoption of the findings of the ten review criteria for Zone Change 1025; or,
- Recommend denial and adopt different findings of the ten review criteria for Zone Change 1025; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

FISCAL EFFECTS

Approval or denial of the proposed zone change will not have an effect on the Planning Division budget.

SUMMARY

Before making a decision, the City Council shall consider the following findings of the ten review criteria:

1) Is the new zoning designed in accordance with the Growth Policy? The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy and the West Billings Neighborhood Plan (2001):

The West Billings Neighborhood Plan goals and objectives stated the need to locate compatible uses and offer a range of housing choices and development densities. The West Billings Plan adopted a number of Goals, Policies, and Implementation Strategies. The proposed Neighborhood PND process for the property is consistent with the following adopted Policies of Planned Growth:

Goal 1: Establish Development Patterns that Use Land More Efficiently; Policy R "Encourage innovative land-use planning techniques to be used in building higher density and mixed-use developments as well as infill developments. (This goal addresses the infill development portion as this parcel applies.)
The proposed zoning is compatible with goals of the West Billings Neighborhood Plan. The proposed zone change and street layout will accommodate uses that are compatible in a residential environment.

The proposed amendment is also in line with the adopted 2016 Growth Policy goals for:
Strong Neighborhoods:

- Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels

- Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, goodwill and social interaction
- Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale streetlights, street trees and walkable access to public spaces.

Home Base:

- A mix of housing types that meet the needs of a diverse population is important
- The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe
- Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings Public safety and emergency service response are critical to the well-being of Billings' residents
- Homes that are safe and sound support a healthy community

The proposed layout for the property will allow the housing development to be located adjacent to the arterial street frontage with a buffer of P1 between Rimrock Road and the parcels. This is not a desired use of P1 zoning, however, it encourages a desired larger landscape area along the existing separated pathway along the north side of Rimrock Road, promoting desired elements of a walkable community.

2) Is the new zoning designed to secure from fire and other dangers?
The N2 & N3 zoning (per section 27-305 and 27-306) requires minimum setbacks, open and landscaped areas and building separations. The zoning assembly and street layout is designed to secure the development from fire and other dangers.

3) Whether the new zoning will promote public health, public safety and general welfare?
Approval of the overall zoning plan and street layout will provide certainty both for the property owner and the surrounding owners. Sections 27-305 and 27-306 specify separation and build to zone designation for the N2 and N3 zone districts. Annexation and provision of public health and safety services from the city will promote the general welfare of the area.

4) Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: The applicant will prepare a traffic impact study in coordination with City Engineering and as part of the subdivision review process. This will ensure access from the full build-out of the development will be safe and have adequate traffic controls and management in place.
Water and Sewer: The City will provide water and sewer to the property. There will be no significant or unexpected impacts to the system from the proposed changes. The City has anticipated growth and the impact on City infrastructure to both water and sewer.
Schools and Parks: Schools and parks may be effected by the proposed zone change and development of a new city neighborhood depending on the potential residents. The School district did not provide any comments.
Fire and Police: The subject property is served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

5) Will the new zoning provide adequate light and air?
The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air. Sections 27-305 and 27-306 specify separation and build to zone designation for the N2 and N3 zone districts.

6) Will the new zoning effect motorized and non-motorized transportation?
The proposed development will not negatively impact non-motorized transportation, however any new residential development will likely increase transportation of all types as development occurs and population increases. The proposed project will have some impact on the motorized transportation system in the area as it was historically agricultural property and would not have the same vehicle trips per day as a residential development. The proposed zoning meets the intent of the zoning code close to a major intersection. The developer has begun the process for subdivision review which includes providing a traffic study.

7) Will the new zoning promote compatible urban growth?
The proposed increase in the overall development density is compatible with urban growth and the provision of city level services to the new residents. The proposed project is similar in zoning to the surrounding proposed developments.Specifically, newly annexed properties at a minimum need to provide a mix of zones and this is consistent with the Neighborhood PND requirements and desire for new neighborhoods in the City of Billings.

8) Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?
The proposed development continues the character of the district. The surrounding developed subdivisions are primarily N3 and N2 zones with a PD close to the south. Those surrounding zone districts are extremely compatible with the proposed development with primarily single family dwellings which is consistent with the new development being proposed and the neighborhood PND.

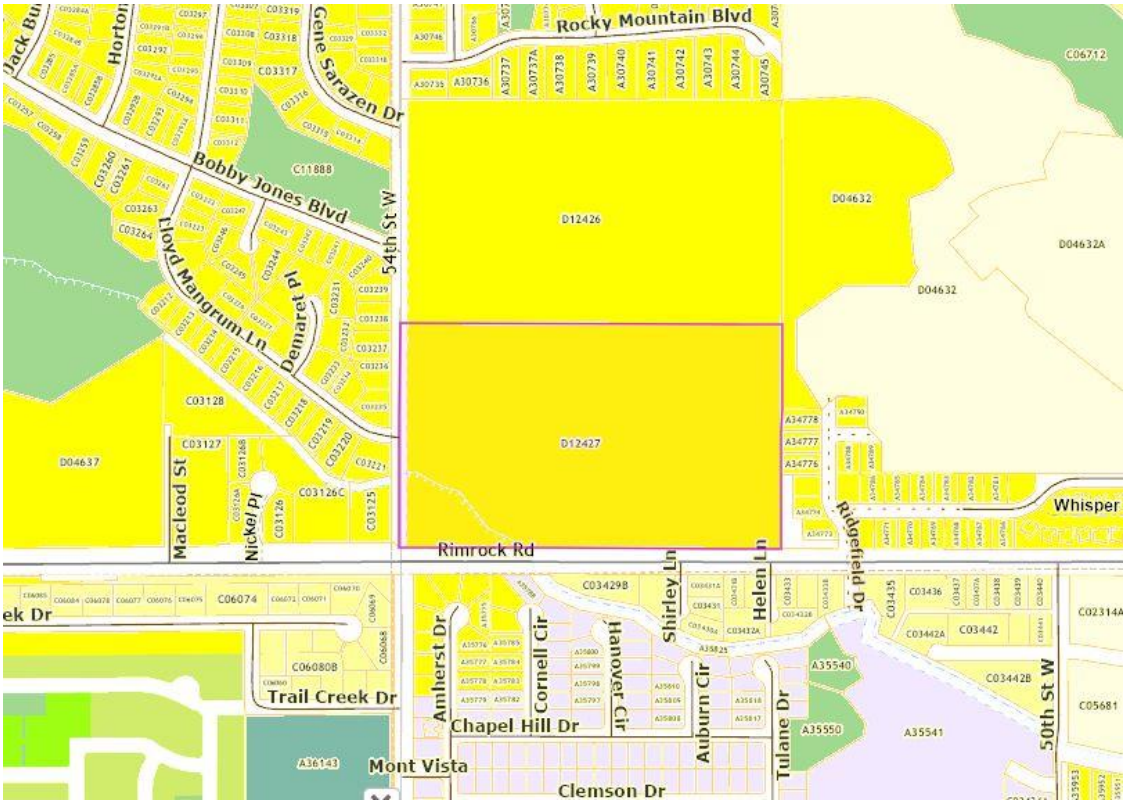
9) Will the new zoning conserve the value of buildings?
The property is an undeveloped parcel and it is currently in the N3 zone. This criteria is not necessarily applicable to undeveloped property as there are no issues of conformity that would compromise value. Further, approval of the zone change will provide certainty to surrounding landowners of impending development and may help to maintain property values of adjacent buildings.

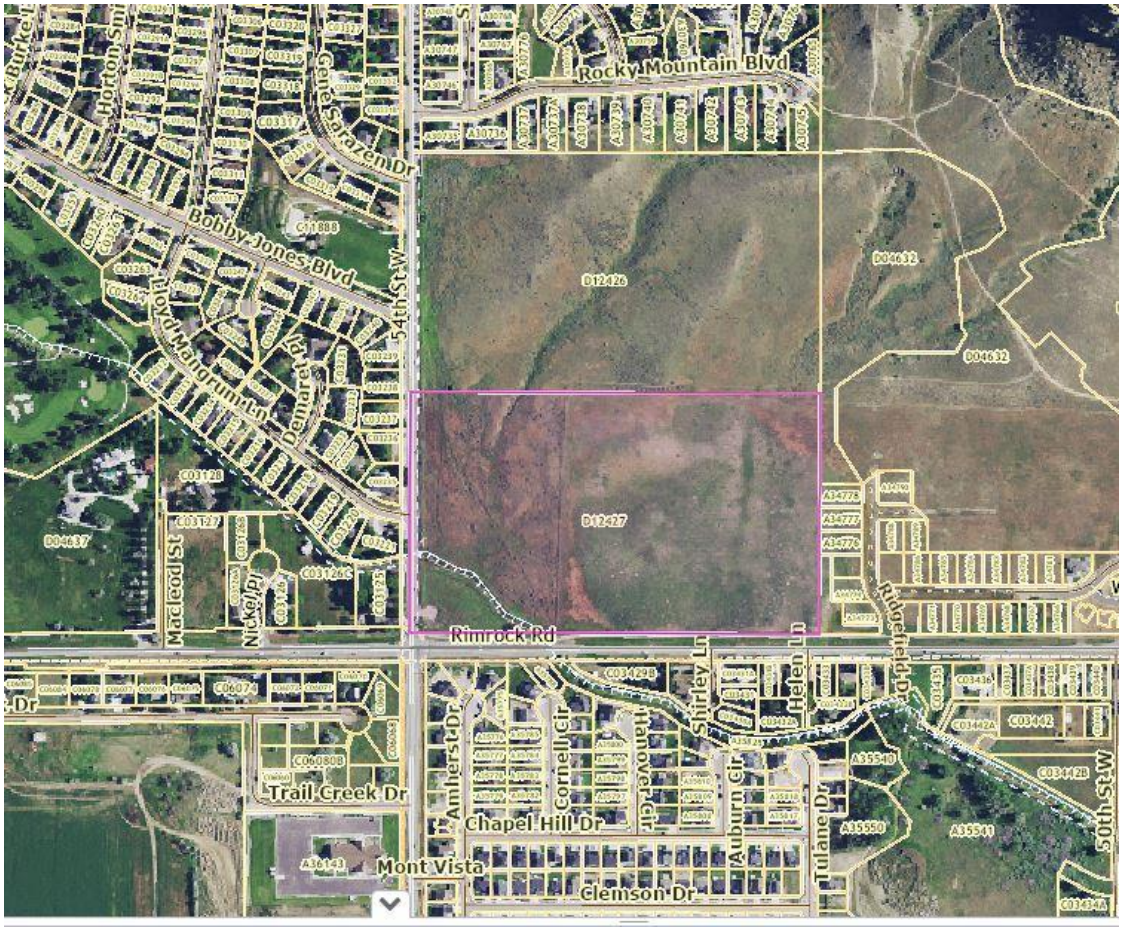
10) Will the new zoning encourage the most appropriate use of land throughout the City of Billings? The proposed Neighborhood PND zone change process with N2, N3 and Public 1 zoning will encourage an appropriate use of this land in Billings. The proposed development is located on the western border of the City limits and is within the annexation area. The proposed zoning meets the intent of the zoning code. Specifically, newly annexed properties at a minimum need to provide a mix of zones and this is consistent with the Neighborhood PND requirements.

Attachments

Zoning Map & Site Photos
Application & Applicant Letter
Neighborhood Meeting Info
Site Plan
Ordinance ZC 1025

Zoning Map & Site Photos







City Limits Prior to Pending Annexation



Proposed Zoning





South



East



West



Looking south at the intersection of 54th St. & Rimrock Rd.



Looking north at the intersection of 54th St. & Rimrock Rd.

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APPLICATION FORM

CITY ZONE CHANGE **Billings Zone Change #**_____ **Project #**_____

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings Zoning Regulations.

Present Zoning N3

Proposed Zoning: N-PND with N3, N2 & P1 districts

TAX ID# 000D124270 CITY ELECTION WARD IV

Legal Description of Property: Lot 2B Amended, COS 1834

Address or General Location: NE 54th Street West and Rimrock Road

Size of Parcel (Area & Dimensions): 30.6 Acres, 1,511' x 882' Present Land-Use: Vacant

Proposed Land-Use: Residential

Covenants or Deed Restrictions on Property: Yes_____ No X

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner Ned Zimmerman
(Recorded Owner)

541 Daisy Dean Road, Wilsall, MT 59086-9405
(Address)

406-551-3455 zncattle@gmail.com
(Phone Number) (email)

Owner Van Zimmerman
(Recorded Owner)

353 Harvard Street #4, Cambridge, MA 2138
(Address)

617-595-2473 van@vanzimmerman.com
(Phone Number) (email)

Agent KLJ Engineering (Travis Copper or as Delegated)
(Name)

2611Gabel Road, Billings, MT 59108
(Address)

406-247-2902 travis.copper@kljeng.com
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature: Ned Eric Zimmerman Van Guth Zimmerman Date: 03/23/2023
(Recorded Owner)

Date Stamp

2611 Gabel Road
Billings, MT 59102-7329
406 245 5499
KLJENG.COM

Zoning Application Narrative

Project: Rezone Application, NE Corner of 54th Street West and Rimrock Road, Billings MT, Lot 2B, COS 1834

Property Overview:

The above described property is in Yellowstone County, Outside of the City of Billings City Limits, but within the City of Billings Zoning Jurisdiction. The property is bordered by City Limits on the south, west and east sides, with existing single-family residential development on the south and west sides and undeveloped land to the east and north. The property is currently zoned N3 – Suburban Neighborhood. City owned water and sanitary sewer mains exist on the west and south sides of the property.

The property is proposed for annexation into the City and concurrent rezoning in accordance with the 2016 City of Billings Growth Policy (GP) and current City of Billings Zoning Regulations (ZR).

Synopsis of Pre-application Neighborhood Meeting:

A Pre-application Neighborhood Meeting for this application to re-zone was held on-site at 5:00 PM on Monday, March 20, 2023. Meeting minutes and sign in sheet are included in the zoning application package. Approximately 35 people showed up to the meeting and expressed various concerns and questions, which are summarized in the minutes.

Consistency with Growth Policy, Neighborhood Plans, and other Applicable City Development Policy:

- Map 3.1 of the GP shows the property within the proposed 2004-2011 Limits of Annexation.
- Annexation and re-zoning would involve "Infill and contiguous County Property" as noted as an Essential Investment Object in Chapter 4 of the GP.
- Section 27-801.B.1 of the ZR establishes Planned Neighborhood Development (PND) standards for annexation of lots larger than 10 acres. The PND standards require a minimum of two zones other than P1-Park and Open Space. The applicant is satisfied with the current N3 zone so has selected N2 for the second zone, as being the most similar that which currently exists. The proposed zones meet all other requirement of the PND standards.

10 Statutory Criteria for a Zone Change:

1. Whether the new zoning is designed in accordance with the growth policy
   It is consistent as described above.

2. Whether the new zoning is designed to secure from fire and other dangers
   Any development of the property will require compliance with all applicable City of Billings development standards, including fire protection requirements.

3. Whether the new zoning will promote public health, public safety and general welfare
   Any development of the property will be required to comply with all City of Billings and Montana Department of Environmental Quality health and safety standards.

4. Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements
   The proposed zoning does not allow the property to be developed at a dissimilar intensity than the existing N3 zoning. Therefore, the rezone will not result in an increased demand for these services.

5. Whether the new zoning will provide adequate light and air
   The proposed zoning does not allow the property to be developed at a dissimilar intensity than the existing N3 zoning. Therefore, the rezoning will not result in reduced air quality or an increased demand for lighting.

6. Whether the new zoning will affect motorized and nonmotorized transportation
   The proposed zoning does not allow the property to be developed at a dissimilar intensity than the existing N3 zoning. Therefore, the rezoning will not result in an increase in transportation needs.

7. Whether the new zoning will promote compatible urban growth
   The proposed annexation and zoning are needed for infill of property currently in the County that is surrounded by City limits on three sides and develop the property consistent with surrounding land uses.

8. Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses
   The proposed land use is the same as that previously assigned to the property by the current zoning designation.

9. Whether the new zoning will conserve the value of buildings
   The proposed zoning is similar to that of surrounding properties and is consistent with existing and proposed building on those properties.

10. Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.
    Appropriate use for the land was determined in development of the GP, of which, the proposed zoning is compatible.

Fits in with the Existing or Planned Developments within the Area:

Land to the south and west is already developed. There are no current development plans for property to the north or east that are known to the applicant. Street and utility stub outs will be required to adjacent undeveloped land through the preliminary plat review process.

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Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning**: N3
2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

   Rezone with Annexation too N PND with N3, N2 & P1 districts per attached map
3. **Subject Property Map**: please attach to this form
4. **Legal Description of Property:** Lot 2B of COS No 1834
5. **Neighborhood Task Force Area**: Yes

   Gordon Olson, Chair Westend Task Force
   5929 Ironwood Dr
   BILLINGS, MT 59106
6. **Roster of persons who attended the pre-application neighborhood meeting**: attach
7. **A copy of the meeting notice.** attach
8. **A brief synopsis of the meeting results including any written minutes or audio recording.** attach
9. **The undersigned affirm the following:**
   1) The pre-application neighborhood meeting was held on the 20th, day of March 2023.
   2) The zone change application is based on materials presented at the meeting.

Owner (s): Ned Eric Zimmerman Telephone: 406-551-3455

Address: 541 Daisy Dean Road, Wilsall, MT 59086-9405 Email: zncattle@gmail.com

Owner (s): Van Guth Zimmerman Telephone: 617-595-2473

Address: 353 Harvard Street #4, Cambridge, MA 02138 Email: van@vanzimmerman.com

Agent (s): Travis Copper Telephone: 406-247-2902

Address: KLJ Engineering (Travis Copper or as Delegate) Email: travis.copper@kljeng.com

2611 Gabel Road, PO Box 80303, Billings, MT 59108

2611 Gabel Road
Billings, MT 59102-7329
406 245 5499
KLJENG.COM

MEETING MINUTES

Project:	Re-zone Application, NE Corner of 54th Street West and Rimrock Road, Billings MT
Purpose:	Pre-application Neighborhood Meeting
Date & Time:	5:00 PM, March 20, 2023
Location:	On-site
Attendees:	Sign-in Sheet Attached

Discussion Points:

1. Introductions, Handouts & Sign-in
2. Brief discussion from Steve Grabill regarding proposed development and requested annexation / zone change
3. Questions and Comments and Comment Period:
    a. What will be done about the Prairie Dogs?
    KLJ response: Developer will evaluate alternatives and feasibility of exterminating them.

    b. Concerns of increased traffic at the 54th / Rimrock intersection:
    KLJ response: A traffic impact analysis is being completed as part of the subdivision review process.

    c. Concerns over added pressure to Yellowstone Family Park, and request for Fifty Four West to be included in Yellowstone Family Park Maintenance District.
    KLJ response: The developer is required to dedicate or pay cash-in-leu for additional parks through the subdivision review process.

    d. Proposed lot size?
    KLJ response: Generally, 10,000 SF and larger, with a few smaller ones

    e. Will there be streetlights? Generally, the neighbors were not in favor.
    KLJ response: Street lights are not proposed by the developer, but the developer will be required to execute a waiver of right to protest formation of an SID for street lights if the City decides to install them in the future and assess the cost to land owners in the subdivision.

    f. Does the proposed N2 allow for higher density or duplexes?
    KLJ response: We were not sure at the time but stated the developer's intent is for single family homes.

    g. What if the developer sells lots to other builders that would like to construct duplexes?
    KLJ response: The developer was satisfied with the existing N3 zoning but is required to rezone in accordance with City ordinance. The developer picked the N2 zone because it

is the most similar to the already existing N3 zone and will result in the most minimal change that can be approved by City ordinance.

h. Will curb and guttered be installed along 54th West to north subdivision boundary
KLJ response: Yes

i. Will there be impacts from shallow groundwater & dewatering?
KLJ response: Geotech borings were completed and we believe most of the construction will not require dewatering.

j. What types of homes will be constructed?
KLJ response: The developer's vision is something similar to Silver Creek Subdivision off of 46th Street.

k. Can a parking area be improved on the NE corner of 54th and Rimrock for Cyclists to use the existing trail system?
KLJ response: The developer has offered that area to the City for park use, but the City is not recognizing it as having any value at this time. The developer would consider donating that land for this purpose if it were credited towards the developer's park dedication requirements.

l. One request was expressed to not develop any parks over concerns of increased crime.
KLJ response: none

m. Other requests were expressed to landscape the proposed open space south of the ditch.
KLJ response: That is yet to be decided based on review and negotiations with the City as part of the subdivision review process.

Zoning Pre-Application Neighborhood Meeting
March 20, 2023
Northeast Rimrock Road and 54th Street West
Sign-in Sheet

Name (Please Print)	Address		Phone (Optional)	Email (Optional)
Jeff Richey	3224 Lloyd Mangrum Ln,	59106	(406) 581-4129	richeyjeff@gmail.com
TONY McCULLOUGH	5357 AMHERST DRIVE	59106	(307)-620-2876	tony.mccullough47@yahoo.com
Bob & Nita Snyder	3350 Amherst Drive	59106	(360)-201-3045	rjsnyder3914@hotmail.com
Christy Vasser	5358 Amherst Dr	59106	801 712 5993	cvasser12@gmail.com
Bob & Carol Jestrab	5044 Amherst Dr.	59106	406-362-7787	rejestrab@gmail.com
Roger & Kirsti	3126 Lloyd Mangrum Ln	59106	406 651 2814	kirstiallgeier@gmail.com
Marilyn Heil	5405 Gene Sarazen	59106	406 656 6914	
Rhonda Heidner	5114 Amherst Dr.	59106		
Kevin Freeman	5126 Amherst Dr	59106	405 876-1931	kfreeman@billingsclinic.org
Dustin Metzger Bretz	5407 Rimrock Rd	59106	(406) 370-8789	dustinbretz@bretzrv.com
Chris & Jennifer Stancek	3458 Stone Mtn Cir.	59106	406-855-4490	stonecreekmountain@outlook.com
John & NLA Compton	3498 Stone Mtn Cir	59106	406-690-7776	JNcompton@hrasson.net
Mary Robert Ostler	5360 Rocky Mountain Blvd	59106	406 671-3999	ostlightandsound@bresnan.net
Ron Hecht	3497 Stone Mountain Circle	59106	406 670-7196	rhecht76@gmail.com
Steve Hoversten	5346 Rocky Mountain Blvd	59106	406 281 1351	stevehoversten@bresnan.net
Josh Kay	5330 Rocky Mountain Blvd	59106	406 591-0539	Josh Kay@JoshKayconstruction.com
George Aukes	3311 Jack Burke Ln	59106		
Pat Curry	5412 Gene Sarazen Drive	59106	406 702 3981	grizcop@gmail.com
Jeff Reinking	5416 GENE SARAZEN DR	59106	406 652-8837	
Jim Wilson	3330 54th St W.	59106	406 698 0167	jjwilson.com
Kristen Montiglio	5230 Rimrock Rd.	59106	406-850-9970	

Name (Please Print)	Address	Phone (Optional)	Email (Optional)
Kevin Bromenshenk	3242 Jack Burke Lane	512-623-0934	Kbromenshenk@icloud.com
Aaron Huseth	5823 Sam Snead Trail	701-341-0284	
Trent Pihs	2259 Gleneagles	406 208-9146	
Brent Sinclair	5292 Rimrock Mountain Blvd		
Dave Keeno	3639 Bellhurst Place	406-860-0843	
Trenay Hart	5513 Bobby Jones	406 860 1175	
Fay Danielson	5522 Bobby Jones	406.655.1929	sidanielson@bresnan.net
Linda Franson	3051 Lloyd Mangrum	559 471-9431	
Roger & NANCY REETER	3430 STONE MTN CIRCLE 59106	406 670-5210	
Kelly Hirsch	3104 54th St W	406-661-6264	
Sam & Chante Lind	3012 54th St. West 59106		Chantz1518@gmail.com
Bill & Judy Richards	3003 Lloyd Mangrum Lane	406-366-3159 / 406-545-7441	mygrandmajud@gmail.com
Steve Fairhill	KLJ		
Travis Copper	KLJ	406-247-2902	travis.copper@kljeng.com

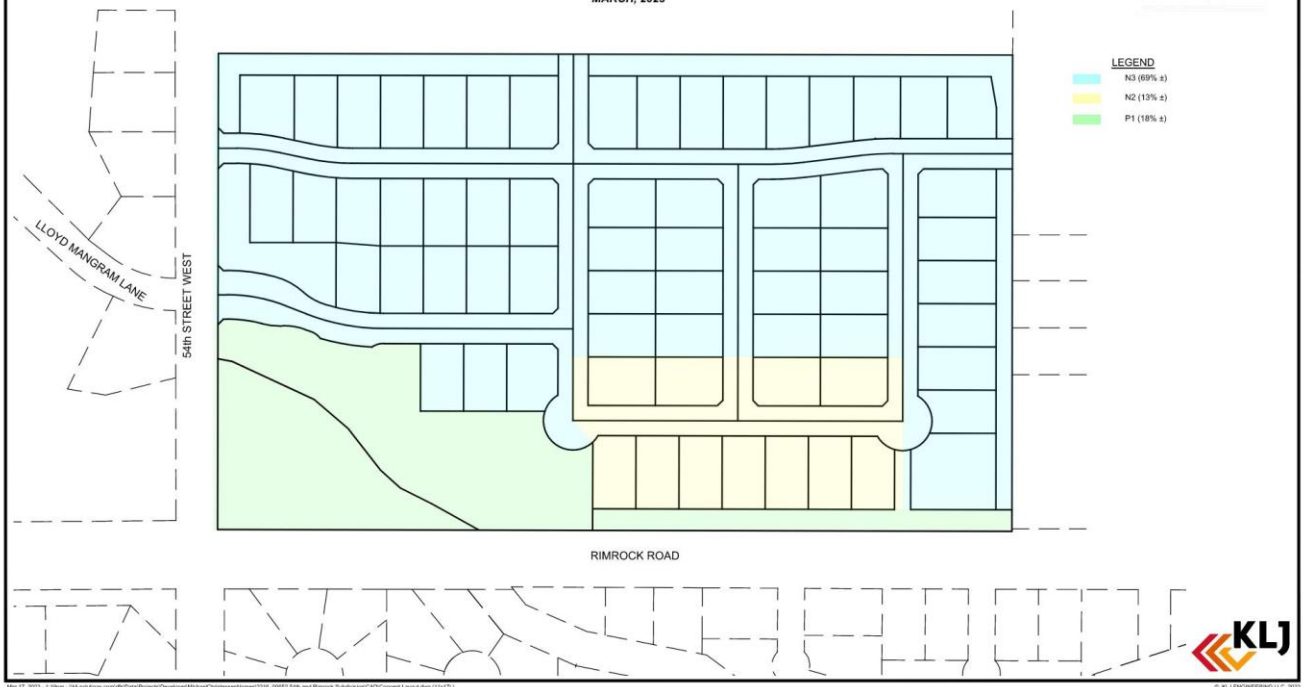
FIFTY FOUR WEST SUBDIVISION

PROPOSED ZONING

TRACT 2B, CS 1834

SW 1/4, SW 1/4, S 19, T01 N, R25 E

MARCH, 2023



Mar 17, 2023 - 1:19pm - \\klj-solutions.com\dfs\Data\Projects\Developer\MichaelChristensenHomes\2216_00052 54th and Rimrock Subdivision\CAD\Concept Layout.dwg (11x17L)

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ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THE ZONE CLASSIFICATION ON C.O.S. 1834,
PARCEL 2B, Amended, 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.** **C.O.S. 1834, PARCEL 2B, Amended,** is presently zoned **Suburban Neighborhood (N3)** a county zone, 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 **C.O.S. 1834, PARCEL 2B, Amended,** is hereby changed from **Suburban Neighborhood (N3), to Mid-Century Neighborhood (N2), Suburban Neighborhood (N3), and Public 1 (P1)** as shown on the attached exhibit, and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Mid-Century Neighborhood (N2), Suburban Neighborhood (N3), and Public 1 (P1)**, 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, or upon effective date of Resolution 23-_____ approving the annexation of the above territory, whichever is later.

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 22nd day of May, 2023.

PASSED, ADOPTED and APPROVED on second reading this 12th day of June, 2023

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

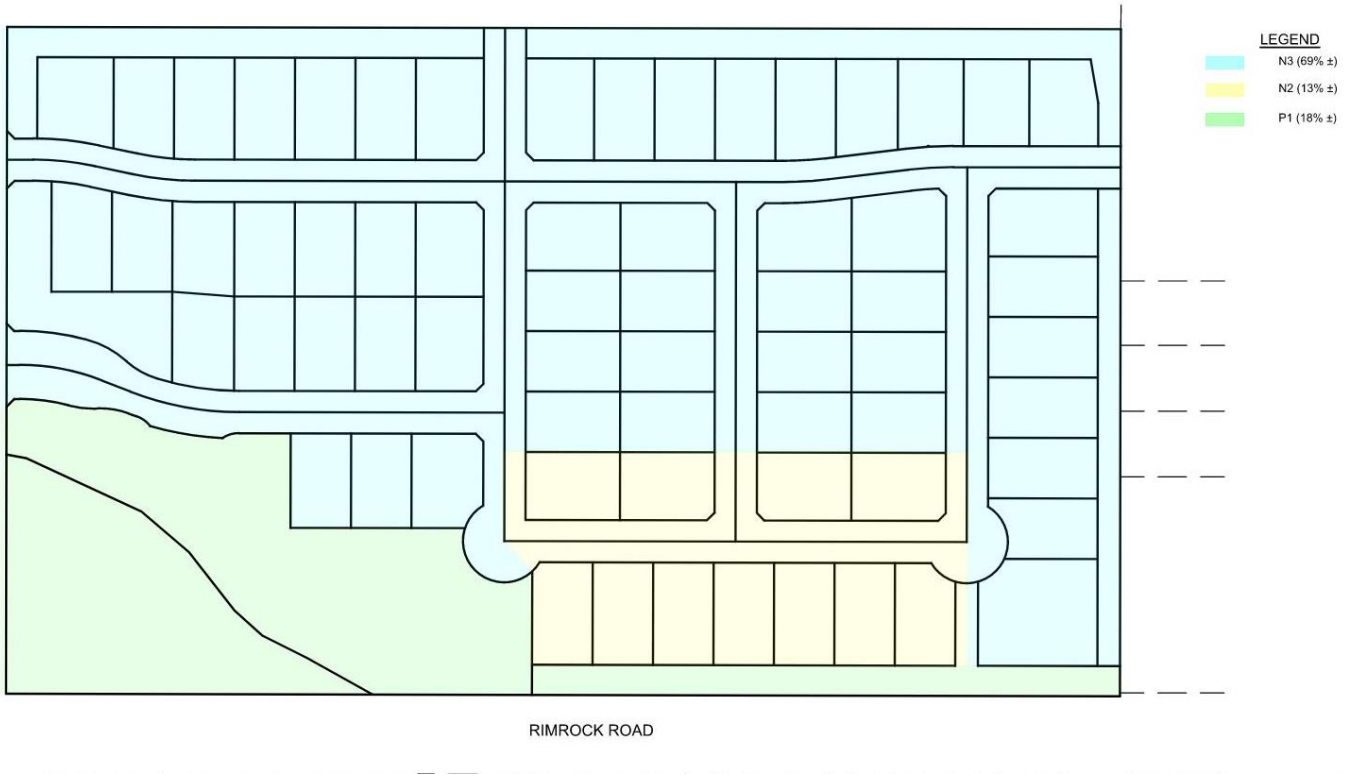
Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1025 - COS 1834, Parcel 2B

Zoning Exhibit



City Council Regular

Date:	05/22/2023
Title:	Public Hearing - Ward Boundary Expansion Ordinance First Reading - Annexation 23-03
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	No
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends the City Council hold a public hearing and approve this ordinance on first reading, adding recently annexed property to Ward IV.

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

KLJ Engineering behalf of Ned and Van Zimmerman submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located North of Rimrock Road and East of 54th Street West. The land being annexed is described as being Parcels of Land situated in the SW 1/4 of Section 29, and the NW 1/4 of Section 32, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows: Tract 2B of Amended Tract 2 of Certificate of Survey No. 1834, recorded November 25th, 1997, under Document No. 1900549 on file and of record in the office of the Yellowstone County Clerk and Recorder. Including adjacent Right-Of-Way of Rimrock Road. Said annexation containing 32.928 gross acres and 30.608 net acres, more or less.

Upon Council approval, this annexation requires a change in the boundaries of Ward IV. Two readings are required for this action. The first reading and public hearing will be heard at this meeting on May 22, 2023. Upon approval the second reading will occur on June 12, 2023.

ALTERNATIVES

City Council may:

- Approve adding the subject property to Ward IV, or;
- Disapprove adding the subject property to Ward IV. Disapproval will not modify the boundary of Ward IV 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.

Attachments

Ward Boundary Ordinance

ORDINANCE NO. 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD IV PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward IV the following described real property:

Parcels of Land situated in the SW 1/4 of Section 29, and the NW 1/4 of Section 32, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tract 2B of Amended Tract 2 of Certificate of Survey No. 1834, recorded November 25th, 1997, under Document No. 1900549 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Including adjacent Right-Of-Way of Rimrock Road.

Said annexation containing 32.928 gross acres and 30.608 net acres, more or less.

(# 23-03) 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. 23-_____ 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 22nd day of May, 2023.

PASSED by the City Council on the second reading this 12th day of June, 2023.

THE CITY OF BILLINGS:

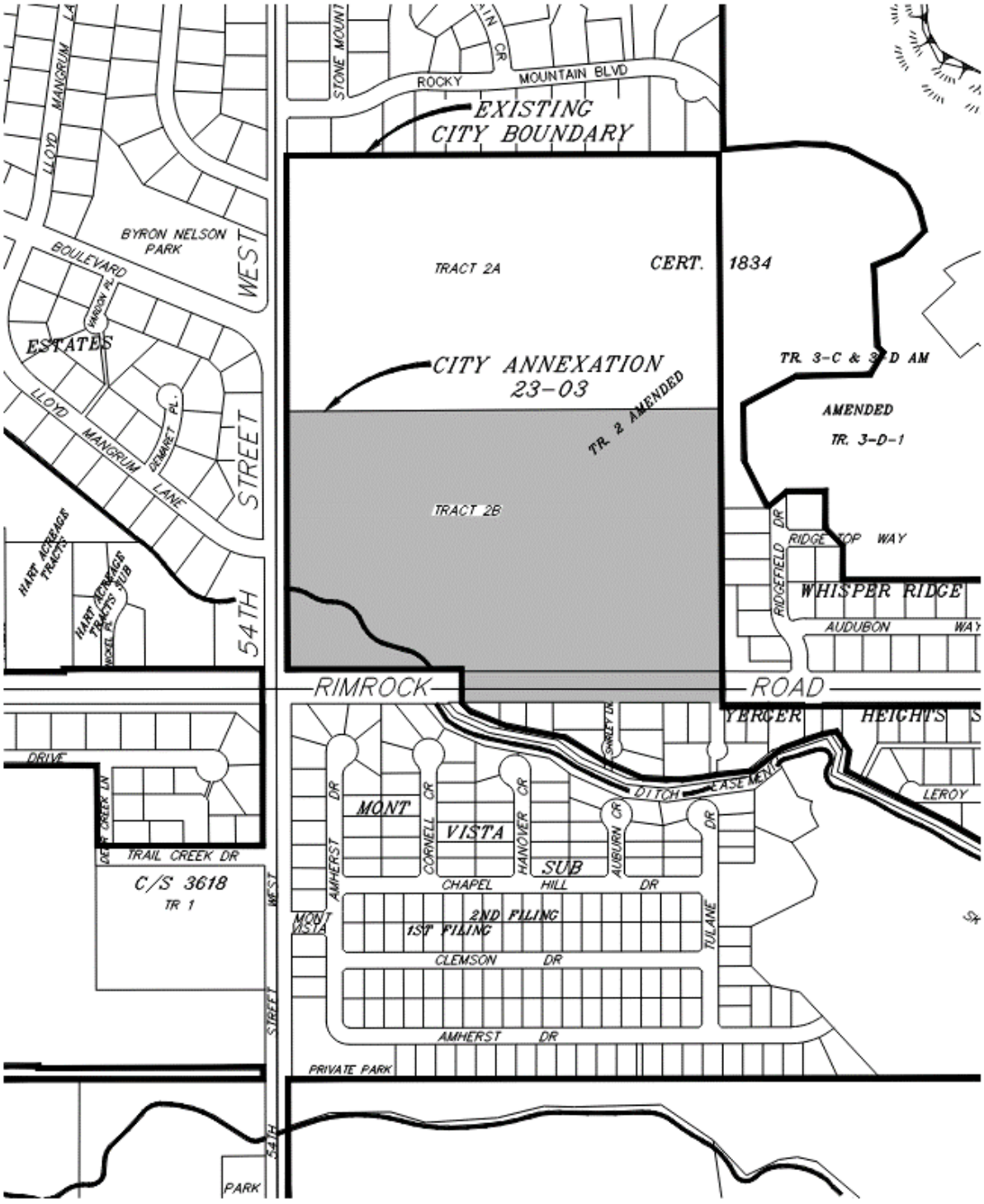
_____
William A. Cole, MAYOR

ATTEST:

BY: _____
Denise Bohlman, CITY CLERK

(#23-03)

EXHIBIT "A"


EXISTING CITY BOUNDARY
CITY ANNEXATION 23-03
TRACT 2A
CERT. 1834
TRACT 2B
TR. 2 AMENDED
TR. 3-C & 3-D AM
AMENDED
TR. 3-D-1
ROCKY MOUNTAIN BLVD
STONE MOUNT
LLOYD MANGRUM LA
BYRON NELSON PARK
BOULEVARD
WEST
ESTATES
GIBSON PL.
LLOYD MANGRUM LANE
DEMARET PL.
STREET
54TH
HART ACREAGE TRACTS
HART ACREAGE TRACTS SUB
NICKEL PL.
RIMROCK ROAD
RIDGE TOP WAY
RIDGEFIELD DR
WHISPER RIDGE
AUDUBON
DRIVE
DEER CREEK LN
TRAIL CREEK DR
C/S 3618
TR 1
MONT VISTA
SUB
2ND FILING
1ST FILING
CLEMSON DR
AMHERST DR
CORNELL CR
HANOVER CR
AUBURN CR
CHAPEL HILL DR
TULANE
SHIRLEY DR
DITCH
LEASE MEXIA
LEROY
PRIVATE PARK
PARK

City Council Regular

Date:	05/22/2023
Title:	Fifty-Four West Subdivision - City Major Preliminary Plat
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

The Planning Board recommends to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and the Findings of Fact adopted as presented in the staff report.

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

On March 1, 2023 , KLJ Engineering , on behalf of Michael Christensen , applied for preliminary major plat approval for Fifty Four West Subdivision . The proposed subdivision creates 66 lots for residential development. The subject property is generally located North of Rimrock Road and East of 54th Street West . The property is currently zoned N3. Per the zoning code, the property will need to be rezoned to a Planned Neighborhood Development. Additionally, in order for this land to develop in the City, annexation is required. Both an annexation and zone change are being reviewed by staff and will be considered concurrently at this meeting with this application. The land is currently vacant .

VARIANCES

No variances are requested.

PROPOSED CONDITIONS OF APPROVAL

1. 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.
2. To minimize the effect on local services, to be compliant with Planned Neighborhood Development zoning regulations, and because of the location in proximity to Cottonwood Park, the subdivider shall provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu. The dollar value shall be determined based on methods outlined in Section 23-1007 of the City of Billings Subdivision Regulations. The payment shall be made prior to final plat approval.
3. In order to protect public health and safety and provide for future park maintenance, all required parkland shall be privately owned and maintained. Prior to final plat approval, the subdivider shall submit for review and comment, documents outlining how the maintenance will occur.
4. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
5. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.
6. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles, fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency.
7. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles and per the City of Billings Subdivision Regulations Section 23-406 A. 3. The subdivider shall install plantings within the open space area adjacent to the shared use path. The landscaping shall include at least 1 tree and 6 shrubs or ornamental grasses every 40'. The trees should be of a variety included in the City's preferred tree planting list.

Note: The staff recommended version of condition number 6 proposed limiting fence heights to 4 feet, only allowing a

6' fence if the fence were constructed of materials that promoted transparency. After review of the Planning Boards recommendation, Staff would like to identify potential points of conflict between Condition 6 and information disclosed from the developer that may need to result in the City Council further amending Condition number 6.

The applicant stated during the public hearing of this preliminary plat of their intent to place a 6-foot tall perimeter cinder block wall around the subdivision, in order to mirror the aesthetic of the subdivisions opposite of Rimrock Road and provide secure and private backyards for future residents. The last sentence of Condition 6, "*The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency*.", may conflict with this design and the intent of the amended Condition 6 as discussed in the public hearing, however the Planning Board did not motion for this language to be struck during the public hearing.

The applicants' agent, during the presentation said the applicant was content with the side yard fences adjacent to the 30' wide ROW for the shared used path being limited to 4 feet in height, as further described in the stakeholder section. However, the Planning Board's motion did not reflect this intent, either. The current version of condition 6 would allow for 6' high fencing or walls along the 30' wide ROW for the shared used path, which would conflict with the CPTED-Friendly intent of Condition 6.

If the City Council were to consider further amendments, based on the Planning Board recommendation, to avoid these potential points of conflict, the following amendments to condition number 6 should be considered.

- Consider limiting the side yard fences to a 4' maximum height immediately adjacent to the 30' wide shared use path access for Lot 9, Block 7 and Lot 7, Block 8.
- Since the developer has indicated they intend to construct a solid type wall (block style) consider striking "The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency."
- Staff recommends current Condition #6 language be replaced with the following: *In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height. The side yard fences adjacent to the 30' wide shared use path access for Lot 9, Block 7 and Lot 7, Block 8 shall be limited to 4 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 shall be limited to 6 feet in height.The side yard fences adjacent to the 30' wide shared use path access for Lot 9 Block 7 and Lot 7 Block 8 shall be limited to 4 feet in height.*

PROCEDURAL HISTORY

Pre-Application Meeting: August 25, 2022
Preliminary Plat application submitted to Planning Division: March 1, 2023
Departmental Review Meeting: March 16, 2023
Preliminary Plat Resubmittal: March 23, 2023
Planning Board Plat Review: April 11, 2023
Planning Board Public Hearing: April 25, 2023
Preliminary Plat to City Council: May 22, 2023
60 Working-Day Preliminary Plat Review period ends: May 24, 2023

PLAT INFORMATION

General Location: North of Rimrock Road and East of 54th Street West
Legal Description: Certificate of Survey 1834, Parcel 2B Amended, AMD 30.608 ac (98)
Owner/Subdivider: Michael Christensen
Engineer/Surveyor: KLJ Engineering
Existing Zoning: N3 - Suburban Neighborhood Residential
Existing Land Use: Vacant land
Proposed Zoning: PND - Planned Neighborhood Development
Proposed Land Use: Residential
Gross & Net Area: Gross 30.61 Acres & Net 16.21 Acres
Lot Size:
    Minimum: 10,000 Square Feet
    Maximum: 21,707 Square Feet
Parkland Requirements: 1.78 Acres required. 0.83 Acres is provided. Of that, 0.33 is provided toward the park land dedication and the remaining 1.45 acres is to be covered via cash-in-lieu contribution. The cash contribution will go

towards Cottonwood Park since the subdivision is located within the 1 mile radius of the park.

STAKEHOLDERS

PLAT REVIEW MEETING

At the Planning Board Plat Review meeting on April 11, staff gave a brief overview of the subdivision and was available for questions from the Board. President Cook called for questions and discussion from members of the Board. Board member John Staley requested clarification regarding the CPTED requirements as proposed in conditions 6-8. Planning and Community Services Director Wyeth Friday responded, explaining the City Council's initiative to incorporate CPTED principles into ongoing planning projects. Board member David Nordel raised additional concerns regarding the CPTED conditions and how they may seem counterproductive to the intended goals of the CPTED principles. Board member Roger Gravgaard asked for clarification on what lots were effected by the proposed fence height restrictions. Staff responded and further explained how CPTED applied to those lots. Board member Gravgaard suggested bringing additional city staff to explain CPTED and how it applies to the City of Billings, with Director Friday responding in the affirmative.

Board member Staley segued into a concern regarding the conditions of approval referring to the parks and the cash-in-lieu contribution. Staff responded by explaining the concerns of the Parks department and the no programmable space proposed by the developer and the storm water facilities planned for the park areas. Director Friday explained further, detailing the possible uses of the cash in lieu contribution and how it relates to the nearby Cottonwood Park. Board member Woody Woods had questions regarding the possible maintenance of the private open space and who would actually perform it. Staff responded by affirming the condition that the private parkland will be privately maintained. Board member Woods also raised concerns regarding the proposed stormwater retention area and if it would be fenced. Travis Copper, the project engineer, responded to the question and stated they could look at fencing options but the stormwater area was intended to be very shallow with gradual slopes. Mr. Copper gave additional context regarding their proposed park and stormwater retention designs. Board member Woods asks staff to clarify the subdivision process and how the associated annexation and zone change are incorporated, with staff affirming the applicant is following all the procedures as necessary. The Applicant, Michael Christensen, rose to speak and provided his vision and mission statements for the project. Mr. Christensen went on to give his rationale on the park distribution within the subdivision and how the proposed private parkland would reflect a more marketable subdivision with grass, benches and other improvements.

There were no further questions or discussion on the plat.

PUBLIC HEARING MEETING

Staff gave a brief presentation to the Planning Board at a public hearing for this subdivision on April 25, 2023.

President Cook called for questions and discussion from the members of the Board. Board member Woods asked about Condition of Approval #8 which was no longer being recommended by staff, and Planner Kelly and Division Manager Plecker provided an explanation. Condition #8 initially read as "*In order to minimize the impacts on local services and protect public health and safety, the 30' wide private open space lots on the perimeter of the development shall be changed to easements as opposed to standalone lots. The Final Plat shall depict these areas as being part of individual lots and depict the easement. The easement along Lot 7, Block 8 and Lot 9, Block 7 shall include the required landscaping/planting strip as referenced in Condition #7."* After additional consideration, staff found that treating these buffer parcels as easements would, in the long term, produce a net detriment on the safety and maintenance of the areas effected. An easement in the previously described area would place the burden of safety and landscaping maintenance on the individual property owners, which may lead to inconsistent enforcement in the areas described in condition 8. This would ultimately not address the CPTED issue as intended, making the condition superfluous.
In response to a question by Board member Staley, staff said Cottonwood Park is located across Rimrock Road and 54th Street West, south of this parcel.

Public Hearing

Steve Grabel with KLJ Engineering represented the applicant, Michael Christensen. Mr. Grabel spoke to clarify Condition of Approval #2 requiring the developer to provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu and he also addressed the question of fencing in the private park area. He said that question was asked during the last Planning Board meeting whether fencing would be provided along the Cove Ditch and the detention area. Mr. Grabel stated that the subdivider agrees to install a 4-foot tall fence adjacent to the proposed private park along the north side of the Cove Ditch. The detention pond in the parkland will be designed and constructed to comply with all City of Billings storm water regulations. Additionally, Mr. Grabel said consideration will be given to flattening the embankment slopes. He continued regarding Condition of Approval #6: "...Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 4 feet in height..." The developer agrees with this

condition with the exception of the back lot lines of the lots located along Rimrock Road. The developer is requesting a 6-ft fence height which he said would be in concurrence with CPTED guidelines for natural surveillance between homes and neighborhood streets, and meeting the criterion for secure backyards. In addition, this would provide noise attenuation and give the landowners the feel of a more secure backyard. Mr. Grabel said that the criterion for a 4-ft fence does not apply in this instance as opposite this subdivision is a 6-ft fence following along the south side of Rimrock Road. He said the applicant is asking that the requirement either be removed or changed from a 4-foot to a 6-foot fence height. Other than that, the applicant concurs with the stipulations and the Conditions of Approval.

President Cook asked the Board if they have questions for Mr. Grabel. Board member Gravgaard asked if the 6-ft fencing would apply to the walkway between Lot 7 and Lot 9. Mr. Christensen, the applicant/developer, instead answered that he is open to suggestions for the pathway corridor to have lower fencing, but he said having the 6-ft fence would create privacy on the backyard of the lots. Board member Ronquillo asked about the materials used for fencing. Mr. Christensen said it would be a wall and he is considering using cinder block, very similar to the wall located on the opposite site of the road. Board member Woods asked about fencing along Cove Ditch to provide a separation for children who tend to wander. Mr. Christensen said that he plans to install a fence on the north side of the Cove Ditch on the 30-ft easement line.

President Cook opened the public hearing and asked if there is anyone present wishing to speak in favor or against the 54 West Subdivision. There was no public comment. President Cook closed the public hearing and called for a motion from the Board.

Motion

Board member Ronquillo made a motion and Board member Nordel seconded the motion that the Planning Board recommend to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and the Findings of Fact adopted as presented in the staff report, and amend Condition of Approval #6 to require a 6-ft fence instead of the 4-foot fence.

President Cook called for discussion on the motion. Board member Stephenson asked staff for background information on the CPTED Conditions of Approval. Division Manager Plecker said this started with a City Council initiative that was passed last year (See Findings of Fact Section 5. Effect on the public health, safety and welfare). This initiative is making it a priority for staff to consider insertion and consideration of CPTED principles and language for recommendations for subdivisions, especially for public walking paths to avoid a tunnel effect. She noted the Boards' discussion on the need to balance the safety of the residents and safety of the public using infrastructure. Board member Stephenson pointed out that in this case, the walking path is adjacent to Rimrock Road and fronts the rear yards. Division Manager Plecker said a CPTED training for staff is scheduled for staff in May and possible CPTED integration into City policies and regulations can be discussed more holistically during a future Planning Board meeting. Planner Hunter Kelly provided clarification on Condition of Approval #6 and said under current zoning code, the maximum rear yard fencing height is 6 feet and the proposed amendment would strike Condition of Approval #6 as a whole. Division Manager Plecker clarified and said instead of striking the condition, updated Findings of Fact would be acceptable. Board member Woods commented it would be beneficial if Council would make Boards and Commissions aware of these types of initiatives so they can make informed decisions. He is in favor of a 6-ft fence along the lots for a number of reasons, especially along Rimrock Road, and it meets present zoning code.

Board member Staley asked why the applicant's proposed internal parkland is not sufficient and the City is asking the applicant to pay for a Cottonwood Park instead, which requires children walking across a very busy street to get there. Ms. Plecker said there is a City resolution stating if parks are located within 1 mile of Cottonwood Park, there is a cash-in lieu dedication requirement. Mike Pigg, the City of Billings Parks Superintendent, said the parkland dedication is a state statute. Ms. Plecker said the parkland requirements in the subdivision regulations are percentage based on the size of lots. There is separate City resolution stating that any time parks are located nearby, contributions would have to be made to Cottonwood Park. Mr. Pigg provided clarification on the City policy and stated this parcel is within a 1 mile radius of a public park and the cash-in-lieu funds for this subdivision will be required to go to fund Cottonwood Park. He pointed out there is a stop light with a crosswalk on Rimrock Road, and a paved path down 54th Street West to Cottonwood Park, which will be designed to be a community park for this area.

Board member Staley said there is no sidewalk on the south side of Rimrock Road. He asked if a variance could be given to allow use of the available ground within the subdivision for parkland. Division Manager Plecker said parkland serving as storm water retention or detention does not count towards the required percentage for contribution of parkland; and the City can express its preference for cash-in lieu of parkland. Board member Staley voiced concern that the only option for children living in this subdivision wanting to access the park is to cross a very busy street and put themselves in harm's way. He said he is having difficulty recommending this as the applicant is having to pay for a park he isn't going to use and it is unsafe for children to access the public parkland. Division Manager Plecker clarified and said there is an existing avenue for pedestrians when crossing 54th Street West and Rimrock. Meaning there are lighted, signaled cross walks. After exiting the crosswalk, there is a shared use path that will take

pedestrians down to Cottonwood Park. Per request of Board member Gravgaard, Division Manager Plecker clarified the location of the shared use path and the way of using existing infrastructure to stay on crosswalks and sidewalks in order to access Cottonwood Park.

President Cook called for a vote 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 May 24, 2023, State and City subdivision regulations also require that preliminary plat 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

The preliminary plat of this subdivision will have no financial impact on the Planning Division.

SUMMARY

One of the purposes of the City's subdivision review process is to identify potential negative effects of property being subdivided. Negative effects that are identified become the subdivider's responsibility to mitigate. Various City departments, private service/utility providers and the affected school district/s, have reviewed this application and provided input on effects and mitigation. The Findings of Fact, which are presented as an attachment, discuss potential negative impacts of the subdivision and conditions of approval are recommended as measures to further mitigate any impacts. In this case, there were found to be some impacts from this proposed subdivision.

Attachments

Preliminary Plat
Draft SIA
Findings of Fact
Mayor's Letterhead

PRELIMINARY PLAT OF

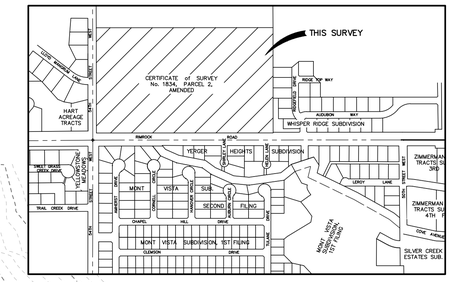
FIFTY FOUR WEST SUBDIVISION

BEING LOT 2B OF CERTIFICATE OF SURVEY NO. 1834
LOCATED IN THE SW 1/4 OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
PREPARED FOR : MICHAEL CHRISTENSEN HOMES
DECEMBER 2022

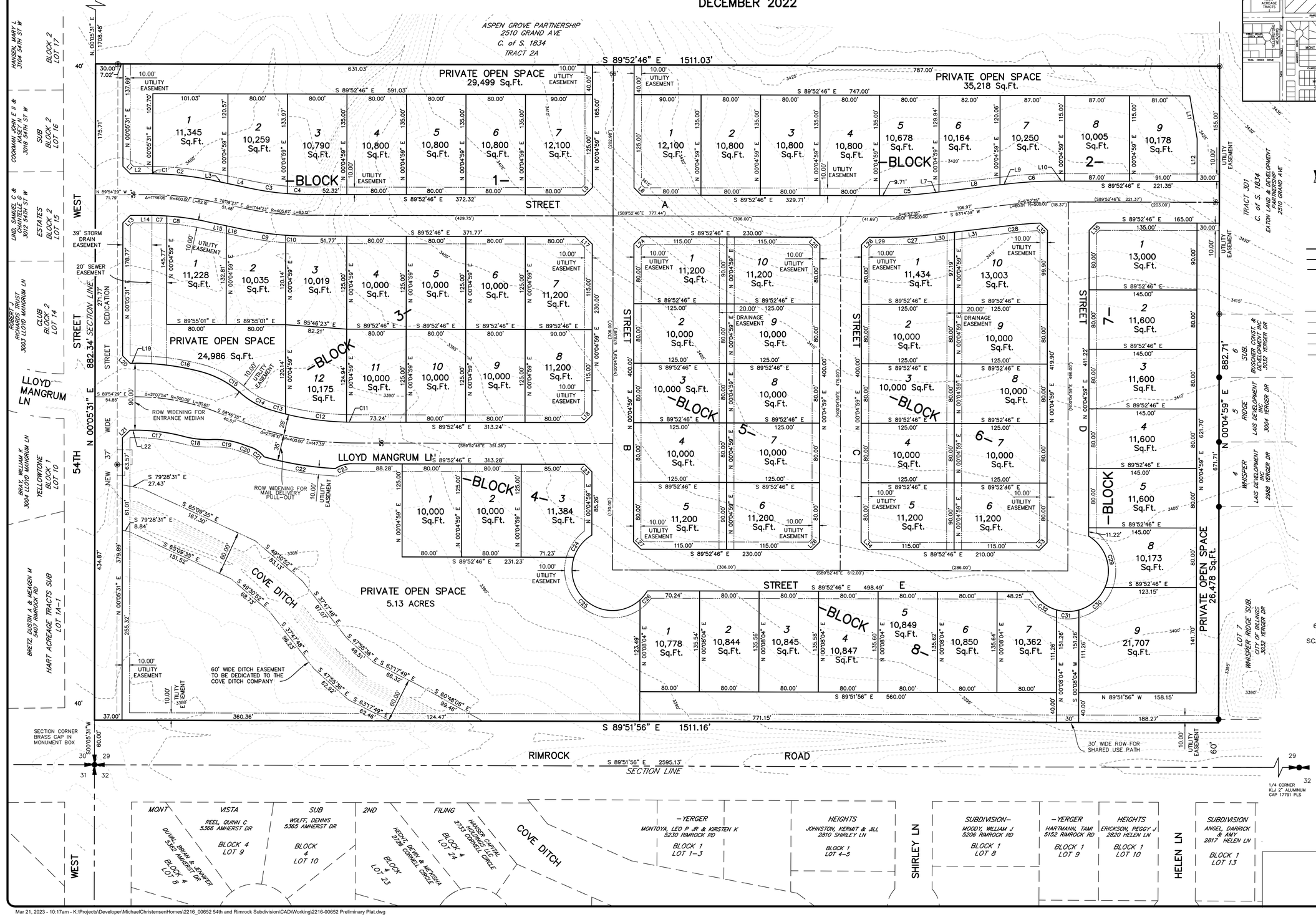
OWNER: NED ZIMMERMAN
541 DARSY DEAN ROAD
WILSALL, MT 59086-9405

SUBDIVIDER: MICHAEL CHRISTENSEN
P.O. BOX 80883, BILLINGS, MT 59108

PREPARED BY:
KLJ
2611 Gabel Road
P.O. Box 80303
Billings, MT 59108



VICINITY MAP
N.T.S.



LEGEND

- Found Section Corner
- Found Monument, YPC, ENG INC 9960LS
- Found Monument, YPC, SANDERSON STEWART 8377S
- Found Monument, YPC, ZUCK ENG 6966S
- YPC Yellow Plastic Cap
- Proposed Water Line
- Proposed Sanitary Line
- Proposed Stormwater Line
- Proposed Sanitary Manhole
- Proposed Stormwater Manhole
- Proposed Stormwater Inlet
- Existing Electrical Overhead Power
- Existing Gas Line
- Existing Fiber-optic Line
- Existing Telephone Line
- Existing Water Line

GENERAL INFORMATION

Number of Lots	66 Single Family 5 Private Open Space 73 Total
Maximum Lot Area (Res)	21,707 SF
Minimum Lot Area (Res)	10,000 SF
Total Length of Streets	4,408 LF
Gross Area	30.61 Acres
Net Area	16.21 Acres (Res Lots)
Existing Zoning	N3
Proposed Zoning	N3, N2 & P1
Existing Land Use	Vacant
Proposed Land Use	Residential

SCALE 60 0 60 120 FEET

NORTH

BASIS OF BEARINGS:

US RMTCS BILLINGS LDP
LAMBERT CONFORMAL CONIC ONE PARALLEL PROJECTION
NAD83(2011) (EPOCH 2010.0000)

CENTRAL MERIDIAN LOCATED AT:
LAT: N45°47'00.00000"
LON: W108°25'00.00000"

BEARINGS SHOWN ARE GRID BEARINGS AND HAVE NOT BEEN ADJUSTED FOR CONVERGENCE.

DISTANCES SHOWN ARE GROUND DISTANCES.

SCALE FACTOR: 1.0001515

SHEET 1 of 2

© KLJ 2022

PRELIMINARY PLAT OF

FIFTY FOUR WEST SUBDIVISION

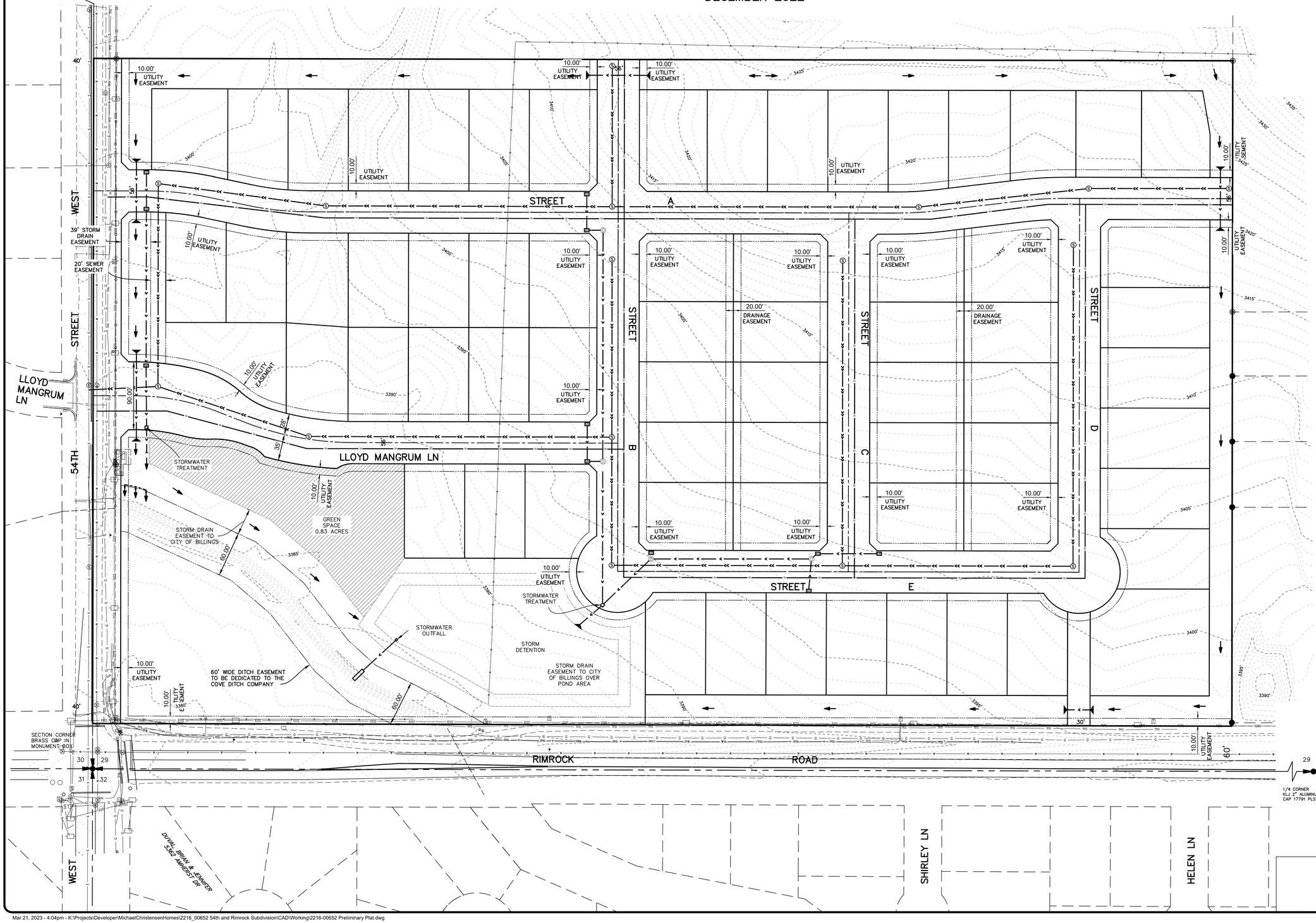
BEING LOT 2B OF CERTIFICATE OF SURVEY NO. 1834
LOCATED IN THE SW 1/4 OF SECTION 29, TOWNSHIP 1 NORTH, RANGE 25 EAST, P.M.M.
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA
PREPARED FOR : MICHAEL CHRISTENSEN HOMES
DECEMBER 2022

OWNER: NED ZIMMERMAN
541 DARSY DEAN ROAD
WILSALL, MT 59086-9405

SUBDIVIDER: MICHAEL CHRISTENSEN
P.O. BOX 80883, BILLINGS, MT 59108

PREPARED BY:
KLJ
2611 Gabel Road
P.O. Box 80303
Billings, MT 59108

1/4 CORNER SET, KLJ 2-1/2" ALUM CAP 17791 PLS



LEGEND

- Found Section Corner
- Found Monument, YPC, ENG INC 9960LS
- Found Monument, YPC, SANDERSON STEWART 8377S
- Found Monument, YPC, ZUCK ENG 6966S
- YPC — Yellow Plastic Cap
- Proposed Water Line
- Proposed Sanitary Line
- Proposed Stormwater Line
- Proposed Sanitary Manhole
- Proposed Stormwater Manhole
- Proposed Stormwater Inlet
- Existing Electrical Overhead Power
- Existing Gas Line
- Existing Fiber-optic Line
- Existing Telephone Line
- Existing Water Line

NORTH

60 0 60 120
SCALE FEET

BASIS OF BEARINGS:

US RMTCS BILLINGS LDP
LAMBERT CONFORMAL CONIC ONE PARALLEL PROJECTION
NAD83(2011) (EPOCH 2010.0000)

CENTRAL MERIDIAN LOCATED AT:
LAT: N45°47'00.00000"
LON: W108°25'00.00000"

BEARINGS SHOWN ARE GRID BEARINGS AND HAVE NOT BEEN ADJUSTED FOR CONVERGENCE.

DISTANCES SHOWN ARE GROUND DISTANCES.

SCALE FACTOR: 1.0001515

SHEET 2 of 2

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SUBDIVISION IMPROVEMENTS AGREEMENT

& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Fifty Four West Subdivision

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(City of Billings, Montana)

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SUBDIVISION IMPROVEMENTS AGREEMENT & WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL IMPROVEMENT DISTRICTS

Fifty Four West Subdivision

This agreement is made and entered into this __ day of _____, 2023, by and between Michael Christensen Homes *(Subdivider)*, whose address for the purpose of this agreement is PO Box 80883 Billings, Montana 59108, 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 _____, 2023, the Board of Planning recommended conditional approval of a preliminary plat of *Fifty Four West Subdivision*; and

WHEREAS, at a regular meeting conducted on __day of _____, 2023, the City Council conditionally approved a preliminary plat of *Fifty Four West Subdivision*; and

WHEREAS, a Subdivision Improvements Agreement is required by the City prior to the approval of the final plat.

WHEREAS, the provisions of this agreement shall be effective and applicable to *Fifty Four West Subdivision* upon the filing of the final plat thereof in the office of the Clerk and Recorder of Yellowstone County, Montana. The Subdivision shall comply with all requirements of the City of Billings Subdivision Regulations, the rules, regulations, policies, and resolutions of the City of Billings, and the laws and administrative rules of the State of Montana.

THEREFORE, THE PARTIES TO THIS AGREEMENT, for and in consideration of the mutual promises herein contained and for other good and valuable consideration, do hereby agree as follows:

I. 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 project Geotechnical Engineering Report prepared by Rimrock Engineering, under project number G22154, dated October 5, 2022. The report contains foundation design and construction recommendations for the subdivision lots that should be considered during building 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.

II. TRANSPORTATION

A. Streets

- Subdivider shall construct Streets A, B, C, D, E and Lloyd Mangrum Lane with asphalt pavement, cub, gutter and sidewalk. The street width shall be 34-feet from back-of-curb to back-of curb. The streets shall be centered in a 56-foot-wide right-of-way, dedicated to the City.
- Subdivider shall construct the east half of 54th Street West along the west subdivision boundary. Construction shall include pavement widening, curb and gutter. The street half-width shall be 19.5-feet from the right-of-way centerline to the east back-of-curb. Subdivider shall dedicate a 37-foot-wide right-of-way half-width along 54th Street West.
- Rimrock Road is designated as a Major Arterial and is located within a 120-foot right-of-way. Rimrock Road shall be constructed with a minimum standard width of 42-feet, back of curb to back of curb. That portion of Rimrock Road adjacent to the subdivision has been partially constructed. The existing street includes approximately (24-feet) of asphalt. The Subdivider shall provide a cash-in-lieu contribution for the construction of approximately an additional 7-feet of asphalt surface with a satisfactory sub-base, base course, standard curb and gutter, necessary tapers and stormdrain piping and inlets on Rimrock Road along the frontage of the subdivision, due prior to final plat approval. The cash-in-lieu contribution shall include engineering design and construction administration.

B. Sidewalks

- Subdivider shall construct 5-foot-wide boulevard walks at the following locations:
  - Along 54th Street west, adjacent to west subdivision boundary
  - Along south side of Lloyd Mangrum Lane, adjacent to the Private Park lot.
  - On the southwest curve of the bulb-out, at the intersection of Streets B & E, adjacent to the Private Park lot.
  - Along street frontages adjacent to private open spaces.
- Subdivider shall construct pedestrian ramps at each intersection within the subdivision and at the east side of intersections with 54th Street West.
- 5-foot-wide boulevard walks shall be constructed along streets within the subdivision by lot owners, along the frontage of each lot, in conjunction with building permits for each respective lot.

C. Street Lighting

Construction or installation of streetlights within the public rights-of-way shall not be required at this time, but streetlights are included in the Waiver

referenced herein for construction of the same in the future. A maintenance district for streetlights may be formed for future maintenance of any streetlights installed in the future.

B. Traffic Control Devices

- "Developer shall furnish and install all necessary traffic control devices in accordance with the MUTCD and approved by the City of Billings Public Works Department.
- Subdivider shall install stop signs on Lloyd Mangrum Lane and Street A at intersections with 54th Street West.
- Subdivider shall install street name signs at all subdivision intersections.
- Road closed signs shall be installed on the north end of Street B and the east end of Street A.
- A traffic impact study has been completed for the 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:
  - Rimrock Road and 54th Street W: 2.25%
  - Rimrock Road and 46th Street W: 2.54%
  - Shiloh Road and Rimrock Road: 2.33%

  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 City Engineering for the year in which the contribution is made. The cash contribution shall be made prior to final plat approval.

C. Access

- No access to or from the subdivision directly to Rimrock Road shall be allowed, except
- Subdivider shall construct a shared use path from the intersection of Street E and Street D, to the existing shared use path along the north side of Rimrock Road. Shared use path shall be in a 20-foot minimum width right-of-way, dedicated to the City of Billings.

D. Heritage Trail Plan

The subdivision is not within the Heritage Trail Plan and no trail improvements are required.

E. Public Transit

No public transit facilities are required to be constructed with the subdivision improvements.

III. 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.

IV. STORM DRAINAGE

Stormwater runoff flowing toward the subdivision from large drainage areas to the north, shall be diverted around the perimeter of the subdivision in drainage ditches and through culverts to be constructed by the Subdivider. Runoff from minor off-site drainage areas may be captured and conveyed through the subdivision stormwater management facilities. Perimeter ditches shall be routed to points of discharge existing in the pre-developed site condition. Discharge points shall be designed and constructed to disperse concentrated flows and prevent downstream property damage.

Perimeter ditches described above shall be constructed within a strip of land around the north, west and east side of the subdivision, as shown on the plat. The ditches shall be owned and maintained by the Homeowner's Association.

Stormwater conveyance facilities shall be constructed within the subdivision in accordance with City design standards. Runoff from the subdivision shall be conveyed to the proposed stormwater treatment and detention area in the Private Open Space adjacent to the north side of the Cove Ditch. Stormwater from the detention facility shall be discharged to the Cove Ditch in accordance with City of Billings design standards and written agreement with the Cove Ditch Company. The design rate of discharge shall not exceed one cubic-foot-per-second (1 CFS) per 10 Acres of Subdivision Area. The HOA shall be responsible for paying all fees required as part of agreement with the Cove Ditch Company.

Subdivider shall construct all stormwater management and conveyance facilities discussed above.

V. 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 – Distribution and Collection 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 appropriate water and wastewater construction fees and franchise fee in effect shall be submitted with the applications.

It is acknowledged that the properties subject to this Subdivision Improvements Agreement shall be subject to the appropriate water and wastewater local and interior construction fees in effect at the time of payment. Fees shall be paid for the lots in each phase as applied for in the extension application and as per the first paragraph above.

The Developer/Owner acknowledges that the subdivision shall be subject to the applicable System Development Fees in effect at the time new water and/or sanitary sewer service connections are made.

The design/installation of sanitary sewers and appurtenances, and water mains and appurtenances (fire hydrants, etc) shall be in accordance with design standards, specifications, rules, regulations of and as approved by the City of Billings Public Works Department, Fire Department and the Montana Department of Environmental Quality.

A. Power, Telephone, Gas, and Cable Television

- 10-foot-wide utility easements shall be dedicated on the plat along all road frontages within and adjacent to the subdivision, to allow for installation of power, gas, telecommunication, data, and other services.

VI. PARKS/OPEN SPACE

In accordance with Section 23-1002 of the City Subdivision Regulations, the Subdivider must dedicate park land at a proportion of 11-percent of the area of residential lots being created that are smaller than ½-acre or pay cash-in-lieu. In accordance with Section 27-800 of the City Zoning Regulations, the subdivision must provide a minimum of 2-percent of the net subdivision area as parkland or open space. This area is credited toward the parkland dedication requirements. The Subdivider must provide for a balance of 9-percent to satisfy these requirements.

The total area of residential lots created by the subdivision, smaller than ½ acre, is 16.26-acres. The total park area requirement is 1.46-acres. The Subdivider agrees to pay the City of Billings cash-in-leu for this land amount prior to recordation of the final plat.

VII. IRRIGATION

Subdivider shall grant to the Cove Ditch Company a 60-foot-wide easement, 30-feet each side of the center line of the cove ditch, to operate and maintain the ditch.

VIII. SOILS/GEOTECHNICAL STUDY

See Section I.C of this agreement.

IX. FINANCIAL GUARANTEES

Except as otherwise provided, Subdivider shall install and construct said required improvements with cash or by utilizing the mechanics of a special improvement district or private contracts 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 special improvement district or private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

X. LEGAL PROVISIONS APPLYING TO SUBDIVIDER

A. Subdivider agrees to guarantee all public improvements for a period of one 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 and 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" Michael Christensen Homes

By:_____

Its:_____

STATE OF MONTANA)
: ss
County of Yellowstone)

On this _____day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be the _____of *(Subdivider)*, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

_____
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

This agreement is hereby approved and accepted by the City of Billings, this _____ day of _____, 2005.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this __ day of _____, 20___, before me, a Notary Public in and for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectively, of the City of Billings, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of the City of Billings, Montana.

_____
Notary Public in and for the State of Montana
Printed Name: _____
Residing at: _____
My commission expires: _____

Waiver of Right to Protest

FUTURE SPECIAL IMPROVEMENT DISTRICTS

FOR VALUABLE CONSIDERATION, the undersigned, being the Subdivider and all of the owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more special improvement district(s) for a period of no more than twenty years from the recording of this waiver, for street light maintenance and energy, and for the construction of streets, street widening, sidewalks, survey monuments, street name signs, curb and gutter, street lights, driveways, traffic signals, and traffic control devices, parks and park maintenance, trails, sanitary sewer lines, water lines, storm drains (either within or outside the area), and other improvements which the City of Billings may require.

This Waiver and Agreement is independent from all other agreements and is supported by sufficient independent consideration to which the undersigned are parties, and shall run with the land and shall be binding upon the undersigned, their successors and assigns, and the same shall be recorded in the office of the County Clerk and Recorder of Yellowstone County, Montana.

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:

Fifty Four West Subdivision

Signed and dated this _____day of _____, 20___.

Subdivider/Owner

By: _____

Its: _____

STATE OF MONTANA)
: ss
County of Yellowstone)

On this __ day of _____, 20__, before me, a Notary Public in and for the State of Montana, personally appeared _____, known to me to be *Subdivider/Owner Name*, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

IN WITNESS WHEROF, I have hereunto set my hand and affixed my Notarial Seal the day and year hereinabove written.

_____
Notary Public in and for the State of Montana
Printed name:_____
Residing in Billings, Montana
My commission expires:_____

FINDINGS OF FACT

The Planning staff has prepared the Findings of Fact for the preliminary plat of Fifty Four West Subdivision. 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 Vacant. 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. New individual services will be provided to all the lots, and new fire hydrants will be installed as required by the City Fire Department. The water service for this subdivision comes from 54th Street West. Any needed extension of those water lines will be installed by the subdivider to meet the requirements of the City of Billings Engineering Department regulations. 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 is outlined in the SIA under the heading VI Utilities, A, Water.

Sanitary sewer service will be provided by connecting to the existing City of Billings' sewer mains. There is an existing sewer main on 54th Street West All new services shall be installed in accordance with design standards, specifications, rules and regulations of the City of Billings Public Works Department and MDEQ. This is outlined in the SIA under the heading VI Utilities, B, Sanitary Sewer.

Private Utilities will be provided from existing facilities to the subdivision. No additional easements on the lot frontage have been requested.

Stormwater – Stormwater drainage for the public streets is proposed to be provided by curb and gutters that discharge into storm water pipes. 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.

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 subdivision is adjacent to 54th Street West and Rimrock Road. Subdivider shall construct the east half of 54th Street West along the west subdivision boundary. Construction shall include pavement widening, curb and gutter. The street half-width shall be 19.5-feet from the right-of-way centerline to the east back-of-curb. Subdivider shall dedicate a 37-foot-wide right-of-way half-width along 54th Street West. Rimrock Road is a developed right of way and no street improvements are anticipated at this time. Street improvements are included in the Waiver of Right to Protest Future Special Improvement Districts.

   The sidewalks will be installed by the respective lot owner on a lot-by-lot basis, as lots develop. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet. The developer will also install all ADA required ramps at the intersections within the proposed subdivision. This information is all in the SIA under the heading Transportation.

   The 40' linear private open space adjacent to Rimrock Road will be landscaped with one tree and 6 shrubs every 40 feet in order to screen adjacent properties from the nearby arterial roads. **(Condition #7)**

d. **Emergency Services** – The Billings Police and Fire Departments will respond to emergencies within the proposed subdivision. The nearest fire station, Station #7, is located at 1501 54th St West. The subdivision is located within the ambulance service area of American Medical Response (AMR).

e. **Schools** – School District #2 provides service to students within this subdivision from elementary to high school (Sandstone Elementary School, Castle Rock Middle School, and Skyview High School). School District #2 did not respond to request for comments at the time of the writing of this report. Previous correspondence with the district has mentioned schools in this vicinity are over or near capacity.

f. **Parks and Recreation** – In accordance with Section 23-1002 of the City Subdivision Regulations, the Subdivider must dedicate park land at a proportion of 11-percent of the area of residential lots being create that are smaller than ½-acre or pay cash-in-lieu. In accordance with Section 27-803 and Table 27-800.1 of the City Zoning Regulations, the subdivision must provide a minimum of 2-percet of the net subdivision area as developed parkland. This area is credited toward the parkland dedication requirements. The Subdivider must provide for a balance of 9-percent to satisfy these requirements. The total area of residential lots created by the subdivision, smaller than ½ acre, is 16.26-acres. The developed park area requirement is 0.33 acres, with 0.83 acres provided. The Subdivider

agrees pay the City of Billings cash-in-leu for the remaining 1.46-acres prior to recordation of the final plat. **(Condition #2)**

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 for the previous filings of this subdivision. The developer will need to coordinate mailbox locations with the postal service. **(Condition #1)**

3. Effect on the natural environment

The subject property is currently vacant with the proposed use of residential lots. The property is not located in a floodplain. 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 may be some impacts to public health, safety and welfare because of this subdivision in relation to visibility of the multi-use pathways along the south border of the subdivision on Rimrock Road and along the pathway corridor from the internal streets connecting to the pathway on Rimrock Road. Since passage of the FY23 Budget and the direction for use of resources and staff time on CPTED implementation, City Administration in consultation with City Council has directed City staff to incorporate CPTED evaluation and principals into projects and processes like transportation planning, park planning, and public safety related activities. **(Condition #6)**

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. West Shiloh Area Plan

The proposed subdivision is consistent with the following goals of the West Shiloh Area Plan.

PLANNED GROWTH GOAL 1 - Establish Development Patterns that use land more efficiently

Policy A Promote efficient utilization of land within the West Billings planning area by promoting well designed, more pedestrian friendly, urban development patterns with a mix of uses and an efficient, creative use of land.

3. 2018 Billings Urban Area Long Range Transportation Plan

The proposed subdivision adheres to the goals and objectives of the 2018 Transportation Plan and preserves the street network and street hierarchy specified in the plan.

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

The proposed subdivision is within the jurisdiction of the Billings Area Bikeways and Trail Master Plan. There is an existing trail on Rimrock Road. No additional improvements of this nature are anticipated.

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 Residential (N3) zoning, and is currently undergoing a rezone process as a Planned Neighborhood Development (PND). The lot frontages shall conform to the requirements of this PND. 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 will be from 54 Street West. New internal accesses will provide circulation to individual lots.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Fifty Four West Subdivision 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, West Shiloh Area Plan 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

The Planning Board recommends to City Council that the preliminary plat of Fifty Four West Subdivision be conditionally approved and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, May 22, 2023

_____

William A. Cole, Mayor

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

May 22, 2023

Travis Copper
KLJ Engineering
2611 Gabel Road
Billings, MT 59102

Dear Applicant/Engineer:

On May 22, 2023, the Billings City Council conditionally approved the preliminary plat of Emma Jean Heights 4th Filings, 1st Amended, subject to the following conditions of approval:

1. To minimize the effects on local service prior to final plat approval, the applicant will coordinate with the USPS 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.

2. To minimize the effect on local services, to be compliant with Planned Neighborhood Development zoning regulations, and because of the location in proximity to Cottonwood Park, the subdivider shall provide a combination of 2% (.33 acres) developed park and 9% (1.46 acres) cash-in-lieu. The dollar value shall be determined based on methods outlined in Section 23-1007 of the City of Billings Subdivision Regulations. The payment shall be made prior to final plat approval.

3. In order to protect public health and safety and provide for future park maintenance, all required parkland shall be privately owned and maintained. Prior to final plat approval, the subdivider shall submit for review and comment, documents outlining how the maintenance will occur.

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

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

CITY OF
Billings
MAYOR'S OFFFICE

Bill Cole, Mayor
P.O. Box 1178
Billings, MT 59103
P 406.657.8296
F 406.657.8390

6. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles; fences within the rear yard setback of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The Covenants, Codes, and Restrictions (CC&Rs) filed with the final plat shall include this language. In addition, the following language shall be placed into the Subdivision Improvements Agreement under Section II. Titled Property Conditions and Information for Lot Purchasers F. rear yard fences of Lots 1-7, Block 8, and Lot 9, Block 7 and side yard fences adjacent to the 30' wide ROW for the shared used path shall be limited to 6 feet in height. The aforementioned fences may be constructed up to the maximum height allowable by zoning, if the fence is constructed of materials that are permitted by the zoning code and allows for transparency.

7. In order to protect public health and safety and adhere to Crime Prevention Through Environmental Design (CPTED) principles and per the City of Billings Subdivision Regulations Section 23-406 A. 3. The subdivider shall install plantings within the open space area adjacent to the shared use path. The landscaping shall include at least 1 tree and 6 shrubs or ornamental grasses every 40'. The trees should be of a variety included in the City's preferred tree planting list.

Should you have any questions please contact Hunter Kelly at (406) 247-8613 or by email at kellyh@billingsmt.gov

Sincerely,

_____
William A. Cole, Mayor

City Council Regular

Date:	05/22/2023
Title:	Franchise fee litigation - Approval of Settlement Agreement
Presented by:	Gina Dahl
Department:	Legal
Presentation:	Yes
Legal Review	Not Applicable

RECOMMENDATION

Staff recommends Council approve the settlement agreement to resolve the litigation in *Houser et al. vs. City of Billings,* DV-18-0778 and *McDaniel vs. City of Billings*, DV-19-1444. These cases are collectively known as the "franchise fee" cases.

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

Franchise fees were formally adopted by the Council on April 13, 1992, after a suggestion from a council member during a council retreat in February 1992. Resolution 92-16531 applied only to water and wastewater, beginning July 1, 1992. However, the 4% franchise fees were also charged on solid waste disposal services.

The fees (on water and wastewater) were adopted pursuant to Section 69-7-101, MCA, which provided:

> A municipality has the power and authority to regulate, establish, and change, as it considers proper, rates, charges, and classifications imposed for utility services to its inhabitants and other persons served by municipal utility systems. Rates, charges, and classifications must be reasonable and just.

The franchise fees were considered "charges" to be included in the cost of service. It is not clear why the Council Resolution called it a franchise fee. Part of the intent behind the franchise fees was to require non-profits who paid no City taxes to pay something towards public safety. The franchise fees went into the general fund to support public safety and other services.

Prior to July 2012, the franchise fees for solid waste disposal were collected by Yellowstone County with real estate taxes. In 2004, the franchise fees on solid waste disposal were raised to 5%.

Before any complaint was filed, Matthew Monforton wrote a letter to City Attorney Brent Brooks on August 3, 2017, regarding the franchise fees. On March 26, 2018, Kristin Juras sent the City a purported "Settlement Agreement" asking the City to eliminate the franchise fees by July 1, 2018, and to pay them $20,000 for their attorney fees and costs. However, this "Settlement Agreement" did not include a release of all claims from the Plaintiffs. Perhaps even more importantly, there was no class action so the "settlement" would not have been binding upon the vast majority of people and entities who paid franchise fees. The purported "settlement" would have permitted the filing of other lawsuits against the City over the franchise fees.

The Council made the decision to eliminate the franchise fees on May 14, 2018, through Resolution No. 18-10718. The franchise fees were eliminated effective June 30, 2018.

On May 16, 2018 (two days after the City formally decided to eliminate the franchise fees), Terry Houser, Terry Odegard, Roger Webb, Mae Woo, Kathryn Zurbuchen, and Thomas Zurbuchen filed a class action complaint against the City. On September 20, 2018, Clayton Fiscus was added as a plaintiff. Plaintiffs asserted five counts against the City: (1) Declaratory Judgment that the franchise fees were an illegal sales tax under 7-1-112(1) and an injunction; (2) breach of contract and bad faith; (3) restitution; (4) violations of Due Process under the U.S. Constitution; and (5) violations of Due Process under the Montana Constitution. Plaintiffs sought the refund of all franchise fees paid from April 1992 through June 2018, plus interest and attorney fees. Plaintiffs were seeking in excess of $100 million from the City.

While conducting extensive discovery, the parties participated in settlement negotiations and an unsuccessful mediation conference in May 2020. The City then filed several motions for summary judgment and the Plaintiffs filed several motions as well.

The Court ruled in favor of the City's motion regarding who were members of the class action and excluded those customers who paid franchise fees pursuant to a Subdivision Improvements Agreement. On October 9, 2019, Gary and Susan McDaniel filed a separate class action complaint against the City on behalf of all customers who paid

franchise fees pursuant to a Subdivision Improvements Agreement. The Court subsequently dismissed Gary McDaniel because he did not have an account with the City and had not paid the franchise fees.

The parties filed various, similar motions in both the *Houser* and *McDaniel* cases, and the Court made several rulings:

- The Court agreed with the City, to a limited extent, and excluded entities who had written contracts with the City for water, wastewater, or solid waste disposal services.
- The following decisions were entered in the McDaniel case. Similar motions were made and remain pending in the Houser case, but have not been decided by the Court because of the status of the Houser case. The Court entered partial summary judgment in favor of the City and against the Plaintiffs on the following:

    1. **Water Claims**. The Court dismissed all of Plaintiffs' water claims based upon their failure to comply with the Uniform Commercial Code, § 30-2-607. Generally, if someone accepts the goods (water) and retains the goods, their only option is to pay for them. If the Buyer discovers a breach, the Buyer must notify the Seller within a reasonable time or be barred from any remedy.
    2. **Breach of Contract Claims & Restitution Claims**. The Court dismissed all of Plaintiffs' claims for breach of contract and for violating the covenant of good faith and fair dealing and for Restitution. The Court held that Plaintiffs failed to comply with Montana's Claim Presentation Statute for Claims against Municipalities. Montana Code Annotated § 7-6-4301(1) provides that all accounts and demands against a city must be presented to the council in an itemized format within 1 year from the date the claims accrued. Because Plaintiffs failed to present an itemized claim to the City Council within one year of when their claims accrued, their claims were barred.
    3. **Gary McDaniel Claims**. The Court dismissed all the claims asserted by Gary McDaniel because he had never had an account with the Public Works Department. The account was only in the name of his wife.
    4. **Breach of the Covenant of Good Faith and Fair Dealing**. The Court dismissed all of Plaintiffs' claims for Breach of the Covenant of Good Faith and Fair Dealing because Plaintiffs did not establish that the City wrongfully exercised discretion in the performance of the contract to deprive Plaintiffs of their benefit. The Court held that "Plaintiffs cannot establish that as a result of dishonesty, commercially unreasonable conduct, or abuse of discretion on the part of the City in performing the terms of the contracts, they were deprived of either a benefit or a justified expectation created by the contract."
    5. **Due Process Claims**. The Court granted partial summary judgment in favor of the City, limiting Plaintiffs' claims to those that arguably accrued in the three years before they filed suit. This had the effect of limiting their claims to February 2, 2015, to June 30, 2018, in Houser and August 2, 2015, to June 30, 2018, in McDaniel. Claims that accrued prior to those dates were barred by the statute of limitations.

The Court ruled against the City and in favor of the Plaintiffs in the McDaniel case on the following matters:

1. **Voluntary Payment Doctrine**. The Voluntary Payment Doctrine requires a party who wishes to challenge the validity or legality of a bill to make a challenge either before voluntarily making the payment, or at the time of making the payment. The rule provides that "one who makes a payment voluntarily cannot recover it on the ground that he was under no legal obligation to make the payment." The City argued that the Voluntary Payment Doctrine barred Plaintiffs' claims for a return of the franchise fees. The Court held that the Voluntary Payment Doctrine did not bar Plaintiffs' claims for violations of Due Process under the Montana and United States Constitutions.
2. **Declaratory Judgment on the Franchise Fees**. On January 19, 2022, the Court entered a judgment declaring that the franchise fees were unlawful, finding that provisions in the City Subdivision Improvements Agreements obligating the Plaintiffs in the McDaniel case to pay franchise fees were unenforceable. The Court enjoined the City from imposing sales taxes in the future upon the Plaintiffs.

Following the Court's rulings of some of the above motions, including the declaration that the franchise fees were unlawful, the City again attempted to initiate settlement negotiations and requested an additional mediation conference, to which the Plaintiff's refused. The City then asked the Court to order Plaintiffs to mediate. The Court granted this request and another unsuccessful mediation conference was held in September 2022. Following the mediation conference, the parties continued to discuss settlement with the assistance of the mediator and came to a tentative agreement in October 2022.

The Court has preliminarily approved the Settlement but it will conduct a fairness hearing in November and will consider any objections to the Settlement prior to any final approval. The Settlement Agreement is attached and the general terms include:

- Settlement amount: $3.6 million
- Claim period: February 2, 2015, through June 30, 2018
- Class members:

1. **The Water Class**. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015, through June 30, 2018.
2. **The Wastewater Class**. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2.
3. **The Solid Waste Disposal Class**. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

The Court excluded specific commercial customers from the Classes who paid franchise fees pursuant to written contracts. Some of those commercial customers had multiple accounts with the City. Those commercial entities will be allowed to participate in the Settlement to the extent that they had contracts with the City for water, wastewater, or solid waste disposal services -- that were not part of a written contract.

- Release and Bar Order: The Class Representatives will execute a Release of All Claims on behalf of themselves and all Class Members who have not opted-out of the Class Action. The Release is to be construed to fully and finally and forever settle and compromise all of the Class Members' claims against the City related to the Franchise Fees. Additionally, the Settlement Agreement provides that the Court shall enter a "Bar Order" which shall permanently bar and enjoin all Participating Class Members from prosecuting any of the Released Claims. The Bar Order is separate from the Release and will be included in the Final Judgment entered by the Court
- Rebate Fund: The portion of the Settlement Amount that the Public Works Department will rebate to Current Customer Class Members. The rebate will be a one-time rebate and reduction of the customer's Public Works Department invoice.
- Claim Fund: The Class Administrator will manage the fund and pay a portion of the Settlement Amount to Class Members who are Former Customers or who were Excluded Current Customers. In order for Former Customers or Excluded Customers to receive a payment, they must file a Claim Form with the Class Administrator by August 31st.
- Expenses: The amount of the Settlement Amount that will be paid to Class Members will be reduced by the amount of expenses approved by the Court. The estimated expenses at this point are:

Class Counsels' attorney fees and expenses	$925,000
Class Administrator's Fees and expenses	$130,000+
Reimbursement of the City's mailing expenses	$32,988.14

- Opt-Out: Class Members have the option to Opt-Out of the Settlement. If they opt-out, they will not receive a settlement payment. Class Members who Opt-Out will not be bound by the release of all claims or the Bar Order.

STAKEHOLDERS
Class members and all taxpayers of the City of Billings.

ALTERNATIVES
City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS
The settlement amount will be paid out of the General Fund. This has not been budgeted in FY23 or included in the FY24 proposed budget. The Council will ultimately need to determine if the payment will be made through short-term borrowing or through a one-time increase in property taxes if capacity in the tax base exists. The settlement cannot be funded by water, wastewater, or solid waste departments because revenue from those departments must be used for those services. The City cannot raise rates for water, wastewater, or solid waste disposal because of the settlement.

Attachments

Settlement Agreement
Settlement amount diagram
Order for preliminary approval of settlement

Settlement notice

Claim form

Comprehensive release of claims

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is entered into by and between the City of Billings (the "City") and Terry Odegard, Thomas Zurbuchen, and Roger Webb, on behalf of themselves individually and as Class Representatives, ("Class Representatives"), along with Susan McDaniel ("McDaniel"). The City, the Class Representatives, and McDaniel are referred to collectively as the "Parties." This Settlement Agreement becomes finally and fully enforceable only upon the occurrence of the Effective Date, as described herein.

RECITALS:

1. Between April 1992 and June 2018, the City collected franchise fees from its water, wastewater service, and solid waste disposal service customers.

2. The City and the Class Representatives are parties to *Houser, et al. v. City of Billings,* Cause No. DV 18-0778, ("*Houser*").

3. The City and McDaniel are parties to *McDaniel v. City of Billings*, Cause No. DV 19-1444 ("*McDaniel*").

4. In *McDaniel,* the Court entered Partial Summary Judgment on January 19, 2022 on Count I, in favor of McDaniel and against the City, declaring the franchise fees to be unlawful sales taxes and permanently enjoined the City from imposing them.

5. In McDaniel, the Court also entered Partial Summary Judgment on January 19, 2022, March 11, 2022, and June 7, 2022 in favor of the City and against McDaniel, on Counts II and III and dismissed both counts. Additionally, in McDaniel, the Court entered partial summary judgment in favor of the City and against McDaniel on the statute of limitations on McDaniel's due process claims and further dismissed Gary McDaniel from the case.

6. In McDaniel, due process claims under Counts IV and V remain unresolved. In *Houser* there are multiple motions for summary judgment pending that have not been ruled upon by the Court.

7. Counsel for the Parties have reviewed and analyzed the legal and factual issues presented in this action, the risks and expenses involved in pursuing the litigation to conclusion, the likelihood of recovering damages in excess of those obtained through the Settlement, the protracted nature of the litigation, and the likelihood, and possible outcomes of one or more procedural and substantive appeals. Based upon their review and analysis, and after arm's length negotiations, including two in-person mediations, the Parties now enter into this Agreement.

AGREEMENT

The Parties stipulate and agree to settle and resolve *Houser* and *McDaniel* as follows:

1. **Amendment of Class Definitions in *Houser***:

a. The parties shall jointly move to (1) amend the Class Definitions in *Houser* to include those customers subject to a subdivision improvement agreement, and (2) name Sue McDaniel as an additional Class Representative. This will result in three classes ("Classes") defined as follows:

> i. The Water Class. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.
>
> ii. The Wastewater Class. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.
>
> iii. The Solid Waste Disposal Class. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

b. Excluded Parties. The Classes shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Powell, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the "Excluded Parties").

c. Class Members. All City customers who paid franchise fees between February 2, 2015 and June 30, 2018, shall be Class Members with respect to the above-described classes, except for those Excluded Parties identified in Section 1(b) above.

d. Claim Period. The term "Claim Period" shall mean February 2, 2015 through June 30, 2018.

e. The Parties shall file a Stipulated Joint Motion to Amend Class Definitions, (see **Exhibit "A"**).

2. **Entry of Final Judgment in *McDaniel***.

a. The Parties shall file a Stipulated Joint Motion to Certify Final Judgments in *McDaniel* and to Dismiss the remaining claims in *McDaniel* (attached as **Exhibit "B"**). The District Court's Interlocutory Judgments, including the Legality of the Franchise Fees and its Injunction, shall become a Final Judgment.

b. The Parties agree that they shall not appeal the District Court's Final Judgment in *McDaniel*.

3. **Settlement Amount**. Following the Effective Date, the City will pay the sum of Three Million Six Hundred Thousand Dollars ($3,600,000.00) (the "**Settlement Amount**"), as provided herein, in full, final, and complete settlement of all claims and causes of action, including but not limited to claims for refunds, damages, attorney's fees, prejudgment interest, costs (including but not

limited to class administration and class notice) and any other relief that was sought or could have been sought in the *Houser* and/or *McDaniel* cases. A portion of the Settlement Amount shall be paid to the Class Administrator, as provided herein. After payment of the Settlement Amount, the City shall be released from any and all liability or liabilities that arose from or are related to the franchise fees imposed by the City from April 1992 through June 30, 2018. This settlement shall bind all class members except those members who expressly request exclusion from the class settlement under Mont. R. Civ. P. 23(e)(4). For the purposes of the Settlement, Class Counsel, counsel for the City, the Class Representatives, McDaniel, and the City stipulate that the Settlement is fair, adequate, and reasonable and will not object to its approval, and will appear at any required hearings and affirm that they believe the Settlement is fair and reasonable. Should the Settlement not be approved, or the Settlement not become final, binding, and non-appealable, no Party to this Agreement shall waive their respective claims or defenses. The Settlement Amount shall be divided into two funds: (a) the Class Administrator Fund, which includes the Claim Fund (as described in paragraphs 8 & 9 below); and (b) the Rebate Fund (as described in paragraph 11 below). The Settlement Amount shall be distributed, as provided herein, subject to approval by the Court, and as generally reflected on **Exhibit "C"** hereto. (Exhibit "C" is included only for demonstrative purposes). After payment of the Settlement Amount the City shall have no other, further, or additional financial obligations arising from or related to the past imposition of franchise fees in connection with water, wastewater, and solid waste disposal services. Provided, however, the foregoing shall not relieve the City of its obligation to comply with the terms and provisions of this Agreement.

4. **Source of Monetary Relief**. The Settlement Amount will be paid by the City out of the City's General Fund.

5. **Class Administrator**. The Parties will seek approval from the Court to appoint Simpluris as Class Administrator. The duties of the Class Administrator shall include: (a) creating a list of current and former City customers who paid franchise fees during the Claim Period and who are Class Members; (b) creating a list of current customers who are Class Members entitled to a Rebate from the City pursuant to Section 12 below; (c) creating a list of Excluded Current Customers (current City customers who are not Class Members and who are not entitled to receive a Rebate from the City pursuant to Section 12 below); (d) providing Postcard Notice to all Class Members; (e) publishing and sharing the Court Approved Notices; (f) reimbursing the City for any direct costs incurred in providing Notice; (g) receiving, reviewing, approving, and paying, out of the Claim Fund, approved claims filed by Former Customers and Excluded Current Customers; (h) objecting to claims submitted by Former Customers and Excluded Current Customers who do not qualify for a refund; (i) providing updates and information to the Court, Class Counsel, and Counsel for the City; (j) paying out of the Claim Fund the amount of attorney fees and Costs awarded to Class Counsel by the Court; (k) paying the costs and expenses of distributing the Settlement Notice and the Summary Notice; (l) reporting to the Court the amount of funds remaining in the Claim Fund after all expenses have been paid and all approved rebates paid to Former Customers and Excluded Recent Customers; (m) paying 50% of the Cy Pres Funds to the Access to Justice Organization identified and approved by the Court; (n) paying the remaining 50% of the Cy Pres Funds to the City for the Benefit of the Public Works Department; (o) paying the Class Administrator's Court approved fees and expenses; and (p) performing any other related duties or tasks that may be assigned by the Court to the Class Administrator.

The Class Administrator shall be exclusively responsible for determining:

a. Who are Class Members eligible to receive a settlement payment ("Allowed Claims"). As a neutral third party, the Class Administrator shall determine which filed claims shall be Allowed Claims, in its sole and exclusive discretion;

b. Which current customers of the City are entitled to receive a rebate; and

c. Which current customers of the City are Excluded Current Customers (defined below).

The Parties stipulate to and shall seek approval of the appointment of Simpluris of 3194-C Airport Loop Drive, Costa Mesa, CA 92626, as the "Class Administrator". The Class Administrator shall file an appropriate report with the Court documenting its confirmation that the Settlement Amount was allocated in accordance with the approved settlement. The Class Administrator's costs and expenses shall be paid from the Settlement Amount, subject to Court review and approval.

6. **Limitation of Liability.** The Parties, Class Counsel, the City and its Counsel shall not have any liability whatsoever with respect to: (i) any act, omission or determination of the Class Administrator, or any of its respective designees or agents, in connection with the administration of the Settlement or otherwise; and/or (ii) the payment or withholding of any Taxes and Tax-Related Expenses.

7. **Attorney's Fees and Case Costs**. Class Counsel will timely make a Motion for Attorney's Fees and Costs pursuant to Mont. R. Civ. P. 23(h), as provided herein. Class Counsel's Motion for Attorney's Fees shall be made so that the Court can decide whether to approve Class Counsel's fees at the Fairness Hearing. Any fees and costs awarded to Class Counsel shall be paid from the Settlement Amount, after the Effective Date. The City will not oppose Class Counsel's application for fees and costs as permitted under Mont. R. Civ. P. 23(h)(2). The dollar amount of fees and costs to be awarded to Class Counsel shall be determined by the Court.

Prior to the Final Fairness Hearing, and at least thirty (30) days before the Opt-Out and Objection Deadlines, Class Counsel will file a Fee Application for an award of attorneys' fees and Litigation Costs to be paid from the Settlement Fund. Class Counsel shall provide to the City and its counsel and the Class Administrator a properly completed and duly executed IRS Form W-9. Fees and Costs awarded (plus any interest accrued thereon) shall be paid by the Class Administrator in the amount approved by the Court, no later than ten (10) days after the Effective Date.

Unless otherwise ordered by the Court, Class Counsel shall have the sole and absolute discretion to allocate any approved Fee Award and Costs amongst Plaintiffs' counsel and other attorneys for Plaintiffs. The City shall have no liability or other responsibility for the allocation of any such attorneys' fees and costs.

8. **Mechanics of Distributing the Settlement Amount**. After the Effective Date, the Settlement Amount shall be distributed in two ways: (a) to the Class Administrator to fund the Class Administrator Fund; and (b) to the Rebate Fund.

The Class Administrator Fund.

The Class Administrator shall use the money in the Class Administrator Fund for the following purposes:

a. To reimburse the City for the cost of providing notice. The parties stipulate that $4,000.00 is a fair and adequate fee. If the City's costs exceed $4,000.00, the City shall not be entitled to further reimbursement.

b. To pay the fees, costs and expenses of the Class Administrator in accordance with this Settlement Agreement and the Parties' contract with Simpluris.

c. To pay refunds to Former Customers and Excluded Current Customers, as defined herein, who file claims and who demonstrate that they paid franchise fees to the City during the Claim Period. The Class Administrator shall be responsible for reviewing all filed claims and determining whether or not the claim filer is a Class Member entitled to be paid from the Claim Fund.

d. After payment of the foregoing, any funds remaining in the Claim Fund and/or the Class Administrator Fund shall be paid as provided in Section 11 herein.

The Rebate Fund.

The City shall distribute the Rebate Fund (the Settlement Amount less the amount of the Class Administrator Fund) to its current water, wastewater, and solid waste disposal customers who have been identified by the Class Administrator as Class Members. The distribution to Class Members shall be on a pro-rata basis. The amount to be distributed shall be divided by the total number of accounts held by current customers who were customers during the Claim Period, as identified by the Class Administrator. The City shall not rebate any portion of the Rebate Fund to Excluded Current Customers, as defined herein below. The Class Administrator shall identify the Excluded Current Customers. The City shall not make any distribution or rebate to the customers identified by the Class Administrator as Excluded Current Customers. In order to participate in the Settlement, Excluded Current Customers must file a claim with the Class Administrator and establish that they paid franchise fees during the Claim Period. Excluded Current Customers who file claims and establish that they paid franchise fees shall be paid by the Class Administrator through the Claim Fund. Excluded Current Customers shall not receive rebates from the City.

9. **The Class Administrator Fund**. After the Effective Date, the City shall pay to the Class Administrator as the Class Administrator Distribution an amount equal to:

a. The amount, as directed by the Court, to fund the Claim Fund. The amount to fund the Claim Fund shall be determined after the Claim Filing Deadline has passed and after the Class Administrator has been able to verify the number of Eligible Former Customers and Excluded Customers who are entitled to settlement payments. It is the intention of the Parties to fund the Claim Fund so that those who filed Allowed Claims shall receive a settlement payment that will approximate the amount of the payment that will be rebated to Current Customers from the Rebate Fund. Accordingly, once the Class Administrator has verified the number of Allowed Claims to be paid through the Claim Fund, the Parties shall enter into a Joint Motion asking the Court to approve the transfer of a portion of the Settlement Amount to the Class Administrator to pay Allowed Claims, consistent with this paragraph.

b. The attorneys' fees and costs awarded to Class Counsel by the Court; (Class Counsel will request $925,000.00).

c. The amount of the costs and expenses of the Class Administrator, as approved by the Court. (estimated at $130,194.00).

d. $4,000.00 as the estimated amount for any reimbursements to the City for direct costs associated with providing Notice(s), as provided herein.

10. **The Class Administrator Fund & the Claim Fund**. The Parties stipulate and agree that the Claim Fund shall be included in the Class Administrator Fund and that the Claim Fund should be funded in the amount to be determined after the number of Allowed Claims has been determined (hereinafter, the "**Claim Fund**") be established to compensate Eligible Former Customers and Excluded Current Customers who timely submit Allowed Claims. The Claim Fund shall be a portion of the Class Administrator Fund, as defined in Section 8 above. Once the City makes payment of the Court approved amount to the Class Administrator, the City shall have no further duty, obligation, or liabilities arising from or with respect to any amounts that may be owed to the Class Administrator, Former Customers, or Excluded Current Customers. Once the City pays the Court approved amount of the Settlement Amount to the Class Administrator, Former Customers and Excluded Current Customers shall look exclusively to the Class Administrator Fund and not to the City. The Class Administrator will make payments from the Claim Fund only to those Eligible Former Customers and Excluded Current Customers who filed Claim Forms **(Exhibit "D")** and establish that they are Class Members. The Class Administrator shall review all filed claims and determine whether or not the claims are Allowed Claims of customers or former customers and are Class Members entitled to participate in the settlement.

"**Eligible Former Customers**" means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City between February 2, 2015 and June 30, 2018. Eligible Former Customers are not current customers of the City and accordingly will not receive a rebate from the City through the Rebate Fund described in Section 12 below. In order to receive a portion of the Settlement, Eligible Former Customers who had water, wastewater, and/or solid waste disposal accounts with the City during the Claim Period, must file a claim **Exhibit "D"** with the Class Administrator.

"**Excluded Current Customers**" means any individual or entity that is a current City Public Works Department customer who paid franchise fees during the Claim Period who was not identified by the Class Administrator as a Class Member. Excluded Current Customers will not receive a rebate from the City. Excluded Current Customers must file a Claim (**Exhibit "D"**) with the Class Administrator.

a. Identification of Eligible Former Customers and Excluded Current Customers. Eligible Former Customers and Excluded Current Customers who desire to receive money from the Claim Fund must file a claim form within the timeline set by the Court and provided in the Settlement Notice. The Claim Form is attached as **Exhibit "D"**. Eligible Former Customers and Excluded Current Customers will not be paid by the City from the Rebate Fund but may be paid by the Claims Administrator from the Claim Fund if they file a timely, approved claim. Eligible Former

Customers and Excluded Current Customers will not receive any portion of the settlement unless they file a Claim Form with the Class Administrator within the time limits set by the Court.

b. Claim Filing Deadlines for Eligible Former Customers and Excluded Current Customers. Eligible Former Customers and Excluded Current Customers shall file claims by August 31, 2023. Eligible Former Customers and Excluded Current Customers shall submit their claims on the Claim Form approved by the Parties and attached as **Exhibit "D".** The Claim Form shall be attached to the Postcard Notice and will be a tear-off postcard claim form.

c. Payment to Eligible Former Customers and Excluded Current Customers. After the claim filing deadline (August 31, 2023) has passed, the Class Administrator shall notify the Parties of the number of Allowed Claims. The Parties shall then file a Joint Motion asking the Court to authorize a transfer of a sufficient sum out of the Settlement Amount to the Claim Fund, so that the Allowed Claims to be paid out of the Claim Fund will be the same or approximately the same amount as the amount that will be paid to customers out of the Rebate Fund.

In no event will the combined payments to Eligible Former Customers and Recent Service Address Customers exceed the amount in the Claim Fund.

d. The Amount of the Claim Fund. The amount of the Claim Fund that will be paid to Allowed Claims by the Class Administrator shall be determined after the Class Administrator has determined the number of Allowed Claims. Thereafter, the dollar amount to be paid on each allowed claim shall be determined by using a fraction, the numerator of which shall be the total amount of the Claim Fund and the denominator shall be the number of Allowed Claims from Eligible Former Customers and Excluded Current Customers. The dollar amount to be used as the numerator shall be that portion of the Settlement Amount necessary to pay Allowed Claims roughly the same dollar amount as the amount that will be rebated to customers from the Rebate Fund.

11. **Cy Pres Funds**. The Class Administrator shall pay any undistributed funds (the "Cy Pres Funds") from the Claim Fund and the Class Administrator Fund as follows: (a) Fifty percent (50%) of the funds shall be paid to the Access to Justice Organization designated by the Court under M. R. Civ. P. Rule 23(i); and (b) the remaining fifty percent (50%) shall be paid to the City's Public Works Department. The Class Administrator shall distribute the Cy Pres Funds in accordance with the Court's order. No Cy Pres Funds shall be returned to the City's General Fund and shall instead be split as equally as possible between the following Public Works Department accounts: (a) the Water Fund; (b) the Wastewater Fund; and (c) the Solid Waste Disposal Fund.

12. **The Rebate Fund**. The Rebate Fund shall mean the Settlement Amount less the amount paid into the Class Administrator Fund. That portion of the Settlement Amount that is not paid to the Class Administrator Fund shall constitute the Rebate Fund. After the Effective Date, the City shall rebate the full amount of the Rebate Fund to its current water, wastewater, and solid waste disposal customers, excluding: (a) Excluded Parties as identified in paragraph 1(b) above; and (b) Excluded Current Customers, as determined by the Class Administrator. It is the intent of the Parties that the rebates shall be paid to current customers who are Class Members.

a. Calculation of Individual Rebates. The amount of the Rebate Fund that will be rebated to an individual service account shall be determined by using a fraction, the numerator of which shall be the total amount of the Rebate Fund and the denominator of which shall be the combined number of current water, wastewater, and solid waste disposal service accounts held by Eligible Current Customers. For demonstrative purposes only, if the amount in the Rebate Fund equals $1 Million and the combined number of water, wastewater and solid waste disposal service accounts held by Eligible Current Customers is 90,000, then $1 Million would be divided by 90,000. The resulting number ($11.11) would be credited against each Eligible Current Customer account for each service type (water, wastewater, and/or solid waste disposal) that the customer has with the City. For demonstrative purposes only, if a customer had only solid waste disposal services during the claim period, that customer would receive a rebate of $11.11 and a customer who had water, wastewater, and solid waste disposal services would receive a rebate of $33.33.

b. Distribution of the Rebate Fund. The City shall rebate the total Rebate Fund to Eligible Current Customers in connection with the City's monthly billing. The Rebate Fund will be distributed to Eligible Current Customers as a one-time rebate, and individual rebates will partially offset the amount invoiced to Eligible Current Customers on their City of Billings Public Works Utilities bill. The Rebate Fund will be rebated to customers over multiple weeks, in accordance with the calculation described above. The City shall use its best efforts to rebate the total Rebate Fund to Eligible Current Customers within nine (9) months of the date the Court grants final approval of the Settlement. The City will not be required to provide any rebates during the months of July and August.

c. Report on Rebate Fund Administration. After the City has paid the Rebate Fund to Eligible Current Customers, the City shall provide a report with the Court stating: (a) the total dollar amount rebated; (b) the number of water, wastewater, and solid waste accounts that received rebates; and the date range during which the rebates were provided to Eligible Current Customers.

13. **Class Notice**. The Parties shall seek approval from the Court for approval of the Notice of Proposed Class Action Settlement ("Settlement Notice") and a Summary Class Settlement Notice ("Summary Notice") attached as **Exhibits "E" and "F"**, respectively. Upon approval by the Court, the Settlement Notice and the Summary Notice shall be distributed in accordance with Section 14 below, or as otherwise directed by the Court.

Subject to the Court's approval, the Notice shall advise Class Members that objections must:

a. Include the case name and number (*Houser v. City of Billings*, Cause No. DV-18-0778, Montana Thirteenth Judicial District Court, Yellowstone County);

b. If the Objector is represented by counsel, the Notice must include the name and address of the Objector's attorney;

c. Explain the basis and reason for the objection;

d. Include the member's current mailing address;

e. State the customer(s) name(s) and address(es) associated with any franchise fees paid by the

member and the dates of residence at each address;

f. Identify the City services for which the member contracted from the City of Billings between February 2, 2015, to July 31, 2018 for: (a) water service; (b) wastewater service; and/or (c) solid waste disposal services;

g. Identify any class action cases in which the member has previously objected to a class settlement;

h. State whether or not the member intends to appear at the final approval hearing; and

i. Be signed by the member.

Additionally, subject to the Court's approval, the Notice shall advise Class Members that, unless approved by the Court after a hearing, a Class Member cannot receive a payment in exchange for (1) forgoing or withdrawing an objection, or (2) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

14. **Distribution of the Settlement Notice and the Summary Notice**. The City and the Class Administrator will distribute notice of the proposed settlement as broadly and cost-effectively as possible to Class Members. The City shall not be required to distribute any Notice to customers during the months of July and August. To ensure that the Parties provide the best notice practicable, including individual notice to members who can be identified through reasonable effort, the Settlement Notice and the Summary Notice shall be distributed by the City and/or the Class Administrator, as follows prior to the Fairness Hearing:

a. **Notice By the City**. The City shall provide Notice as follows:

i. **City Council Meeting Announcement**. The City of Billings will make an announcement regarding the proposed settlement and the date of the Fairness Hearing at three public and regularly noticed City Council meetings or work sessions. The announcement will direct class members to copies of the Settlement Notice that will be available at the Council meetings.

ii. **Copies of Notice at City Council Meetings**. The City shall place at least twenty-five (25) copies of the Settlement Notice next to the Meeting Agenda at three (3) consecutive public meetings of the Billings City Council. These Settlement Notices shall be available and designated for members of the public.

iii. **Public Posting**. The City shall post a copy of the Summary Notice in prominent places within the control of the City of Billings, including City Hall, the Billings Public Library, Municipal Court, the Airport, the City Planning Department, and the office of the Public Works Department. The City will also request that Yellowstone County post the Summary Notice in the Yellowstone County Courthouse, the County Treasurer's Office, and the Clerk and Recorder's Office.

iv. **Facebook.** The City shall post the Summary Notice on its Facebook page with a hyperlink to the website containing the Settlement Notice and other information regarding the litigation.

v. **Direct Mailing to Current City Customers**. The City of Billings shall mail the Summary Notice to all of its current water, wastewater, and solid waste disposal customers, with the exception of the Excluded Parties identified in paragraph 1(b) above. The City shall not be required to mail the notices in the months of July and August. The City may include the Summary Notice with monthly invoices or may separately mail the Summary Notice. The Summary Notice will be mailed to all current customers within ninety (90) days of the date that the Court provides preliminary approval of the settlement and the Settlement Agreement. The Summary Notices may be mailed to customers on a rolling basis consistent with the Public Works Department's billing practices.

vi. **Mail or E-mail Notice.** The City shall mail or e-mail a copy of the Settlement Notice to the following local media outlets: (i) the Billings Gazette; (ii) the Yellowstone County News; (iii) the Laurel Outlook; (iv) KTVQ; (v) KULR; (vi) Community 7; (vii) KSVI; (viii) the Montana Free Press; (ix) the Daily Montanan; (x) The Bismarck Tribune; (xi) the Missoulian; (xii) the Great Falls Tribune; (xiii) The Independent Record; (xiv) the Bozeman Daily Chronicle; (xv) the Casper Star-Tribune; (xvi) the Montana Standard; (xvi) and (xvii) the Billings Times. After the City completes the foregoing mailings, it shall file a Report with the Court verifying where the Notice was mailed and the date or dates of mailing.

b. **Class Administrator Notice**. The Class Administrator shall provide Notice as follows:

i. **Postcard Notice**. The Class Administrator shall mail Postcard Notices to all Class Members. The Postcard Notice shall contain the URL for the Class Administrator's website with additional information regarding the Settlement. The Postcard Notices shall contain a tear-off claim form to be used by Eligible Former Customers and Excluded Current Customers. Current Customers who have been identified by the Class Administrator as Class Members will not have to file claims. The Claim Form is attached as Exhibit "D".

ii. **E-mail Notices**. The Class Administrator shall e-mail copies of the Summary Notice and the Settlement Notice to any current or former water, wastewater, and/or solid waste disposal customers for whom the City Public Works Utility Department has e-mail addresses. The City has e-mail addresses for approximately 8,700 current customers and for approximately 4,000 former customers. The City shall provide the e-mail addresses to the Class Administrator. The Class Administrator shall use the e-mail addresses exclusively for the purposes of this Settlement and for no other purpose.

iii. **Settlement Notice Website**. The Class Administrator will provide notice to the Class Members via its website. The website shall include a copy of the Summary Notice and the Settlement Notice. In addition, the website will also include pertinent details about the proposed settlement, the lawsuit, the date of the Fairness Hearing, contact information for Class Counsel, the Claim Form, and the Opt-Out Form, **Exhibit "H".**

iv. **Published Notice.** The Class Administrator shall publish an advertisement in the following publications once a week for three consecutive weeks: (a) the Billings Gazette; (b) the Yellowstone County News; (c) the Billings Times; (d) the Missoulian; and (e) the Great Falls Tribune. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.

v. **Big Sky Business Journal**. The Class Administrator shall publish an advertisement in the Big Sky Business Journal for two consecutive editions. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.

15. **Notice Costs**. Any direct, out-of-pocket costs incurred by the City in distributing the Settlement Notice or Summary Notice shall be reimbursed to the City out of the Class Administrator Fund. Subject to the Court's approval, the Parties stipulate that the Class Administrator shall pay $4,000.00 to the City, as a stipulated amount, as reimbursement for the City's Notice Costs. In the event that the City's Notice costs exceed the foregoing amount, the City waives any right to additional reimbursement.

16. **Effective Date.** The Effective Date of this Settlement is the earliest date upon which all of the following have occurred:

a. Entry of an order granting the Joint Motion Amending the Class Definitions and adding McDaniel as a Class Representative;

b. Entry of the preliminary approval order of the Settlement;

c. Entry by the Court of an order in *McDaniel* certifying the Interlocutory Judgments as Final Judgments and dismissing the remaining claims, with prejudice;

d. Entry of an order in response to the Motion of Class Counsel for attorney fees and costs;

e. Approval by the Court of the settlement, following notice to the class and a hearing, as required under Mont. R. Civ. P. 23;

f. Approval of the settlement by the Billings City Council;

g. Entry by the Court of the Final Judgment and Order of Dismissal; and

h. The passage of time in which any appeal might be taken from the Final Judgment, with no appeal having been timely filed; or, in the event of any timely appeal, either affirmance of the Final Judgment without modification of any term of this Settlement Agreement or dismissal or withdrawal of such appeal, all such that the Final Judgment shall be final, binding, and non-appealable. (As used herein, "appeal" and "appellate review" include any petition for a writ of certiorari or application for other discretionary judicial review as well as any appeal of right.).

17. **Comprehensive Release of All Claims**. On or before the Effective Date, the Class Representatives and McDaniel, on behalf of themselves and all Class Members, shall execute and deliver to the City a comprehensive Release of All Claims substantially in the form of the Release of Claims attached as **Exhibit "G"**. All Participating Class Members (all Class Members except

for those who opted out of the Settlement) ("Participating Class Members") will fully release and discharge the City and other Released Parties of and from any and all claims pled or that could have been pled in the Complaint driving from and/or based on the facts alleged, arising out of or related to the franchise fees charged or imposed by the City. The Court appointed Class Representatives and McDaniel shall acknowledge that the Release shall be binding upon all Class Members. This Release will finally, fully, and forever release, compromise, settle, and discharge any and all claims that the class members may have against the City arising from or related to the franchise fees. The Class Members shall not reserve or retain any claims but shall knowingly and intentionally release any and all claims that arose prior to the date of the Settlement Agreement. Neither the Plaintiffs nor the City of Billings shall admit any fault. The release language shall be modeled on the MDTLA release form but may contain additional release language consistent with there being a full and final release of all claims. The Release shall state the intention of the Parties that the Release be construed to the broadest extent possible to achieve a full, final, and complete settlement and compromise of all claims and issues.

The Settlement is the result of disputed claims, including but not limited to claims pertaining to the due process rights of the Class Members. The Settlement Agreement and/or the implementation thereof is not and shall not be construed as an admission of liability that the City violated those rights.

The Release shall provide that every Participating Class Member who does not timely and properly opt out of the class shall be bound by all proceedings, orders, and judgments entered by the Court. Named Class Representatives and McDaniel by signing below agree that the satisfaction of all the claims against the City, as well as entry of the final approval Order, shall be binding upon all Class Members.

Any Participating Class Member who does not timely submit an allowed objection to the Settlement hereby waives any and all rights to appeal from the Final Approval Order and Judgment, including all rights to any post-judgment proceeding and appellate proceeding such as a motion to vacate judgment, motion for new trial, and extraordinary writs. This waiver does not include a waiver of the right to oppose any appeals, appellate proceedings, or post judgment proceedings, if any.

All of the claims of Class Members described hereinabove and/or in the Release of All Claims (**Exhibit "G"**) are collectively referred to as the "Released Claims". It is the intention of the parties that the Release Claims be construed to the broadest extent possible to fully, finally, and forever settle and resolve the disputes between the parties.

The Released Claims include the release of Unknown Claims. "Unknown Claims" means claims that could have been raised in the Litigation and that any of the Class Representatives or Class Members and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns does not know or suspect to exist, which, if known by him, her or it, might affect his, her or its agreement to release the City and its present and former successors, assigns, subsidiaries, divisions, affiliates, departments, and any and all of their past, present, and future officers, directors, employees, servants, agents, successors, attorneys, advisors, consultants, representatives, insurers, reinsurers, subrogees and the predecessors, successors, and assigns of any of the foregoing or the Released Claims or might affect his, hers or its decision to

agree, object or not to object to the Settlement. Upon the Effective Date, each of the Class Representatives and Participating Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns shall be deemed to have, and shall have, waived any and all provisions, rights and benefits conferred by any law of state, the District of Columbia or territory of the United States, by federal law, or principle of common law or the law of any jurisdiction outside of the United States. The Class Representatives and Participating Class Members, and each of their respective heirs, executors, administrators, representatives, agents, partners, successors, attorneys, and assigns acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of the Release, but that it is their intention to finally and forever settle and release the Released Claims, including but not limited to any Unknown Claims they may have, as that term is defined in this Paragraph.

18. **Dispute Resolution.** If any disputes as to this Agreement or the conditions of the Settlement arise which the Parties are unable to settle and resolve by written stipulation, then the Parties consent and agree to submit any unresolved disputes to the Court for resolution. Notwithstanding the foregoing, the Court shall not change the Settlement Amount, and the Court shall not modify the timing of the City's distribution of Notices or the Rebate Fund (including the provision indicating that the City cannot provide notices or rebates in the Months of July or August). Provided, however, that nothing in this Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Agreement, or any Court Order implementing this Agreement, in a manner consistent with the terms of this Agreement.

19. **Court Filings**. In connection with this Settlement, the Parties shall file the following motions and stipulations with the Court:

a. Joint Motion and Stipulation to Amend the Class Definitions and proposed Order, (see **Exhibit "A"**).

b. Joint Motion to Certify Final Judgments and to Dismiss the remaining claims in *McDaniel,* With Prejudice, and proposed Order, (see **Exhibit "B"**).

c. Joint Motion and Stipulation for Approval of the Settlement Agreement.

d. Joint Motion to Approve Class Notice and Summary Class Notice and Opt-out Form. (see **Exhibit "E","F", & H**).

e. Any additional motions or pleadings that are required to effectuate the terms of this Settlement Agreement or its approval by the Court.

20. **Publicity.** The Parties and Class Counsel agree that, until this Agreement has been preliminarily approved by the Court, the Parties will not in any manner publicize the terms of this Agreement, and they shall not notify any member of the media regarding the terms and conditions of the Agreement or respond to media inquiries. Provided, however, this provision shall not limit or preclude the Mediator from filing status reports with the Court in accordance with its Orders.

Class Representatives and McDaniel understand and expressly acknowledge that this Agreement must be approved by the Billings City Council following a properly noticed public hearing.

Accordingly, Class Representatives, McDaniel, and Class Counsel stipulate, consent, and agree that, the City, the City Administration, the City Council, the City Staff, the Mayor, and their counsel shall be permitted to openly discuss and respond to public comment regarding the Settlement, the Settlement Agreement and the associated litigation and may communicate with the public, the media, and others regarding the Settlement, the Settlement Agreement, and the associated litigation. Accordingly, the Parties stipulate to the Court including language in its Order Preliminarily Approving the Settlement to permit the foregoing communications. The Parties intend that the required City Council meeting will occur following: (a) preliminary approval of the Settlement; and (b) the distribution of the Settlement Notice as provided hereinabove. The City Council must approve the Settlement and the Settlement Agreement prior to the Fairness Hearing.

21. **Confidentiality**. The terms of this Agreement shall remain confidential until this Agreement is filed in connection with a motion for preliminary approval of the Settlement, unless otherwise ordered by the Court. Provided, however, the Mediator shall be permitted to file Status Reports with the Court. Further, the Parties acknowledge and waive the mediation confidentiality provisions under Mont. Code Ann. § 26-1-813 for the sole and limited purpose of disclosing the mediator's involvement in this settlement, as specifically referenced in this Agreement.

22. **Binding Effect: Exclusion and Objection Rights.**

a. Right of Class Members to be Excluded. Any Class Member, other than the Class Representatives and McDaniel, may elect to be excluded from the Classes at any time before the Response Deadline established by the Court. To be effective, the Class Member must submit a valid request for exclusion (the Opt-Out Notice) to the Class Administrator and postmarked on or before the Response Deadline. The date of the postmark on the mailing envelope shall be the exclusive means to determine whether a request for exclusion is timely. If a Class Member submits a timely exclusion using the Court approved Opt-Out Form (Exhibit "H") that is rejected by the Class Administrator as deficient in some material respect (for example, the Class Member failed to sign it), the Class Administrator will notify the Class Member in writing of the basis for the deficiency and give the Class Member an opportunity to cure the deficiency as set forth below. Notification to the Class Member may include a follow-up telephone call, if necessary. The Class Administrator will also provide the Class Member with Class Counsel's contact information in case the Class Member wishes to seek Class Counsel's assistance. Class Members shall have fifteen (15) calendar days from notification of the deficiency to cure the deficiency, or until the end of the Response Period, whichever comes later. Any Class Member who timely requests exclusion through the Opt-Out Notice (**Exhibit "H"**) in compliance with these requirements: (i) shall not have any rights under this Agreement; (ii) shall not be entitled to receive a Rebate; and (iii) shall not be bound by this Agreement, the Final Approval Order, or the Judgment.

b. Binding Effect on Participating Class Members. Except for those Class Members who Opt-Out and exclude themselves in compliance with the procedures set forth above or who otherwise file valid objections to the Settlement that are sustained by the Court, all Class Members will be deemed to be Participating Class Members for all purposes under this Agreement; will be bound by the terms and condition of this Agreement, the Final Approval Order, the Judgment, and the releases provided herein; and will be deemed to have waived all objections and opposition to the fairness, reasonableness, and adequacy of the settlement.

c. Communication Between Counsel Regarding Objections and Exclusions: Upon receipt, counsel for the Parties shall promptly exchange with one another copies of all requests for exclusion and/or objections to the Settlement or to any part thereof. Class Counsel and Counsel for the City shall file any responses to any written objections that are submitted in accordance with this Settlement Agreement at least five (5) business days before the final approval hearing.

23. **Binding Effect**. This Agreement is binding upon the heirs, personal representatives, successors, and assigns of each of the Parties.

24. **Choice of Law and Venue**. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Montana. The Parties agree that Yellowstone County, Montana is the proper place of venue for any dispute arising under the Agreement.

25. **Further Assurances**. In the event that any further action is necessary or required to carry out the purposes of this Agreement or the settlement contemplated by this Agreement, each of the Parties will take such further action (including the execution and delivery of further instruments and documents or the filing of the necessary motions or documents with the Court) as any other party reasonably may request.

26. **Electronic Signatures and Counterparts**. A copy of this Agreement transmitted by authenticated electronic signature or by email containing the signature of any party shall be accepted as the original and shall be binding upon the signing party to the same extent as would a copy of this Agreement containing the party's original signature. Upon request of a party, a party signing and delivering this Agreement by e-mail shall deliver to the requesting party a copy of this Agreement containing the signing party's original signature. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document.

27. **Final Settlement Approval.** A hearing shall be held for the purpose of obtaining the Final Approval Order and entry of Judgment approving this Settlement Agreement and releasing the claims of the Participating Class Members. The date of the hearing shall be set by the Court and notice of such hearing shall be provided to Class Members in the Class Notice, although such hearing may be continued by the Court without further notice to Class Members. Because any appeal by an objecting Class Member would delay the payment under the Settlement, each Class Member that appeals agrees to put up a cash bond to be set by the District Court sufficient to reimburse Class Counsel's appellate fees, Class Counsel's expenses, and the lost interest to the Class caused by the delay.

A final approval hearing shall be held before the Court in order to consider and determine whether (a) the Court should give final approval to this Settlement; (b) Class Counsel's application for attorney's fees and litigation costs should be granted; (c) the Class Administrator's fees and costs are appropriate; and (d) any timely objections made have any merit and to consider all responses by Class Counsel and counsel for the City.

Upon final approval of the Settlement by the Court, the Parties request that the Court enter a Final Approval Order and Judgment as follows:

a. Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

b. Approving Class Counsel's application for an award of attorneys' fees and costs;

c. Approving Class Administrator's fees and costs; and

d. Entering final judgment, permanently barring and enjoining all Participating Class Members from prosecuting any of the Released Claims against Released Parties, as defined herein, upon satisfaction of all payments and obligations hereunder, hereinafter the "Bar Order". The Final Judgment shall include the Bar Order referenced herein.

The judgment will contain the following: (a) the class definitions; (b) the full release language; and (c) a statement that no Class Member has opted-out of the settlement – i.e., requested to be excluded, or a statement listing the names of the Class Members who timely opted-out of the settlement. Notice of final Judgment shall be posted on the Class Administrator's website. Thereafter, the Class Administrator shall maintain the website for at least one hundred and eighty (180) days after the entry of Final Judgment.

28. **Miscellaneous**.

a. The Parties agree that they each shall undertake any required steps to effectuate the purposes and intent of this Agreement.

b. The Parties represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Agreement and have been given the opportunity to review independently this Agreement with such legal counsel and agree to the particular language of the provisions herein.

c. The Parties understand and agree that all terms of this Agreement, including the Exhibits thereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Agreement on behalf of the Party that he or she represents.

d. This Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties and covenants contained and memorialized herein.

e. The Parties agree that no single Party shall be deemed to have drafted this Settlement Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentum.* This Settlement Agreement is a collaborative effort of the Parties and their attorneys.

f. This Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Persons who executed this Agreement or their successors-in-interest. The failure of a Party hereto to insist upon strict performance of any provision of this Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such

Party of any default by another Party in the performance or compliance of any of the terms of this Agreement. In addition, the waiver by one Party of any breach of this Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

g. Should any part, term or provision of this Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

h. The Parties agree that the terms set forth in this Agreement shall survive the signing of this Agreement.

i. The following shall apply to the interpretation of this Agreement:

i. Definitions apply to the singular and plural forms of each term defined.

ii. Definitions apply to the masculine, feminine, and neuter genders of each term defined.

iii. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

j. The Parties agree and acknowledge that this Agreement carries no precedential value.

k. The Parties and their counsel believe this Agreement is a fair and reasonable compromise of the disputed claims, in the best interest of the Parties, and have arrived at this Agreement as a result of extensive arms-length negotiations.

l. The administration and consummation of the Settlement as embodied in this Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Agreement.

m. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Agreement. In the event of a dispute concerning the terms and conditions of this Agreement, the headings shall be disregarded.

n. Each Party represents and warrants that such Party has not assigned or otherwise transferred (via subrogation or otherwise) any right, title or interest in or to any of the Released Claims.

o. The Settlement Agreement contains all of the terms agreed upon among the Parties and supersedes all prior agreements among the Parties with respect to the subject matter hereof.

p. Each party shall bear the expense of any taxes associated with the settlement. Any taxes specific to the Class and Class Counsel shall be borne by them.

q. Any Exhibits to this Settlement Agreement are incorporated in and constitute an integral part of the Settlement Agreement.

29. **Approval Required**. This Settlement Agreement is subject to final approval by both: (a) the District Court, after a hearing as required under Mont. R. Civ. P. 23(e)(2); and (b) the Billings City Council, at a regularly scheduled and properly noticed public hearing. The undersigned agree to recommend approval of the Settlement by the Court as being fair, reasonable, and adequate.

30. **Effect of Termination.** In the event any third party is allowed by the Court to intervene in this Action and/or successfully challenges and/or contests, in any regard or manner, any term or condition of this Settlement Agreement that would increase the City's liability obligations, payments, or exposure under this Settlement Agreement, or diminish the scope of the relief accorded in this Settlement Agreement to the City, then, in that event, the City shall have the absolute right to terminate this Settlement Agreement, in the City's sole and exclusive discretion. Provided, however, that any increase in the City's attorney fees in connection with any challenges and/or contests shall not be considered to increase the City's liability obligations, payments, or exposure under this Settlement Agreement.

In the event any third party is allowed by the Court to intervene in this Action and/or successfully challenges and/or contests, in any regard or manner, any term or condition of this Settlement Agreement that would diminish the relief accorded to the Certified Classes pursuant to this Settlement Agreement, then, in that event, any of the Class Representatives and McDaniel shall have the absolute right to terminate this Settlement Agreement, in the Class Representatives and McDaniel's sole and exclusive discretion. Provided, however, that any increase or decrease in the attorney fees awarded to Class Counsel shall not be considered to diminish the relief provided to the Certified Classes under this Settlement Agreement.

In the event that the Settlement Agreement is terminated, it shall become null and void and shall have no further force and effect, and neither the Settlement Agreement nor any of the negotiations and proceedings relating to the Settlement Agreement shall be offered or received in evidence or otherwise used in the Action or in any other legal proceeding for any purpose. In such event, all of the Parties shall be restored to their respective positions existing prior to the execution of the Settlement Agreement and the Action shall revert to its status prior to November 1, 2022.

In connection with the final approval of the Settlement by the Court, the Parties shall jointly seek from the Court an Order barring any future actions against any of the undersigned Parties to the Settlement Agreement, including all Class Representatives and all Class Members, the City, and their affiliates, divisions, subsidiaries, agents, directors, attorneys, insurers, trustees, and assignees ("the Bar Order"). The Bar Order shall be incorporated in the Final Approval Order. Upon issuance of the Final Approval Order, containing the Bar Order, no party and no Participating Class Member may take any future action against any party to the Settlement with respect to the subject matter of the Action. Specifically, the Bar Order shall provide that the Releasing Parties, including all Participating Class Members, shall be permanently barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting or continuing, either directly or in any other capacity, any action or proceeding in any court, agency, arbitration, tribunal, or jurisdiction, asserting any released claims pursuant to this Settlement Agreement, or seeking an award of fees and costs of any kind or nature whatsoever and pursuant to any authority or theory whatsoever, relating to or arising from the litigation and/or as a result of or in addition to those provided by this Settlement Agreement and the Court's Final Order and Judgment. It is further

agreed that the Settlement may be pleaded as a complete defense to any proceeding subject to the Settlement Agreement.

31. **Satisfaction of Judgments.** Once all obligations in this Settlement Agreement have been satisfied, the Parties agree to file satisfactions of judgment with the Courts in both the *Houser* and *McDaniel* cases.

Exhibits:

A. Stipulated Motion to Amend the Class Definitions and add McDaniel as a Class Representative and Proposed Order.

B. Stipulated Joint Motion to Certify Final Judgments and Dismiss Claims in McDaniel and Proposed Order.

C. Settlement Amount Diagram.

D. Claim Form for Former Customers and Recent Service Address Customers.

E. Notice of Proposed Class Action Settlement.

F. Summary Notice.

G. Comprehensive Release of All Claims.

H. Opt-Out Form.

Dated this _____ day of _____, 2023.

By: **The City of Billings**

_____
William A. Cole
Its Mayor

Approved as to form and content:

_____
Doug James
Moulton Bellingham PC
P. O. Box 2559
Billings, MT 59103
Attorneys for the City of Billings

Dated this _____ day of _____, 2023

[Signatures to follow]

By: **The Class Representatives**

Terry Odegard

Dated this 16 day of March, 2023

[Signatures to follow]

By: **The Class Representatives**

Thomas Zurbuchen

Dated this 16 day of March, 2023

[Signatures to follow]

By: **The Class Representatives**

Roger Webb

Dated this 16th day of March, 2023

[Signatures to follow]

By: **McDaniel**

Susan McDaniel

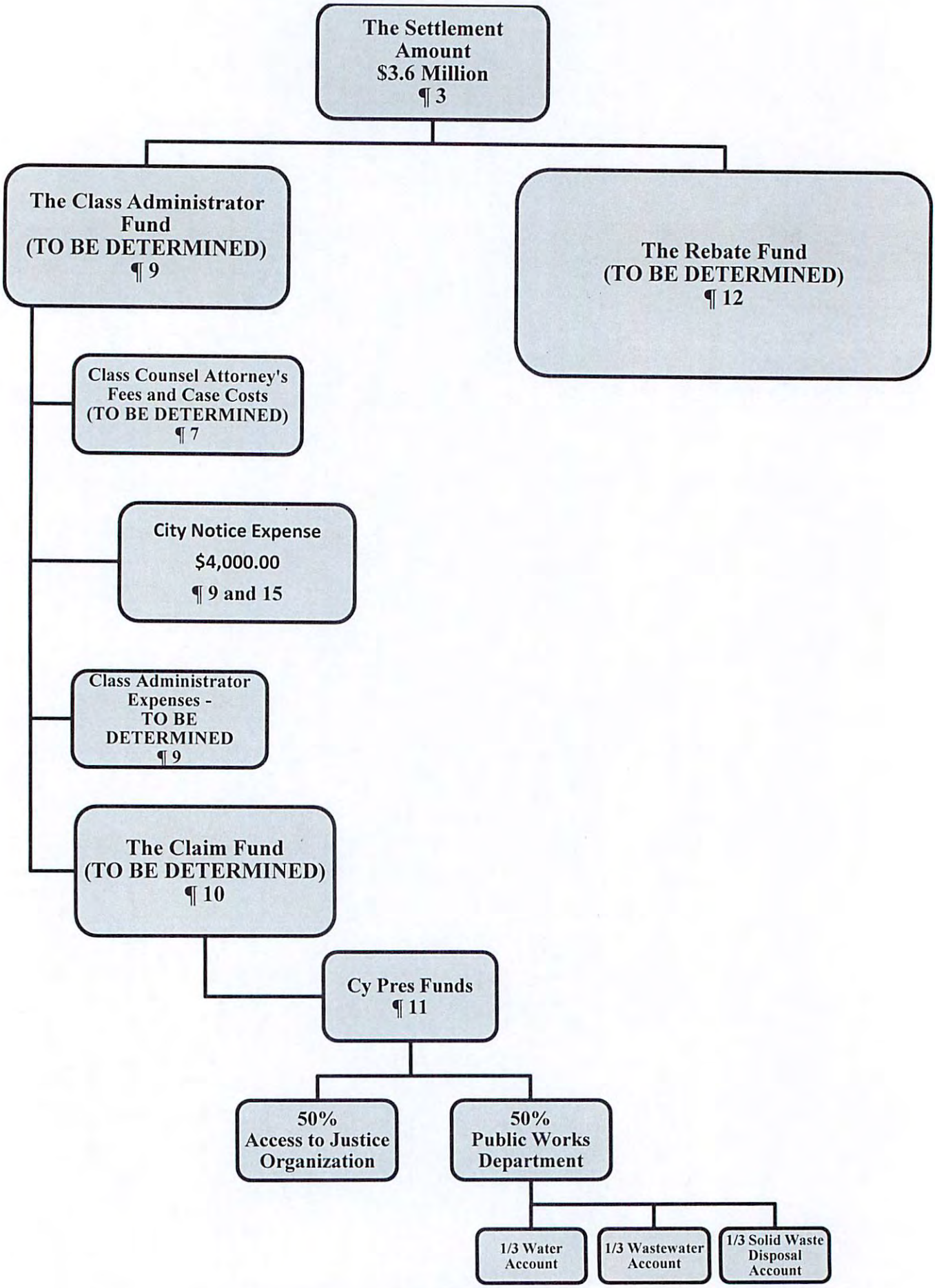
Dated this 16 day of MARCH, 2023

Approved as to form and content:

Matthew Monforton
32 Kelly Court
Bozeman, Montana 59718

Attorney for the Class Representatives and McDaniel

Exhibit C – Settlement Distribution



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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

* * * * * * * *

TERRY HOUSER, TERRY ODEGARD, THOMAS ZURBUCHEN, ROGER WEBB, on behalf of themselves and all others similarly situated, Plaintiffs, -v- CITY OF BILLINGS, Defendant.	Cause No. DV 18-0778 **ORDER FOR PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT**

On March 20, 2023, Defendant and Plaintiffs under Rule 23(e), Mont. R. Civ. P. filed a Joint Motion for Approval of Settlement Agreement. Ct. Doc. 282 The Court has reviewed the proposed Settlement Agreement and the Exhibits attached thereto. Ct. Doc. 284. Further, from its involvement in this case and the history of the case and the related case of *McDaniel v. Billings,* DV 19-1444, Mont. 13th Jud. Dist. Court, Yellowstone County Court is familiar with the facts and issues involved in these class actions lawsuits.

Fair, Adequate, and Reasonable. Based upon a review of the record, the motions and arguments of counsel and the Court's familiarity with the facts and legal issues involved in this case and the Court finds that it has sufficient information to make a preliminary determination of whether the Settlement Agreement is fair, adequate, and reasonable.

From the information provided by the parties and the Court's familiarity with this case and McDaniel and the Court finds that the Settlement Agreement was achieved after more than four

and a half years of litigation, including voluminous discovery. The proposed Settlement itself was preceded by two failed Court ordered mediation conferences. The proposed Settlement was achieved, in part, with the assistance and extraordinary efforts on the part of an independent mediator. Mediator Jonathan McDonald mediated this case and *McDaniel* on two separate times through which he developed great familiarity with the facts and issues surrounding these cases. Mediator McDonald kept the court informed of the progress of the mediation efforts. Ct. Docs. 268, 271, 273,274 and 275. Although the formal mediation conferences failed, Mediator McDonald continued to press the parties to settle. After the second failed mediation conference, McDonald wrote to Class Counsel and counsel for the City on October 7, 2022 in order to state his recommendations for settlement, including the settlement amount of $3.6 million, as well as many of the other material terms of the proposed Settlement.

The Court finds that the Settlement Agreement was reached through arms-length bargaining and that the investigation and discovery over the past four and a half years are sufficient to allow counsel to act intelligently and the Court to act informatively. Both counsel are experienced in similar litigation.

In order for the Settlement to be finalized, the Settlement Agreement must be approved by the Billings City Council at a publicly noticed public meeting. Towards that end, the parties jointly moved and stipulated in the Settlement Agreement that the City of Billings, Billings City Council, the Billings Mayor, the City Administration, the City Staff, the City Attorney, and Defense Counsel be allowed to discuss the Settlement and the Settlement Agreement after the Court Approved Notice has been mailed out. The parties also stipulated that the foregoing discussions and communications shall not be considered violations or Rule 4.2 of the Montana Rules of

Professional Conduct. Because Class Counsel has consented to the communications after Class Notice has been mailed out, there would be no violation of rule 4.2.

BACKGROUND

Factual and Procedural Background.

The Billings City Council adopted "franchise fees" on water and wastewater services on April 13, 1992. Thereafter, the City also assessed a franchise fee on solid waste disposal services. The record reflects that beginning in April 1992, some Billings citizens and Council Members objected to the franchise fees as an illegal sales tax. The City eliminated the franchise fees effective June 30, 2018.

On May 16, 2018, Plaintiffs filed this Class Action in District Court. Class Plaintiffs challenged the legality of the franchise fees. The original Complaint sought a declaration that the franchise fees imposed by the City were sales taxes that violated Section 7-1-112(1), MCA. The Complaint requested judgment declaring the "franchise fee" to be an illegal tax and an injunction against further collection of the "franchise fees." Plaintiffs also sought a refund of all amounts paid to the City as "franchise fees." Plaintiffs later amended their Complaint to add federal and state constitutional claims and also sought a refund of the "franchise fees."

The City stopped charging "franchise fees" on water, wastewater, and solid waste disposal services on June 30, 2018. On November 12, 2019, the Billings City Council formally adopted a resolution repealing Resolution 92-16531, the resolution that originally added a "franchise fee" to the cost of water and wastewater service beginning in 1992.

Class Certification.

On April 10, 2019, the Court entered an Order Granting Plaintiffs' Motion for Class Certification. In its Order, the Court found that the requirements under Rule 23(a), Mont. R. Civ.

P. 23(a) and (b). The Court also defined the Water Class, the Wastewater Class, and the Solid Waste Disposal Class.

The City appealed the District Court's Order on Class Certification to the Montana Supreme Court. On March 3, 2020, the Supreme Court affirmed the District Court's decision certifying the Water Class, the Wastewater Class, and the Solid Waste Disposal Class. *Houser v. City of Billings*, 2020 MT 51, 399 Mont. 140, 458 P.3d 1031.

The Second Class Action Case: *McDaniel v. City of Billings.*

In its Order granting Class Certification, the Court also specifically excluded certain parties who paid "franchise fees" under Subdivision Improvements Agreements from the Plaintiff classes. On October 9, 2019, Class Counsel, on behalf of Gary and Susan McDaniel filed a second Class Action Complaint. The second case, *McDaniel,* is also before this Court. The *McDaniel* Plaintiffs seek relief from the City for those parties that paid "franchise fees" under a Subdivision Improvements Agreement.

The Litigation.

This case has been contentious and hard fought. This case and *McDaniel* involve complex issues, voluminous documents, and multiple witnesses over the nearly 30-year history of the "franchise fees." The proposed Settlement is the culmination of years of extensive litigation and multiple attempts to find resolution. In its various summary judgment orders issued in *McDaniel*, the Court has documented the long and contentions history of this case and *McDaniel*. The docket for *Houser* case reflects 272 separate filings. The docket in *McDaniel* reflects 143 separate filings. These cases have been litigated for four and one-half years, and many of the named class plaintiffs have questioned or challenged the "franchise fees" years prior to filing the present lawsuit. Three of the named Plaintiffs—Terry Houser, Clayton Fiscus, and Kathryn Zurbuchen—died during the

course of this litigation,. The parties' thirty plus year contentious relationship and the litigation history demonstrate that settlement negotiations occurred at arm's length and pursuant to Court Order. Two Court-ordered mediation conferences failed to achieve a final settlement.

The parties have extensively developed the factual evidence in both cases. The Court is advised that the parties have exchanged over 83,000 pages of documentation in discovery and have responded to multiple sets of written discovery requests, including 240 requests for admissions, 96 interrogatories, and 215 requests for the production of documents. There have been numerous depositions, including the following individuals:

- Bruce McCandless, former City Administrator;
- David Mumford, former Director of Public Works;
- Jennifer Duray, the Deputy Director and former Finance Director of the Department of Public Works;
- Patrick Weber, the former Finance Director for the City of Billings;
- Plaintiff Terry Houser;
- Plaintiff Terry Odegard;
- Plaintiff Thomas Zurbuchen;
- Mae Woo, former Plaintiff;
- Plaintiff Roger Webb;
- Plaintiff Clayton Fiscus;
- Gary McDaniel, former Plaintiff; and
- Plaintiff Susan McDaniel.

In addition to the foregoing depositions, the Court has heard testimony and other evidence at multiple hearings for this case, including the testimony of Plaintiff Terry Odegard, Plaintiff

Thomas Zurbuchen, Plaintiff Roger Webb, and proposed Intervenors, Andrew Billstein, and Jacob Troyer. This testimony is in addition to affidavit testimony from multiple individuals, including:

- Denise R. Bohlman, City Clerk;
- Jennifer Duray, Deputy Director of the Public Works Department and former Finance Director for the Public Works Department;
- David Mumford, former Public Works Director;
- Bruce McCandless, former City Administrator for the City of Billings;
- Chuck Tooley, former Mayor of the City of Billings;
- Brett Rutherford, former Yellowstone County Elections Administrator;
- Chris Hertz, Public Works Department Engineer III;
- Tom Hanel, former May of the City of Billings;
- Andy Zoeller, Finance Director for the City of Billings;
- Christina Volek, former City Administrator for the City of Billings;
- Rod Wilson, real estate broker and developer;
- Carl Peters, Board President for the Lockwood Area/Yellowstone County Water and Sewer District; and
- Debi Meling, Director of the Public Works Department.

Dispositive Motions.

Plaintiffs and Defendants filed multiple pretrial motions in this case and *McDaniel*. The Court determined that it could not issue Orders in this case that were binding upon the Plaintiff Classes until the class members received class notice. However, at the outset in *McDaniel*, the Court recognized that it could issue rulings on the parties' respective dispositive motions prior to

entering its decision on class certification. The Court entered the following Orders in *McDaniel* on the parties' respective motions:

- On January 5, 2022, the Court granted Plaintiffs' Motion for Partial Summary Judgment Regarding the Legality of City Ordinances and SIA Provisions Imposing "Franchise Fees." (*McDaniel,* Doc. No. 99). The Court entered judgment declaring that the franchise fees were unlawful, finding that provisions in City Subdivision Improvements Agreements obligating Plaintiffs to pay franchise fees were unenforceable, and enjoining the City from imposing sales taxes in the future upon Plaintiffs. (Doc. 102). As part of the foregoing Judgment, the Court enjoined the City of Billings, its officers, agents, servants, employees, or persons in active concert with any of them from imposing illegal sales taxes in the future on Plaintiffs. (Doc. 102).

- On January 5, 2022, the Court granted the City's Motion for Partial Summary Judgment on Plaintiff's Breach of Contract and Restitution claims. (*McDaniel*, Doc. No. 98). The Court determined that Plaintiffs failed to comply with Mont. Code Ann. § 7-6-4301 and entered judgment dismissing Counts II (breach of contract) and III (restitution) of Plaintiffs' Complaint. On January 19, 2022, the Court entered judgment in favor of the city and against the Plaintiffs on Counts II (breach of contract) and III (restitution). (Doc. 103).

- On March 1, 2022, the Court granted the City's Motion for Partial Summary Judgment regarding water contract claims under Mont. Code Ann. § 30-2-607. (*McDaniel*, Doc. No. 106). The Court concluded that Plaintiffs receiving water service failed to comply with Mont. Code Ann. § 30-2-607 and entered judgment dismissing with prejudice Plaintiffs' water claims under Counts II and III. The Court entered judgment on March 11, 2022 in favor of the City and against Plaintiffs on their water contract claims pursuant to Mont. Code Ann. § 30-2-607. (Doc. 110).

- On June 2, 2022, the Court granted the City's Motion for Partial Summary Judgment and found that the City did not breach its contracts with ratepayer plaintiffs because it did not violate the implied covenant of good faith and fair dealing. (*McDaniel*, Doc. No. 126). The Court entered judgment dismissing Count II (breach of contract) of Plaintiffs' Complaint. On June 7, 2022, the Court entered judgment in favor of the City and against the Plaintiffs on their breach of contract claims. (Doc. 129).

- On July 19, 2022, the Court entered an order granting in part and denying in part the City's Motion for Summary Judgment on Plaintiffs' state and federal Due Process claims. (*McDaniel*, Doc. No. 134). The Court confirmed that the statute of limitations for Plaintiffs' Due Process claims is three years and that Plaintiffs' Due Process claims that accrued prior to August 2, 2015 are barred by the statute of limitations. The Court found that Plaintiffs' claims that came into existence after August 2, 2015 were not barred. The Court also dismissed Gary McDaniel as a Plaintiff, finding that Gary McDaniel never had an account for City services. On July 27, 2022, the Court entered partial summary judgment on Counts IV and V (due process). (Doc. 146).

- On July 19, 2022 the Court also entered an order denying the City's request for summary judgment under the Voluntary Payment Doctrine. (*McDaniel*, Doc. No. 131). The Court found that the Voluntary Payment Doctrine does not bar Plaintiffs' federal and state Due Process claims.

Due to the unique procedural posture of the case, the Orders entered above are only binding upon the named plaintiffs in *McDaniel*. However, many of the orders mirror similar factual and legal arguments made by the City and the *Houser* Class Plaintiffs. Thus, the outstanding unresolved issues between the parties have been narrowed by the Court's Orders on the pretrial motions. Further, the Court's Orders have identified the appropriate limitations periods that would apply to Plaintiffs' remaining due process claims.

Mediation and Settlement.

The City filed a motion to compel Plaintiffs to mediate this case on December 13, 2019. (Ct. Doc. 126). The Court granted the City's motion on March 2, 2022. (Ct. Doc. 129). The parties formally mediated this case before Jonathan McDonald on May 13, 2020. The mediation failed and did not achieve a settlement.

On March 11, 2022, the City filed a second Motion to compel the Plaintiffs to mediate this case. Ct. Doc. 248. The Court granted the City's motion. Ct. Doc. 267. The Court ordered the parties to mediate these cases a second time again using independent mediator, Jonathan McDonald. The Court is advised that the parties participated in a second formal mediation conference in Billings, Montana, on September 15, 2022, which was not successful. However, after the failed mediation conference, the Mediator continued to press for a settlement. On October 17, 2022, the Mediator wrote to Class Counsel and counsel for the City stating the Mediator's recommendations for the terms of a settlement, including the settlement amount of $3.6 million. Ultimately, the parties agreed to settle these cases when Plaintiffs and the Defendant accepted and

agreed to the settlement terms proposed and recommended by the Mediator. The proposed Settlement Agreement is based upon the Mediator's recommendations.

The Amount of the Proposed Settlement.

The Court must also address the amount of the Proposed Settlement. As noted above, the amount of the Settlement is the amount recommended for settlement by independent mediator Jonathan McDonald. Settlement was achieved after nearly five years of contentious litigation and two failed mediation conferences.

The first mediation conference in May of 2020 did not achieve a final settlement. However, Court pleadings reveal that the parties agreed upon the amount of a settlement during that mediation conference, but could not agree upon other material settlement terms. The agreed upon settlement amount in May of 2020 was $2.6 million, one million dollars less than the current settlement. Accordingly, the proposed Settlement is $1 million more than what the parties agreed to in May of 2020. Given the extensive litigation since May of 2020, the increased Settlement Amount is not surprising. Since the first mediation conference in May of 2020, the parties briefed and litigated numerous dispositive motions in both this case and *McDaniel*. As noted below, the Court's Orders on those dispositive motions substantially narrowed the issues in *McDaniel*. While Plaintiffs' damage claims were significantly reduced, those dispositive motions and the on-going litigation required substantial effort by all of the attorneys involved.

In discussing the amount of the Settlement, it is also important to note that the Settlement will be paid out of the General Fund of the City of Billings. That means that the Settlement will be paid by the Billings taxpayers. The Settlement will not be paid by the Public Works Department and will not be paid with revenue derived from the provision of water, wastewater, and solid waste disposal services. After the payment of attorney fees to Class Counsel, the expenses of the Class

Administrator, and other expenses, the balance of the Settlement Amount will be rebated to customers of the Public Works Department of the City. Those customers are, for the most part, the very taxpayers who will fund the Settlement. Thus, this case is unique in that the claimants themselves are the parties who will bear the burden of the settlement as taxpayers. Further litigation is likely to drive up attorney fees and expenses for both the City of Billings and the Plaintiffs. Since Plaintiffs are essentially funding both sides of this litigation, prolonging this litigation would not be in the best interests of either party.

The Court appointed Simpluris to act as Class Administrator. The Court is advised that counsel for the parties have worked with Simpluris to structure a settlement that would minimize the costs and expenses of settlement in order to maximize the payments to current and former customers. The amount to be paid to each current or former customer will be the same amount. The amount to be paid to each Class Member shall be determined by using a fraction. The numerator shall be the amount available for payment to Class Members (the Settlement Amount less attorney fees and expenses) and the denominator shall be the total number of Class Members who are Current Customers, plus the number of Allowed Claims filed by Eligible Former Customers and Excluded Current Customers. **After the Claim Filing deadline (August 31, 2023), the parties are directed to file a Joint Motion informing the Court of the number of Allowed Claims and the approximate dollar amount to be paid to each Class Member. The Motion shall request the transfer of a sufficient portion of the Settlement Amount to the Class Administrator to fund the Claim Fund to pay the pro rata share of the settlement to the Allowed Claim holders.**

Rule 23 Preliminary Fairness Determination

Having certified the Settlement Class, the Court must next make a preliminary

determination as to whether the proposed settlement is "fair, reasonable, and adequate" pursuant to Rule 23(e), Mont. R. Civ. P. Federal courts analyzing Fed R. Civ. P 23, which is similar to Montana's Rule 23. Relevant factors to this determination include:

> ...the strength of the plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Hanlon v. Chrysler Corp., 150 F.3d 1011, 102, (9th Cir. 1998) (citing *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

Rule 23(e) Requirements

Under Rule 23(e), Mont. R. Civ P. "the claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Further, Rule 23(e) provides five procedures that apply to the proposed settlement of a class action case.

The first procedural requirement under Rule 23(e) requires that the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Further, class members in this case have not received notice of the class action to date. This Court previously certified this case as a class action under Rule 23(b)(3). Since class members have not received notice of class certification, the mandatory notice procedures required by Rule 23(c)(2)(B) must be followed. Rule 23(c)(2)(B) requires that "[f]or any class certified under Rule 23(b)(3) the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort."

In addition to the requirements above, Rule 23(c)(2)(B) also requires that the notice itself must clearly and concisely state the following in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

"Notice is satisfactory if it 'generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.'" *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 962 (9th Cir. 2009) (quoting *Churchill Vill., LLC v. Gen. Elec.*,361 F.3d 566, 575 (9th Cir. 2004)). "[T]he mechanics of the notice process are left to the discretion of the court subject only to the broad 'reasonableness' standards imposed by due process." *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 120 (8th Cir. 1975).

The Court finds that the proposed notices and distribution of those notices meets the requirements of Mont. R. Civ. P. 23(c)(2)(B) and 23(e)(1). The notice and distribution methods in the Settlement Agreement indicate that those class members who can be identified by address will receive individual postcard notices. The Settlement also requires additional broad public notice both in Yellowstone County and regionally. Specifically, notice shall be delivered by the following means:

Notice By the City. The City shall provide Notice as follows:

- **City Council Meeting Announcement**. The City of Billings will make an announcement regarding the proposed settlement and the date of the Fairness Hearing at three public and regularly noticed City Council meetings or work sessions. The announcement will direct class members to copies of the Settlement Notice that will be available at the Council meetings.
- **Copies of Notice at City Council Meetings**. The City shall place at least twenty-five (25) copies of the Settlement Notice next to the Meeting Agenda at three (3) consecutive public meetings of the Billings City Council. These Settlement Notices shall be available and designated for members of the public.
- **Public Posting**. The City shall post a copy of the Summary Notice in prominent places within the control of the City of Billings, including City Hall, the Billings Public Library, Municipal Court, the Airport, the City Planning Department, and the office of the Public Works Department. The City will also request that Yellowstone County post the Summary Notice in the Yellowstone County Courthouse, the County Treasurer's Office, and the Clerk and Recorder's Office.
- **Facebook.** The City shall post the Summary Notice on its Facebook page with a hyperlink to the website containing the Settlement Notice and other information regarding the litigation.
- **Direct Mailing to Current City Customers**. The City shall mail the Summary Notice to all of its current water, wastewater, and solid waste disposal customers, with the exception of the Excluded parties. The City shall not be required to mail the notices in the months of July and August. The City may include the Summary Notice with monthly invoices or may separately mail the Summary Notice. The Summary Notice

will be mailed to all current customers within ninety (90) days of the date that the Court provides preliminary approval of the settlement and the Settlement Agreement. The Summary Notices may be mailed to customers on a rolling basis consistent with the Public Works Department's billing practices.

- **Mail or E-mail Notice.** The City shall mail or e-mail a copy of the Settlement Notice to the following local media outlets: (i) the Billings Gazette; (ii) the Yellowstone County News; (iii) the Laurel Outlook; (iv) KTVQ; (v) KULR; (vi) Community 7; (vii) KSVI; (viii) the Montana Free Press; (ix) the Daily Montanan; (x) The Bismarck Tribune; (xi) the Missoulian; (xii) the Great Falls Tribune; (xiii) The Independent Record; (xiv) the Bozeman Daily Chronicle; (xv) the Casper Star-Tribune; (xvi) the Montana Standard; (xvi) and (xvii) the Billings Times. After the City completes the foregoing mailings, it shall file a Report with the Court verifying where the Notice was mailed and the date or dates of mailing.

Class Administrator Notice. The Class Administrator shall provide Notice as follows:

- **Postcard Notice**. The Class Administrator shall mail Postcard Notices to all Class Members. The Postcard Notice shall contain the URL for the Class Administrator's website with additional information regarding the Settlement. The Postcard Notices shall contain a tear-off claim form to be used by Eligible Former Customers and Excluded Current Customers. Current Customers who have been identified by the Class Administrator as Class Members will not have to file claims. The Claim Form is attached as Exhibit "D".
- **E-mail Notices**. The Class Administrator shall e-mail copies of the Summary Notice and the Settlement Notice to any current or former water, wastewater, and/or solid

waste disposal customers for whom the City Public Works Utility Department has e-mail addresses. The City has e-mail addresses for approximately 8,700 current customers and for approximately 4,000 former customers. The City shall provide the e-mail addresses to the Class Administrator. The Class Administrator shall use the e-mail addresses exclusively for the purposes of this Settlement and for no other purpose.

- **Settlement Notice Website**. The Class Administrator will provide notice to the Class Members via its website. The website shall include a copy of the Summary Notice and the Settlement Notice. In addition, the website will also include pertinent details about the proposed settlement, the lawsuit, the date of the Fairness Hearing, contact information for Class Counsel, the Claim Form, and the Opt-Out Form, **Exhibit "H".**
- **Published Notice.** The Class Administrator shall publish an advertisement in the following publications once a week for three consecutive weeks: (a) the Billings Gazette; (b) the Yellowstone County News; (c) the Billings Times; (d) the Missoulian; and (e) the Great Falls Tribune. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.
- **Big Sky Business Journal**. The Class Administrator shall publish an advertisement in the Big Sky Business Journal for two consecutive editions. The advertisement will contain the Summary Class Notice along with the URL to the website for additional information.

Following the filing of this Order, the City and the Class Administrator shall distribute notice of the proposed settlement as provided in the Settlement Agreement. The Court finds that the individual notice to identifiable class members, coupled with broad public notices and distribution to local news outlets satisfies the requirements of Rule 23(c)(2)(B). Mont. R. Civ. P.

relating to providing notice as broadly and cost-effectively as possible to Class Members. Further, the notices proposed by the parties contain the information specified in Rule 23(c)(2)(B)(i)-(vii). Mont. R. Civ. P. As stipulated in the Settlement Agreement, the City shall not be required to distribute any notice to customers during the months of July and August.

Having thoroughly reviewed the jointly drafted Notice, the Court finds that the method and content of the Notice to be satisfactory. Accordingly, the Court approves the parties' proposed notification plan.

Since the Settlement Agreement would be binding upon all class members (except those that timely opt out), the Court cannot provide final approval until after a hearing upon finding that the Settlement Agreement is fair, reasonable, and adequate. At this preliminary stage, the Court finds that the fairness standard has been met.

A proposed settlement is entitled to a presumption of fairness where: (1) the settlement negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected. *Pallister v. Blue Cross & Blue Shield of Montana, Inc.*, 2012 MT 198, ¶ 26, 366 Mont. 175, 184, 285 P.3d 562, 568 (quoting *In re CertainTeed Corp. Roofing Shingle Products Liability Litigation*, 269 F.R.D. 468, 484 (E. D. Pa. 2010).

As described above, the record before the Court demonstrates that the Settlement Agreement was achieved due to a compromise of the parties' remaining disputed claims, along with extraordinary efforts of the Mediator. The Settlement Agreement was reached by the parties after extensive litigation spanning over 4.5 years. Further, the Settlement Amount ($3.6 million) and many of the material terms of the Settlement Agreement were reached upon recommendation by the Mediator and approval by the parties. These factors demonstrate the presence of an arm's

length settlement. The record of litigation over 4.5 years and the manner in which the Settlement Agreement was achieved demonstrates that the proposed Settlement Agreement is fair, adequate and reasonable.

Factor two also supports a presumption that the Settlement Agreement is fair. The parties have engaged in exhaustive discovery. The parties have exchanged and reviewed "voluminous documents," served multiple sets of discovery requests, and completed numerous depositions. It is evident that both parties, through discovery and independent investigation, were able to learn significant information about the facts and law applicable to this case. Accordingly, it appears the parties have entered into the Settlement Agreement with a strong working knowledge of the strengths and weaknesses of their claims and defenses.

The record in this case reflects that the parties have been engaged in extensive litigation for nearly five years. The amount of discovery conducted by the parties and the extensive record of adversarial litigation demonstrates that the proposed settlement was the conscious choice of the parties and is not the product of any collusion. The length of time this case has been litigated and the amount of evidence and other documentation exchanged between the parties has been extensive. The Court finds there was sufficient discovery conducted prior to achieving settlement.

Factor three also supports a presumption of fairness. "In considering the adequacy of the terms of a settlement, the trial court is entitled to, and should, rely upon the judgment of experienced counsel for the parties." *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal. 2013) (citing *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004). The Court has previously found that Class Counsel meets the requirements to serve as Class Counsel under Rule 23(g), Mont. R. Civ. P. The Court has recognized Class Counsel's diligence in pursuing the present litigation. Doc. No. 230, p. 27. Class Counsel believes

the Settlement Agreement is fair, reasonable, adequate, and in the best interest of the Settlement Classes. Furthermore, the presumption of reasonableness is warranted in this case based on Class Counsel's expertise in complex litigation, familiarity with the relevant facts and law, and experience with other class and collective action settlements. Class Counsel has adequately represented the Water Class, the Wastewater Class, and the Solid Waste Disposal Class.

Likewise, the City's counsel have significant experience and have, in *McDaniel,* successfully resolved several claims in the City's favor by summary judgment. Both parties have been represented by competent counsel with experience in similar litigation. Given the foregoing, and according the appropriate weight to the judgment of experienced counsel, this factor weighs in favor of the proposed Settlement Agreement being fair, reasonable, and adequate.

Factor four is appropriately reserved for the fairness hearing after class members are notified of the proposed settlement. The Court will need to review those objections under Rule 23(e)(5)., Mont. R. Civ. P. However, the terms in the Settlement Agreement treat all class members essentially the same with respect to the pro rata settlement amount each individual class member will receive. The primary difference among class members is that certain class members[1] will need to submit their claims for reimbursement because these parties are not accurately identifiable as class members in the City's Public Works Department records.

To succeed on the merits, Plaintiffs would have to prove that Defendant actually engaged in the practices and policies alleged and that those practices and policies violated the law. Were the case to proceed, there is a strong likelihood of more protracted and contentious litigation and appeals. Without a settlement, this case could potentially continue for years. There are still a number of motions for summary judgment pending before the Court. While those

[1] The terms "Eligible Former Customers" and "Excluded Current Customers", are described in the Settlement Agreement.

motions would likely narrow this case as the motions did in *McDaniel*, it is unlikely that they would resolve all issues. It is unlikely that this case would proceed to trial before 2024. Regardless of the result of the trial, it is probable that there would be an appeal.

The Court is mindful of the cost of litigation. Those costs are particularly relevant in this case since the Plaintiffs, as taxpayers, are funding the defense costs for the City. Similarly, if the Plaintiffs prevail at trial, any judgment would ultimately be paid by the City with tax revenue derived from the Plaintiffs.

The cost of further litigation must also be viewed in the factual context of this case. The City voluntarily stopped charging franchise fees effective June 30, 2018 – nearly five years ago. Subsequently, in *McDaniel* the Court issued an injunction that prohibits the City from imposing "franchise fees" in the future. Given this factual and legal background, it is unlikely that the City will impose "franchise fees" in the future in connection with its water, wastewater, and solid waste disposal services. Given that future "franchise fees" are unlikely, the cost of continued litigation, where the Plaintiffs are effectively funding both sides of the litigation, favors approval of the settlement.

The City has agreed to pay $3.6 million to settle this lawsuit. Plaintiffs acknowledge serious hurdles and expenses to getting a favorable judgment on the merits. Considering these risks, Class Counsel believes, and the Court preliminarily agrees that the recovery of $3,600,000 for the Classes is an excellent result. Accordingly, the amount of the settlement weighs in favor of the settlement being fair, reasonable, and adequate, as it assures class members compensation that may otherwise not be available.

As previously discussed in this Order, after conducting this discovery, the parties engaged in two mediations with Mediator McDonald. The mediations were unsuccessful. The

Court is advised that Mr. McDonald made an independent recommendation as to how he believed this case should settle. Plaintiffs and the City ultimately agreed to settle on the terms recommended by the Mediator. It is significant that the settlement was achieved, not through negotiation, but through a recommendation of an independent third party mediator who developed extensive knowledge of the case. The manner in which the settlement was proposed and achieved weighs strongly in favor of the proposed settlement being fair, reasonable, and adequate.

For the reasons stated above, the Court preliminarily finds the Settlement Agreement to be fair, reasonable and adequate.

For all of the foregoing reasons the Court issues the following Order:

ORDER

IT IS HEREBY ORDERED:

1. The Joint Motion for Preliminary Approval of Settlement Agreement is **GRANTED.**

2. The Settlement Agreement Ct. Doc, 284, attached to Ct. Doc. 282 as Exhibit 1 is preliminarily approved as fair, reasonable, and adequate pursuant to Rule 23(e), Mont. R. Civ. P. The relief being provided to the Water Class, the Wastewater Class, and the Solid Waste Disposal Class is fair, reasonable, and adequate. The Members of the Water Class, the Wastewater Class, and the Solid Waste Disposal Class have been treated equitably to each other through the Settlement Agreement.

3. The Court approves the form and substance of the proposed notices attached to the Settlement Agreement (which are also attached to the Joint Motion for Approval of Settlement Notice and Other Settlement Documents) and the form and method for notifying Settlement Class Members of the Settlement Agreement. Their terms and conditions satisfy the requirements of

Rule 23(c)(2)(B) and 23(e), Mont. R. Civ. P.

4. The notice procedure submitted by the parties constitutes the best notice practicable under the circumstances. As provided in the Settlement Agreement, the Class Administrator shall provide notice to Settlement Class Members and respond to class member inquiries.

5. As required by Rule 23(e)(2), Mont. R. Civ. P. a Final Approval/Fairness Hearing shall be held on **Thursday November 16, 2023, at 9:00 a.m.** in Room 414, Yellowstone County Courthouse at 217 N. 27th Street, Billings, Montana to consider:

a. Whether the preliminary Settlement Agreement is fair, reasonable, and adequate;

b. Plaintiff's request for the award of attorneys' fees and costs;

c. Objections to settlement; and

d. Dismissal of this action after the Settlement Amount has been paid and any Cy Pres funds distributed.

6. At the Final Approval Hearing, the parties shall also be prepared to update the Court on any new developments since the filing of the Joint Motion for Preliminary Approval of Settlement Agreement, including any untimely submitted opt-outs, objections, and claims, or any other issues as the Court deems appropriate.

7. The date, time and place of the Final Approval Hearing shall be included in the Notice to be mailed/distributed to all class members.

8. No later than twenty-eight (28) days before the Final Approval Hearing, the parties shall file a Motion for Final Approval of Class Action Settlement. The Motion shall include and address any objections received as of the filing date. In addition to the class certification and settlement fairness factors, the motion shall address the number of putative Settlement Class Members who have opted out and the corresponding number of claims.

9. On or before August 1, 2023, Class Counsel shall file an application for attorneys' fees and costs. Class Counsel shall provide documentation detailing the number of hours incurred by Class Counsel in litigating this action, supported by detailed time records, as well as hourly compensation to which those counsel are reasonably entitled. Class Counsel should address the appropriateness of any upward or downward in the lodestar calculation, or a departure from the benchmark in a percentage-of-the-fund approach to awarding attorney's fees. Class Counsel should be prepared to address any questions the Court may have regarding the application for fees at the Final Approval Hearing.

10. The City of Billings, the Billings City Council, the Billings Mayor, the City Administration, the City Staff, the City Attorney, and Defense Counsel's communications and discussions regarding the settlement and the related Settlement Agreement shall be permitted, after the Class Notice has been mailed out.

Dated March 31, 2023.

Mike Salvagni

Hon. Mike Salvagni
Presiding Judge

c: Matthew G. Monforton
Doug James
Bryce Burke
Jonathan McDonald

Houser v. City of Billings, Cause No. DV-18-0778
Montana Thirteenth Judicial District Court, Yellowstone County

If you paid monthly water, wastewater, or solid waste disposal charges to the City of Billings between February 2, 2015, and June 30, 2018, you could get a payment from a class action settlement.

A court authorized this Notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights may be affected by a class action settlement.

Several water, wastewater, and solid waste disposal customers of the City of Billings ("City") filed a lawsuit against the City challenging the legality of franchise fees added by the City on all monthly charges for water, wastewater, and solid waste disposal services and seek a refund of those franchise fees on behalf of the customers who paid them. The Parties have reached a preliminary settlement of the case.

Your rights and each option you may follow, and related deadlines, are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS	
CLASS MEMBERS DEFINED	Class Members are those customers who paid franchise fees to the City of Billings in connection with their water, wastewater, and/or solid waste accounts between February 2, 2015 and June 30, 2018, with the exception of certain commercial entities who paid franchise fees pursuant to written contracts.
CURRENT CUSTOMER CLASS MEMBERS - DO NOTHING AND YOU WILL AUTOMATICALLY RECEIVE REBATES	If the Court grants final approval of the Settlement, Rebates will be deducted from future utility bills for Class Members who are current utility customers, with the exception of certain excluded customers who paid franchise fees pursuant to written contracts. If you have been notified that you are a **Current Customer Class Member** and you want to participate in the Settlement by receiving these payments, then you do not need to take any further action. You will be bound by the terms of the Settlement and releases described in this Notice.
EXCLUDED CURRENT CUSTOMERS CLASS MEMBERS – YOU MUST FILE A CLAIM FORM TO RECEIVE REBATES **Deadline: August 31, 2023**	If you are a current water, wastewater, and/or solid waste disposal customer and you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period of February 2, 2015 and June 30, 2018, and you received a postcard from the City of Billings Class Administrator identifying you as an **Excluded Current Customer Class Member**, then you must file a claim in order to receive a portion of the Settlement Fund.
ELIGIBLE FORMER CUSTOMERS CLASS MEMBERS – YOU MUST FILE A CLAIM FORM TO RECEIVE REBATES	If you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period of February 2, 2015 and June 30, 2018, and you received a postcard from the City of Billings Class Administrator identifying you as a **Eligible Former Customer Class Member**, then you must file a claim in order to receive a portion of the Settlement Fund.

Deadline: August 31, 2023	
ASK TO BEEXCLUDED **Deadline: August 31, 2023**	You can exclude yourself from the Settlement if you do not wish to participate in the Settlement. This is the only option that allows you to pursue your own lawsuit against the City about the legal claims in this case. If you exclude yourself, you will not receive any rebate. If you want to exclude yourself, you must complete and return the Opt-Out Form.
OBJECT TO THE SETTLEMENT **Deadline: August 31, 2023**	If you think the Settlement or Class Counsel's request for Attorney Fees is not fair, you can submit a written objection ("Notice of Objection") to the Class Administrator, and it will be considered by the Court. If the Settlement is approved, you will receive payment and will be bound by the terms of the Settlement and releases described in this Notice.

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BASIC INFORMATION

1. Why did I get this notice?

The Court has given preliminary approval to a settlement of the lawsuit, *Houser v. City of Billings*, Cause No. DV-18-0778, which is pending in the Montana Thirteenth Judicial District Court for Yellowstone County. The Settlement is on behalf of customers who paid franchise fees to the City of Billings for water, wastewater service, and solid waste disposal service during the period from February 2, 2015, to June 30, 2018 (the "Claim Period").

The City's records show that you are a current customer of the Public Utilities Department or may have been a customer during the Claim Period and thus you may be a member of one of the Classes ("Class Member"). This notice explains the lawsuit, the settlement, your legal rights, the benefits available for you, and how you can obtain them.

2. What is this lawsuit about?

Plaintiff Terry Houser and three other City residents, Terry Odegard, Thomas Zurbuchen, and Roger Webb, sued the City of Billings on behalf of themselves and other customers who paid franchise fees to the City of Billings for water, wastewater service, and solid waste disposal service during the Settlement Period. They have asserted various claims against the City, including the claim that charging the franchise fees violated the customers' due process rights. The City denies the allegations. To avoid the costs of litigation, however, and in light of the risks and uncertainties of continued litigation, the Parties have agreed to settle this lawsuit.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of other people who have similar claims. The people they represent are a "Class" or "Class Members." The Class Representatives and all the Class Members are called the Plaintiffs. The City is called the Defendant. One court resolves the issues for everyone in the Classes—except for those people who choose to exclude themselves from the Classes.

The Court has appointed Simpluris as the City of Billings Class Administrator. If you have questions, you may contact the Class Administrator at PO Box 25199, Santa Ana, CA 92799 or by calling (833) 513-0862. Please do not contact the Court.

4. Why is there a Settlement?

The Court has not decided whether or not the City violated the due process rights of their customers. There has not been a trial. Instead, both sides agreed to a settlement of the lawsuit ("Settlement") following a mediation and with the assistance of an independent class action attorney appointed by the Court. By agreeing to settle this lawsuit, the parties are able to avoid the cost and further delay of continued litigation and a trial, and the Class Members will receive reasonable compensation. Plaintiffs and Class Counsel believe the Settlement is in the best interests of the Class and is fair, reasonable, and adequate.

5. Who are the Parties in this lawsuit?

The Plaintiffs are customers who paid for water, wastewater service, and solid waste disposal service from the City and also paid franchise fees during the Claim Period. The City is the Defendant in this lawsuit.

6. Am I part of one of the Classes?

The Court has defined three separate Classes of City utility customers who have paid franchise fees: the Water Class, the Wastewater Class, and the Solid Waste Disposal Class. You may be a member of one, two, or all three of these Classes if you were a customer and paid franchise fees between February 2, 2015 and June 30, 2018.

7. Are any City customers not included in the Classes?

The Court has excluded from the Classes certain large commercial customers who have negotiated written contracts with the City for the provision of water, wastewater, or solid waste disposal services. If a City customer first initiated water, wastewater, or solid waste disposal services after June 30, 2018, they are not Class Members and they will not receive a settlement.

8. Do I have a lawyer representing me?

The Court decided that lawyer Matthew Monforton of Bozeman, Montana, is qualified to represent you and all Class Members. The lawyer representing a class in a class action is called "Class Counsel." He is experienced in handling similar cases. His contact information is:

Matthew Monforton
Monforton Law Offices, P.C.
40 Spanish Peak Drive, Suite 101
Bozeman, Montana 59718
Telephone No. (406) 570-2949
Facsimile: (406) 551-6919
Email: ClassCounselMonforton@mail.com

If you have questions regarding this Settlement, you should contact Simpluris, the Class Administrator, at (833) 513-0862. If the Class Administrator is not able to answer your question, you may contact the Class Counsel at ClassCounselMonforton@mail.com or (406) 570-2949. You may also view documents relating to the Settlement (including, but not limited to, the Settlement Agreement and key documents filed in connection with the motion for preliminary approval of the Settlement, the order granting preliminary approval of the Settlement, and other documents) by visiting the following website: **www.CityofBillingsFranchiseFeesSettlement.com**.

9. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you will have to pay that lawyer. For example, you can ask him or her to appear in Court for you if you want someone other than Class Counsel to speak for you.

THE TERMS OF THE SETTLEMENT

10. What is the settlement amount and how will the money be apportioned?

Under the proposed Settlement, which the Court has preliminarily approved, the City will pay $3,600,000.00 (the "Settlement Amount") to fully and finally resolve all claims in the lawsuit. Subject to final approval from the Court, the following amounts will be paid out of the Settlement Fund:

Current Class Members: If you received a postcard from the Class Administrator identifying you as a Current Customer Class Member, you do not have to do anything to participate in the settlement.

Excluded Current Customer Class Members: If you received a postcard from the Class Administrator identifying you as an Excluded Current Customer Class Member and you were a water, wastewater, and/or solid waste disposal customer between February 2, 2015 and June 30, 2018, then you must file a Claim in order to receive a settlement payment.

Eligible Former Customer Class Members: If you received a postcard from the Class Administrator identifying you as an Eligible Former Customer Class Member and you were a water, wastewater, and/or solid waste disposal customer between February 2, 2015 and June 30, 2018 and you are no longer a customer, then you must file a Claim in order to receive a settlement payment.

Attorney's Fees and Costs: Class Counsel have spent nearly 5 years prosecuting this lawsuit on behalf of the Classes but has not yet received any payment. During this time, Class Counsel has, among other tasks: (i) reviewed tens of thousands of documents relating to Plaintiffs' claims and allegations; (ii) taken and defended nearly a dozen depositions of City employees and the Class representatives; (iii) prepared multiple briefs and attended multiple hearings before the District Court and the Montana Supreme Court, (iv) obtained a ruling from Montana Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in multiple, lengthy mediation sessions. In consideration for these efforts, Class Counsel will ask the Court for 25% of the Settlement Fund as an award of attorneys' fees for the services provided to the Plaintiffs in the lawsuit. The payment of the Attorneys' Fees from out of the Settlement Fund will constitute full and complete compensation for all legal fees of the attorneys representing Plaintiffs in the Action. Class Counsel will also ask the Court for litigation expenses totaling no more than $25,000.00.

Settlement Administration Costs: The Settlement Administration Costs refer to the fees and expenses reasonably incurred by the Class Administrator to, among other things, distribute notices to Class Members, process Requests to Opt-Out and Notices of Objection, and facilitate payments under the Settlement.

The Rebate Fund: Most of the Settlement Amount will be rebated to current customers. This amount is known as the Rebate Fund. The rebates will reduce the monthly invoices of Class Members who are current customers by the Rebate Amount, for one month. After the Effective Date, the City shall rebate the full amount of the Rebate Fund to those Class Members identified by the Class Administrator who are current water, wastewater, and solid waste disposal customers, excluding: (a) Excluded Parties; and (b) Excluded Current Customers.

The "**Excluded Parties**" are larger commercial companies or governmental units that obtained services from the City pursuant to a written contract.

"**Eligible Former Customers**" means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City during the Settlement Class Period.

The Claim Fund: A portion of the Settlement Amount will be available for Excluded Current Customers and Eligible Former Customers who file a claim for payment from the Settlement.

NOTE: Excluded Current Customers and Eligible Former Customers must file a claim to receive payment from the Settlement.

Residual Funds: Any portion of the Settlement Fund that is not paid to customers or otherwise disbursed in accordance with the Settlement Agreement and the Court's Orders, is considered Residual Funds. As required by state law, fifty percent (50%) of any Residual Funds shall be paid to the Access to Justice Organization approved by the Court. The remaining fifty percent (50%) of the Residual Funds shall be paid to the City's Public Works Department and shall be split as equally as possible among the following Public Works Department accounts: (a) the Water Fund; (b) the Wastewater Fund; and (c) the Solid Waste Disposal Fund.

11. How much will my Individual Settlement Payment be?

The dollar amount of individual settlements will be dependent upon how many claims are filed. The settlement funds will be divided on a pro rata basis among all Allowed Claims that are filed and all current customers who are Class Members.

How to Get a Rebate and the Claims I am Releasing

12. How do I get a payment?

Current Customers who have been identified as Class Members. If you received a postcard from the Class Administrator identifying you as a Class Member, you do not need to do anything – you will automatically receive your Individual Settlement.

Excluded Current Customers who have not been identified as Class Members. If you are a current water, wastewater, and/or solid waste disposal customer and you have not been identified by the Class Administrator as a Class Member, then you are an "Excluded Current Customer" and you must file a Claim Form to participate in the settlement. In order to be eligible to receive a settlement payment you must have been a water, wastewater, or solid waste disposal customer between February 2, 2015 and June 30, 2018.

Eligible Former Customers. If you were a water, wastewater, and/or solid waste disposal customer sometime during the Claim Period (February 2, 2015 and June 30, 2018) and you are not a current customer, you are an "Eligible Former Customers", and you must file a claim form in order to receive a settlement payment.

Eligible Former Customers and Excluded Current Customers must complete the Claim Form and return it to the Class Administrator with a postmark not later than August 31, 2023. Current Customers who have been identified as Class Members do not have to file a Claim Form.

If you do not know if you are a Class Member, please contact the Class Administrator at PO Box 25199, Santa Ana, CA 92799 or by calling (833) 513-0862. Please do not contact the Court.

If final approval of the Settlement is granted, current monthly customers will receive rebates that will be shown on their monthly statements, while Eligible Former Customers and Excluded Current Customers must file a claim for reimbursement.

13. What am I giving up to get a Rebate?

Unless you exclude yourself, you remain in one or more of the Classes, which means you will not be able to sue, continue to sue, or be part of any other lawsuit against the City for the same legal issues in this lawsuit. Specifically, you will be giving up or "releasing" the claims described in the First Amended Complaint of the lawsuit, a copy of which can be found at: **www.CityofBillingsFranchiseFeesSettlement.com**.

If the Court approves the Settlement, each Class Member who does not exclude himself or herself from this lawsuit will be bound by the Settlement, and release the City of Billings (including all of the City's past, present and/or future, direct and/or indirect, subsidiaries, parents, divisions, joint venturers, predecessors, successors, insurers, assigns, consultants, and subcontractors, the City's employee benefit plans and the trustees, fiduciaries, and administrators of those plans, and any of the City's current or former employees, officers, directors, servants, agents, investors, representatives, attorneys, executors, administrators, and assigns, and all persons acting under, by, through, or in concert with any of them, and each of them) from all claims and causes of action raised or that reasonably could have been raised in the Lawsuit (the "Released Claims").

The definition of Released Claims shall not be limited in any way by the possibility that Plaintiff or Settlement Class Members may discover new facts or legal theories or legal arguments not alleged in the Lawsuit but which might serve as an alternative basis for pursuing the same claims, causes of action, or legal theories of relief falling within the definition of Released Claims. The Settlement shall result in a final judgment, permanently barring and enjoining all participating Class Members from prosecuting any of the Released Claims against the City and the Released Parties.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I exclude myself from the Settlement?

If you want to retain the right to pursue claims related to this case against the City and/or you do NOT want a payment from this Settlement, then you must exclude yourself by submitting a written request for exclusion. Excluding yourself is also referred to as "opting-out." If you exclude yourself, you will not receive money from this settlement.

To ask to be excluded, you must send an "Opt-Out Form Request" in the form of a letter sent by mail, stating that you want to be excluded from *Houser v. City of Billings* and *McDaniel v. City of Billings*. Be sure to include your name and address, and sign the letter. You must mail your Opt-Out Form postmarked by **August 31, 2023** to City of Billings Class Administrator, PO Box 25199, Santa Ana, CA 92799 or by calling (833) 513-0862. Please do not contact the Court.

You may ask to be excluded from the Classes by completing and mailing the "Opt-Out Form" that is available for download on the settlement website at www.CityofBillingsFranchiseFeesSettlement.com.

OBJECTING TO THE SETTLEMENT

15. How do I tell the Court that I don't like the Settlement?

If you think anything about the Settlement is unfair, you can object to the Settlement and tell the Court that you do not agree with the Settlement or some part of it. The Court will consider your views when deciding whether to grant final approval of the Settlement.

To object to the Settlement, you must mail a written Notice of Objection to the Class Administrator at the above address by **August 31, 2023**. The administrator will mail all objections to the parties' counsel and to the Court. The Court will consider all objections in deciding whether to approve the Settlement. All written objections should:

(a) include the case name and number (*Houser v. City of Billings*, Cause No. DV-18-0778, Montana Thirteenth Judicial District Court, Yellowstone County);

(b) If you are represented by counsel, the name and address of your attorney;

(c) explain the reason for your objection;

(d) include your current mailing address;

(e) state your name and the address(es) associated with any franchise fees paid and the dates of residence at each address;

(f) state the services for which you contracted from the City of Billings, between February 2, 2015 and June 30, 2018, for water, wastewater service, or solid waste disposal service;

(g) identify any class action cases in which you have previously objected to a class settlement;

(h) state whether or not you intend to appear at the final approval hearing; and

(i) be signed by you.

Unless approved by the Court after a hearing, you cannot receive a payment in exchange for (1) forgoing or withdrawing an objection or (2) forgoing, dismissing, or abandoning an appeal from a judgment approving the proposal.

The Court will rule on the objections it receives, and if they are overruled, then you will be a Settlement Class Member and receive payment.

16. What is the difference between objecting and being excluded?

Objecting is telling the Court that you do not like something about the Settlement. You may only object if you remain a Settlement Class Member. Excluding yourself is telling the Court that you do not want to be a Settlement Class Member. If you exclude yourself, you cannot object.

THE COURT'S FINAL APPROVAL HEARING

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing before Judge Mike Salvagni in Room 414 at the Yellowstone County Court House located at 217 N. 27th Street, Billings, MT 59107 on November 17, 2023, at 9:00 a.m. At this hearing, the Court will determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, and the Class Administrator's fees and Costs. The Court may reschedule the Final Approval Hearing without further notice to Settlement Class Members.

18. Do I have to come to the hearing?

You are not required to attend the Final Approval Hearing, but you or your lawyer may attend if you choose. If you are a participating Settlement Class Member and you wish to speak or have your lawyer speak for you, you may do so. Please visit the settlement website at www.CityofBillingsFranchiseFeesSettlement.com to see whether the Final Approval Hearing will be held on November 17, 2023 or has been rescheduled to a new hearing date.

GETTING MORE INFORMATION

19. Are more details available?

Yes. Do not contact the Court for legal questions or advice—**the Court and its staff are not allowed to answer your questions.** You may obtain additional information about this lawsuit in several ways:

a) Review carefully all of the information in this Notice;

b) Review copies of the court documents that are posted at: www.CityofBillingsFranchiseFeesSettlement.com, including Orders Certifying the Classes, the Complaints that the Plaintiffs submitted, the Defendant's Answers to the Complaints, Class Counsel's Motion for Attorneys' Fees, the Claim Form, as well as the Opt-Out Form.

c) Review copies of other court documents filed in this case which are public records and are available for inspection during regular business hours at: Office of the Clerk, Montana Thirteenth Judicial District, 217 N. 27th Street, P.O. Box 35030, Billings MT 59107. You will need to provide the name of the lawsuit and docket number, which is as follows:

Houser v. City of Billings, Cause No. DV 18-0778

d) If you still have questions, you may contact Simpluris, the Class Administrator at (833) 513-0862, or Class Counsel by calling (406) 570-2949.

CLASS ACTION CLAIM FORM

Terry Houser, et al. v. City of Billings, Cause No. DV 18-0778, Montana Thirteenth Judicial District Court, Yellowstone County

You must fill out this form if you are an **Eligible Former Customer** or **an Excluded Current Customer**.

Eligible Former Customer means any individual or entity that is a member of one of the Classes who no longer has a water, wastewater, or solid waste disposal account with the City and who had an account with the City between February 2, 2015 and June 30, 2018.

Excluded Current Customer means any individual or entity that is a current City Public Works Department customer who paid franchise fees during the Claim Period (February 2, 2015, through June 30, 2018) and who did not receive a postcard notice from the Class Administrator informing them that they are Members of the Class.

Eligible Class Members. Class Members are those individuals and entities who had water, wastewater, and/or solid waste disposal accounts with the City of Billings, at any time, during the Claim Period (February 2, 2015 through June 30, 2018).

Current Customers who are Class Members. The Class Administrator mailed postcards to Current Customers who are Class Members identifying them as Class Members. If you received a postcard from the Class Administrator that identified you as a Class Member, then you do not have to file a Claim. You will automatically receive a settlement payment as a rebate on a monthly bill from the Public Works Department of the City.

Claim Form. This claim form is only for those: (a) who have not been identified as Eligible Class Members but who believe that they actually are Members of the Class; and (b) for Eligible Former Customers who are Class Members. If you previously mailed the Class Administrator a Postcard Claim Form, you do not need to file another claim.

DO NOT FILL OUT THIS FORM IF YOU ARE A CURRENT CUSTOMER AND YOU RECEIVED A POSTCARD FROM THE CLAIMS ADMINISTRATOR TELLING YOU THAT YOU ARE A MEMBER OF THE CLASS. IF YOU ARE AN ELIGIBLE FORMER CUSTOMER OR AN EXCLUDED CURRENT CUSTOMER, YOU MUST FILE A CLAIM IN ORDER TO RECEIVE ANY PAYMENT PURSUANT TO THE SETTLEMENT.

> You must mail this Claim Form with a postmark **NO LATER THAN AUGUST 31, 2023** if you want to receive money from the Former Claim Fund. If your Claim Form is not mailed by August 31, 2023, you still will be bound by the settlement, and you will not receive any money. **DO NOT DELAY.**

The information given in this Claim Form is private, and will be held in strictest confidence, except as needed by the Parties and the Settlement Administrator. If you have any questions about this lawsuit, call or write to us at

> Class Administrator
> PO Box 25199
> Santa Ana, CA 92799
> Telephone: (888) 654-1271

Name(s):_____ Telephone:_____

(Please print all names on the account, including former names)

Current Address:_____
Street City State Postal Code

I WISH TO MAKE A CLAIM, and I certify that I am entitled to a claim from the Claim Fund

---

☐ **I am an Eligible Former Customer**

☐ I had an account with the City of Billings and paid for the services marked below between the dates of February 2, 2015 and June 30, 2018 at

_____ *
Service Address

☐ Water Service

☐ Wastewater Service

☐ Solid Waste Disposal Service

AND

☐ I no longer have an account with the City of Billings.

☐ **I am an Excluded Current Customer**

☐ I am a current customer of the City of Billings;

☐ I did not receive a postcard telling me that I am a member of the Class;
AND

☐ I had an account with the City of Billings between the dates of February 2, 2015 and June 30, 2018 at

_____ *
Service Address for February 2, 2015 through June 30, 2018

For the following services:

☐ Water Service

☐ Wastewater Service

☐ Solid Waste Disposal Service

By signing this form below, I am confirming that the above information is correct and that:

1. I am the person identified above.
2. I have not received money or compensation for any of the claims involved in this case.
3. I will abide by, and be limited to, the payment amount approved by the Court.
4. I will notify the Settlement Administrator if my address changes.

I declare under penalty of perjury that the information given above is true and correct.

* If you paid for services between February 2, 2015 and June 30, 2018 at multiple addresses, please separately list each address and the date you resided at the address on the Class Action Claim Form Supplement.

Date Signed	Signature of Account Holder
Date Signed	Signature of Account Holder

* If you paid for services between February 2, 2015 and June 30, 2018 at multiple addresses, please separately list each address and the date you resided at the address on the Class Action Claim Form Supplement.

CLASS ACTION CLAIM FORM SUPPLEMENT

Please fill out this Supplement ONLY if you had accounts with the City of Billings at multiple service addresses between February 2, 2015 and June 30, 2018.

I had multiple accounts with the City of Billings and paid for City services at the following service addresses:

_____	_____
Service Address	Dates at Service Address
_____	_____
Service Address	Dates at Service Address
_____	_____
Service Address	Dates at Service Address
_____	_____
Service Address	Dates at Service Address

I declare under penalty of perjury that the supplemental information given above is true and correct.

_____	_____
Date Signed	Signature of Account Holder
_____	_____
Date Signed	Signature of Account Holder

4876-5873-0580, v. 1

RELEASE OF CLAIMS

Releasors: Terry Odegard, Thomas Zurbuchen, Roger Webb, and Susan McDaniel, on behalf of themselves individually and as Class Representatives ("**Class Representatives**") for the Water Class, Wastewater Class, and Solid Waste Disposal Class (collectively, the "**Plaintiff Classes**") in the matter of *Terry Houser et al. v. City of Billings*, Cause no DV 18-0778 before the Thirteenth Judicial District Court in Yellowstone County, Montana.

Releasee: The City of Billings, and its successors, City Council Members, political subdivisions, subsidiaries, affiliates, representatives, employees, adjusters, successors, assigns, agents, insurers and attorneys, (the "**City**").

Litigation: That Certified Class action known as Houser v. The City of Billings, Cause No. DV 18-0778, before Thirteenth Judicial District Court in and for Yellowstone County, Montana.

Dispute: Dispute over franchise fees charged by the City upon water, wastewater, and solid waste disposal services from April 1992 through June 30, 2018 on services provided by the City Public Works Department.

Settlement Amount: $3.6 million.

RECITALS

A. Between April 1992 and June 2018, the City collected franchise fees from its water, wastewater service, and solid waste disposal service customers.

B. Terry Houser, Terry Odegard, Roger Webb, Mae Woo, Kathryn Zurbuchen, and Thomas Zurbuchen filed a class action complaint against the City on May 16, 2018. The Complaint was based upon the City's imposition of franchise fees that were included in the cost of water, wastewater, and solid waste disposal services beginning in April of 1992. Plaintiffs' complaint was captioned *Houser, et al. v. The City of Billings*, Case No. DV 18-0778, before Montana's Thirteenth Judicial District Court in and for Yellowstone County.

C. On September 21, 2018, the *Houser* Plaintiffs filed an Amended Complaint adding Clayton Fiscus as a Plaintiff. (Doc. No. 35).

D. On April 10, 2019, the District Court certified the *Houser* case as a class action. (Doc. No. 74). The Court excluded from the *Houser* classes, any person or entity who paid a franchise fee under a written contract with the City of Billings or who paid the franchise fee under a Subdivision Improvement Agreement.

E. During the course of the *Houser* litigation, Plaintiffs Terry Houser, Katheryn Zurbuchen and Clayton Fiscus died. Plaintiff Mae Woo withdrew from the case and was dismissed as a Class Representative.

F. On October 9, 2019, Gary McDaniel and Susan McDaniel filed a class action complaint against the City on behalf of themselves and those who paid franchise fees pursuant to a Subdivision Improvements Agreement. The case was captioned *McDaniel v. the City of Billings*, Case No. DV 19-1444, before the Montana Thirteenth Judicial District Court, in and for Yellowstone County. Subsequently, Gary McDaniel was dismissed from the McDaniel case.

G. In *McDaniel v. City of Billings*, Cause No. DV 19-1444 ("*McDaniel*"), the Court entered Partial Summary Judgment on January 19, 2022 on Count I, in favor of McDaniel and against the City, declaring the franchise fees to be unlawful sales taxes and permanently enjoined the City from imposing them.

H. The parties have stipulated to the dismissal of the remaining claims in *McDaniel*.

I. Pursuant to a Joint Motion of the Class Representatives in the Houser case, the class definitions in the Houser case were amended to include the putative members of the McDaniel case. Pursuant to Court Order, the Amended Class Definitions in the Houser case are as follows:

i. The Water Class. All persons or entities who paid monthly metered water charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.

ii. The Wastewater Class. All persons or entities who paid monthly metered wastewater charges and were charged franchise fees under Section 16-2 and 16-11 of the City of Billings Rules and Regulations Governing Water and Wastewater Service since February 2, 2015 through June 30, 2018.

iii. The Solid Waste Disposal Class. All persons or entities who paid solid waste disposal charges and who were charged franchise fees under Section 21-226 of the City of Billings Solid Waste Collection Code and City Resolutions 15-10460, 16-10560, and 17-10635 since February 2, 2015, through June 30, 2018.

Excluded Parties. The Certified Classes, as amended above, shall not include any person or entity who paid franchise fees pursuant to a written contract (other than a Subdivision Improvements Agreement), including: County Water District of Billings Heights; Lockwood Area/Yellowstone County Water and Sewer District; Phillips 66 Refinery; Meadowlark Capital, LLC; City of Power, Wyoming; City of Laurel, Montana; Mackenzie Disposal, Inc.; Republic Services of Montana; Stillwater County, Montana; Two Tough Guy Services, LLC; and Yellowstone County Solid Waste Disposal District. (the "Excluded Parties").

J. The Class Representatives, including Susan McDaniel, entered into a Settlement Agreement with the City of Billings. On ____, January, 2023, the Court issued an Order Preliminarily approving the Settlement.

K. On _____, 2023, the Court held a fairness hearing in connection with the Settlement, after which the Court entered a Final Approval Order and Judgment approving the Settlement.

L. The Class Representatives execute this RELEASE OF ALL CLAIMS on behalf of themselves and on behalf of all Members of the Certified Classes who did not opt-out of the Settlement, pursuant to the terms of the Settlement Agreement and the Court's approval Order.

THE RELEASE AGREEMENT

1. RELEASE

Upon the Effective Date of the Settlement entered by and between the Class Representatives and the City, and in consideration for payment of the Settlement Amount by the City, the Class Representatives and all members of the Plaintiff Classes who do not timely elect to opt out of the Settlement, for themselves and for their assigns, agents, representatives, attorneys, heirs, executors, administrators, and beneficiaries, release and discharge the City and its successors, City Council Members, political subdivisions, subsidiaries, affiliates, representatives, employees, adjusters, successors, assigns, agents, insurers and attorneys from any and all actions, claims, causes of action, demands, or expenses for any and all damages, injuries, or losses of any kind whatsoever, whether asserted or unasserted, known or unknown, foreseen or unforeseen, arising out of or relating to: (a) the franchise fees imposed by the City prior to June 30, 2018; and (b) claims that were asserted or could have been asserted in *Houser et al. v. City of Billings*, Cause No. DV-18-0778 or *Susan McDaniel v. City of Billings*, Cause No. DV-19-1444, each before the Montana Thirteenth Judicial District Court, Yellowstone County. Releasors release all claims and potential claims against the Releasee, whether arising at law or in equity for damages, or attorney fees, or expenses, in connection with, arising from, or related to the franchise fees imposed and/or charged by the Releasee on water, wastewater, and solid waste disposal services.

Releasors warrant and represent that Releasors are not reserving any claims against the Releasee. Releasors are are knowingly and intentionally releasing any and all claims that Releasors may have against the Releasee arising from or related to the franchise fees imposed by the City from April 1992 through June 30, 2018. Releasors further represent that it is Releasors' express intention that this Release be construed to the broadest extent possibly to fully, finally, and forever settle and compromise the Releasors' claims including potential claims, and the claims of the Plaintiff Classes, against the Releasee.

The Releasors acknowledge that Releasors, or a member of the Releasor class may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is Releasors' intention to finally and forever settle and release the claims described above against the Releasee. This release remains applicable notwithstanding the discovery or existence of any additional or different facts, as to which the

Releasors, the Class Representatives and the Plaintiff Classes expressly assume the risk, and Releasors, the Class Representatives and the Plaintiff Classes freely and voluntarily give the release as set forth above.

2. FUTURE DAMAGES

Inasmuch as all of the damages, injuries and/or losses arising in any way out of or resulting from the dispute described above may not be fully known, and hence may be more numerous or more serious than it is now understood or expected, the Releasors, the Class Representatives and the Plaintiff Classes expressly agree, as a further consideration of this entire agreement, that this Release applies to any and all damages, injuries, and/or losses of any kind arising out of or resulting in any manner from the City charging franchise fees on water, wastewater, and solid waste disposal services from April 1992 to June 2018, even though now unanticipated, unexpected and unknown, as well as any and all damages, injuries and/or losses which have already developed and which are now known or anticipated.

3. NO ADMISSION OF LIABILITY

Releasors, the Class Representatives and the Plaintiff Classes understand that the Settlement Amount and additional terms contained in the Settlement Agreement (including this Release) are accepted as the sole consideration for full satisfaction and accord to compromise disputed claims, and that neither the payment of the Settlement Amount by the Releasee or agreement to the terms nor the negotiations for the settlement shall be considered as any admission of liability or damages by the Releasee.

4. APPORTIONMENT OF PAYMENT TO CLASS MEMBERS

The Settlement Amount shall be distributed to the Plaintiff Classes in accordance with the distribution provisions contained in the Settlement Agreement, or as otherwise directed by the Court.

5. NO ADDITIONAL CLAIMS

Releasors represent that no additional claims are contemplated against the Releasee or any other party that is or may be potentially liable for the damages, injuries, or losses for which this Release is given. This includes any appellate claim.

6. TAXATION

Neither Releasee nor Releasee's attorney make any representations about the taxability of any portion of the consideration made in exchange for this Release and Settlement. Class Members shall bear sole responsibility for consulting their tax and accounting professionals and shall bear sole responsibility for any and all tax consequences and tax liability arising from the Settlement Payment, this Release and the Settlement Agreement.

7. SEVERABILITY

The parties expressly agree that should any term, provision or clause of this Release be found unenforceable, then the remaining terms shall be fully severable so that all remaining terms, provisions, and clauses shall remain in full force and effect.

8. FULL AGREEMENT, AMENDMENT, & CHOICE OF LAW

This Release shall not be modified, amended, or changed in any respect except by prior, written agreement by all parties or as expressly provided by the Court with respect to those matters subject to the Court's authority under Mont. R. Civ. P. 23. Further, the law of the State of Montana shall apply to any issue raised regarding the interpretation, enforcement, or breadth of this Agreement.

9. DISCLAIMER AND ACKNOWLEDGMENT

Releasors and the Class Representatives have carefully read the foregoing, discussed its legal effect with class counsel, understand the contents thereof, and sign the same of their own free will and accord after consultation with class counsel and financial representatives.

10. BINDING EFFECT

This Release shall be binding upon the Releasors, the Class Representatives, members of the Plaintiff Classes, and any of their family members, heirs, successors, personal representatives, and assigns.

Dated this _____ day of _____, 2023

By: **The Class Representatives**

_____
Terry Odegard

_____
Thomas Zurbuchen

_____
Roger Webb

_____
Susan McDaniel

Approved as to form and content:

_____

Matthew Monforton
32 Kelly Court
Bozeman, Montana 59718

Attorney for the Class Representatives and McDaniel

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