****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."

REVISED 7/24/2023 TO CORRECT THE ORDER OF REGULAR AGENDA ITEMS

CITY COUNCIL
REGULAR BUSINESS MEETING

AGENDA

COUNCIL CHAMBERS | JULY 24, 2023 | 5:30 P.M.

CALL TO ORDER: Mayor Cole

PLEDGE OF ALLEGIANCE: Mayor Cole

INVOCATION: Councilmember Gulick

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

MINUTES:

- May 22, 2023
- June 12, 2023
- June 26, 2023 - Pending
- July 10, 2023 - Pending

COURTESIES:

PROCLAMATIONS:

COUNCIL REPORTS:

ADMINISTRATOR REPORTS - CHRIS KUKULSKI

PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 5b ONLY. Speaker sign-in required. (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

1. <u>CONSENT AGENDA</u> -- Separations:

   A. **Contract** with Fabricon, LLC, for Skypoint Sail Replacement.

   B. **Contract** with Alta Planning + Design, Inc., in association with Sanderson Stewart, for 2023 Pedestrian and Bicycle Master Plan update.

   C. **Compensation Agreement** with Daniel Properties, LLC, extension of a public water main from the intersection of Rimrock Road and 62nd Street West, along the frontage of Tule Ridge Subdivision.

   D. **Services Agreement** with Airside Solutions, Inc. for Airfield Lighting System Equipment Upgrade.

   E. **Services Agreement** to NEOGOV for onboarding employees.

   F. **Amendment No. 6,** with HDR Engineering for W.O. 14-11: WRF Nutrient Upgrade, Expansion and Improvements Project.

   G. **Change Order No. 1,** Hail Repairs at Billings Community Center, Finishing Touch Exteriors, Inc.

H. **Quitclaim Deed** from the City to Todd and Michelle Vralsted.

I. **Preliminary Major Plat** of Howard Billings Industrial Subdivision. *Quasi-Judicial

J. **Bills for the Week of:**

1. June 19, 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. **PUBLIC HEARING AND RESOLUTION** approving and adopting FY2023 budget amendments. Staff recommends approval.

- Presented by: Andy Zoeller, Finance Director

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve and adopt FY2023 budget amendments, as recommended by staff.

3. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending BMCC, Article 21-200, Solid Waste Collection and Disposal. 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 First Reading Ordinance amending BMCC, Article 21-200, Solid Waste Collection and Disposal, as recommended by staff.

4. **CITY-OWNED PROPERTY NORTHEAST OF BILLINGS-LOGAN INTERNATIONAL AIRPORT:**

a. **JOINT PUBLIC HEARING FOR ANNEXATION 23-05 AND ZONE CHANGE 1032:**

i. **RESOLUTION APPROVING ANNEXATION 23-05:** City-owned lands located west and north of the Billings-Logan International Airport. Staff recommends approval. *Quasi-Judicial

- Presented by: Hunter Kelly, Planner

Recommended Motion: Having conducted a public hearing, considered written and spoken public testimony, I move to approve the Resolution approving Annexation 23-05, as recommended by staff.

ii. **FIRST READING ORDINANCE FOR ZONE CHANGE 1032:** to allow the annexation of city-owned land adjacent to the Billings Logan International Airport and bring all current airport property into the City Limits. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

- 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 1032 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 I to include recently annexed property in Annexation 23-05: a parcel located west and north of the Billings Logan International Airport. 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 I, as recommended by staff.

5. MACK AND SPAENY PROPERTIES:

a. JOINT PUBLIC HEARING FOR ANNEXATION 23-06 AND ZONE CHANGE 1030:

i. **RESOLUTION APPROVING ANNEXATION 23-06:** a parcel located north of King Avenue West, west of Saint Mary Way and east of South 44th 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 23-06, as recommended by staff.

ii. **FIRST READING ORDINANCE FOR ZONE CHANGE 1030:** three parcels of land located on King Ave. W. between the St. Vincent's Healthcare Subdivision and the Lenhardt Square Subdivision. Zoning Commission recommends approval and adoption of the 10 criteria. *Quasi-Judicial

- 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 1030 and adopt the findings of the 10 criteria, as recommended by the Zoning Commission.

b. **ANNEXATION AGREEMENT** with Molly and Darrell Spaeny and Michelle Amen. Staff recommends approval.

- Presented by: Debi Meling, Public Works Director

Recommended Motion: I move to approve an Annexation Agreement with Molly and Darrell Spaeny and Michelle Amen, as recommended by staff.

c. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward V to include recently annexed property in Annexation 23-06: a parcel located north of King Avenue West, west of Saint Mary Way and east of South 44th 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 V, as recommended by staff.

6. **PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE 1031:** Text Amendments - Phase II - Action Options for Zoning Commission and City Council; Open Space in NX districts and PND; Rebuild of Residential in Commercial and Mixed Use; Step-backs for structures in NX2/NX3. 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 1031, amending text to the Open Space in NX districts and PND; Rebuild of Residential in Commercial and Mixed Use; Step-backs for structures in NX2/NX3, as recommended by the Zoning Commission.

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:	07/24/2023
Title:	Skypoint Sail Replacement - Contract with Fabricon, LLC
Presented by:	Cole McQuillan, Project Manager
Department:	Parks/Rec/Public Lands
Presentation:	No
Legal Review:	No
Project Number:	N/A

RECOMMENDATION

Staff recommends Billings City Council approves contract with Fabricon, LLC for $144,993.83 to replace sails on Skypoint. Skypoint is located downtown and spans the intersection of Broadway & 2nd Ave N.

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

Skypoint's original fabric sails have surpassed their expected lifespan and need replaced. The original manufacture and installer was Fabricon, LLC for the custom made structure.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

The FY24 Downtown Business Alliance budget included $260,000 for Skypoint improvements. The remainder, after the sail replacement will be used for additional improvements.

Attachments

Insurance
Skypoint contract
Sole Source

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 05/22/2023

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

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

PRODUCER	CONTACT NAME: Peter Kesel	
Peter Kesel 3215 Brooks B Missoula, MT 59801	PHONE (A/C, No, Ext): 406-541-9119	FAX (A/C, No):
	E-MAIL ADDRESS:	

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A :	Foster Crum Specialty Insurance CO	
INSURER B :	Truck insurance exchange	
INSURER C :	Starstone National Insurance Company	
INSURER D :		
INSURER E :		
INSURER F :		

INSURED
Fabricon
721 S 5th W
Missoula, MT 59801

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

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	y	y	BAK-39617-6	11/20/2022	11/20/2024	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG $	$ 1,000,000 $ 100,000 $ 5,000 $ 1,000,000 $ 2,000,000 $ 2,000,000 $
B	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [ ] SCHEDULED AUTOS [ ] HIRED AUTOS ONLY [ ] NON-OWNED AUTOS ONLY	y	y	605496323	11/03/2023	11/03/2024	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) $	$ 1,000,000 $ $ $ $
C	[ ] UMBRELLA LIAB [ ] OCCUR [X] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $			89222R230ALI			EACH OCCURRENCE AGGREGATE $	$ 2,000,000 $ 2,000,000 $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y / N [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N / A					[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City Of Billings
210 N 27th ST
Billings, Mt 59101

CANCELLATION

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

AUTHORIZED REPRESENTATIVE
Peter Kesel

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SERVICES AGREEMENT

THIS AGREEMENT is made and entered into _____, by and between the **CITY OF BILLINGS, MONTANA,** a municipal corporation organized and existing under the laws of the State of Montana, P.O. Box 1178, Billings, Montana 59103, hereinafter referred to as "**CITY**," and **Fabricon, LLC**, of 721 South 5th West Missoula, MT, 59801 hereinafter referred to as "**CONTRACTOR**."

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

1. **PURPOSE: CITY** agrees to hire **CONTRACTOR** as an independent contractor to fabricate and install five (5) membrane panels on Skypoint, more accurately described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

2. **EFFECTIVE DATE:** This **AGREEMENT** is effective upon the date of its execution and will terminate on October 31, 2023. The parties may extend this **AGREEMENT**, by mutual concurrence, for 90 days, in writing prior to its termination.

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

4. **INCORPORATION BY REFERENCE:** All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

5. **PAYMENT: CITY** agrees to pay **CONTRACTOR** One Hundred and Forty-Four Thousand, Nine Hundred and Ninety-Three Dollars and Eighty-Three Cents, ($144,993.83) for the work described in the Scope of Work in Exhibit "A". Any alteration or deviation from the described work that involves extra costs will be executed only upon written request by the **CITY** to **CONTRACTOR** and will become an extra charge over and above the contract amount. The parties must agree upon any extra charges in writing.

   Except as otherwise specified herein, the **CONTRACTOR** shall invoice the **CITY** monthly (or on such other basis as the Parties may mutually determine) for all

services rendered pursuant to this **AGREEMENT**. Such invoices shall specify the services provided to the **CITY** during the preceding month and identify the applicable fees, and shall be accompanied by reasonable documentation or other reasonable explanations supporting such charges.

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONTRACTOR** for said invoice within thirty (30) days after receipt.

If partial payment is requested by **CONTRACTOR**, it shall be made upon invoice and said estimate being proportioned to the work completed by the **CONTRACTOR**. The final payment shall be made only after acceptance of final invoice by the **CITY**, and determination has been made by the **CITY** that the scope of work has been satisfactorily completed.

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

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

7. **INDEMNITY:**

The **CONTRACTOR** SHALL:

A. Indemnify and hold **CITY**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONTRACTOR** or its agents or employees.

B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONTRACTOR**, the **CONTRACTOR** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONTRACTOR'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONTRACTOR'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

D. Indemnify and hold **CONTRACTOR**, its officers, agents and employees harmless from any and all losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.

E. Not indemnify and hold the **CONTRACTOR** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONTRACTOR** occurring during the course of or as a result of the performance of the **AGREEMENT**.

F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONTRACTOR** and the **CITY**, the **CITY** shall indemnify and hold the **CONTRACTOR** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

8. <u>INSURANCE</u>:

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

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

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

- Automobile liability -- $1,500,000 per accident.

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

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

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

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

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

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

11. **PREVAILING WAGE REQUIREMENTS:**

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or non-construction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, each contractor shall ensure that at least 50% of the contractor's workers performing labor on a construction project are bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409,

MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.
In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.
Section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.
Furthermore, Section 18-2-417, requires allowance for a 3% annual increase in wages for a multiyear contract. (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract. (2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract. (3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.
Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.
The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, The booklet is attached and may also be found at http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates. Also see Exhibit B.

12. **CONTRACTORS' GROSS RECEIPTS TAX: CONTRACTOR** understands that all contractors or subcontractors working on a publicly funded construction

project, including any work requiring the installation, addition, placement, replacement, or removal of any equipment, parts, structures, or materials of any kind whatsoever, are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Five Thousand Dollars ($5,000) or more.

13. <u>NONDISCRIMINATION</u>:

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

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

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

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

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

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

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

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

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

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

15. **LIAISON: CITY's** designated liaison for this **AGREEMENT** is **Cole McQuillan** and **CONTRACTOR's** designated liaison for this **AGREEMENT** is **Mark Welander**.

16. **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.

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

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

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

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

CITY OF BILLINGS, MONTANA

Fabricon, LLC
BUSINESS NAME (CONTRACTOR)

Mark Welander
SIGNATURE

WILLIAM A. COLE,
MAYOR

Mark Welander
PRINT NAME

APPROVED AS TO FORM:

Owner
PRINT TITLE

By_____
CITY ATTORNEY'S OFFICE

ATTEST:

DENISE BOHLMAN, CITY CLERK

EXHIBIT A
Scope of Work

A. **General**
Patterning, fabrication, and installation of five (5) membrane panels to the existing frame structure.

Site trips:
Trip 1 – Removal of existing membranes and inspection of existing hardware.
Trip 2 – Installation and tensioning of the 5 membrane covers.

Work performed will follow Attachment A as proposed.

B. **Existing Conditions**
Skypoint is located at the intersection of Broadway and 2nd Ave. N.

C. **Installation**
CONTRACTOR will provide installation relating to the fabric tensile membranes. This work to be done above existing installed structural steel (steel and foundation construction including embed by others).

See Attachment A for details.

D. **Schedule**
CITY and **CONTRACTOR** agree that scheduling of this work shall be mutually agreed upon. Engineering (if required), materials procurement, material fabrication, delivery and installation will be scheduled according to standard industry durations. Upon receipt of a contract or purchase order, a more definitive schedule will be drafted detailing standard milestones. This schedule will be sent within ten (10) working days of receipt of a fully executed contract or purchase order.

E. **Warranty**
Upon completion of installation, the **CONTRACTOR** shall provide documentation attesting the equipment has been installed meeting all specifications from the manufacturer and warrantee their work for a period of 1 year against any claims of defects and workmanship arising from the installation.

F. **Exclusions**
Items listed in Attachment A.

G. **Safety and Damages**

CONTRACTOR is responsible to properly secure the site during construction to prevent any un-authorized access. Also **CONTRACTOR** shall take care to avoid damage to **CITY** property.

EXHIBIT B
Prevailing Wage Rates

MONTANA
PREVAILING WAGE RATES FOR HEAVY CONSTRUCTION SERVICES 2023

Effective: January 14, 2023

Greg Gianforte, Governor
State of Montana

Laurie Esau, Commissioner
Department of Labor & Industry

To obtain copies of prevailing wage rate schedules, or for information relating to public works projects and payment of prevailing wage rates, visit ERD at erd.dli.mt.gov/labor-standards or contact:

Employment Standards Division
Montana Department of Labor and Industry
P. O. Box 8011
Helena, MT 59601
Phone 406-444-6543

The department welcomes questions, comments, and suggestions from the public. In addition, we'll do our best to provide information in an accessible format, upon request, in compliance with the Americans with Disabilities Act.

MONTANA PREVAILING WAGE REQUIREMENTS

The Commissioner of the Department of Labor and Industry, in accordance with Sections 18-2-401 and 18-2-402 of the Montana Code Annotated (MCA), has determined the standard prevailing rate of wages for the occupations listed in this publication.

The wages specified herein control the prevailing rate of wages for the purposes of Section 18-2-401, et seq., MCA. It is required each employer pay (as a minimum) the rate of wages, including fringe benefits, travel allowance, zone pay and per diem applicable to the district in which the work is being performed as provided in the attached wage determinations.

All Montana Prevailing Wage Rates are available on the internet at erd.dli.mt.gov/labor-standards or by contacting the department at (406) 444-6543.

In addition, this publication provides general information concerning compliance with Montana's Prevailing Wage Law and the payment of prevailing wages. For detailed compliance information relating to public works contracts and payment of prevailing wage rates, please consult the regulations on the internet at erd.dli.mt.gov/labor-standards or contact the department at (406) 444-6543.

LAURIE ESAU
Commissioner
Department of Labor and Industry
State of Montana

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A. Date of January 14, 2023

B. Definition of Heavy Construction

The Administrative Rules of Montana (ARM), 24.17.501(4) – (4)(a), states *"Heavy construction projects include, but are not limited to, those projects that are not properly classified as either 'building construction', or 'highway construction.'*

Heavy construction projects include, but are not limited to, antenna towers, bridges (major bridges designed for commercial navigation), breakwaters, caissons (other than building or highway), canals, channels, channel cut-offs, chemical complexes or facilities (other than buildings), cofferdams, coke ovens, dams, demolition (not incidental to construction), dikes, docks, drainage projects, dredging projects, electrification projects (outdoor), fish hatcheries, flood control projects, industrial incinerators (other than building), irrigation projects, jetties, kilns, land drainage (not incidental to other construction), land leveling (not incidental to other construction), land reclamation, levees, locks and waterways, oil refineries (other than buildings), pipe lines, ponds, pumping stations (prefabricated drop-in units – not buildings), railroad construction, reservoirs, revetments, sewage collection and disposal lines, sewers (sanitary, storm, etc.), shoreline maintenance, ski tows, storage tanks, swimming pools (outdoor), subways (other than buildings), tipples, tunnels, unsheltered piers and wharves, viaducts (other than highway), water mains, waterway construction, water supply lines (not incidental to building), water and sewage treatment plants (other than buildings) and wells."

C. Definition of Public Works Contract

Section 18-2-401(11)(a), MCA defines "public works contract" as *"…a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000…"*.

D. Prevailing Wage Schedule

This publication covers only Heavy Construction occupations and rates in the specific localities mentioned herein. These rates will remain in effect until superseded by a more current publication. Current prevailing wage rate schedules for Building Construction, Highway Construction and Nonconstruction Services occupations can be found on the internet at www.mtwagehourbopa.com or by contacting the department at (406) 444-6543.

E. Rates to Use for Projects

ARM, 24.17.127(1)(c), states *"The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised."*

F. Wage Rate Adjustments for Multiyear Contracts

Section 18-2-417, MCA states:

"(1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency."

G. Fringe Benefits

Section 18-2-412, MCA states:

"(1) To fulfill the obligation…a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U. S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U. S. department of labor."

Fringe benefits are paid for all hours worked (straight time and overtime hours). However, fringe benefits are not to be considered a part of the hourly rate of pay for calculating overtime, unless there is a collectively bargained agreement in effect that specifies otherwise.

H. Dispatch City

ARM, 24.17.103(11), defines dispatch city as *"…the courthouse in the city from the following list which is closest to the center of the job: Billings, Bozeman, Butte, Great Falls, Helena, Kalispell, Miles City, Missoula and Sidney."*

I. Zone Pay

Zone pay is not travel pay. ARM, 24.17.103(25), defines zone pay as *"…an amount added to the base pay; the combined sum then becomes the new base wage rate to be paid for all hours worked on the project. Zone pay must be determined by measuring the road miles one way over the shortest practical maintained route from the dispatch city to the center of the job."* See section H above for a list of dispatch cities.

J. Computing Travel Benefits

ARM, 24.17.103(23), states *" 'Travel pay,' also referred to as 'travel allowance,' is and must be paid for travel both to and from the job site, except those with special provisions listed under the classification. The rate is determined by measuring the road miles one direction over the shortest practical maintained route from the dispatch city or the employee's home, whichever is closer, to the center of the job."* See section H above for a list of dispatch cities.

K. Per Diem

ARM, 24.17.103(19), states *" 'Per diem' typically covers costs associated with board and lodging expenses. Per diem is paid when an employee is required to work at a location outside the daily commuting distance and is required to stay at that location overnight or longer."*

L. Apprentices

Wage rates for apprentices registered in approved federal or state apprenticeship programs are contained in those programs. Additionally, Section 18-2-416(2), MCA states, *"…The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract."* Apprentices not registered in approved federal or state apprenticeship programs will be paid the appropriate journey level prevailing wage rate when working on a public works contract.

M. Posting Notice of Prevailing Wages
Section 18-2-406, MCA, provides that contractors, subcontractors, and employers who are *"…performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees."*

N. Employment Preference
Sections 18-2-403 and 18-2-409, MCA require contractors to give preference to the employment of bona fide Montana residents in the performance of work on public works contracts.

O. Projects of a Mixed Nature
Section 18-2-408, MCA states:

"(1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.

(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification"

P. Occupations Definitions
You can find definitions for these occupations on the following Bureau of Labor Statistics website:
http://www.bls.gov/oes/current/oes_stru.htm

Q. Welder Rates
Welders receive the rate prescribed for the craft performing an operation to which welding is incidental.

R. Foreman Rates
Rates are no longer set for foremen. However, if a foreman performs journey level work, the foreman must be paid at least the journey level rate.

S. Proper Classification for Pipefitter and Laborer/Pipelayer Work on Water and Waste Water Treatment Plants The proper classification for the following work is Pipefitter, when it is performed inside a building structure or performed at a location which will later be inside of a building: Joining steel pipe larger than 12 inches in diameter with bolted flange connections that has been pre-fabricated off site and does not require any modification such as cutting, grinding, welding, or other fabrication in order to be installed. All other work previously classified as pipefitter remains in that classification. The proper classification for that work when it is at a location that will always be outside a building is Pipelayer, which is under the Laborer Group 3 classification.

WAGE RATES

BOILERMAKERS

Wage	Benefit
$34.12	$31.68

Duties Include:
Construct, assemble, maintain, and repair stationary steam boilers, boiler house auxiliaries, process vessels, pressure vessels and penstocks. Bulk storage tanks and bolted steel tanks.

Travel:
All Districts
0-120 mi. free zone
>120 mi. federal mileage rate/mi.

Special Provision:
Travel is paid only at the beginning and end of the job.

Per Diem:
All Districts
0-70 mi. free zone
>70-120 mi. $65.00/day
>120 mi. $80.00/day

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BRICK, BLOCK, AND STONE MASONS

Wage	Benefit
$32.32	$16.78

Travel:
0-70 mi. free zone
>70-90 mi. $60.00/day
>90 mi. $80.00/day

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CARPENTERS

Wage	Benefit
$33.50	$14.07

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $4.00/hr.
>60 mi. base pay + $6.00/hr.

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CEMENT MASONS AND CONCRETE FINISHERS

No Rate Established

Duties Include:
Smooth and finish surfaces of poured concrete, such as floors, walks, sidewalks, or curbs. Align forms for sidewalks, curbs, or gutters.

Zone Pay:
No zone pay established.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 1

Wage	Benefit
$29.11	$13.80

This group includes but is not limited to:
Air Compressor; Auto Fine Grader; Belt Finishing; Boring Machine (Small); Cement Silo; Crane, A-Frame Truck Crane; Crusher Conveyor; DW-10, 15, and 20 Tractor Roller; Farm Tractor; Forklift; Form Grader; Front-End Loader, under 1 cu. yd; Oiler, Herman Nelson Heater; Mucking Machine; Oiler, All Except Cranes/Shovels; Pumpman.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 2

Wage	Benefit
$29.70	$13.80

This group includes but is not limited to:
Air Doctor; Backhoe\Excavator\Shovel, up to and incl. 3 cu. yds; Bit Grinder; Bitunimous Paving Travel Plant; Boring Machine, Large; Broom, Self-Propelled; Concrete Travel Batcher; Concrete Float & Spreader; Concrete Bucket Dispatcher; Concrete Finish Machine; Concrete Conveyor; Distributor; Dozer, Rubber-Tired, Push, & Side Boom; Elevating Grader\Gradall; Field Equipment Serviceman; Front-End Loader, 1 cu. yd up to and incl. 5 cu. yds; Grade Setter; Heavy Duty Drills, All Types; Hoist\Tugger, All; Hydralift Forklifts & Similar; Industrial Locomotive; Motor Patrol (except finish); Mountain Skidder; Oiler, Cranes\Shovels; Pavement Breaker, EMSCO; Power Saw, Self-Propelled; Pugmill; Pumpcrete\Grout Machine; Punch Truck; Roller, other than Asphalt; Roller, Sheepsfoot (Self-Propelled); Roller, 25 tons and over; Ross Carrier; Rotomill, under 6 ft; Trenching Machine; Washing /Screening Plant

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 3

Wage	Benefit
$30.65	$13.80

This group includes but is not limited to:
Asphalt Paving Machine; Asphalt Screed; Backhoe\Excavator\Shovel, over 3 cu. yds; Cableway Highline; Concrete Batch Plant; Concrete Curing Machine; Concrete Pump; Cranes, Creter; Cranes, Electric Overhead; Cranes, 24 tons and under; Curb Machine\Slip Form Paver; Finish Dozer; Front-End Loader, over 5 cu. yds; Mechanic\Welder; Pioneer Dozer; Roller Asphalt (Breakdown & Finish); Rotomill, over 6 ft; Scraper, Single, Twin, or Pulling Belly-Dump; YO-YO Cat.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 4

Wage	Benefit
$31.65	$13.80

This group includes but is not limited to:
Asphalt\Hot Plant Operator; Cranes, 25 tons up to and incl. 44 tons; Crusher Operator; Finish Motor Patrol; Finish Scraper.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 5

Wage	Benefit
$31.75	$13.80

This group includes but is not limited to:
Cranes, 45 tons up to and incl. 74 tons.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 6

Wage	Benefit
$32.75	$13.80

This group includes but is not limited to:
Cranes, 75 tons up to and incl. 149 tons; Cranes, Whirley (All).

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION EQUIPMENT OPERATORS GROUP 7

Wage	Benefit
$33.75	$13.80

This group includes but is not limited to:
Cranes, 150 tons up to and incl. 250 tons; Cranes, over 250 tons—add $1.00 for every 100 tons over 250 tons; Crane, Tower (All); Crane Stiff-Leg or Derrick; Helicopter Hoist.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.50/hr.
>60 mi. base pay + $5.50/hr.

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CONSTRUCTION LABORERS GROUP 1/FLAG PERSON FOR TRAFFIC CONTROL

Wage	Benefit
$23.08	$11.82

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.05/hr.
>60 mi. base pay + $4.85/hr.

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CONSTRUCTION LABORERS GROUP 2

Wage	Benefit
$26.40	$11.82

This group includes but is not limited to:
General Labor; Asbestos Removal; Burning Bar; Bucket Man; Carpenter Tender; Caisson Worker; Cement Mason Tender; Cement Handler (dry); Chuck Tender; Choker Setter; Concrete Worker; Curb Machine-lay Down; Crusher and Batch Worker; Heater Tender; Fence Erector; Landscape Laborer; Landscaper; Lawn Sprinkler Installer; Pipe Wrapper; Pot Tender; Powderman Tender; Rail and Truck Loaders and Unloaders; Riprapper; Sign Erection; Guardrail and Jersey Rail; Spike Driver; Stake Jumper; Signalman; Tail Hoseman; Tool Checker and Houseman and Traffic Control Worker.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.05/hr.
>60 mi. base pay + $4.85/hr.

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CONSTRUCTION LABORERS GROUP 3

Wage	Benefit
$26.07	$12.44

This group includes but is not limited to:
Concrete Vibrator; Dumpman (Grademan); Equipment Handler; Geotextile and Liners; High-Pressure Nozzleman; Jackhammer (Pavement Breaker) Non-Riding Rollers; Pipelayer; Posthole Digger (Power); Power Driven Wheelbarrow; Rigger; Sandblaster; Sod Cutter-Power and Tamper.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.05/hr.
>60 mi. base pay + $4.85/hr.

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CONSTRUCTION LABORERS GROUP 4

Wage	Benefit
$26.76	$11.82

This group includes but is not limited to:
Hod Carrier***; Water Well Laborer; Blaster; Wagon Driller; Asphalt Raker; Cutting Torch; Grade Setter; High-Scaler; Power Saws (Faller & Concrete);
Powderman; Rock & Core Drill; Track or Truck Mounted Wagon Drill and Welder incl. Air Arc

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $3.05/hr.
>60 mi. base pay + $4.85/hr.

***Hod Carriers will receive the same amount of travel and/or subsistence pay as bricklayers when requested to travel.

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DIVER TENDERS

Wage	Benefit
$43.98	$17.84

The tender shall receive 2 hours at the straight time pay rate per shift for dressing and/or undressing a Diver when work is done under hyperbaric conditions.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $4.00/hr.
>60 mi. base pay + $6.00/hr.

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DIVERS

	Wage	Benefit
Stand-By	$44.98	$17.84
Diving	$89.96	$17.84

Depth Pay (Surface Diving)

0-20 ft.	free zone
>20-100 ft.	$2.00 per ft.
>100-150 ft.	$3.00 per ft.
>150-220 ft.	$4.00 per ft.
>220 ft.	$5.00 per ft.

Diving In Enclosures

0-25 ft.	free zone
>25-300 ft.	$1.00 per ft.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $4.00/hr.
>60 mi. base pay + $6.00/hr.

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ELECTRICIANS

Wage	Benefit
$36.69	$16.93

Travel:
No mileage due when traveling in employer's vehicle.

The following travel allowance is applicable when traveling in employee's vehicle:

0-18 mi. free zone
>18-60 mi. federal mileage rate/mi.
>60 mi. $75.00/day

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INSULATION WORKERS - MECHANICAL (HEAT AND FROST)

Wage	Benefit
$41.07	$19.87

Duties Include:
Insulate pipes, ductwork or other mechanical systems.

Travel:
All Districts
0-30 mi. free zone
>30-40 mi. $25.00/day
>40-50 mi. $35.00/day
>50-60 mi. $50.00/day
>60 mi. $60.00/day plus
- $0.56/mi. if transportation is not provided.
- $0.20/mi. if in company vehicle.

>60 mi. $105.00/day on jobs requiring an overnight stay plus
- $0.56/mi. if transportation is not provided.
- $0.20/mi. if in company vehicle.

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IRONWORKERS – REINFORCING IRON AND REBAR WORKERS

Wage	Benefit
$30.53	$27.91

Duties Include:
Cut, bend, tie, and place rebar.

Travel:
0-45 mi. free zone
>45-60 mi. $50.00/day
>60-100 mi. $75.00/day
>100 mi. $95.00/day

Special Provision:
When the employer provides transportation, travel will not be paid. However, when an employee is required to travel over 70 miles one way, the employee may elect to receive the travel pay in lieu of the transportation.

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IRONWORKERS – STRUCTURAL IRON AND STEEL WORKERS

Wage	Benefit
$30.53	$27.91

Duties Include:
Structural steel erection; assemble prefabricated metal buildings; energy producing windmill type towers; metal bleacher seating; handrail fabrication and ornamental steel.

Travel:
0-45 mi. free zone
>45-60 mi. $50.00/day
>60-100 mi. $75.00/day
>100 mi. $95.00/day

Special Provision:
When the employer provides transportation, travel will not be paid. However, when an employee is required to travel over 70 miles one way, the employee may elect to receive the travel pay in lieu of the transportation.

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LINE CONSTRUCTION – EQUIPMENT OPERATORS

Wage	Benefit
$37.26	$17.93

Duties Include:
All work on substations

Travel:
No Free Zone
$60.00/day

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LINE CONSTRUCTION – GROUNDMAN

Wage	Benefit
$29.09	$17.24

Duties Include:
All work on substations

Travel:
No Free Zone
$60.00/day

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LINE CONSTRUCTION – LINEMAN

Wage	Benefit
$48.65	$19.06

Duties Include:
All work on substations

Travel:
No Free Zone
$60.00/day

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MILLWRIGHTS

Wage	Benefit
$42.58	$14.57

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $4.00/hr.
>60 mi. base pay + $6.00/hr.

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PAINTERS

Wage	Benefit
$25.00	$0.00

Travel:
No travel or per diem established.

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PILE BUCKS

Wage	Benefit
$33.50	$14.07

Duties Include:
Set up crane; set up hammer; weld tips on piles; set leads; insure piles are driven straight with the use of level or plum bob. Give direction to crane operator as to speed, and direction of swing. Cut piles to grade.

Zone Pay:
0-30 mi. free zone
>30-60 mi. base pay + $4.00/hr.
>60 mi. base pay + $6.00/hr.

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PILOT CAR DRIVERS

No Rate Established

Zone Pay:
No zone pay established.

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PLUMBERS, PIPEFITTERS, AND STEAMFITTERS

Wage	Benefit
$38.56	$20.61

Duties Include:
Assemble, install, alter, and repair pipe-lines or pipe systems that carry water, steam, air, other liquids or gases. Testing of piping systems, commissioning and retro-commissioning. Workers in this occupation may also install heating and cooling equipment and mechanical control systems.

Travel:
0-70 free zone
>70 mi.

- On jobs when employees do not work consecutive days: $0.55/mi. if employer doesn't provide transportation. Not to exceed two trips.
- On jobs when employees work any number of consecutive days: $110.00/day.
-

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SPRINKLER FITTERS

Wage	Benefit
$35.66	$24.29

Duties Include:
Duties Include but not limited to any and all fire protection systems: Installation, dismantling, inspection, testing, maintenance, repairs, adjustments, and corrections of all fire protection and fire control systems, including both overhead and underground water mains, all piping, fire hydrants, standpipes, air lines, tanks, and pumps used in connection with sprinkler and alarm systems.

Travel
All Districts
The following travel allowance is applicable when traveling in employee's vehicle.

0-60 mi. free zone
>60-80 mi. $21.00/day
>80-100 mi. $31.00/day
>100 mi. $115.00/day + the IRS rate per mile and $8.92 for every 15 miles traveled for one trip out and one trip back

No travel allowance required when in employer's vehicle.

Per Diem
No per diem is applicable when traveling in employer's vehicle

The following per diem is applicable when traveling in employee's vehicle.

0-100 mi. free zone
>100 mi. $105.00/day + the IRS rate per mile and $8.92 for every 15 miles traveled for one trip out and one trip back.
>100 mi. $115.00/day

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TRUCK DRIVERS

	Wage	Benefit
Truck Driver	$31.28	$11.96

Truck drivers include but are not limited to:
Combination Truck and Concrete Mixer and Transit Mixer; Dry Batch Trucks; Distributor Driver; Dumpman; Dump Trucks and similar equipment; Dumpster; Flat Trucks; Lumber Carriers; Lowboys; Pickup; Powder Truck Driver; Power Boom; Serviceman; Service Truck/Fuel Truck/Tireperson; Truck Mechanic; Trucks with Power Equipment; Warehouseman, Partsman, Cardex and Warehouse Expeditor; Water Trucks.

Zone Pay:
All Districts
0-30 mi. free zone
>30-60 mi. base pay + $3.05/hr.
>60 mi. base pay + .$4.85/hr.

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Attachment A
Quote

Fabricon, LLC
Mail: 721 South 5th West Missoula, MT, 59801
Phone: 406.728.8300/406.544.1577
Email: fabricon@montana.com
Web site: www.fabricon.com

April 26, 2023

Proposal: 20230426_Skypoint

Project: Skypoint Membrane Panel Replacements

Attn: Cole McQuillan
Project Manager
390 North 23rd Street
Billings, MT 59101
mcquillanc@billingsmt.gov
406.657.8372

DESCRIPTION: Membrane Coverings for 5 Bays of the existing Circular Frame Structure

$144,993.83

*All prices assume use of existing attachment/tensioning hardware

Prices are valid for thirty (30) days from the above date and are based upon information provided to Fabricon. This proposal shall be referenced as a part of any contract/purchase order drafted for this project.

SCOPE OF WORK:

Patterning, fabrication, and installation of five (5) membrane panels to the existing frame structure.

Site trips:
Trip 1 – Removal of existing membranes and inspection of existing hardware.
Trip 2 – Installation and tensioning of the 5 membrane covers.

Note: our scope of work begins at the interface of the structural steel elements installed on the existing frame that supports the membranes supplied by Fabricon to the existing frame and structural components.

Furnished Materials

1. 5 fabric membranes: 1 large and 4 small, using Serge Ferrari TX-30, type-III
2. All packaging and freight allowance.
3. All equipment, booms and lifts required to complete removal and installation.
4. One-year workmanship warranty provided by Fabricon.
5. Fabric Manufacturer's prorated warranty (20 year).

We specifically exclude the following:

1. Engineering or design of membranes, footings, connections, piers, or other points to which membranes attach.
2. Performance or payment bonds, building permits or related fees.
3. Road closures, barricades, and costs related to street closures to perform work.
4. Tensioning hardware assumes current hardware is reusable. Upon inspection Fabricon will notify owners of any hardware in need of replacement and costs associated.
5. Applicable Taxes - other than the 1% gross receipt tax included in above price.
6. Any of the following systems, components, or their attachment to our work - gutters, metal flashing, mechanical systems, electrical, lighting and lightning protection systems.

7. Any site work or landscaping work.
8. Anything not mentioned above.

Installation

1. Fabricon will provide installation relating to the fabric tensile membranes. This work to be done above existing installed structural steel (steel and foundation construction including embed by others).
2. Installation supervision of all Fabricon supplied materials with three (3) qualified technicians and one supervisor during entire duration of installation. Mobilization of additional installation technicians may result in a change order to cover additional costs.
3. Fabricon will provide required labor and equipment to offload, stage, complete installation of Fabricon supplied materials. Labor and equipment requirements to be confirmed but assume 3 technicians and 1 supervisor for 3-4 days per trip, 2 booms, 1 elevated work platform, and 1 crane.
4. Installation schedule will be in general accordance with general contractor's C.P.M. schedule but will be negotiated upon signing of contract and will be dependent upon date of contract execution.
5. The installation requirement assumes clear, sequential and continuous access to the work during normal, daytime working hours and assumes all utilities, including trash receptacles, will be provided by the general contractor/owner.
6. Direct costs reimbursable to Fabricon installation supervisors for work stoppages and/or delays caused by to its work that are caused by the owner, general contractor or architect are as follows:
   A. Demobilization/remobilization is $2,200.00 per incident per supervisor.
   B. Rescheduling of mobilization within 5 days of scheduled installation is $750 per incident.
   C. On site downtime is $750 per day per representative.

Schedule

1. General Contractor/owner and Fabricon agree that scheduling of this work shall be mutually agreed upon. Engineering (if required), materials procurement, material fabrication, delivery and installation will be scheduled according to standard industry durations. Upon receipt of a contract or purchase order, a more definitive schedule will be drafted detailing standard milestones. This schedule will be sent within ten (10) working days of receipt of a fully executed contract or purchase order.
2. No work will commence until Fabricon receives a fully executed contract or purchase order.

Payment Terms

1. Our price assumes that Fabricon will receive prompt payments. We will provide reasonable documentation of material acquisition, work completed, material shipment information, and casualty insurance for stored materials. General Contractor/Owner shall arrange to pay as per these terms. Any delay in receipt of payment will result in an immediate work stoppage by Fabricon and the entire duration of delayed time will be added to our overall schedule as an approved time extension. Fabricon does not release any rights to claim additional cost related to these delays.
2. Fabricon will submit Payment Applications and invoices based upon the following schedule:

Thirty-three percent (33%) initial payment of $47,847.96 to commence first site visit, an additional $47,847.96 (33%) following completion of inspection and removal for material acquisition, and balance $49,297.90 (34%) upon completion of final installation.

Thank you for the opportunity to participate in your project.

For and on behalf of Fabricon LLC.
Mark Welander, MFC

Attachment B
Specifications

Serge Ferrari

Flexlight
Xtrem TX30



Highest Performing Membrane with 30+ Year Life Expectancy

White TX30-II-3000

White TX30-III-3000

White TX30-IV-3000

White TX30-V-3000

The colors and textures represented in this document are provided as a reference only.

Flexlight
Xtrem TX30

Applications:
Static and permanent structures: tensile roofs and structures, large free span and anti-clastic shape

- **Longevity:** Easy to maintain with a potential lifespan of over 30 years
- **Natural Light and Solar Protection:** Blocks UV while providing consistent color translucency
- **Dimensionally Stable:** Will not elongate over time thanks to its Precontraint® technology

	Flexlight Xtrem TX30-II	Flexlight Xtrem TX30-III	Flexlight Xtrem TX30-IV	Flexlight Xtrem TX30-V	
	Technical specifications				**Standards**
Surface coating	CROSSLINK PVDF				
HT polyester cables	1100 Dtex	1100/1670 Dtex	1100/2200 Dtex	1670/2200 Dtex	
Thickness	0.78 mm	0.78 mm	1.02 mm	1.14 mm	
Weight	31 oz/sqyd	31 oz/sqyd	39.8 oz/sqyd	44.2 oz/sqyd	ASTM D751
Width	70 in	70 in	70 in	70 in	
Adhesion	12 daN/5 cm	12 daN/5 cm	13 daN/5 cm	15 daN/5 cm	EN ISO 2411
Tensile strength (warp/weft)	490/490 lbs/in	630/630 lbs/in	900/800 lbs/in	1150/900 lbs/in	ASTM D751 Cut strip
Tear strength (warp/weft)	80/75 lbs	130/100 lbs	200/180 lbs	360/250 lbs	ASTM D751 Trapezoid
The technical data above are average values with a +/- 5% tolerance					
	Additional information				
Elongation 24 h - 10 daN/5 cm (warp/weft)	< 1.2% / <1.2%	< 1.2% / <1.2%	< 1% / <1%	< 1.2% / <1.2%	EN15977
Residual elongation (warp/weft)	< 0.5% / <0.5%	< 0.5% / <0.5%	< 0.4% / <0.4%	< 0.5% / <0.5%	EN 15977
Heat transfer coefficient (vertical/horizontal)	U=5.6/6.4 W / sqm/ °C				Calculated
Acoustic weakening index	13dBA	14dBA	15dBA	16dBA	ISO 140-3 & ISO 717-1
Visible light transmittance (Tv)	8%	7.5%	5.5%	5%	EN 410
Visible light reflection (Rv)	84%	84%	85%	85%	EN 410
Solar transmittance (Ts)	10%	10%	10%	10%	EN 410
Solar reflection (Rs)	75%	75%	75%	75%	EN 410
Solar factor (g)	14%	13%	11.5%	10.5%	EN 410
UV transmittance	0%	0%	0%	0%	EN 410
Solar reflectance index (SRI)	84.9%	84.9%	86.1%	87.5%	ASTM E1980-01 (Approach II)
	Flame retardancy				
	NFPA 701 Method 1 / CSFM T19 / B-s2,d0 - EN13501-1	NFPA 701 Method 1 / CSFM T19 / C-s2,d0 - EN13501-1	NFPA 701 Method 1 / CSFM T19 / C-s2,d0 - EN13501-1	NFPA 701 Method 1 / CSFM T19 / CAN/ULC-S109-14 / C-s2,d0 - EN13501-1	
	Certifications and warranties				

Precontraint® technology | **ISO 9001 ISO 14001** | **20 year warranty** | **CSR and LEED reports available upon request**

The ADDITIONAL INFORMATION values quoted above are given as an indication. Our products are subject to changes prompted by technology developments. We reserve the right to modify their characteristics at any time. The buyer of our products is responsible for checking the validity of the data.
WARRANTY: Please refer to the text of our warranty. The warranty is valid only after a written confirmation on a case -by-case basis of warranty application. The warranty will not apply to mobile structures. The buyer of our products is fully responsible for their application or their transformation concerning any possible third party. The buyer of our products is responsible for their implementation and installation in compliance with standards, codes of practice and safety regulations in force in destination countries.

Serge Ferrari
lightweight + durable

Serge Ferrari North America
954.942.3600
marketing.us@sergeferrari.com
sergeferrari.com/us

Serge Ferrari and Precontraint are registered trademarks of Serge Ferrari
US CT-00894 • December 2020/V2

Cover Photo: The Camp, Aix en Provence, France ©StudiovU

Justification for Sole Source Provider

Date	6/20/2023	Vendor	Fabricon, LLC
Requestor Name	Cole McQuillan	Contact Name	Mark Welander
Department	PRPL	Phone #	406-728-8300
Division	Parks	Email	mark@fabricon.com
Phone #	406-657-8367	Amount	$ 144,993.83

Scope of Work or Product:

Patterning, fabrication, and installation of five (5) custom membrane panels to the existing frame structure.

Furnished Materials
1. 5 each, 1 large and 4 small panels
2. Packaging and freight allowance.
3. All equipment, booms and lifts required to complete removal and installation.
4. One-year workmanship warranty provided by Fabricon.
5. Fabric Manufacturer's prorated warranty (10 years)

Reason for requesting sole source: (please check all that apply and supply necessary information)

☒ Item must match existing equipment because custom install, Fabricon, LLC was original installer and manufacture in 2002.

☒ Item is a repair part for existing equipment OR item is to be attached to existing equipment.

Name of existing equipment: Skypoint

☒ Technical characteristics of requested item are essential to our needs because

replacement matches or exceeds original specifications.

☐ Product is proprietary; no other manufacturer of this type of product exists.

☒ Only known vendor to service or provide this type of product in this region.

☐ Other manufacturers of this type of product do not meet our requirements:

Manufacturer's Name: Click here to enter text.

Reason: Click here to enter text.

Manufacturer's Name: Click here to enter text.

Reason: Click here to enter text.

☐ Product is being purchased through State of Montana Contract #: Click here to enter text.

☐ Other reason not listed above: Click here to enter text.

Please attach all appropriate documents and forward to Purchasing Agent. *Thank you.*

City Council Regular

Date:	07/24/2023
Title:	Contract for 2023 Pedestrian and Bicycle Master Plan Update
Presented by:	Elyse Monat
Department:	Planning & Community Services
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that Billings City Council approve the contract with Alta Planning + Design, Inc,. in association with Sanderson Stewart, for the 2023 Pedestrian and Bicycle Master Plan Update. This action is consistent with the City Council's approval of the 2023 Unified Planning Work Program (UPWP) submitted by the Billings-Yellowstone County Metropolitan Planning Organization in summer 2022. The UPWP included funding for the Pedestrian and Bicycle Master Plan Update.

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

The Billings-Yellowstone County Metropolitan Planning Organization (MPO) has identified the need to update the 2017 Bikeways and Trails Master Plan. Plans like these are updated on approximately a 5-6 year cycle for currency with industry best practices and to align with community trends and changes. The plan has been renamed the Billings Pedestrian and Bicycle Master Plan in order to include a stronger focus on pedestrian facilities in the Billings urbanized area in addition to the focus on bikeways and trails. The goal of the plan is to evaluate system usage and construction progress since the 2017 plan; review, evaluate, and prioritize on-street bikeways, and key off-street trail and pedestrian connections; identify funding for the construction and maintenance of active transportation facilities; engage the public; provide recommendations for education and encourage the use of active transportation; and promote the system as a healthy, safe mode of transportation. New for this year, the plan will evaluate the comfort of the pedestrian environment through a Pedestrian Level of Traffic Stress Analysis which will complement the Bicycle Level of Traffic Stress Analysis. Also, with Planning Division staff now CPTED trained there will be coordination and evaluation of user and corridor safety integrated into the process.

The MPO advertised a request for proposals in May and June of 2023. One proposal was received from Alta Planning + Design, Inc. in association with Sanderson Stewart. After negotiation on the scope of work, the budget for the plan was determined to be not more than $116,935, which is within the established budget provided by funding in the UPWP. The plan is estimated to be completed by the summer of 2024.

ALTERNATIVES

City Council may:

- Approve the contract; or,
- Not Approve the contract

Approving the contract is consistent with the previous vote by the Council in summer 2022 to forward a recommendation of approval for the UPWP to the Policy Coordinating Committee (PCC) and the PCCs approval of the Work Program in 2022. The UPWP allocated funding for this plan.

FISCAL EFFECTS

100% of the funds for this plan come from federal Planning (PL) dollars, so no local funds will be expended on this plan.

Attachments

Pedestrian and Bicycle Master Plan Update Contract

CONSULTANT 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 Alta Planning + Design, Inc., 711 SE Grand Avenue, Portland, OR 97214, hereinafter referred to as "**CONSULTANT**."

WITNESSETH:

WHEREAS, the **CITY** proposes to obtain information regarding the update of the 2017 Billings Area Bikeway and Trail Master Plan, renamed to Billings Area Pedestrian and Bicycle Mater Plan, and desires to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof.

WHEREAS, the **CITY** has authority to contract for such services, and;

WHEREAS, the **CONSULTANT** represents that he/she is fully qualified to perform such services personally and is in compliance with the Montana Statutes relating to the provisions of such services.

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

1. PURPOSE: CITY agrees to hire **CONSULTANT** as an independent contractor to perform the services as described in the Scope of Work attached hereto as Exhibit "A" and by this reference made a part hereof. In performing these services, the **CONSULTANT** shall at all times comply with all federal, state and local statutes, rules and ordinances applicable. These services and all duties incidental or necessary therefore, shall be performed diligently and completely and in accordance with professional standards of conduct and performance ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same locale.

2. TERM: This **AGREEMENT** shall be for a period of 12 months, from the execution of this **AGREEMENT**. This **AGREEMENT** may be extended for three one month options by mutual agreement of both parties, in writing, thirty (30) days prior to termination of each term.

3. PAYMENT: In consideration of the services provided by the **CONSULTANT** under this **AGREEMENT**, the **CITY** agrees to pay **CONSULTANT** a price not to exceed $116,935.

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

Except as otherwise specified herein, the **CITY** shall pay, net of applicable withholding tax, if any, the **CONSULTANT** for said invoice within thirty (30) days after receipt.

In the event scope of work issues arise, the **CONSULTANT** shall immediately discuss them with the Project Manager for the **CITY**. It is understood that the **CONSULTANT** will not perform any work that the **CITY** deems outside the scope prior to receiving written approval from the **CITY**, and at a rate agreed upon by both parties. Any payment for work not agreed upon by the **CITY** shall be denied.

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

4. INCORPORATION BY REFERENCE: All exhibits and addenda attached hereto, as well as any bid or proposal referenced, are hereby incorporated into this **AGREEMENT** and made a part hereof. If there is any conflict between such exhibits or addenda and the terms of this **AGREEMENT**, the terms of this **AGREEMENT** shall control.

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

6. INDEMNITY:

The **CONSULTANT** SHALL:

A. Indemnify and hold **CITY**, its officers, agents and employees harmless from losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CONSULTANT** or its agents or employees.

B. Not indemnify and hold the **CITY** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CITY** occurring during the course of or as a result of the performance of the **AGREEMENT**.

C. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CITY** and the **CONSULTANT**, the **CONSULTANT** shall indemnify and hold the **CITY** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, to the extent caused by the **CONSULTANT'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CONSULTANT'S** performance pursuant to this **AGREEMENT**.

The **CITY** SHALL:

D. Indemnify and hold **CONSULTANT**, its officers, agents and employees harmless from losses, damage and liability to the extent caused by any intentional or negligent act on the part of **CITY** or its agents or employees.

E. Not indemnify and hold the **CONSULTANT** harmless from claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses or reasonable attorneys' fees and costs to the extent caused by the wrongful or negligent acts, error or omission of the **CONSULTANT** occurring during the course of or as a result of the performance of the **AGREEMENT**.

F. Where claims, lawsuits or liability, including reasonable attorneys' fees and costs arise from any wrongful or negligent act of both the **CONSULTANT** and the **CITY**, the **CITY** shall indemnify and hold the **CONSULTANT** harmless from only that portion of claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including attorneys' fees and costs, to the extent caused by the **CITY'S** or any subcontractor's wrongful or negligent acts occurring as a result from the **CITY'S** performance pursuant to this **AGREEMENT**.

7. <u>INSURANCE</u>:

A. The **CONSULTANT** shall maintain in good standing the insurance described in this Section. Before rendering any services under this **AGREEMENT**, the **CONSULTANT** shall furnish the **CITY** with proof of insurance in accordance with this Section.

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

1. Workers' compensation and employer's liability coverage as required by Montana law.
2. Commercial general liability, including contractual liability assumed under an insured agreement and personal injury coverage's -- $750,000 per claim and $1,500,000 per occurrence.
3. Automobile liability -- $1,500,000 per accident.
4. Professional liability in the amount of $1,500,000 per claim.

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

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

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

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

8. AGREEMENTS OF CONSULTANT: As an inducement to the execution of this **AGREEMENT** by the **CITY** and in consideration of the agreements to be performed by the **CITY**, the **CONSULTANT** agrees that:

A. Qualifications

The **CONSULTANT** is qualified to perform the services to be furnished under this **AGREEMENT** and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform.

B. Solicitation of Agreement

The **CONSULTANT** has not employed any person to solicit this **AGREEMENT** and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this **AGREEMENT**.

C. Facilities and Personnel

The **CONSULTANT** has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

D. Subcontracting

None of the work or services covered by this **AGREEMENT** shall be subcontracted without the prior approval of the **CITY**.

E. Affidavits of Compliance

The **CONSULTANT** will, if requested by the **CITY**, furnish the **CITY** affidavits certifying compliance with the provisions of this Section.

9. AGREEMENTS OF CITY:

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

B. Name a Project Manager who shall be the liaison between the **CONSULTANT** and the **CITY**. For this project, the Project Manager for **CONSULTANT** designated is Mack Drzayich and the Project Manager for the **CITY** designated is Elyse Monat.

10. NONDISCRIMINATION:

A. **CONSULTANT** 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. **CONSULTANT** 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 **CONSULTANT** subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** 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 **CONSULTANT** and any **SUBCONSULTANT** 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 **CONSULTANT'S** legal duty to furnish information.

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

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

E. The **CONSULTANT** 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 **CONSULTANT** under this **AGREEMENT**.

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

11. **PERMITS, LAWS, AND TAXES:** The **CONSULTANT** shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this **AGREEMENT**. All actions taken by the **CONSULTANT** under this **AGREEMENT** shall comply with all applicable statutes, ordinances, rules and regulations. The **CONSULTANT** shall pay all taxes pertaining to its performance under this **AGREEMENT**.

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

13. **CONFLICT OF INTEREST: CONSULTANT** shall exercise reasonable care and diligence to prevent any actions or conditions which could result **in** a conflict with **CITY'S** interest. During the term of this **AGREEMENT**, **CONSULTANT** shall not accept any employment or engage in any consulting work which creates a conflict of interest with **CITY** or in any way compromises the services to be performed under this **AGREEMENT**. **CONSULTANT** shall immediately notify **CITY** of any and all violations of this Section upon becoming aware of such violation.

14. **SUCCESSORS AND ASSIGNS:** This **AGREEMENT** and all of the covenants hereof shall inure to the benefit of and be binding upon the **CITY** and the **CONSULTANT** respectively and his partners, successors, assigns, and legal representatives. Neither the **CITY** nor the

CONSULTANT shall have the right to assign, transfer, or sublet his interest or obligations hereunder without written consent of the other party.

15. **CHANGES IN WORK:** Any change in the scope of **CONSULTANT'S** services as stated in this **AGREEMENT** for whatever reason, will be negotiated between the **CITY** and the **CONSULTANT** and an amendment to this **AGREEMENT** will be issued with the appropriate change of services and **AGREEMENT** fee noted.

16. **LEGAL RELATIONS:** The **CONSULTANT** shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done.

17. **TERMINATION OF AGREEMENT:** The right is reserved by the **CITY** to terminate this **AGREEMENT** at any time upon not less than thirty (30) days written notice to the **CONSULTANT**.

    In the event the **CITY** terminates this **AGREEMENT**, the **CONSULTANT** shall be paid for the amount of work performed or services rendered to date of termination per the **AGREEMENT** fee.

18. **ENDORSEMENTS:** The **CONSULTANT** shall furnish signatures, statements, or other suitable means to signify responsible endorsement of work on all reports furnished by him.

19. **OWNERSHIP OF DOCUMENTS:** All information relating to the project and prepared under the terms of this **AGREEMENT**, including reports, data, recommendations, exhibits, analyses, and plans shall be deemed the property of the **CITY**. Reproducibles of all notes, reports, and plans shall be made available at the **CITY'S** request.

20. **PUBLIC INFORMATION:** The **CONSULTANT** shall not issue any statements, releases, or information for public dissemination without prior written approval of the **CITY**. All materials related to this **AGREEMENT** and services provided are considered public records under Article II, Section 9 of the Montana Constitution and §§ 2-6-102 and 7-1-4144, MCA and may be distributed by written request pursuant to Montana's Constitutional Right to Know or Public Records Acts.

21. **PROPRIETARY RIGHTS:** If patentable discoveries or inventions should result from work required herein, all rights accruing from such discoveries or inventions shall be the property of the **CITY**.

22. **RECORDS:** The **CONSULTANT** shall maintain accounting records and other evidence pertaining to the cost incurred and to make the records available at all times during the **AGREEMENT** term and for three (3) years from the date of final payment. Such accounting records and other

evidence pertaining to the cost incurred will be made available for inspections authorized by the **CITY** and copies thereof shall be furnished if requested.

23. **ATTORNEY'S FEES AND COSTS:** That 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 the **AGREEMENT** or to give any notice required herein, then the prevailing Party or the Party giving notice shall be entitled to reasonable attorney's fees and costs.

24. **LITIGATION LOCATION:** The parties agree that this **AGREEMENT** shall be governed in all respects by the laws of the state of Montana, and the parties expressly agree that venue shall be in the Montana Thirteenth Judicial District County for Yellowstone County and there shall be no other venue for resolution of disputes arising from the **AGREEMENT** or the performance of its terms.

25. **MODIFICATION AND AMENDMENTS:** That any amendment or modification 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**.

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

ALTA PLANNING + DESIGN, INC.

SIGNATURE

Joe Gilpin
PRINT NAME

Vice President, as duly authorized.

EXHIBIT A-SCOPE OF WORK

SCOPE OF WORK FOR BILLINGS AREA BIKEWAY AND TRAIL MASTER PLAN

To: Elyse Monat, Billings MPO

From: Mack Drzayich, Alta

Date: July 11, 2023

Re: Billings, MT Pedestrian and Bicycle Master Plan Update – Scope of Work

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Scope of Work

Task 1: Project Management & Coordination

1.1 Project Management

Alta's project manager will collaborate frequently with the MPO project manager to see that project milestones and timelines are met in an efficient and effective manner. Alta will work with the MPO project manager to develop a project work plan that outlines a detailed project schedule, project milestones and deadlines, and timing and methods for public involvement activities. The work plan will also outline a strategy for project manager coordination, expectations and involvement of City and MPO staff, and collaboration with the Steering Committee and other stakeholders.

Alta's project manager will facilitate bi-weekly check-in calls with the MPO project manager to coordinate upcoming efforts and keep the project on schedule. Additionally, Alta will provide weekly project management reports to the MPO project manager that summarize project progress and needs.

1.2 Review and Update Vision, Goals, and Objectives

Alta will utilize input from the Steering Committee, City and MPO staff, and the general public to update and refine the plan vision, goals, and objectives outlined in the 2017 plan.

1.3 Steering Committee Collaboration

The Alta Team will plan and facilitate up to five (5) Steering Committee meetings in conjunction with project milestones. The purpose of these meetings will be to achieve consensus on the overall direction of the plan, get input on needs and opportunities, and solicit feedback on project deliverables throughout the duration of the planning process. Tentative meeting topics include:

- SC Meeting #1: Kickoff, establish vision and desired outcomes, report back on progress made since 2017
- SC Meeting #2: Existing conditions review, coordinating public involvement efforts
- SC Meeting #3: Recommendations workshop, prioritization methodology
- SC Meeting #4: Prioritization results review and refinement
- SC Meeting #5: Draft plan review and comment response

Alta will also coordinate with Steering Committee members virtually and via email as needed between Steering Committee meetings to solicit additional feedback and input. One steering committee meeting will be held in person; all others will be held virtually or in a hybrid format.

Task 1 Deliverables:

- Bi-weekly PM check-in calls

- Weekly progress reports sent via email
- Updated vision, goals, and objectives
- Facilitation of up to five (5) Steering Committee meetings

Task 1 Assumptions:

- MPO PM will serve as point of contact for Steering Committee
- One Steering Committee meeting will be held in person; Alta will attend remaining meetings virtually

Task 2: Public Involvement

The public involvement (PI) component of this project will be critical to developing a comprehensive plan that accurately depicts the needs and priorities of all members of the greater Billings community, including residents and visitors of all ages and spanning a broad geographic footprint. The project team will work with the MPO to implement a variety of outreach practices designed to promote active engagement regardless of demographics.

2.1 In-Person Outreach

The project team will plan and facilitate an in-person public outreach event. If a more traditional open house is pursued, the presentation will be broadcast via Facebook Live or Zoom so as to be remotely accessible. The event will be strategically scheduled at a stage in the project where draft materials can be presented to solicit feedback and gather input to inform recommendations.

2.2 Project Website

The project team will create an inclusive project website to provide basic project and team contact information, present project content, give updates on progress and schedule, and to serve as an additional avenue for the public to provide feedback on the project including interactive mapping, surveys, and the ability to subscribe to project update emails.

2.3 Promotional Collateral

The project team will create signage, posters, and/or postcards about the project, directing community members to the project website via web address and QR code. Signage/posters can be displayed at local events such as Summer Fair, Yellowstone Valley Farmer's Market, and placed in active recreation areas such as trail heads, parks, on the downtown events boards at Skypoint, and transit facilities such as the downtown MET transfer station. Postcards can be distributed by hand at local events, in bicycle shops, sporting goods stores, etc.

Additionally, the project team will facilitate the creation of a project Facebook page that will provide status updates, facilitate discussion, and promote participation in other public involvement activities and events.

2.4 Pop-up Demonstration Project

The Alta team will coordinate a pop-up demonstration project designed to interactively educate the public about innovative bicycle and pedestrian safety project opportunities. The project team will work with the Steering Committee and MPO staff to determine the most appropriate location and scale for the demonstration project, which will utilize temporary materials to pilot new ideas, raise awareness about the project, and foster community outreach. This event could be strategically promoted and held in partnership with Billings TrailNet, with participation incentivized via prize drawings for adult and children's bicycles sponsored by one of the local bike shops or sporting goods stores and/or free food that could be sponsored by a local grocery or meat provider. This event would be an excellent opportunity to survey adults and children about project priorities, safety concerns, gaps in the infrastructure system, etc. while also promoting other opportunities to engage with the project team.

Task 2 Deliverables:

- Facilitation of one (1) in-person public outreach event
- Project website, including survey and interactive mapping tool
- Print-ready collateral for promoting the project
- Design and installation of one demonstration project

Task 2 Assumptions:

- MPO staff will help to secure a venue for the in-person public outreach event
- The demonstration project will be limited to a scale and quality that is congruent with the project budget and staff and volunteer resources
- Materials for the demonstration project, such as paint, barriers, cones, signage, etc. will be provided by City/MPO staff or donated by a third party
- MPO staff will help to provide volunteer support for the installation of the demonstration project
- MPO staff will facilitate any permitting or approvals that may be required for the installation of the demonstration project

Task 3: Existing Conditions Review

3.1 Background Document Review

Alta will review relevant local, regional, and state development plans and policies to identify previously planned projects and current policies as they relate to active transportation. Alta will develop a summary of the background document review as a memo or appendix to the plan. Background documents and information that will be reviewed include:

- 2023 Long-Range Transportation Plan (under development)
- 2023 Community Transportation Safety Plan
- Billings City Council Strategic and Citizen Survey
- FY24-28 Capital Improvement Plan
- 2023 Yellowstone County Community Health Needs Assessment
- 2017 Billings Area Bikeway and Trails Master Plan

3.2 Inventory and Analysis

Alta will use existing GIS data and other information, as provided by the MPO and from public sources, to conduct a review of the pedestrian and bicycle system today, and how it has changed since the 2017 plan was adopted. Key takeaways will be extracted for inclusion in the existing conditions section of the plan and used to inform recommendations. This review will answer the following questions, with past and present comparisons to plot growth:

What are the types and quantities of pedestrian and bicycle facilities in the Billings area today (inventory)?

Alta will illustrate existing conditions findings through maps, infographics, photos, and narrative to paint an accurate picture of the state and progress of the pedestrian and bicycle network.

How much do these facilities get utilized (count analysis)?

We will update our previous analysis of manual and automatic counter data that has been collected since 2017. Alta will visualize this data using infographics and mapping to distill a wealth of information into easily digestible findings. Alta will compare count data provided by the MPO to third party, crowd sourced data sources such as Strava to further identify trends and high-use corridors where manual or automatic counts have not been recorded.

Who are these facilities serving (demographics)?

Alta will use the U.S. Census Bureau and American Community Survey databases to summarize current and changing demographics and population data for the Billings area. This will include a summary of journey-to-work data with the goal of tracking commuting trends over time.

How is the active transportation system being promoted (existing programs)?

With input from stakeholders and the Steering Committee, Alta will inventory existing programs occurring in the Billings area that are relevant to active transportation participation, safety, and investment.

3.3 Previous Recommendations Review

Alta will work with City and MPO staff to review infrastructure, policy, and program recommendations from the 2017 plan to identify the status of each recommendation. The purpose of this task is to understand what actions, conditions, and opportunities have led to the successful implementation of some recommendations, and what conditions and challenges have hindered the implementation of other recommendations. The results of this evaluation will inform future implementation strategies and highlight strengths, weaknesses, opportunities, and challenges in realizing Billings' vision for the active transportation system.

Task 3 Deliverables:

- Data request memo
- Inventory of existing pedestrian and bicycle networks
- User count analysis
- Demographics analysis
- Inventory of existing programs and initiatives related to active transportation
- Summary of previous recommendations and progress since 2017

Task 3 Assumptions:

- All GIS data necessary for the analyses and mapping included in this task will be provided by the Billings MPO, including count data and completed projects since 2017
- The inclusion of free Strava data in the count analysis is dependent upon the MPO's ability to secure the data in a timely manner and may not be necessary depending on existing user count data
- Alta is not responsible for the accuracy of spatial data provided by the MPO or from other public sources

Task 4: Needs Assessment

Building on the existing conditions review, the needs assessment will evaluate how well the pedestrian and bicycle network meets the needs of active transportation users, and will include the following analysis tasks:

4.1 Level of Traffic Stress (LTS) Analysis

Alta will review the previous Bicycle Level of Traffic Stress (BLTS) analysis results from the 2017 plan, which were developed using the 2012 Mineta Transportation Institute (MTI) methodology for evaluating low-stress bicycling and network connectivity. The MTI methodology is still relevant in today's best practices for evaluating bicycle networks. However, in recent years, cities and agencies across the country have hired Alta to adapt and customize LTS analysis models for local context and nuances. Upon evaluation of the current BLTS analysis results, Alta will work with MPO staff to update the BLTS model and scoring as needed.

Alta will also conduct a Pedestrian Level of Traffic Stress (PLTS) analysis. Similar to the BLTS, a PLTS analysis highlights corridors on a scale from LTS 1 (low stress, high comfort) to LTS 4 (high stress, low comfort) to aid in identifying areas where investments in sidewalk connections and quality may be most impactful for improving pedestrian safety and comfort. This analysis will be completed using available sidewalk and roadway data, and will include evaluation factors such as sidewalk presence, sidewalk width, buffer presence, buffer width, and other roadway characteristics such as posted speed limits and number of lanes.

4.2 Public Involvement Summary

The Alta team will provide a cohesive summary complete with a set of infographics that summarize the results of our public involvement during the initial phases. This includes summary from the first public meeting and the results of the interactive mapping exercise on the project website. Findings from initial public involvement efforts will inform the development of recommendations and project prioritization.

4.3 Review Bicycle Facility Selection Best Practices

The state of the practice of bikeway design and implementation has continued to evolve since the adoption of the 2017 Billings Area Bikeway and Trails Master Plan. Specifically, in 2019, both FHWA and NACTO published guidance and criteria for selecting the appropriate bikeway type based on roadway and surrounding context in order to achieve "all ages & abilities" bicycle facilities and networks. Additionally, NACTO's *Don't Give Up at the Intersection* guide, published in 2019, fills a gap in national guidance and standards for improving the safety and comfort of facilities through intersections. Alta will review advances in the industry and compare to treatments that have been deployed in the Billings area.

4.4 Crash Analysis

Using available crash data provided by the MPO or other public sources from the last five years, Alta will map and analyze crash locations, severity, modes involved, and roadway context to understand locations with historical safety challenges. Depending on the progress of the Billings High Injury Network (HIN), which is currently under development, Alta will incorporate findings to enrich the crash analysis summary.

4.5 Benefits Analysis

Alta will utilize data from the American Community Survey and other sources to estimate the current levels of bicycling in the Billings area and use it to update estimates of associated annual benefits presented in the 2017 plan. Alta will review and update the summary of current research on how investments in pedestrian and bicycle networks impact communities. This will include a discussion of overall community mobility (including aging in place), economic benefits (including tourism, property values, and employer attraction and talent retention), environmental benefits, quality of life, and community health benefits.

Task 4 Deliverables:

- Bicycle level of traffic stress (BLTS) analysis
- Pedestrian level of traffic stress (PLTS) analysis
- Public involvement results summary
- Review of bicycle facility selection best practices
- Crash analysis
- Benefits analysis

Task 4 Assumptions:

- The BLTS analysis will utilize the same methodology used in the 2017 plan for consistency in evaluating the bicycle network, but the methodology may be updated based on need

- Depending on the progress of the concurrent High Injury Network (HIN) study, Alta may substitute the crash analysis with results from the HIN study
- Alta is not responsible for the accuracy of spatial data provided by the MPO or from other public sources

Task 5: Recommendations

5.1 Infrastructure Recommendations

Alta will audit and update the previous plan's recommendations for infrastructural improvements, including linear facilities (bikeways, trails, etc.) and spot improvements (crossing improvements, intersection improvements, etc.). We will examine each prior recommendation for continued applicability and weigh it against collected public feedback and changes in the state of the practice. Following up on the existing conditions analysis and needs assessment, Alta will identify new project needs for consideration in the updated infrastructure recommendations. As always, Alta staff will evaluate planning level feasibility of newly recommended projects by looking at curb-to-curb widths, right-of-way availability, opportunities for roadway rebalancing, and other factors dictating project feasibility in order to build confidence that recommended improvements are realistic and in line with the vision, goals, and objectives of the plan.

In this task, Alta will also review and update recommendations for supporting infrastructure, such as bicycle parking, bicycle and pedestrian amenities, and trailheads.

5.2 Program and Policy Recommendations

Based on the results of Task 3.3, Alta will review and update policy and program recommendations from the previous plan and identify new recommendations as needs and opportunities arise from the existing conditions analysis and needs assessment. The deliverable for this task will be a refined suite of policy and program recommendations that have buy-in from City and MPO staff, the Steering Committee, and stakeholders and are actionable within the new plan's lifespan. This task will outline lead and partner organizations who would be responsible for implementing each recommendation.

Task 5 Deliverables:

- Updated infrastructure recommendations
- Update program and policy recommendations

Task 5 Assumptions:

- Alta will respond to one round of comments on the draft bicycle and pedestrian network recommendations; Steering Committee comments will be reconciled and consolidated by the MPO PM

Task 6: Implementation Strategy

6.1 Prioritization

Following the vetting and acceptance of the recommendations in Task 5, the Alta team will discuss the effectiveness of the prioritization scheme utilized in the previous plan and modify as necessary to produce a valuable, actionable methodology. This could involve a similar evaluation which weighs the relative merits of each recommendation based on goal-based criteria; a feasibility-based approach which factors synergies with planned projects or project complexity; or a combination of both methods.

6.2 Cost Estimates

Planning level cost estimates will be developed for each project contained within the plan. These costs will be +/- 30% of the likely eventual construction cost and will be based on recent bid data and our experience implementing bikeways and trails nationwide. As part of the cost estimating, the Alta team will identify projects that present potential for low-dollar value grant applications.

6.3 Funding Strategies

In this task, Alta will work with City and MPO staff to review recent funding avenues utilized for active transportation projects since 2017. This task will refine the previous plan's funding sources table based on this review, as well as changes to funding opportunities at the federal, state, and local levels that have taken place since the adoption of the previous plan.

Task 6 Deliverables:

- Project prioritization
- Cost estimates for each project
- Funding strategies

Task 7: Draft Plan & Presentations

7.1 Draft Plan

As project tasks develop, Alta will provide working papers, or chapters of the draft plan, for review by MPO staff and the Steering Committee. Alta will respond to one round of comments for each working paper submitted for review. The revised working papers will then be incorporated into a complete draft of the Billings Area Pedestrian and Bicycle Master Plan. Alta will respond to one round of comments from the Steering Committee and MPO staff on the complete draft plan, limited to new material and formatting not already reviewed in previous working paper review periods. All comments, for working papers and the complete draft, will be reconciled and consolidated by the MPO project manager before submitting to Alta for revisions.

Alta will make necessary revisions to the draft plan prior to presenting the plan to governing bodies. Alta will make any final revisions based on comments from governing bodies.

7.2 Presentations to Governing Bodies

The Alta team will present the draft plan to various local government organizations. Where acceptable, these presentations will be made virtually, via Zoom or related platform. Alta will present to the following governing bodies:

- Technical Advisory Committee (TAC)
- Yellowstone County Board of Planning (Planning Board)
- Billings City Council (City) (x2 meetings)
- Yellowstone Board of Commissioners (BOCC)
- Policy Coordinating Committee (PCC)

Additionally, Alta will provide progress presentations to the Bicycle and Pedestrian Advisory Committee, the City Council, and the County Commissioners mid-way through the project.

Task 7 Deliverables:

- Draft Billings Pedestrian & Bicycle Master Plan document
- One round of revisions to the draft plan
- Up to six (6) virtual presentations to governing bodies

Task 7 Assumptions:

- The MPO PM will reconcile conflicting comments from staff and Steering Committee members and consolidate all comments into one PDF markup before returning to Alta for revisions
- The MPO PM will schedule presentations to governing bodies

Task 8: Final Plan

8.1 Final Plan

Alta will address comments received and revise the draft plan accordingly to produce a final Billings Area Pedestrian and Bicycle Master Plan. After final adoption by the PCC, Alta will deliver five (5) printed copies of the final plan, the associated InDesign file, and a digital PDF copy for use on the City's website. Additionally, Alta will provide all relevant files used to produce the plan, including GIS data and map packages.

Task 8 Deliverables:

- Five (5) printed copies of the final plan
- One (1) PDF digital copy of the final plan
- InDesign package for final plan
- Data handoff, including GIS and other relevant project files

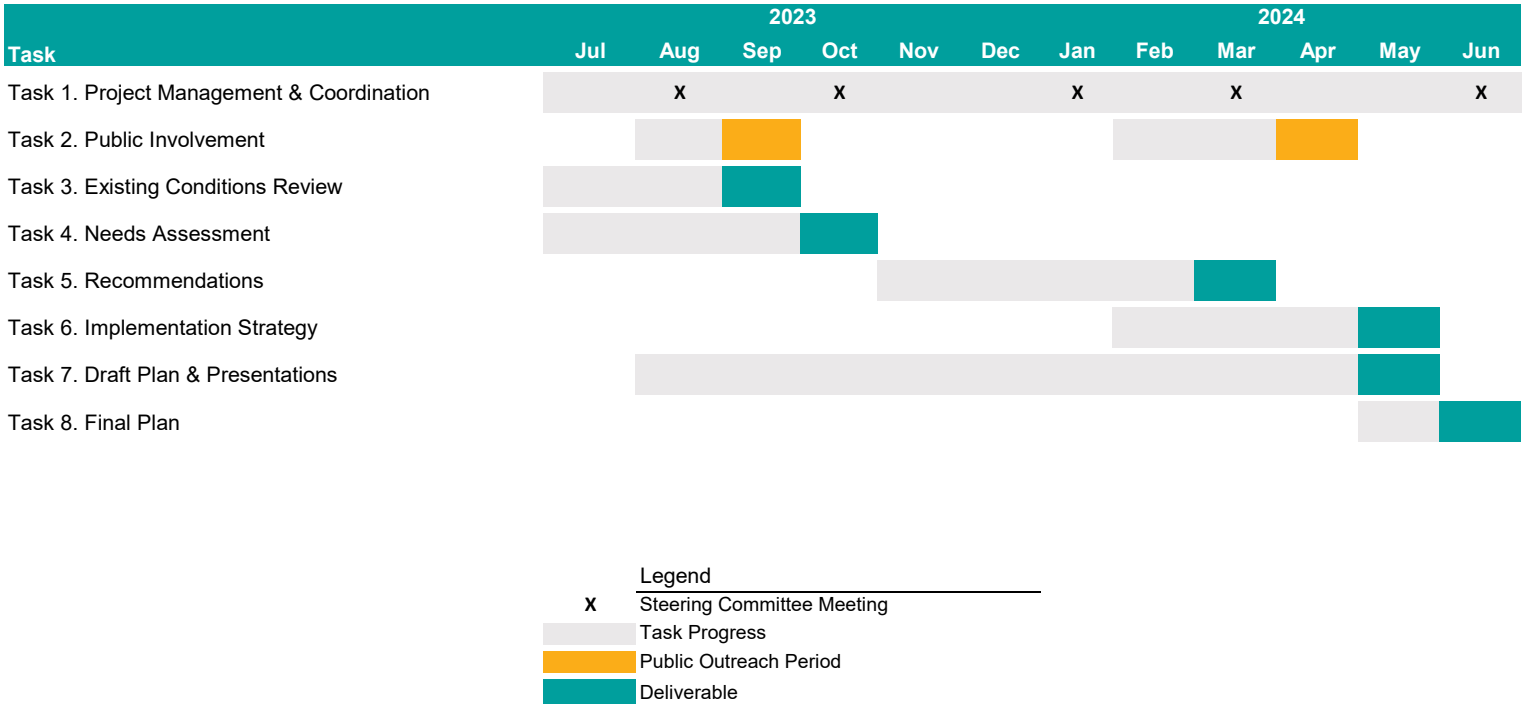

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Task 1. Project Management & Coordination
X
X
X
X
X
Task 2. Public Involvement
Task 3. Existing Conditions Review
Task 4. Needs Assessment
Task 5. Recommendations
Task 6. Implementation Strategy
Task 7. Draft Plan & Presentations
Task 8. Final Plan
Legend
X
Steering Committee Meeting
Task Progress
Public Outreach Period
Deliverable

EXHIBIT B-PROJECT BUDGET

TASK	Alta Planning + Design, Inc.							Sanderson Stewart		Total Task Hours	Total Task Fee
	Principal-in-Charge	*Project Manager*	*Senior Advisor*	*Planner*	*GIS Analyst*	*Graphic Designer*	*Project Coordinator*	*Senior Engineer*	*Planner*		
	David Foster	Mack Drzayich	Joe Gilpin	Zoey Mauck	Paulo Aguilera	Nora Hastings	Julie Lo	DJ Clark	John Halverson		
*2023 Hourly Rate**	$230	$150	$290	$120	$120	$140	$110	$235	$145		
Task 1. Project Management & Coordination	**7**	**49**	**1**	**19**	**5**	**0**	**8**	**16**	**8**	**113**	**$17,930**
1.1 Project management	4	20					8	8		40	$6,680
1.2 Review and update vision, goals, and objectives		1		4						5	$630
1.3 Steering Committee collaboration	3	28	1	15	5			8	8	68	$10,620
Task 2. Public Involvement	**0**	**0**	**0**	**0**	**0**	**0**	**0**	**23**	**98**	**121**	**$19,615**
2.1 In-person outreach								8	24	32	$5,360
2.2 Project website								1	20	21	$3,135
2.3 Promotional collateral								2	14	16	$2,500
2.4 Pop-up demonstration project								12	40	52	$8,620
Task 3. Existing Conditions Review	**1**	**9**	**2**	**44**	**32**	**0**	**0**	**4**	**6**	**98**	**$13,090**
3.1 Background document review		1		12						13	$1,590
3.2 Inventory and analysis	1	4	2	16	32			4	6	65	$8,980
3.3 Previous recommendations review		4		16						20	$2,520
Task 4. Needs Assessment	**2**	**38**	**1**	**54**	**104**	**8**	**0**	**2**	**16**	**225**	**$29,320**
4.1a Bicycle Level of Traffic Stress		2			20					22	$2,700
4.1b Pedestrian Level of Traffic Stress	2	32		30	76					140	$17,980
4.2 Public involvement summary						8		2	16	26	$3,910
4.3 Review bicycle facility selection best practices		1	1	12						14	$1,880
4.4 Crash analysis		2			8					10	$1,260
4.5 Benefits analysis		1		12						13	$1,590
Task 5. Recommendations	**0**	**18**	**0**	**42**	**0**	**0**	**0**	**2**	**0**	**62**	**$8,210**
5.1 Infrastructure recommendations		14		24				2		40	$5,450
5.2 Program and policy recommendations		4		18						22	$2,760
Task 6. Implementation Strategy	**1**	**12**	**1**	**40**	**8**	**0**	**0**	**8**	**14**	**84**	**$11,990**
6.1 Prioritization	1	11	1	32	8			4		57	$7,910
6.2 Cost estimates								4	14	18	$2,970
6.3 Funding strategies		1		8						9	$1,110
Task 7. Draft Plan & Presentations	**1**	**20**	**1**	**24**	**0**	**36**	**0**	**2**	**0**	**84**	**$11,910**
7.1 Draft plan	1	8	1	24		36		2		72	$10,110
7.2 Presentations to governing bodies		12								12	$1,800
Task 8. Final Plan	**1**	**2**	**0**	**0**	**2**	**15**	**0**	**0**	**0**	**20**	**$2,870**
8.1 Final plan	1	2			2	15				20	$2,870
Staff Hours	**13**	**148**	**6**	**223**	**151**	**59**	**8**	**57**	**142**	**807**	**$114,935**
Labor Total	**$2,990**	**$22,200**	**$1,740**	**$26,760**	**$18,120**	**$8,260**	**$880**	**$13,395**	**$20,590**		**$114,935**
Reimbursable Expenses & Travel		$500		$500				$1,000			$2,000
Project Total											**$116,935**

GENERAL NOTES:

* This fee proposal is valid for 90 days from the date submitted.

* Hours and staff assignments can be adjusted by the consultant as needed to implement the tasks described during the course of the project.

City Council Regular

Date:	07/24/2023
Title:	Compensation Agreement with Daniel Properties, LLC
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review:	Yes
Project Number:	NA

RECOMMENDATION

Staff recommends the City Council approve the Compensation Agreement with Daniel Properties, LLC.

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

In order to obtain water service, Daniel Properties, LLC will extend a public water main from the intersection of Rimrock Road and 62nd Street West along the frontage of Tule Ridge Subdivision. A short section of 20-inch water main will be constructed within the limits of the proposed MDT roundabout improvements and a 12-inch main will be continued further south for the majority of the property frontage. Tule Ridge Subdivision is located at the southeast corner of Rimrock Road and 62nd Street West. The property on the west side of 62nd Street West is owned by the City of Billings. This water main is considered a general benefit facility that benefits a large number of customers and/or provides service to large areas. Per City Code (BMCC 26-502, 26-504, and 26-506), general benefit facilities are defined as water lines greater than 8-inches in diameter for residential developments and are eligible for compensation. The public main will be larger than 8-inch diameter and the City's policy is to compensate and pay for oversizing of a water main above 8-inches in diameter. Also, the City is compensating for one-half of the construction of the water main due to the fact that the property on the west side is owned by the City. Compensation is estimated to be $206,333. The compensation amount could be higher or lower depending on actual construction costs. This project also serves the purpose of extending the water main out of the intersection of 62nd Street West and Rimrock Road ahead of MDT constructing a roundabout at the intersection.

ALTERNATIVES

The Council may:

- Approve a Compensation Agreement with Daniel Properties, LLC; or
- Not approve an Agreement for compensation. This would be inconsistent with current City practice of compensating for oversizing utility extensions that have general benefit and for compensating along City property.

FISCAL EFFECTS

Based on review of the quantity of pipe to be installed and information provided by the Developer's agent, staff estimated the oversizing cost of the of water main to be $206,333.00. The extent and timing of the City's participation in the project costs is determined in conformance with the FY24 budget approved by City Council and based on actual quantities installed. The funds are budgeted annually from water funds specific to compensation agreements.

Attachments

Compensation Agreement

COMPENSATION AGREEMENT

THIS AGREEMENT entered into this _____ day of _____, 20___ between THE CITY OF BILLINGS, Billings, Montana, hereinafter referred to as the "CITY", and Daniel Properties, LLC, 2047 Broadwater Avenue Suite 1, Billings, Montana 59102, hereinafter referred to as "DEVELOPER".

W I T N E S S E T H

WHEREAS, the CITY'S Rules and Regulations Governing Water and Wastewater Service outlines the procedure and criteria the CITY uses in approving extensions of the public water and wastewater systems; and

WHEREAS, the CITY'S Rules and Regulations Governing Water and Wastewater Service outlines how the CITY participates in construction of various water and wastewater facilities and applies water and wastewater construction fees and system development fees to developments; and

WHEREAS, no person, developer, customer or applicant shall acquire any vested rights under the terms and provisions of this agreement; and

WHEREAS, DEVELOPER has agreed to extend or replace water facilities for the purpose of providing service through plans and specifications approved by the City on the 29th day of June, 2023. Said plans and specifications generally provide for the construction of water facilities which are specifically described in Exhibit 1, attached hereto; and

WHEREAS, DEVELOPER is desirous of obtaining compensation for a portion of the water facilities hereafter described; and

WHEREAS, the CITY is desirous of compensating the DEVELOPER for fifty percent (50%) of construction of said water facilities.

NOW, THEREFORE, CITY and DEVELOPER, in consideration of their mutual promises to each other hereinafter stated, agree as follows:

1. The water facilities which are eligible for compensation to the extent set forth in this Agreement are specifically described in Exhibit 1, attached hereto, and by this reference incorporated herein as if fully set out.

2. With respect to DEVELOPER'S entitlement to compensation, the CITY and DEVELOPER agree that the conditions set forth hereinafter, must be met before DEVELOPER is entitled to or will receive any compensation. Said conditions are:

   (a) The extent, timing, and manner of the CITY'S participation in a water facilities extension or replacement is determined in

conformance with the CITY'S Rules and Regulations Governing Water and Wastewater Service and the DEVELOPER'S compliance with city, state and federal laws, rules, and regulations. These policies require necessary funds to be included in the current, approved Capital Improvements Projects (CIP) budget in order to be eligible for compensation back to the DEVELOPER. The DEVELOPER may choose to proceed with an extension or replacement project without waiting for funds to be made available in the CIP budget; in this case, the DEVELOPER is responsible for paying the entire cost of the construction. Extensions or replacements not eligible for compensation according to these CITY policies and practices must be constructed by the DEVELOPER at his expense.

(b) DEVELOPER shall provide to the CITY sufficient verifiable cost data to determine the appropriate amount of compensation within thirty (30) days of final inspection of the water facilities and approval and acceptance by the CITY that all construction was completed according to the approved plans and specifications.

(c) DEVELOPER shall enter into a compensation agreement with the CITY at the time the CITY approves the DEVELOPER'S application for extension of water facilities or, in the case of a replacement project, prior to submittal of preliminary plans and specifications by the DEVELOPER.

(d) Upon completion of the extension or replacement of the water facilities, the DEVELOPER must convey all right, title and interest in the facilities to the CITY.

(e) DEVELOPER shall, at all times, provide to the CITY a current address for purposes of mailing compensation to DEVELOPER.

(f) Extension of water facilities must be done in compliance with all rules, regulations, resolutions and ordinances of the CITY, including but not limited to standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.

DEVELOPER agrees that it will not be entitled to any compensation whatsoever until the above conditions have been completely satisfied. DEVELOPER'S violation of any of the conditions set forth herein may, at the option of the CITY, result in denial of any and all compensation to the DEVELOPER.

3. In addition, it is expressly agreed that any compensation is conditioned upon the following:

(a) Compensation is limited to costs attributable to water facilities described in Exhibit 1, less all administrative costs incurred by the CITY. In no event will compensation exceed the actual cost to the DEVELOPER of extending or replacing the water facilities.

(b) Compensation shall not include any interest charges.

Acceptance of the water facilities for purposes of compensation as set forth in this agreement shall be evidenced by written notice of a letter from the Public Works Department of the CITY and directed to the DEVELOPER at the address set forth in the first paragraph of this agreement.

4. The CITY, by this agreement, is not guaranteeing that full compensation by the CITY to the DEVELOPER will be made. The CITY is only agreeing that it will develop a plan under the CITY'S Rules and Regulations Governing Water and Wastewater Service that will recommend that compensation for water facilities which have been extended at the DEVELOPER'S expense will be made as set forth herein. Compensation does not apply to

additional extensions or replacements of the water facilities. Compensation shall be based upon the final total project costs.

5. The address for mailing compensation to the DEVELOPER shall be that address specified in the first paragraph of this agreement. Any change in address of the DEVELOPER shall be sent to the Public Works Director of the City of Billings at P.O. Box 1178, Billings, MT 59103. The designation of a new address shall be accompanied by a copy of this agreement.

6. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their successors and assigns.

DATED this _____ day of _____, 20___.

DEVELOPER

By _____

CITY OF BILLINGS

By _____
Mayor

ATTEST:

_____
City Clerk

Exhibit 1

In order to obtain water service, DEVELOPER will extend a 20-inch water main and 12-inch water main along 62nd Street West south of Rimrock Road along the frontage of Tule Ridge Subdivision, located on the east side of 62nd Street West. The property on the west side of 62nd Street West is owned by the City. Since the property on the west side is owned by the City and per City policy, the City shall compensate for one-half of the cost of constructing the 20-inch water and 12-inch water main along with oversizing of the 20-inch water main. Compensation for the water main is estimated to be $206,333.00.

City Council Regular

Date:	07/24/2023
Title:	Airfield Lighting System Equipment Upgrade
Presented by:	Shane Ketterling, Assistant Director of Aviation and Transit
Department:	Airport
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that the City Council approve the Airfield Lighting System Equipment Upgrade with the sole source/proprietary vendor Airside Solutions, Inc. for the amount of $158,408.74.

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

Included in the Fiscal Year 2024 Budget is the funding to upgrade fourteen existing Constant Current Regulators (CCRs) including all associated hardware and software that operates the Airport's Airfield Lighting Control and Monitoring System. The CCRs were originally installed in 2005 and the parts within the regulators are 18 years old, no longer available, and have exceeded their useable life. The regulators are located at the Airfield Lighting Vault and provide power to approximately 1,250 runway, ramp, and taxiway lights, 120 guidance signs, including many other airfield lighting systems and aircraft navigational aids. When the system was originally installed in 2005, the Billings Logan International Airport competitively advertised and received bids on a new Airport lighting control system. The successful bidder was Airside Solutions, Inc., which installed a Siemens Airfield Lighting Control System. The Airport needs to upgrade the equipment and software in order to keep up with changing technology, and maintain a safe and reliable system. Airport staff received a quote of $158,408.74 to complete this work. This is sole source/proprietary work, and the Airport must coordinate this work through Airside Solutions who is the sole manufacturer's representative/contractor. Airside will then work with the manufacturer of the Siemens System (ADB SafeGate) as required. This project will replace obsolete equipment, design technical specifications, perform factory operational and system acceptance testing, and send a technician to install, commission, and train personnel on the use of the equipment. This is an extremely important Airport equipment upgrade since it controls all airfield lighting that every aircraft relies on, along with other navigational aids when operating during inclement weather and at night. If the airfield lighting system becomes inoperable, the Airport would need to close due to FAA rules/regulations and to protect the safety of the traveling public. A copy of the project quote, services and agreement with Airside Solutions, Inc. is attached.

ALTERNATIVES

City Council may:

- Approve the sole source/proprietary Airfield Lighting System Equipment Upgrade with Airside Solutions; or
- Not approve the project and provide direction to staff on how to proceed.

FISCAL EFFECTS

The total cost of this project is $158,408.74. Funding for this equipment upgrade is available in the Airport's FY 24 approved budget.

Attachments

Airside Solutions Project

AIRSIDE SOLUTIONS,INC
SALES; LOGISTICS;TECHNICAL SERVICES

2222 West Valley Hwy N.
Suite 140
Auburn, WA 98001

ASCL#: AIRSISI850NC

VISIT US AT: https://www.airsidesolutionsinc.com/

Project Quote

Project Name: ACE3 UPGRADE

Date: 2/8/2023

Quote #: 9119

THANK YOU FOR THE OPPORTUNITY TO SERVE YOU!

Name / Address
BILLINGS LOGAN INTL AIRPORT ATTN: CRAIG CALLICOT ACE3 UPGRADE

ASI Phone #	ASI Fax #
(253) 833-6434	(253) 833-6870

Project Name	Rep	Terms	FOB	Lead Time	Quote Expires
ACE3 UPGRADE	GCE	ASI STD TERMS	POS-PPD&ALL...	20 - 26 WEEKS	9/30/2023

Qty	Item	Description	Unit Price	Total
1	W-PROJECT UPGRADE	PROJECT UPGRADE - TO BE COMPLETED BY PEG BIL-2301 project is to update the existing ACE1 Constant Current Regulators (CCRs) to integrated ACE3 as part of the Airfield Lighting Control and Monitoring System (ALCMS) at Billings Logan International Airport (BIL). Update the ALCMS with the latest executable files. The new ACE3 units will be continue to communicate via the existing serial communication network	130,983.74	130,983.74T
1	TECHSVCS-NON	ASI TECH SERVICE SITE VISIT PER ATTACHED STATEMENT OF WORK SCOPE IN REFERENCE TO #9 CONTRACTOR/ AIRPORT RESPONSIBILITIES. ***Unless otherwise indicated in an additional Request for Quote (RFQ) from the Contractor/Airport, the Contractor/Airport is responsible for the following services as required for the project described herein***	27,425.00	27,425.00T

SERVICES

NOTES:

Subtotal	$158,408.74
Sales Tax (0.00)	$0.00
Total	**$158,408.74**

Signature

** All Copper Material Pricing is Based on COMEX and is Subject to Escalation / Descalation at Tme of Shipment. ~ Wire Tolerances: +/- 5%

ALL UNIT PRICING IS BASED ON THIS COMPLETE BILL OF MATERIAL AS QUOTED AND IS SUBJECT TO THE FULL TERMS AND CONDITIONS OF AIRSIDE SOLUTIONS, INC., A COPY OF WHICH MAY BE OBTAINED BY VISITING OUR WEB SITE AT: http://www.airsidesolutionsinc.com

c



Quote
ALCMS Upgrade

Proposal Information	
Project Number:	BIL-2301
Estimated By:	Kevin Sharkey
Quote Revision:	1: 3/21/2023
Airport:	Billings Logan International Airport (BIL)
Project Description:	Ace 3 Upgrade to CCR's

This quote is valid for 90 days from quote date and will need to be re-quoted if expired

Company Confidential Information.
This proposal is considered proprietary and confidential and intended for the sole use of ADB SAFEGATE's intended recipient. Any reproduction, retransmission, or sharing of information related to this document is strictly prohibited.

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1. Terms and Conditions

Herein is the project proposal which describes ADB SAFEGATE's interpretation of the work to be completed according to requirements gathered from available specifications, drawings and addendums received at the time of the quote date. Included is the preliminary scope statement, equipment list, block diagram, preliminary schedule, risk analysis and support service responsibilities of ADB SAFEGATE and the installing Airport.

2. References and Applicable Documents

This Quote information is based on the following applicable documents received as of the indicated quote date. Any changes / addendums that may result in changes to scope of this project will require a change order request.

Reference	Details
Specification Document	Constant Current Regulator information collected from BIL Drawing Set
Email / Phone Conversations	Request by sales group

Table 1: References and Applicable Documents

3. Project Scope Statement

The purpose of this project is to update the existing ACE1 Constant Current Regulators (CCRs) to integrated ACE3 as part of the Airfield Lighting Control and Monitoring System (ALCMS) at Billings Logan International Airport (BIL). The project scope includes:

Hardware

- Upgrade of fourteen (14) ACE1 to ACE3 Integrated CCRs

.1 These kits include an ACE3 to be installed in the existing position of the ACE1 located on the CCR door.
.2 The Current and Voltage Module (CVM) will be replaced inside of the CCR with an updated unit for communication to the new ACE3.
.3 The ACE3 will continue to communicate via the existing redundant serial communication network.

- Replacement of the two (2) – ACE1 I/O to ACE3 I/O

.1 Utilized for control and monitoring of the generator, PAPI 07, PAPI 25, RENL RWY 28, and Windcone

The internal universal regulator controller (URC) circuit boards for the CCRs are not being upgraded as part of this project.

Software

- Update the ALCMS with the latest executable files. The new ACE3 units will be continue to communicate via the existing serial communication network.

Travel

- The project will include up to three (3) trips for the installation and commissioning of the ACE3 Units

Request for Information

1. Upon project award, customer to provide pictures of the labels of the fourteen (14) CCRs being updated as part of this project.

4. Scope of Support Services

4.1 Submittal Phase

Technical written and electrical/mechanical Submittal drawings will be delivered within four (4) weeks from receipt of Purchase Order. Equipment will not be released to production until ADB SAFEGATE receives written hard-copy of approved Submittals including written technical proposal and electrical/mechanical drawings. Approved Submittals are ADB SAFEGATE's only indication that the system design is correct and provides ADB SAFEGATE authorization to begin procuring equipment.

4.2 Factory Acceptance Test [FAT]

An Un-witnessed Factory Acceptance Test will be performed in-house by ADB SAFEGATE Personnel prior to shipment. FAT Test Reports will be available upon customer request.

4.3 On Site Commissioning and System Acceptance Test [SAT]

ADB SAFEGATE will complete onsite commission and system readiness checks. A witnessed System Acceptance Test will be performed on site by ADB SAFEGATE Personnel to be witnessed by airport owner/owner representative and Airport. Copies of the SAT Reports can be provided upon request.

4.4 Scope Overview Training

Scope Overview Training will be completed during commissioning trip by commissioning engineer personnel. Training will include a review with the end user regarding any pertinent changes that will affect operation of the existing ALCMS.

4.5 Project Documentation

ADB SAFEGATE will provide and Electronic copies of the final As-Installed Drawings.

5. Proposed Project Hardware and Materials

5.1 Project Hardware and Materials List Accuracy

The project equipment list (Bill-of-Material) contained within this proposal is considered complete. ADB SAFEGATE is not liable for any shortage, losses, or damages resulting from any discrepancies, omissions, or errors. This proposal consists of ADB SAFEGATE's best interpretation of the bid documents, plans or specifications available to ADB SAFEGATE at time of quote date. The recipient of this proposal is responsible for the accuracy of this RFQ and is required to immediately inform ADB SAFEGATE of any discrepancies.

5.2 Proposed Hardware

5.2.1 Airfield Lighting Vault

- Fourteen (14) - ACE3 Integrated Upgrades
  - ACE3 Control and Monitoring Assembly
    - Default Card for Control and Monitoring Functions
  - Current and Voltage Module (CVM2)
  - Fiber Cables
- Two (2) – ACE3 I/O

6. Project Critical Milestones and Delivery

The project will be managed with the following milestones involved in the design, production, testing, commissioning, and training for this project.

ID	Milestone	Description
M1	Submittal	Written Proposal / Drawings submitted to customer for review/approval
M2	Submittal Approval	Submittal reviewed by the customer and approved for release
M3	Production Release	Equipment is released for procurement
M5	System Assembly	Equipment is assembled and ready for test
M6	Factory Acceptance Testing	Factory Acceptance Testing (FAT) is completed by project team at ADB SAFEGATE
M7	Shipment	System is shipped to installation site
M8	Airport Installation	Airport installs equipment, external wiring and completed install checklist
M9	Commissioning	ADB SAFEGATE commissioning team inspects installation, complete commissioning and performs Operational Readiness Test
M10	System Acceptance Testing	System Acceptance Testing (SAT) is witnessed by airport/owner and/or engineer

Table 2 Project Critical Milestones

6.1 Delivery Schedule and Contingencies

Equipment will not be released for purchasing or production until receipt of written approval of Submittals including written technical proposal and electrical/mechanical drawings. This means delivery date of equipment is contingent on length of *Submittal Approval Phase (M2).*

Shipment schedule will be confirmed upon ADB SAFEGATE's receipt of approved written Submittals and/or drawing package.

7. Invoicing

ADB SAFEGATE will invoice for completed work based on schedule milestone completion as follows:

ID	Invoice Milestone	Description
M1	Project Submittals	Once project submittals have been submitted. ADB SAFEGATE will invoice for costs associated with the submission.
M6	Factory Acceptance Test	Once FAT is completed (witnessed or un-witnessed), ADB SAFEGATE will invoice for costs associated with software, production and FAT.
M7	Shipment	Equipment will be invoiced when shipped
M10	SAT	Upon completion of commissioning responsibilities and completion of SAT, ADB SAFEGATE will invoice for project completion.

Table 3 Invoicing Schedule

8. ADB SAFEGATE Responsibilities

Unless otherwise indicated in an additional Request For Quote (RFQ) from the Airport, ADB SAFEGATE's project team will provide the following services as required for the project described herein:

- Coordinate and plan with Airport schedule for system commissioning. Coordinate date for switchover to new system pending completion of Airport's responsibilities
- Installation of ACE3 Integrated Kits into existing CCRs
- Update to the latest ACE3 executables
- Coordinate and plan with Airport Maintenance training sessions per project requirements. Please refer to Airport responsibilities
- Complete the commissioning of the control and monitoring system comprising of:
  - Confirm proper location and installation of distributed control (ACE™) units
  - Power up and test (ACE™) units
  - Power up and test control system communication lines.
- Perform operational readiness test (ORT) to demonstrate proper operation prior to system switchover.
- Make any hardware/software changes that are contractual requirements within scope
- Perform Maintenance training on agreed scheduled times
- Perform final System Acceptance Test (SAT) with owner/owner representative
- Resolve any punch list items that are contractual requirements within scope
- Record owner/owner representative system acceptance and provide formal SAT record upon request
- Provide required sets of Operator Manuals, As-Built drawings
- Pack up and ship service tools and extra commissioning material and unused parts from the "Spares Trunk"

9. Airport Responsibilities

Unless otherwise indicated in an additional Request For Quote (RFQ) from the Airport, the Airport is responsible for the following services as required for the project described herein:

- Provide manpower and airport escorts as needed through entire installation, commissioning and testing effort.
- Coordinate all on-site training activities including maintenance training and operations training.
- Provide existing input power for all ACE™ units
- Provide proper grounding for all ACE™ units
- Provide and install all hard-wire communication and peripherals as needed for a complete communication system. Including providing junction boxes / terminal cabinets as required.
- Install and terminate all cabling (including spares), between junction boxes and computer cabinet.
- Complete all airfield work such that all CCR loads are in their final configuration and circuits are fully operational (all lamps burning).
- Coordinate and provide manpower for completion of System Acceptance Testing (SAT) assuring appropriate personnel are present to witness and authorize the test report.
- Complete punch list items within project requirements
- Provide project sign-off upon completion of all project equipment

City Council Regular

Date:	07/24/2023
Title:	NEOGOV Services Agreement
Presented by:	Karla Stanton, Human Resources Director
Department:	Human Resources
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends the City Council approve a services agreement with NEOGOV, for onboarding employees with one-time implementation and subscription costs of $15,663.00, plus ongoing annual subscription costs in the amount of $19,662.30 for the remaining years of the agreement.

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

Human Resources purchased NEOGOV's applicant tracking system in late 2022, and finalized implementation in January 2023. This software has automated the recruitment and hiring processes for the City, and has been well received by job applicants and hiring supervisors. Therefore, Human Resources would like to purchase the onboarding software to support staff in meeting new hire compliance requirements and welcoming employees to the City. The software enables staff to build custom forms and checklists, create personalized landing pages, and assign tasks to departments. In addition, it gives new hires access to all onboarding resources before they begin employment. NEOGOV provides clear checklists and automatic reminders for incomplete tasks to ensure new hires are prepared and compliant before their start date.

Employee onboarding portals provide employees with access to useful documents, training, videos, and FAQs. These resources help new hires understand their roles and responsibilities, as well as organizational expectations and norms. The onboarding portal for new employees may include:

City policies and procedures
Contact information for the employee's new supervisor
Organizational charts
Health and retirement benefits information
Onboarding paperwork
The onboarding portal enables new hires to look at the onboarding process as a whole, so they know exactly what to expect in the first few days and weeks of employment.

A Request For Proposal (RFP) was not needed, since NEOGOV is part of the SHI cooperative purchasing agreement.

ALTERNATIVES

City Council may:

- Approve the agreement with NEOGOV, in the amount of $35,325.30 for initial implementation and annual subscription costs; or,
- Not approve the agreement and provide staff with further direction.

FISCAL EFFECTS

The contract amount is $35,325.30 in year 1 for implementation and annual subscription costs, plus ongoing annual subscription costs of $19,662.30 for the remaining years of the agreement. HR's budget has adequate funds for the initial year licensing and implementation. Annual fees for subsequent years will be included in the respective fiscal year budgets.

Attachments

NEOGOV Services Agreement

NEOGOV™

PowerDMS Digital Management Software A NEOGOV Company

SERVICES AGREEMENT

V040123

You agree that by placing an order through a NEOGOV standard ordering document such as an "Order Form", "Service Order," "Ordering Document," "SOW" or other document mutually agreed by the parties detailing the services, pricing and subscription term (each, an "Order Form" for purposes of this Agreement), you agree to follow and be bound by the terms and conditions set forth herein. "Governmentjobs.com", "NEOGOV", "we", and "our" means Governmentjobs.com, Inc. (D/B/A/ NEOGOV), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, "NEOGOV" and, where applicable, its other affiliates; "Customer", "you", "your" means the NEOGOV client, customer, and/or the subscriber identified in the Order Form).

"Services Agreement" or the "Agreement" shall be used to collectively refer to this NEOGOV Services Agreement, documents incorporated herein including the applicable Order Form, each Addendum (as applicable), and Special Conditions (if any). "Addendum" means each Addendum set forth either as an Exhibit hereto or otherwise made available at https://www.neogov.com/service-specifications (the "NEOGOV Site") and, as applicable, made a part of this Agreement. "Special Conditions" means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Order Form.

1. Provision of Services. Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Order Form (collectively referred to as the "Services"). Customer hereby acknowledges and agrees that NEOGOV's provision and performance of, and Customer's access to, the Services is dependent and conditioned upon Customer's full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the earlier of: (i) date of your signature on an applicable Order Form; or (ii) use of the Services commences (the "Effective Date"). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.

2. SaaS Subscription.

   a) Subscription Grant. "SaaS Applications" means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order Form and subsequently made available by NEOGOV to Customer, and associated components as described in any written service specifications made available to Customer by NEOGOV (the "Service Specifications"). Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (i) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Order Form solely for Customer's internal, non-commercial purposes; (ii) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (iii) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the "SaaS Subscription"). "Authorized Users" means (1) Customer employees, agents, contractors, consultants ("Personnel") who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (2) for whom access to the Services has been purchased hereunder. You shall not exceed the usage limits (if any) as detailed in the user tier in the applicable Order Form. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. You shall be responsible for each Authorized User's access to and use of the SaaS Applications and compliance with applicable terms and conditions of this Agreement.

   b) Subscription Term. Unless otherwise specified in an applicable Order Form, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the "Initial Term"). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a "Renewal Term" and together with the Initial Term, collectively, the "Term") unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party's intention to not renew the SaaS Subscriptions, or unless terminated earlier in accordance with this Agreement. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service.

3. Customer Responsibilities. Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make

available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOGOV Intellectual Property and on and in any documentation or training materials, or (i) use the Services in a manner which violates the terms of this Agreement, any Order Form or any applicable laws.

4. Professional Services. "Professional Services" shall mean professional services purchased by Customer as detailed in an applicable Order Form or NEOGOV Scope of Work (SOW) describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Professional Services may include training, implementation, and best practices of and concerning the SaaS Applications. Professional Services are subject to the terms of the Professional Services Addendum made available on the NEOGOV Site and made a part hereof and may be subject to additional terms pursuant to an SOW and Service Specifications describing, if applicable, the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by Customer before NEOGOV shall commence work. If Customer executes a separate SOW, this Agreement and documents incorporated herein (including but not limited to the Professional Services Addendum) shall control in the event of a conflict with the terms of the SOW. All Professional Services purchased by Customer must be utilized within twelve (12) months of the date of the applicable Order Form or SOW.

5. Payment Terms.

   a) Fees. Customer shall pay all Subscription, Onboarding and Set-Up fees ("Subscription Fees") and Professional Service fees ("Professional Service Fees", collectively the "Fees") as set forth in an Order Form within thirty (30) days of the date of NEOGOV's invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Unless explicitly stated otherwise in an Order Form, all payments due under an Order Form are expressed in and shall be paid in U.S. dollars. Invoices shall be delivered to the stated "Bill To" party on the Order Form. Unless explicitly provided otherwise, once placed the Order Form is non-cancellable and sums paid nonrefundable. Any invoiced amount that is not received by NEOGOV when due as set forth in an Order Form will be subject to a late payment fee of 1.5% per month or the maximum rate permitted by law, whichever is lower. If any amount owing by Customer is more than 30 days overdue, NEOGOV may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. If Subscription Fees are based upon the Authorized User or employee count as may be specified in an Order Form, Customer shall owe NEOGOV supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users or employees set forth in the Order Form. Except as otherwise specifically stated in the Order Form, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by providing Customer with new pricing at least thirty (30) day notice prior to commencement of a Renewal Term. The new pricing shall be deemed to be effective if Customer (a) returns an executed Order Form to NEOGOV, (b) remits payment to NEOGOV of the fees set forth in the invoice referencing the new pricing, or (c) the Customer or any of its Authorized Users access or use the Services after the expiration of the previous Term.

   b) Taxes. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption within ten (10) days after the Effective Date of this Agreement and thereafter upon NEOGOV's request therefor.

   c) Purchase Orders. Any reference to a purchase order in an Order Form or any associated invoice is solely for Customer's convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order. If a purchase order is delivered by Customer in connection with the purchase of Services, none of the terms and conditions contained in such purchase order shall have any effect or modify or supersede the terms and conditions of this Agreement. NEOGOV's failure to object to terms contained in any such purchase order shall not be a waiver of the terms set forth in this provision or in this Agreement.

6. Term and Termination.

a) Term. This Agreement shall commence on the Effective Date and shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services, unless it is terminated earlier in accordance with this Agreement.

b) Termination for Cause; Effect of Termination. Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder pose a security risk to the Services, NEOGOV or any third party, or become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, following 90 days after expiration or termination of the Agreement after expiration or termination of this Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.

7. Audit Rights. Upon reasonable notice, NEOGOV or its agent shall have the right to audit Customer's records relating to its compliance with this Agreement. Customer shall cooperate fully with this audit. If any audit conducted under this Section indicates that any amount due to NEOGOV was underpaid, Customer shall within three (3) business days pay to NEOGOV the amount due. All expenses associated with any such audit shall be paid by NEOGOV unless the audit reveals underpayment in excess of five percent (5%), in which case Customer shall pay such expenses as well as any amount due to NEOGOV.

8. Maintenance; Modifications; Support Services.

a) Maintenance, Updates, Upgrades. NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.

b) Program Documentation; Training Materials. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.

c) Implementation. For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Order Form. For an additional fee as detailed on an applicable Order Form, NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer's responsiveness. NEOGOV is not responsible or liable for any delay or failure to perform implementation caused in whole or in part by Customer's delay in performing its obligations hereunder and, in the event of any such delay, NEOGOV may, in its sole discretion, extend all performance dates as NEOGOV deems reasonably necessary.

d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the NEOGOV support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.

e) Limitations. Unless otherwise specified in the Order Form, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual

data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

9. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the "NEOGOV Intellectual Property"). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.

10. Data Processing and Privacy.

    a) Customer Data. "Customer Data" shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV's provision of Services to Customer, including Personnel data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term "Customer Data". Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOGOV reserves the right to delete or disable Customer Data stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the intellectual property rights of others, or if NEOGOV otherwise reasonably believes any such content is in violation of this Agreement.

    b) Platform Data. "Platform Data" shall mean any anonymized data reflecting the access to or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOGOV may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOGOV may use Platform Data to the extent and in the manner permitted under applicable law. Such anonymized data neither identifies Customer or its users, nor can Customer or any its users can be derived from such data.

    c) Data Processing Agreement. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the "EU") or the United Kingdom ("UK"), or has Authorized Users accessing the Services from the EU or UK, the terms of the NEOGOV Data Processing Addendum ("DPA") made available on the NEOGOV Site is hereby incorporated herein by reference and made part of this Agreement.

    d) Data Responsibilities.

        i) NEOGOV will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by NEOGOV personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for NEOGOV to rely upon the security processes and measures utilized by NEOGOV's cloud infrastructure providers.

        ii) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data, including but not limited to compliance with applicable laws. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Without limiting the foregoing, Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (a) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (b) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (c) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless

otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services. Customer shall provide and institute all appropriate tools and procedures required to ensure the security of its own information system and, more specifically, to prevent, detect and destroy the occurrence of any viruses.

e) Breach Notice. NEOGOV will notify Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within its custody and control (a "Security Breach") within 72 hours of NEOGOV's confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach. If applicable law or Customer's policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.

f) Data Export, Retention and Destruction. Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOGOV's systems using the then existing features and functionality of the Services, NEOGOV will, upon Customer's written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOGOV, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOGOV will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement. Customer acknowledges that it is solely responsible for determining any retention requirements with respect to the Customer Data as required by applicable law and NEOGOV disclaims all liability in connection with such determination. In addition, to the extent Customer requests that NEOGOV retain Customer Data beyond the expiration of the retention period required by applicable law, rule or regulation, NEOGOV disclaims all liability in in connection with retaining such Customer Data including but not limited to any claims related to loss or destruction of such Customer Data.

11. Third Party Services. The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services ("Third Party Services"). Customer agrees that NEOGOV is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOGOV makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOGOV may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOGOV to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, NEOGOV will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.

12. Nondisclosure.

a) Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer's Confidential Information includes its Customer Data. NEOGOV Confidential Information includes the NEOGOV Intellectual Property and the Services. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

b) Obligations. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.

c) Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the

extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

d) Equitable Relief. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. Representations, Warranties, and Disclaimers.

a) Mutual Representations. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

b) Service Performance Warranty. NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill and in a professional manner in accordance with generally recognized industry standards for similar services.

c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.

d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALLY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS OR WITH RESPECT TO ANY THIRD PARTY SERVICES.

e) No Medical Advice. Through certain Services, NEOGOV may make certain telehealth related information available to Customer and/or facilitate user access to telemedicine, expert medical services, and/or emergency medical services. NEOGOV is independent from healthcare providers who provide telemedicine services and is not responsible for such healthcare providers' acts, omissions or for any content or communications made by them. The Services do not provide medical advice and do not create a healthcare provider/patient relationship between Customer and NEOGOV or otherwise. Any Services, or content accessed from the Services, are for informational purposes only and do not constitute medical advice. Customer should seek professional medical advice, diagnosis, and/or treatment for any and all medical conditions, whether as a result of using Services or otherwise. NEOGOV IS NOT RESPONSIBLE OR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS OR ANY OTHER TREATMENT OR INFORMATION THAT CUSTOMER OR ITS USERS MAY OBTAIN THROUGH THE USE OF THE SERVICES.

14. Indemnification.

a) Customer Indemnity. To the extent permitted by applicable law, Customer will defend and indemnify NEOGOV from and against any claim, demand, suit or proceeding made or brought against NEOGOV (i) by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (ii) in connection with Customer's violation of any applicable laws, or (iii) any claim or allegation by any third party resulting from or related to Customer's or any of its Authorized User's breach of Section 3 of this Agreement.

b) NEOGOV Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) and 14(c) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV.

i) Alternative Resolution. If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.

ii) No Duty to Indemnify. NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.

iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.

c) Indemnification Procedures. In order to receive the indemnities described hereunder, the indemnified party must: (i) promptly notify the indemnifying party, in writing, of any claim; (ii) cooperate reasonably with indemnifying party, at the indemnifying party's expense, in the defense and/or settlement thereof; and (iii) allow the indemnifying party to control the defense and/or settlement thereof except that the indemnifying party may not, without the indemnified party's prior written consent, enter into any settlement that does not unconditionally release the indemnified party from liability. The indemnified party shall have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense, provided that ultimate control of such defense shall remain solely with the indemnifying party.

15. Limitations of Liability.

a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, INCLUDING FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b) CAP ON MONETARY LIABILITY. EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, OR CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

16. Reimbursement of Costs in Third Party Litigation. With respect to any litigation or other court proceeding involving Customer and a third party, if any subpoena or other legally binding request related to such litigation or court proceeding is served to NEOGOV requesting copies of documents maintained by NEOGOV or otherwise requesting NEOGOV to appear as a witness in any capacity or provide testimony with respect to Customer's documentation, Customer shall reimburse NEOGOV for its out-of-pocket costs associated with compliance with such request, including but not limited to NEOGOV's reasonable attorneys' fees.

17. Text Message Communications. NEOGOV may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOGOV shall not be responsible for your use of such features, and you shall indemnify NEOGOV with respect to any damages resulting from your use including but not limited any violations of applicable law. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.

18. Publicity. Unless otherwise provided in the applicable Order Form, NEOGOV may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.

19. Force Majeure. Except for Customer's payment obligations to NEOGOV, neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity for any act, circumstance, event, impediment or occurrence beyond such party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, pandemic, military action or usurped power; (h) actions or failures to act on the part of a governmental authority; (i) internet service interruptions or slowdowns, vandalism or cyber-attacks, or (j) any other cause beyond the reasonable control of such party.

20. Independent Contractor; No Third Party Beneficiary; Fulfillment Partners. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. NEOGOV may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.

21. Entire Agreement; Amendment; Addendum. This Services Agreement, the Exhibits hereto, each Addendum (as may be applicable pursuant to the terms therein) and documents incorporated herein, the applicable Order Form, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. It is expressly agreed that the terms of this Agreement and any NEOGOV Order Form shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Order Form, 3) the NEOGOV Services Agreement, and 4) incorporated documents (including the Exhibits and each applicable Addendum). This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound. If you are subscribing for the HRIS or PowerEngage Platform, you hereby specifically agree to the terms of the applicable Addendum set forth on the NEOGOV Site.

22. General.
    a) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of California, without giving effect to conflict of law rules. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles, California.

b) Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive.

c) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOGOV at the address specified in the applicable Order Form.

d) Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.

e) Electronic Delivery. Delivery of a copy of this Agreement or an Order Form bearing an original signature by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

f) Assignment. Customer may not assign this Agreement without the express written approval of NEOGOV Any attempt at assignment in violation of this Section shall be null and void.

g) Construction. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, addendum, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum ("Government Addendum") forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a "Government Customer" means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. **Applicability**. The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement.

2. **Termination for Non-Appropriation of Funds**. If Customer is subject to federal, state or local law which makes Customer's financial obligations under this Services Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Services Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available. It is expressly agreed that Customer shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its fiscal operations. If Customer terminates the Services Agreement under this Section 2, Customer agrees not to replace the Services with functionally similar products or services for a period of one year after the termination of the Services Agreement.

3. **Indemnification**. If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 14(a) and the indemnification provision included in Section 17 of the Services Agreement shall not apply to Customer, to the extent disallowed by applicable law.

4. **Open Records**. If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws ("Open Records Laws") the confidentiality requirements of Section 12 of the Services Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for NEOGOV to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.

5. **Cooperative Purchasing**. As permitted by law, it is understood and agreed by Customer and NEOGOV that any (i) federal, state, local, tribal, or other municipal government (including all administrative agencies, departments, and offices thereof); (ii) any business enterprise in which a federal, state, local, tribal or other municipal entity has a full, majority, or other controlling interest; and/or (iii) any public school (including without limitation K-12 schools, colleges, universities, and vocational schools) (collectively referred to as the "New Entity") may purchase the Services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity. Any New Entity who purchases Services under this Section hereby represents that is has the authority to use this Services Agreement for the purchase and that the use of the Services Agreement for the purchase is not prohibited by law or procurement regulations applicable to the New Entity.

6. **Subcontractors.** For purposes of this Agreement, including any subsequent documentation requested by Customer pursuant to this Agreement, the term "subcontractors" shall exclude subcontractors (i) who perform routine software development and maintenance services which are not specific to the Customer, and (ii) subcontractors who will not have any access to Customer Data.

Exhibit B
Integration Terms Addendum

NEOGOV offers integrations and platform APIs for integrations to third party systems ("Integration Services"). Customer may use only those Integration Services purchased or subscribed to as listed within the NEOGOV Order Form. The following terms (the "Integration Terms Addendum") shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at https://api.neogov.com/connect/marketplace.html and/or https://apidocs.powerdms.com ("Affiliated API") or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service ("Customer Application") integrated using NEOGOV's open API ("Open API"). Integration Services are not available for HRIS Services and this Exhibit B shall not apply to HRIS Services.

1. Provision of Integrations. Subject to and conditioned on compliance with all terms and conditions set forth in this Agreement, NEOGOV hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in this Agreement, or the Open API for communication between Customer's human resource related third application(s) that will interoperate with NEOGOV Services (collectively these uses shall be referred to as the "API" or "Integration"). Customer acknowledges there are no implied licenses granted under this Agreement. NEOGOV reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.

2. Integration Intellectual Property. All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOGOV. All right, title, and interest in and to the third-party materials, includingall intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.

3. Integration Terms of Use. Except as expressly authorized under this Agreement, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rightor other right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOGOV; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOGOV-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.

4. Customer Integration Responsibilities. Customer, Customer developed web or other software services or applications, and Customer third-party vendors that integrate with the API (collectively the "Customer Applications"), shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on https://api.neogov.com/connect/index.html and/or https://apidocs.powerdms.com from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware,or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email ("spam"),multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.

5. Cooperation. If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOGOV reasonably requests to enable the API. NEOGOV is not responsible or liable for any late delivery or delay or failure of performance caused in wholeor in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement. NEOGOV will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOGOV. NEOGOV shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOGOV control.

6. Provision of Open API. In the event license fees or other payments are not due in exchange for the right to use and access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth

in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein. Notwithstanding the foregoing, NEOGOV reserves the right to charge for access with effect from the start of each Renewal Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. API Key. In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agreesto monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior. This Agreement does not entitle Customer to any support for the Open API. You acknowledge that NEOGOV may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.

8. Efficient Processing. You must use efficient programming, which will not cause an overwhelming number of requests to be made in too short a period of time, as-determined solely by NEOGOV. If this occurs, NEOGOV reserves the right to throttle your API connections,or suspend or terminate your access to the Open API. NEOGOV shall use reasonable efforts to provide Customer notice and reasonable time to cure prior to taking such actions.

9. Open API Limitations. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOGOVBE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICTLIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS, EVEN IF NEOGOV HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOGOV WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.

10. Open API Termination. Notwithstanding the additional Termination rights herein, NEOGOV may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

City Council Regular

Date:	07/24/2023
Title:	W.O. 14-11: WRF Nutrient Upgrade, Expansion and Improvements Project, Contract Amendment
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that the City Council approve Amendment No. 6 to the City's professional engineering services contract with HDR Engineering for W.O. 14-11: WRF Nutrient Upgrade, Expansion, and Improvements Project in the amount of $194,700.

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

This project reached final completion in July 2022. Since that time, HDR has provided periodic ongoing assistance with training, operations assistance, and warranty issues that extend beyond the scope of the original contract and previous amendments. Equipment startup and programming services beyond the allocated budget were also necessary as part of the fine-tuning needed on various new treatment process equipment. Finally, additional design and construction support services were required for AFT, influent screening, influent grit removal and UV disinfection equipment that were procured separately by the City and installed during this project timeframe.

HDR was awarded a professional engineering services contract in 2014 which covered the original project design and bidding services. Approved contract Amendments Nos. 1, 2, and 3 enabled HDR to complete additional necessary design phases as well as engineering construction administration services. Amendment No. 4 provided funding for Yellowstone River water quality studies, and Amendment No. 5 provided design and bidding services for an Administration Building remodel. The value of HDR's contract including this proposed Amendment No. 6 is $12,239,000. This final amendment will complete and close out the project.

ALTERNATIVES

City Council may:

- Approve Contract Amendment No. 6 with HDR Engineering; or,
- Not approve Amendment No. 6 with HDR Engineering. If this amendment is not approved, HDR will not be compensated for out of scope work necessary to complete the project and ensure proper process operations.

FISCAL EFFECTS

Original Contract	$4,591,900
Previous Contract Amendments 1-5	$7,452,400
This Contract Amendment	$194,700
Contract Total	$12,239,000

FY24 wastewater funds will be used for this project amendment. A capital project will need to be deferred, or a budget amendment will be required for this amendment.

Attachments

WO1411 PES Contract Amend#6

AMENDMENT NO. 6

TO

CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES

W.O. 14-11

WASTEWATER TREATMENT PLANT NUTRIENT UPGRADE, EXPANSION AND IMPROVEMENTS

THIS AGREEMENT, made and entered into on July 5, 2023, by and between the following:

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

and

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

WITNESSETH:

WHEREAS, the City and Contractor have entered into a contract dated June 9, 2014, for Contractor to provide engineering services to the City for Work Order 14-11 Wastewater Treatment Plant Nutrient Upgrade, Expansion and Improvements, and;

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

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

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

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

Part I, Section 4. is amended as follows:

Increase the amount of compensation by One Hundred Ninety-Four Thousand Seven Hundred and no/100 DOLLARS ($194,700.00) to Twelve Million Two Hundred Thirty Nine Thousand and no/100 DOLLARS ($12,239,000.00).

Appendix A, Section 3. Add the following to the Scope of Work:

- Provide support services to the City for procuring the following equipment:
  - Air Flotation Thickener Equipment
  - Headworks Fine Screen
  - Headworks Grit Unit
  - UV equipment for third channel
- Provide updated design drawings and specifications for procured equipment installation.
- Provide hydraulic analysis, design drawings and specifications for upgrades to the Headworks effluent channel.
- Provide design drawings and specifications for addition of macerators in the Washer/Compactor sump area.
- Provide bidding services for the equipment installation, Headworks effluent channel modifications and macerators addition.
- Provide additional construction services (beyond original scope) for equipment installation.
- Provide construction services for Headworks effluent channel modifications.
- Provide programming services to plant SCADA system beyond original project scope.
- Provide startup and operations assistance for main plant project beyond original scope.

Appendix B, Section 1, Paragraph A. Add the following to the previous breakdowns:

1.	Project Initiation, Coordination and Management	$2,700
2.	Design	$41,800
3.	Bidding Services	$6,100
6.	Construction Services	$33,500
7.	Startup, Training and eOM Services	$16,100
8.	Operations Assistance	$67,400
9.	Application Software Programming Services	$27,100
	Total	**$194,700**

CONSULTANT

NAME: Jared Harris

BY: Jared R Harris

TITLE: Senior Vice President

DATE: July 5, 2023

CITY OF BILLINGS, MONTANA

BY: _____
Mayor

DATE: _____

City Council Regular

Date:	07/24/2023
Title:	Community Center Hail Repairs - Change Order No. 1
Presented by:	John Caterino, Facilities Manager
Department:	City Hall Administration
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that City Council approve an additive change order in the amount of $103,427.00 to the prime contract with Finishing Touch Exteriors, Inc., for hail repairs at Billings Community Center.

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

The original plan set and scope that was bid was missing some items from the insurance adjuster repair methodology. A revised plan set was issued and revision pricing for change order #1 includes repairs to HVAC, EIFS, doors, and rooftop solar array.

ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

The increased cost of change order #1 is $103,427.00 and will be funded by insurance claim funds paid out for the August 2019 hail event.

Attachments

CO #1

CHANGE ORDER

No. 001

PROJECT:	**Hail Damage Repairs Billings Community Center**
CONTRACT DATE:	**5/9/2023**
CO DATE OF ISSUANCE:	**7/26/2023**

OWNER:	City of Billings PO Box 1178 Billings, MT 59013	**CONTRACTOR:**	Finishing Touch Exteriors, Inc. PO Box 30556 Billings, MT 59107
OWNERS REP:	JOHN CATERINO	**CONTRACT FOR:**	2019 Hail – Community Center

You are directed to make the following changes in the Contract Documents.

Description: Additive change order to original prime contractor for hail repairs at Community Center dated 5/9/2023.

Purpose of Change Order: Increase scope of work to include the following:

HVAC: replace nine (9) down blast exhaust fans, replace seven (7) b cap vents, replace one (1) single wall cap, replace two (2) axial down blast fans, replace one (1) 12” intake cap, replace one (1) 4-ton condenser with interior coil and new refrigerant, replace one (1) 5-ton condenser with new refrigerant, two (2) duct modifications for new interior coils, removal and disposal of all equipment, crane onsite for lifting.

EFIS: patch, repair, and skim cost to EFIS system on elevation above PRPL storefront.

Doors: remove and replace one (1) screen door (center), remove and replace one (1) man door (south), clean and paint one (1) man door (north).

Solar Array: test and inspect solar array before resetting.

Attachments: Project Revision #1 pricing from Finishing Touch Exteriors, Inc., signed by Nathan Weaver and dated 7/10/2023. Drawings named “HAIL DAMAGE REPAIRS BILLINGS COMMUNITY CENTER” Revision #1 dated 5/5/23.

CHANGE IN CONTRACT PRICE:

Original Contract Price

$ 646,750.00

Previous Change Orders No.___

$ ----------

Contract Price prior to this Change Order

$ 646,750.00

Net Increase (decrease) of this Change

$ 103,427.00

Contract Price with approved Change Order

$ 750,177.00

CHANGE IN CONTRACT TIME:

Original Contract Time

July 31, 2023
days or date

Net Change from previous Change Orders

Contract Time prior to this Change Order

July 31, 2023
days or date

Net Increase (decrease) of this Change

92
days

Contract Time with approved Change Order

October 31, 2023
days or date

APPROVED:
CITY OF BILLINGS, MONTANA

By _____
Owner Signature

Name _____

Title _____

Date _____

APPROVED:
FINISHING TOUCH EXTERIORS, INC

By _____
Contractor Signature

Name _____

Title _____

Date _____

City Council Regular
Date: 07/24/2023
Title: Quitclaim deed to Todd and Michelle Vralsted
Presented by: Debi Meling
Department: Public Works
Presentation: No
Legal Review: Yes
Project Number: NA

RECOMMENDATION
Staff recommends that Council approve of the quitclaim deed to Todd and Michelle Vralsted.

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
Certificate of Survey 592, located west of 37th Street West and north of Rimrock Road, was platted in 1953. The plat shows a 30-foot wide easement for a proposed road along Tracts F, G, H and I. 37th Street West was constructed in the easement fronting Tracts F, G, H and a portion of the frontage along Tract I. Tracts F, G, and H dedicated the easement as public right-of-way through a subdivision plat. Subsequently, 37th Street West was platted and constructed turning eastward, rather than running directly north up into the Rims.

The property owners of Tract I, Todd and Michelle Vralsted, are proposing to construct out buildings over the easement on their property. These buildings will be on a portion of the easement that is not utilized for 37th Street West and where there is no need for public use. There is a question of whether the original easement was for the benefit of the properties in Certificate of Survey 592 or for the public. For this reason, City legal staff recommended that the City quitclaim its interest in the northern portion of the easement that is not used for public use for 37th Street West. In summary, as a result of this Council action, the City would maintain interest in the southern portion of the easement, and quitclaim interest in the northern half at the point where 37th Street west veers east and the easement is unnecessary. Attached is a copy of the plat for Certificate of Survey 592, and exhibit showing the easement area, and the quitclaim deed.

ALTERNATIVES
City Council may:

- Approve the quitclaim deed; or,
- Not Approve the quitclaim deed. This may stop the property owner from being able to develop on their property where the easement exists or require a different development plan.

FISCAL EFFECTS
There is no fiscal impact to the City with approval of the quitclaim deed.

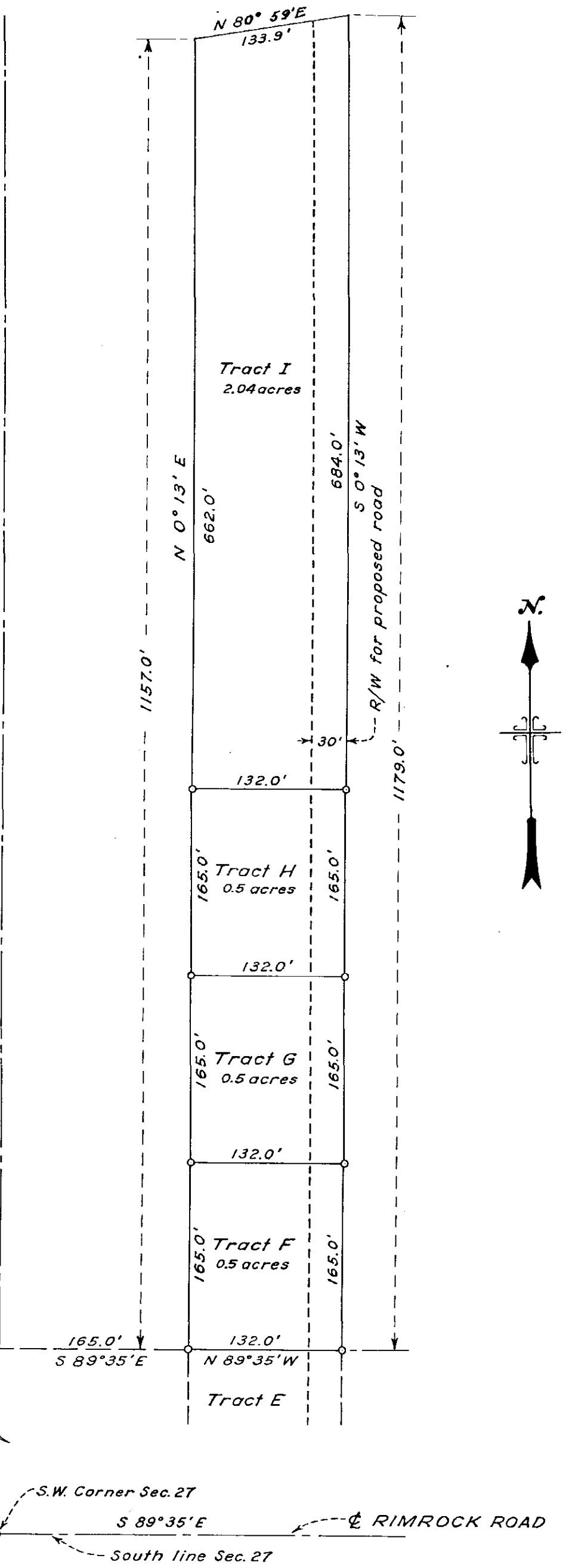
Attachments

CS 592
Easement Exhibit
Quitclaim Deed

C/A #592

PLAT OF SURVEY

Of part of the S.W. ¼ of Sec. 27, T. 1 N., R. 25 E. of the Montana Principal Meridian in Yellowstone County, Montana.



507290

STATE OF MONTANA }
County of Yellowstone } ss
This instrument was filed in
office the 26th day of May 53
at 1:32 o'clock P.M.
Chris Rubich
County Recorder
by L. A. Mukluan
$1.50

No. 592

For: Henry W. Reimers

CERTIFICATE OF SURVEY

STATE OF MONTANA)
COUNTY OF YELLOWSTONE) SS

This is to certify that I, Francis D. Bates, made a survey of a tract of land situated in the S.W. ¼ of Sec. 27, T. 1 N., R. 25 E. of the M.P.M.
Said tract being more particularly described as follows, to wit:

Beginning at a point which is located 825 feet N. 0° -13'E. and 165 feet S. 89° -35'E. from the S.W. corner of said Section 27, said point of beginning being the N.W. corner of Tract E of Survey No. 548; thence extending N. 0° -13'E. on a line parallel to the West line of said Section 27, a distance of 1,157 feet, to a point at the base of the vertical sandstone cliff (rimrocks); thence N. 80° - 59' E. on a line along and approximately parallel to the base of the cliff, a distance of 133.9 feet to a point at the base of the vertical sandstone cliff; thence S. 0° -13'W. on a line parallel with the West line of said Section 27, a distance of 1,179 feet to the N.E. corner of Tract E of said Survey No. 548; thence N. 89° -35'W. a distance of 132 feet to the point of beginning. Said described tract contains 3.54 acres more or less.

I further certify that: said tract is divided into small tracts lettered alphebetically from F to I; that each of the lettered tract are of the dimensions and area shown upon the annexed Plat; the location and boundries of each lettered tract, and of the whole tract are as shown upon said Plat, and are in accordance with the survey on the ground; that the Plat and Survey were made in May, 1953. Dated this 21st day of May, 1953 A.D.

#592

Francis D. Bates
Francis D. Bates
Civil Engineer and Land Surveyor
Reg. No. 322 ES
State of Montana

Subscribed and Sworn to, before me, a Notary Public in and for the State of Montana,
this 22 day of May, 1953.

Witness my hand and seal, the day and year herein written.

Louis Monahan
Notary Public in and for the
State of Montana, residing in
Billings, Montana

My commission expires July 10, 1953

Easement Quit Claim Exhibit



Portion of Easement to be Quitclaimed by City

Portion of Easement Remaining

City of Billings
Attn: City Clerk
P.O. Box 1178
Billings, Montana 59103

QUITCLAIM DEED

For valuable consideration, receipt of which is acknowledged this ___ day of _____, 2023, the **CITY OF BILLINGS, MONTANA,** a municipal corporation of the State of Montana, whose principal address is 210 N. 27th Street, Billings, Montana 59103, ("**GRANTOR"),** does hereby grant, convey, release and forever quitclaim its interest, if any, unto **TODD & MICHELLE VRALSTED,** whose principal address is 3322 37th Street West, Billings, Montana 59102, ("**GRANTEE"),** in the following described real property situated in the City of Billings, Yellowstone County, Montana:

> Tract 1 of Certificate of Survey 592 located in the NWSW of Section 27, T01N, R25E, P.M.M. in the City of Billings, Yellowstone County, Montana
> Commencing at the northeast corner of Tract 1 of Certificate of Survey 592, also being the Point of Beginning; thence S78°38'42"W a distance of 30.53 feet; thence S0°41'41"E a distance of 431.41 feet; thence N89°18'19"E a distance of 30.00 feet; thence N0°41'41"W a distance of 437.07 feet to the Point of Beginning.
> Said area being 0.299 acres, more-or-less.

TO HAVE AND TO HOLD unto GRANTEE, and to their assigns and successors forever.

By:_____

WILLIAM A. COLE, MAYOR
CITY OF BILLINGS

ATTEST:

By:_____

DENISE R. BOHLMAN, CITY CLERK
CITY OF BILLINGS

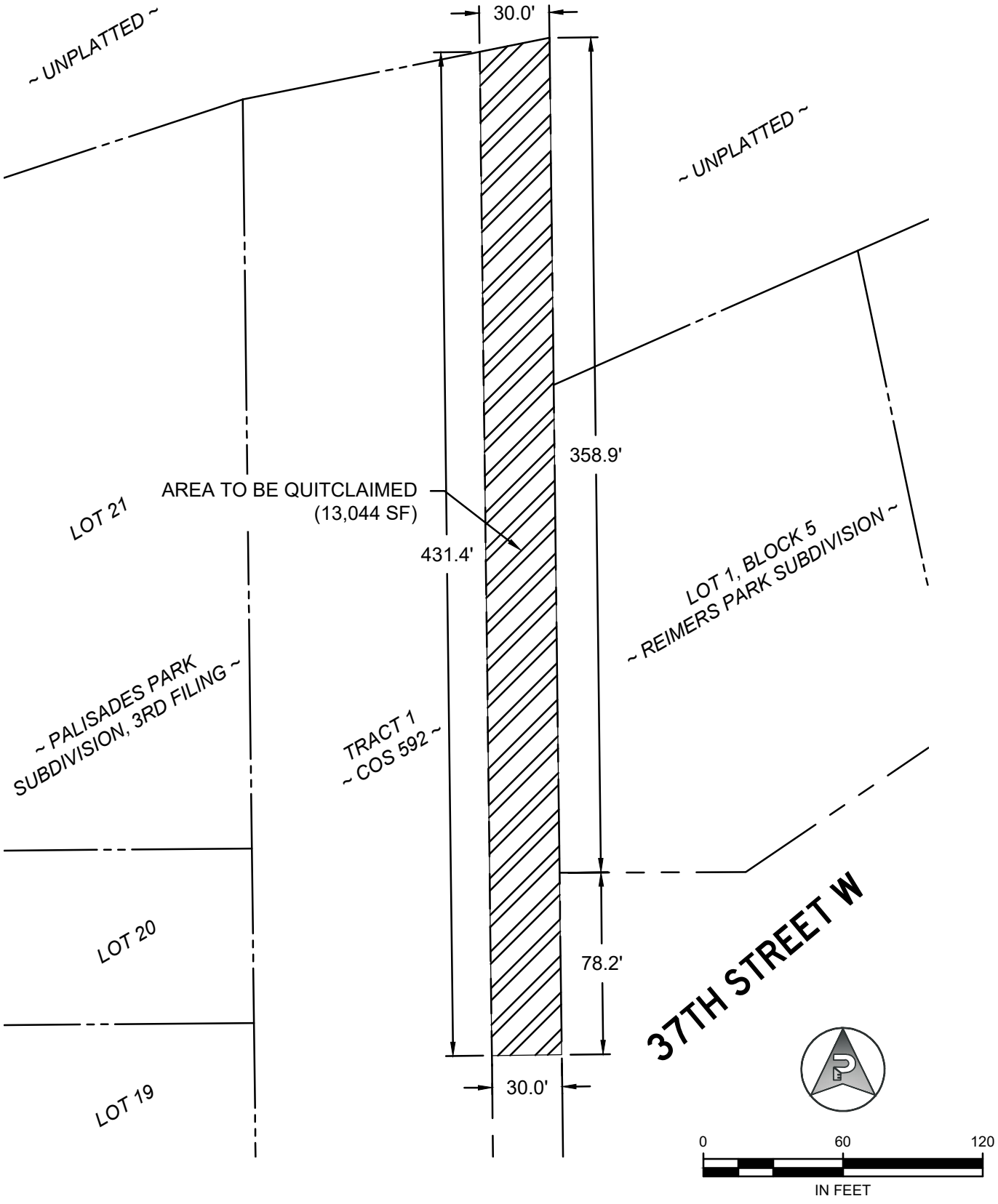
STATE OF MONTANA)
:ss
County of Yellowstone)

This instrument was signed or acknowledged before me on this _____day of _____, 20__, by **WILLIAM A. COLE**, **MAYOR** and **DENISE R. BOHLMAN, CITY CLERK**, on behalf of the **CITY OF BILLINGS, a Montana municipal corporation,** as **GRANTOR**.

_____
(Notary Signature)

(Notarial Seal)

EXHIBIT "A"


~ UNPLATTED ~
30.0'
~ UNPLATTED ~
358.9'
AREA TO BE QUITCLAIMED
(13,044 SF)
431.4'
LOT 21
LOT 1, BLOCK 5
~ REIMERS PARK SUBDIVISION ~
~ PALISADES PARK
SUBDIVISION, 3RD FILING ~
TRACT 1
~ COS 592 ~
LOT 20
78.2'
37TH STREET W
LOT 19
30.0'
0
60
120
IN FEET

City Council Regular

Date:	07/24/2023
Title:	Howard Billings Industrial Subdivision - Preliminary Major Plat
Presented by:	Monica Plecker
Department:	Planning & Community Services
Presentation:	No
Legal Review:	Not Applicable
Project Number:	PZX-22-00183-01

RECOMMENDATION

The Planning Board forwards to the City Council a recommendation to conditionally approve the preliminary plat of Howard Billings Industrial Subdivision, adopt the Findings of Fact as presented in the staff report, and deny the variance request.

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

On May 1, 2023, Stahly Engineering & Associates for SLH Industries LLC, applied for preliminary major plat approval for Howard Billings Industrial Subdivision. The proposed subdivision creates 40 lots for commercial development. The subject property is generally located west of Mullowney Lane and south of the South Frontage Road. The property is zoned Heavy Commercial (CX), builders will follow the CX zoning when developing the lots.

VARIANCES REQUESTED

The applicant is requesting a variance from the subdivision regulations, Section 23-406.A.1, Streets and Roads, relation to undeveloped areas.Staff and the Planning Board have recommended denial of the variance. More information can be found in Attachment A of this staff report.

PROPOSED CONDITIONS OF APPROVAL

Pursuant to Section 76-3-608(4), MCA, the following conditions are recommended to reasonably minimize potential adverse impacts identified within the Findings of Fact.

1. To protect public health and safety, 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 minimize traffic conflicts, prior to final plat approval, City Engineering has requested the developer directly line up their Holiday Lane road with the existing Holiday Lane on the east side of Mullowney. This shall be depicted correctly on the Final Plat.
3. To protect public health and safety and to minimize the possibility of traffic conflicts, prior to final plat approval, the applicant will place a no access strip on lots that have a lot line in common with the road edges of Mullowney Lane and South Frontage Road. Lot 2, Block 5 and Lot 1, Block 1, shall have a no access strip place on it from Mullowney Lane going west for 100 feet. Lot 17, Block 1, and Lot 1, Block 3 shall have a no access strip placed on them from South Frontage Road going south 100 feet.
4. To protect public health and safety and minimize the impacts on local services, the subdivider shall provide connectivity to an existing trail and neighboring subdivision by installing a pedestrian bridge across Hogan's Slough. This bridge will connect the existing trail located in QFC subdivision to this proposed subdivision with a 10-foot-wide paved surface that will extend from their new internal street to the existing 10-foot wide paved trail in QFC subdivision. The connection shall be depicted on the final plat and the SIA shall include language describing the bridge and pedestrian connection.*
   **Note, This condition reflects the Planning Boards recommendation of denial for the variance. If the City Council approves the variance, this condition of approval will no longer apply.*
5. To protect public health and safety, prior to final plat, the applicant will coordinate with the USPS to locate a central box unit for the subdivision and provide enough space for the mail delivery person to safely stop there and deliver the 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 March 16, 2023
- Preliminary plat application submitted to Planning Division on May 1, 2023
- Departmental review meeting May 18, 2023
- Preliminary plat re-submittal May 25, 2023
- Planning Board plat review June 13, 2023
- Planning Board public hearing June 27, 2023
- Preliminary plat to City Council July 24, 2023
- 60 working-day preliminary plat review period ends July 26, 2023

PLAT INFORMATION

General location:	West of Mullowney Lane and south of South Frontage Road
Legal Description:	Amended plat of Lots 1 & 2, Block 1, of Zeiler Subdivision
Owner/Subdivider:	SLH Industrial LLC
Engineer and Surveyor:	Stahly Engineering & Associates
Existing Zoning:	CX - Heavy Commercial
Existing land use:	Farmland
Proposed land use:	Commercial
Gross and Net area:	56.62 acres / 50,02
Proposed number of lots:	40
Lot size:	Max: 2 acres Min: 0.91 acres
Parkland requirements:	Parkland dedication is not required for commercial subdivisions.

STAKEHOLDERS

A public hearing for Howard Billings Industrial Subdivision was held at the June 27, 2023, planning board meeting. Staff gave a brief presentation about the proposed subdivision. The applicant for this subdivision has asked for a variance from the requirement of making a connection to undeveloped land, Billings subdivision regulations Section 23-406.A.1, Streets and Roads. The parcel to the west is not developed, land to the south is developed and there is no possibility of connecting. There are existing roads to the north, South Frontage Road, and east, Mullowney Lane. The subdivision will make connections to both Mullowney Lane and the South Frontage Road. One of the requirements of a subdivision variance request is to provide an alternate solution, but the applicant did not offer an alternative to the requirement of making a connection to undeveloped land to the west. The subdivision to the west is QFC subdivision. Hogan's Slough separates this proposed subdivision and the QFC subdivision. The Planning Board has recommended denial of the variance request along with conditional approval of the subdivision. Denial of the variance requires the developer create a pedestrian and bicycle connection to an existing path in the QFC subdivision. Along the east edge of QFC subdivision, next to Hogan's Slough there is an existing 10-foot wide, paved, pedestrian/bike path that goes south to Elysian Road. By connecting to this trail it will provide another way to get north from Elysian Road and not have to be in streets or on trails that are alongside arterial streets. It will provide a connection to an existing trail. Should the new subdivision have businesses in it, and employees in the subdivisions to the south, the employees would be able to walk or ride a bike to work. This connection would allow families in the future to ride on a trail to the north to connect to South Frontage Road and businesses in the area. This connection would also provide a future connection to the proposed trail along South Frontage Road, which this subdivision will be building part of that trail. Within the subdivision there will be sidewalks installed and the paved surface of the roads will be 40 feet back of curb to back or curb. A subdivision with commercial uses will have lower traffic volume compared to major arterial streets. This connection to the existing trail in QFC subdivision will be a safer connection that avoids having to ride alongside arterial streets. It will also eliminate having to cross arterial streets should you have to use the trail along Elysian Road and then need to cross Elysian Road to connect with the trail going north along Mullowney Lane.

Planning Board President Dennis Cook called for questions and discussion from the members of the Board. Board member Woods asked regarding the trail connection from the west, specifically where it would be a good location to

make the connection from this subdivision to the existing trail in QFC subdivision. Staff suggested they use the proposed 20-foot wide sanitary sewer easement shown in Lot 11 Block 1. Internal Streets and sidewalks will be used for a north and east connection for pedestrians/cyclists. Board member Nordel asked regarding Hogan's Slough and was there an environmental study done on the slough for this subdivision. Matt Smith with Stahly Engineering and Associates, agent for the applicant, said the site slopes from northwest to southeast at a very minimum slope. Stahly considered a pond for drainage to Hogan's Slough, but it was not feasible due to the lack of slope. So they are proposing all water go from the northwest to the southeast to a proposed detention basin in the southeast corner by Mullowney Lane. He said no environmental study was done for the Slough.

Public Hearing
Planning Board President Dennis Cook opened the public hearing and asked if there is anyone wishing to speak in favor or against the Howard Billings Industrial Subdivision. There was no one wishing to speak for or against the proposed subdivision.
President Cook closed the public hearing and called for a motion.

Motion
Board member Stephenson made a motion and Board member Woods seconded the motion to forward to the City Council a recommendation to conditionally approve the preliminary plat of Howard Billings Industrial Subdivision, adopt the Findings of Fact as presented in the staff report, and deny the variance request.
Discussion
President Cook called for discussion on the motion. There was none.

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 plan. The 60 working day review period for the proposed subdivision ends on July 26, 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 60 working day review period, the City Council is required to:
1. Approve;
2. Conditionally Approve; or
3. Deny the Preliminary Plan

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
Waiver of Right to Protest
Attachment A Variance
Mayors Letter

FINDINGS OF FACT

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

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

1. Effect on agriculture and agricultural water user facilities

The subject property is currently farm land. Water rights will not be transferred to subdivision property owners. The Hogan Slough runs along the west edge of the proposed subdivision. Existing ditches around the perimeter of 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 to the subject property will be provided by the City of Billings. The subdivision will install a 12-inch water main at the proposed intersection of Mullowney Lane and the Holiday Avenue. A second connection will be made at the proposed intersection of South Frontage Road and Leith Trail. The water lines will be looped to provide consistent pressure within the system. 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.

The sewer system has been designed to drain two different directions. The east side of the subdivision will connect to a 4-inch low-pressure sewer main. The split system is due to existing sewer main depths and topographical constraints. This low-pressure sewer main will discharge into a manhole to be installed in Holiday Ave, approximately 800 feet west of Mullowney Lane. The remainder of the subdivision will drain wastewater to the west via 8 and 12-inch gravity sewer mains. The sanitary sewer will connect to existing City of Billings sewer collection system by tying into an existing manhole in the adjacent QFC Subdivision.

All lots will have a sanitary sewer stub to them from the proposed mains. 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. The new storm drain piping will discharge into one stormwater retention/detention basin in the subdivision that will manage storm drainage from the public streets. The basin will be located on the east side near Mullowney Lane and discharge water into the storm drainpipe alongside Mullowney Lane. This storm basin will have approximately 65,000 cubic feet of storage.
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. **(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 Mullowney Lane and South Frontage Road. Access to each individual lot will be from the internals streets that are proposed with this subdivision. All new streets will be in a 70-foot-wide right of way and will be constructed to 40-foot wide, back of curb to back of curb road. This right of way width and paved surface width is required for subdivisions that are commercial developments. Construction will include installation of accessible ramps at the intersections with all roads within the proposed subdivision.

The southern road within this subdivision is a continuation of a street, Holiday Lane, east across Mullowney Lane. In comments from City Engineering, they have requested that the developer directly line up their Holiday Lane road with the existing Holiday Lane on the east side of Mullowney. **(Condition #2)** The road currently shows an offset with the new section of Holiday Lane being slightly farther to the south of the existing road on the east of Mullowney Lane.

This subdivision has proposed lots along Mullowney Lane and South Frontage Road. Engineering has asked that a no access strip be added to those lots that have a lot line in common with the road edges of Mullowney Lane and South Frontage Road. Lot 2, Block 5 and Lot 1, Block 1, shall have a no access strip place on it from Mullowney Lane going west for 100 feet. Lot 17, Block 1, and Lot 1, Block 3 shall have a no access strip placed on them from South Frontage Road going south 100 feet. **(Condition #3)**

A traffic study has been completed for this proposed subdivision and the applicant will be making contributions to the intersections impacted by the additional traffic burden places on them. Those contributions are outlined in the SIA under the heading III Transportation H. Their proportional contribution will be made to the City prior to final plat approval.

City of Billings Subdivision Regulations Section 23-406 A 1 requires subdividers to provide future road connections to undeveloped land around them. The applicant has requested a variance from this requirement for a connection to the west. One of the requirements of asking for a variance is to provide an alternative design that can satisfy the objectives of the subdivision regulations. There was not an alternative proposed by the applicant.

City Staff is proposing a pedestrian bridge across Hogan's Slough and connecting the bridge to the new internal streets and sidewalks of the propose subdivision to the existing trail on the west side of Hogan's Slough. See Attachment A for further discussion. Staff believes the pedestrian bridge is a good alternative to a vehicle bridge in providing a connection between the subdivisions. **(Condition #4)**

Sidewalks will be installed at the time of individual lot development. All sidewalks will be boulevard type walks with 5-foot wide boulevard sidewalks.

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** – Because this is a commercial subdivision there will be no impact on the school populations in the area.

g. **Parks and Recreation** – This proposed subdivision is for commercial development and therefore is not required to provide parkland.

h. **Mail Delivery -** The United States Postal Service will provide postal service to the subdivision. The developer will work with the USPS to provide a satisfactory location for a CBU for this filing. **(Condition #5)**

3. Effect on the natural environment

The subject property is relatively level land adjacent and is surrounded by other commercial development. This land has been used for farming purposes for many years and the natural environment does not exist any longer. There are pockets of natural landscape along some edges, but the overwhelming majority of the site has been farmed for years.

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 not proposing to build the subdivision is phases.

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:

> **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.
>
> **Essential Investments (relating public and private expenditures to public values)** Infill development and development near existing City infrastructure may be the most cost effective.
>
> **Community Fabric (attractive, aesthetically pleasing, uniquely Billings)** Planning and construction of interconnected sidewalks and trails are important to the 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 does not show any trails within the proposed subdivision. There is a proposed trail along Mullowney Lane, there is also one identified along the South Frontage Road. There is a 10-foot paved trail along the south side of Elysian road that allows student to walk/bike to Elysian School.

There is an existing trail along the west side of Hogan's Slough. Staff is proposing the applicant provide a pedestrian bridge across Hogan's Slough with connecting trails to that bridge and connection to the existing trail on the west side of Hogan's Slough. See attachment A.

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 Heavy Commercial – CX zoning. All building development on the lots shall comply with the CX 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 Mullowney Lane and South Frontage Road. Each lot has legal and physical access from the proposed internal public streets.

CONCLUSIONS OF FINDINGS OF FACT

- The preliminary plat of Howard Billings Industrial 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

City staff recommends the Planning Board forward to the City Council, the preliminary plat of Howard Billings Industrial Subdivision, recommending conditional approval and adopt the Findings of Fact as presented in the staff report.

Approved by the Billings City Council, July 24, 2023

_____

William A. Cole, Mayor

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PRELIMINARY PLAT
AMENDED PLAT OF LOTS 1 & 2, BLOCK 1, ZEILER SUBDIVISION
TO BE KNOWN AS

HOWARD BILLINGS INDUSTRIAL SUBDIVISION

A SUBDIVISION OF LOTS 1 & 2, BLOCK 1, OF THE ZEILER SUBDIVISION, DOC. 3716126
LOCATED IN THE SE 1/4 OF SECTION 18, T. 1 S., R. 26 E., P.M.M
CITY OF BILLINGS, YELLOWSTONE COUNTY, MONTANA

SITE DATA:

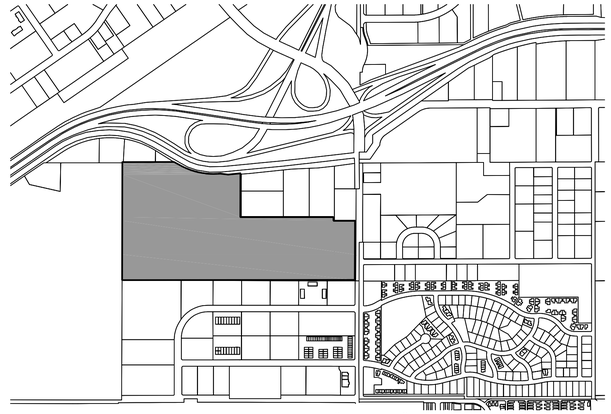
- *Number of lots: 41*
- *Maximum Lot area: 2.00 Ac.*
- *Minimum Lot area: 0.60 Ac.*
- *Area of parkland: 0.00 Ac.*
- *Linear feet of streets: 6,770'*
- *Net and Gross acreage of land to be subdivided: 58.62 Ac.*
- *Existing and proposed zoning: Heavy Commercial\Heavy Commercial*
- *Existing and proposed land use:Agriculture\ Heavy Commercial*

Owner\Subdivider: SLH Industrial L.L.C.

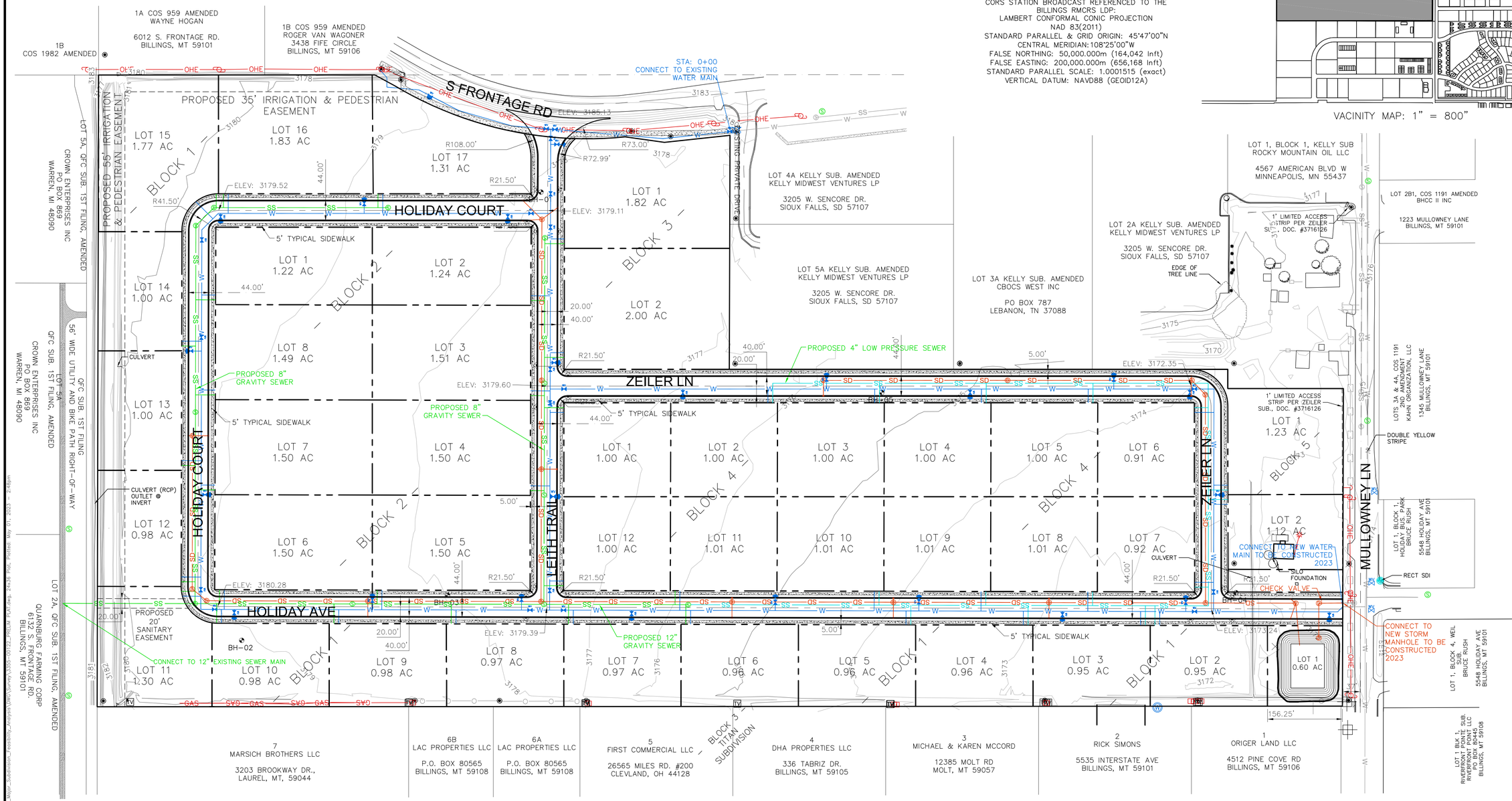
Surveyor & Engineer: Stahly Engineering & Associates

Prepared: March, 2023

BASIS OF BEARINGS:
GNSS OBSERVATIONS DERIVED FROM BILLINGS BASE CORS STATION BROADCAST REFERENCED TO THE BILLINGS RMCRS LDP:
LAMBERT CONFORMAL CONIC PROJECTION
NAD 83(2011)
STANDARD PARALLEL & GRID ORIGIN: 45°47'00"N
CENTRAL MERIDIAN:108°25'00"W
FALSE NORTHING: 50,000.000m (164,042 Inft)
FALSE EASTING: 200,000.000m (656,168 Inft)
STANDARD PARALLEL SCALE: 1.0001515 (exact)
VERTICAL DATUM: NAVD88 (GEOID12A)



VACINITY MAP: 1" = 800"



1/4	Sec.	T	R
X	18	1S	26E

HOWARD BILLINGS INDUSTRIAL SUBDIVISION

COUNTY: YELLOWSTONE
PRINCIPAL MERIDIAN, MONTANA

STAHLY ENGINEERING & ASSOCIATES
PROFESSIONAL ENGINEERS & SURVEYORS
www.seaeng.com
2223 MONTANA AVE. STE. 201 BILLINGS, MT. 59101 Phone:(406)445-5594 Fax:(406)601-4062
3530 CENTENNIAL DR. HELENA, MT. 59601 Phone:(406)442-5594 Fax:(406)442-8557
851 BRIDGER DR. STE. 1 BOZEMAN, MT. 59715 Phone:(406)522-9526 Fax:(406)522-9528

CADD: CWK
CHECKED: MS
DATE: 03-16-23

SHEET NO.
1 OF 1

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

Howard Billings Industrial Subdivision
City of Billings, Montana

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SUBDIVISION IMPROVEMENTS AGREEMENT

Howard Billings Industrial Subdivision

This agreement is made and entered into this _____ day of_____ , 2023, by and between **SLH Industrial, LLC**, whose address for the purpose of this agreement is 1819 W. Olive Ave. Burbank, CA 91506-2435, 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_____ , 2003, the Board of Planning recommended conditional approval of a preliminary plat of Howard Billings Industrial Subdivision; and

WHEREAS, at a regular meeting conducted on ____ day of _____, 2023, the City Council conditionally approved a preliminary plat of Howard Billings Industrial 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 Howard Billings Industrial 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

A. Subdivider is requesting a variance from City of Billings Subdivision Regulations Section 23-406 Streets and Roads - Section A. 1 Relation to Undeveloped Areas.

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. Streets

The streets within the subdivision will be installed within a 70-foot right-of way dedicated to the public.

The internal subdivision streets will be completed as Commercial Local Access as defined in Table 23.406.B.1 of the City of Billings Subdivision Regulations. Each street will have 40-foot-wide asphalt which consists of 2-13.5-foot travel lanes and 8’ wide parking. Curb and gutter, 5-foot-wide boulevards and 5-foot-wide sidewalk will be installed on both sides of the streets.

Curb and gutter will meet the minimum requirements of the City of Billings standard drawing Sm_M025828-1.

B. Sidewalks

5’ wide boulevard sidewalks will be installed along interior streets by the lot owners at the time the individual lots are developed.

Sidewalks will be 4’ thick concrete.

At intersections, ADA compliant curb ramps will be installed with truncated domes and 5' landings at either end of the ramps. These will be installed by the developer at the time of street construction.

C. Street Lighting

There is no street lighting required or proposed for the subdivision.

D. Traffic Control Devices

Stop signs/street sign will be installed the intersections of Holiday Ave and Mullowney Lane; South Frontage Road and Leith Trail. Yellow curb paint will also be installed at these intersections to ensure adequate site distances are maintained.

At interior street intersections, street signs will be installed as appropriate.

E. Access

Legal access to the subdivision is provided via City of Billings public right-of-way off of Mullowney Lane and Montana Department of Transportation right-of-way off of South Frontage Road. The streets within the subdivision are 70-foot right of ways dedicated to the City of Billings.

F. Billings Area Bikeway and Trail Master Plan

This subdivision is within the Billings Area Bikeway and Trail Master Plan study area.

The plan shows a multi-use trail along the South Frontage Road, a shared use path along Mullowney Lane, the east boundary of the subdivision and a conceptual multi-use path along the west boundary across the Hogan Slough from this development.

The 10-foot-wide asphalt multi-use trail along the South Frontage will be installed within the MDT right-of-way at Developer's expense. The multi-use trail along Mullowney Lane has been included in the City of Billing Project "W.O. 22-07 Mullowney Lane Improvements". A 15-foot-wide easement along the west boundary of the subdivision has been provided to allow the installation of a future multi-use trail.

G. Public Transit

No public transit improvements are required or proposed for this subdivision.

IV. EMERGENCY SERVICE

Fire protection shall be provided by fire hydrants located along the streets within the subdivision. Fire hydrant spacing will be 300 feet apart, per commercial development requirements, and locations shall be approved by the Billings Fire Department.

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

At a minimum, the following is required:

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

V. STORM DRAINAGE

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.

- There will be two stormwater retention/detention basin in the subdivision that will manage storm drainage from the public streets. The basin will be located on the east side and discharge water into the storm drain pipe alongside Mullowney Lane. This storm basin will have approximately 65,000 cubic feet of storage.

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 City of Billings Public Works. 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

The water system will consist of 12" diameter mains connected to the City of Billings water distribution system at the intersection of Mullowney Lane and Holiday Avenue. A second connection will be at the intersection of Leith Trail and the South Frontage Road. The existing water main in the South Frontage Road will be extended approximately 800 lineal feet, across the subdivision's frontage with the road.

Fire hydrants will be installed throughout the subdivision at spacing of approximately 300 lineal feet. The system will be looped.

B. Sanitary Sewer

The sewer system has been designed to drain two different directions. The east side of the subdivision will connect to an 4-inch low-pressure sewer main due to existing sewer main depths and topographical constraints. This low-pressure sewer main will discharge into a manhole to be installed in Holiday Ave, approximately 800 feet east of Mullowney Lane.

The remainder of the subdivision will drain wastewater to the west via 8- and 12-inch gravity sewer mains. The sanitary sewer will connect to existing City of Billings sewer collection system by tying into an existing manhole in the adjacent QFC Subdivision.

C. Power, Telephone, Gas, and Cable Television

All telephone, gas, electrical power, and cable television lines (where said utilities are actually available and existing to subdivision) shall be installed prior to street paving.

The Subdivider shall install private utilities within private utility easements where possible. Extension of private utilities into each lot shall be the responsibility of the individual lot owners. The location of all such off-site facilities within the existing public rights-of-way shall be subject to approval of the City Public Works Department and shall be installed underground. The Subdivider shall coordinate installation with the various utility companies.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Howard Billings Industrial Subdivision, as this is a non-residential subdivision [MCA 76-3-621(3)(b)].

VIII. IRRIGATION

The property has an existing water right off of Hogans Slough. Irrigation laterals on the subdivision previously used on the site will be removed. No water shares have been transferred to the individual lot owners.

Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners unless otherwise noted herein. 35-foot-wide irrigation easements have been dedicated on the plat to ensure continued irrigation water and maintenance along perimeter ditches with downstream users.

IX. SOILS/GEOTECHNICAL STUDY

A geotechnical investigation was conducted in October 2022 by Rahwide Engineering, Inc. for use in pavement and stormwater design. The investigation consisted of drilling five borings to depths varying between 5 to 25 feet. In general, the site has one foot of topsoil and vegetation that is underlain by sandy lean clays and lean clay to a depth of approximately 18.5 feet. Below that was a two and a half foot sand layer which was underlain by gravel with sand to the explored depth of 25 feet. Groundwater was encountered at a depth of 19.4 feet below existing grade elevations.

No specific construction restrictions or required mitigation efforts are needed for the utility and surface improvements.

X. 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.

XI. LEGAL PROVISIONS APPLYING TO 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 of transferee's 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" SLC

By:_____

Title: _____

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_____ , 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 _____, 202__.

"CITY"
CITY OF BILLINGS
MONTANA

By: _____
Mayor

Attest: _____
City Clerk

STATE OF MONTANA)
: ss
County of Yellowstone)

On this _____ day of _____ , 200_, before me, a Notary Public in and for the State of Montana, personally appeared_____ , 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 he/she 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:

Howard Billings Industrial Subdivision

Signed and dated this _____ day of _____, 2023.

Subdivider/Owner

_____

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 Brad Howard, known to me to be *Subdivider/Owner*, the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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

Attachment A

Staff Analysis and Recommendation

City staff has reviewed the request for a variance from **Section 23-406.A.1, Streets and Roads, relation to undeveloped areas**. Specifically, the applicant is requesting to not provide a connection to the undeveloped land to the west. Section 23-406.A.1 requires new subdivision to provide a connection to undeveloped land all around it.

The applicant has requested this variance, see Request Letter included below this analysis.

This proposed subdivision is a major commercial subdivision and the land to the west is zoned CX – Heavy Commercial, the same as the subject property. Providing an access for property to the west would allow for interconnected subdivisions with the same zoning and uses.

The applicant has provided their reasoning for not providing the connection but they have not provided any alternative to the connection.

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

By not providing a connection to the subdivision to the west it will create a barrier for people to be able to access the existing trail system in the QFC subdivision that lead to other trails and connection.

This variance will be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties by not allowing for a connection that will benefit people in the area.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced.

There is an existing trail along the west side of Hogan's Slough that provides a connection to the trail on the south side of Elysian Road. This trail is identified on the Billings Area Bikeway and Trails Master Plan as a shared use path, conceptual. A pedestrian bridge can be placed over Hogan's Slough, similar to the one over Hogan's Slough on the trail along the south side of Elysian Road. This connection would open a lot of pedestrian/biking possibilities. It would help people walking/running or biking to be able to stay off arterial streets.

3. The variance will not result in an increase in taxpayer burden.

The variance request will not increase taxpayer burden.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy.

Granting the variance will have no effect on zoning. It is an issue of connecting subdivisions through roads and trails.

5. The subdivider must prove that the alternative design is equally effective, and the objectives of the improvements are satisfied.

The applicant has not provided an alternate for the request to not provide a vehicle connection to the undeveloped land to the west.

When QFC subdivision was completed to the west of this property they were required to provide a 56-foot-wide dedicated utility and bike path right of way along their east border next to Hogan's Slough. That 10-foot-wide paved path has been installed and will provide a connection to the 10 paved trail that runs along the south side of Elysian Road. The trail along the south side of Elysian Road has had a pedestrian bridge constructed across the Hogan's Slough.

This subdivision is required to install a 10-foot-wide trail along the frontage of South Frontage Road that abuts this subdivision. The reconstruction of Mullowney Lane will provide a bike/pedestrian trail along it when the construction is completed.

Staff is proposing as an alternative to a vehicle connection to the undeveloped land to the west that the developer provide a pedestrian connection to the land to the west. This would include a 10-foot-wide paved trail on the utility easement between lots 11 and 12, block 1. A pedestrian bridge over Hogan's Slough and a connection to the existing trail. With this connection for pedestrians it would open access through the subdivision to those who walk or ride a bike and provide a connection to the trail on Mullowney Lane and a connection to the future trail on South Frontage Road through the use of the internal sidewalks and local street network within the proposed subdivision.

Variance request from applicant's agent

Howard Billings Industrial Subdivision
Variance Request

This document will address the Variance Request Criteria for per Chapter 11 sections 1.A.1-5

The developer is requesting a variance from the City of Billings Subdivision Regulations Section 23-406.A.1, Streets and Roads, Relation to Undeveloped Areas. The section states:

When a proposed subdivision adjoins undeveloped land, streets within the proposed subdivision shall be arranged to allow access to the adjoining undeveloped land. Streets within the proposed subdivision shall be constructed to the boundary lines of the tract to be developed, unless prevented by topography or other physical conditions.

Discussion: This section seems to require an extension or accommodation of an extension, of the proposed Holiday Ave to the west across the proposed Lot 11 of Block 1. Hogans Slough bounds this property on the west. In order to extend the proposed Holiday Ave. to the west subdivision, a new bridge would have to be constructed over Hogans Slough.

Variance Request Criteria per Article 23-1100

1. The granting of the variance will not be detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

   The adjoining properties are currently undeveloped and there has not been a Hogans Slough crossing in this area. The granting of this variance will maintain current conditions.

2. Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, an undue hardship to the owner would result if the strict letter of the regulation was enforced;

   To cross Hogans Slough, a bridge would have to be constructed. The bridge would need to have a surface elevation approximately five feet above existing ground. During high water events in Hogans Slough, any crossing could act a s a chokepoint and cause water to overtop the banks, flooding surrounding property. The proposed subdivision is all down grade of the Slough and would water would flow through the subdivision to Mullowney Lane.

3. The variance will not result in an increase in taxpayer burden;

   The granting would decrease taxpayer burden. A bridge would eventually be owned and maintained by the City of Billings.

4. The variance will not in any manner place the subdivision in nonconformance with any adopted zoning regulations or Growth Policy

   The proposed subdivision will be in conformance with the City of Billings Zoning Regulations and the Growth Policy.

5. The subdivider must prove the that the alternative design is equally effective and the objectives of the improvements are satisfied.

   The variance request will have no affect on the traffic within the proposed subdivision. Adequate access to the lots are provided by proposed subdivision streets that access off of Mullowney Lane and the South Frontage Road. The additional easement may affect undeveloped lands to the west. However, the undeveloped parcel has access to East Street and access to Elysian Road through an existing Right of Way.

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

CITY OF Billings
MAYOR'S OFFFICE

Stahly Engineering & Associates
2223 Montana Ave
Billings, MT 59101

Dear Applicant:

On July 24, 2023, the Billings City Council conditionally approved the preliminary plat of Howard Billings Industrial 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 minimize traffic conflicts, prior to final plat approval, City Engineering has requested the developer directly line up their Holiday Lane road with the existing Holiday Lane on the east side of Mullowney. This shall be depicted correctly on the Final Plat.
3. To protect public health and safety and to minimize the possibility of traffic conflicts, prior to final plat approval, the applicant will place a no access strip on lots that have a lot line in common with the road edges of Mullowney Lane and South Frontage Road. Lot 2, Block 5 and Lot 1, Block 1, shall have a no access strip place on it from Mullowney Lane going west for 100 feet. Lot 17, Block 1, and Lot 1, Block 3 shall have a no access strip placed on them from South Frontage Road going south 100 feet.
4. To protect public health and safety and minimize the impacts on local services, the subdivider shall provide connectivity to an existing trail and neighboring subdivision by installing a pedestrian bridge across Hogan's Slough. This bridge will connect the existing trail located in QFC subdivision to this proposed subdivision with a 10-foot-wide paved surface that will extend from their new internal street to the existing 10-foot wide paved trail in QFC subdivision. The connection shall be depicted on the final plat and the SIA shall include language describing the bridge and pedestrian connection.*
   **Note, This condition reflects the Planning Boards recommendation of denial for the variance. If the City Council approves the variance, this condition of approval will no longer apply.*
5. To protect public health and safety, prior to final plat, the applicant will coordinate with the USPS to locate a central box unit for the subdivision and provide enough space for the mail delivery person to safely stop there and deliver the 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

July 24, 2023

Sincerely,

_____
William A. Cole, Mayor

City Council Regular

Date:	07/24/2023
Title:	Payment of Claims for week of June 19, 2023
Presented by:	Andy Zoeller, Finance Director
Department:	Finance
Presentation:	No
Legal Review:	Not Applicable
Project Number:	N/A

RECOMMENDATION

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of $7,528,590.36 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 06192023

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862387	3 Bull Contracting	CDBG	$ 25,505.38	CDBG / Comanche Park Site Improvements
45096	862390	Advance Eng & Enviro	Water	$ 15,942.00	WO 22-45 Willett and Christensen Pump Station Improvements
45096	862390	Advance Eng & Enviro	Water	$ 24,489.30	WO 22-45 Willett and Christensen Pump Station Improvements
45096	862390	Advance Eng & Enviro	Water	$ 15,492.00	WO 22-45 Willett and Christensen Pump Station Improvements
45096	862390	Advance Eng & Enviro	Water	$ 11,256.50	WO 23-96 WTP Intake #2 Catwalk Repair Evaluation; Payment 1
45096	862391	All Color Embroidery	Public Safety	$ 1,575.00	35837
45096	862391	All Color Embroidery	Public Safety	$ 1,575.00	36262
45096	862391	All Color Embroidery	Public Safety	$ 1,575.00	36299
45096	862393	Alphagraphics	General	$ 3,537.44	Ultra Graphics Invoice 273017 Jury
45096	862398	Apsco Inc	Wastewater	$ 8,754.44	shoe wear. quantity 60
45096	862399	Archie Cochrane	Public Safety	$ 192.50	5471448
45096	862399	Archie Cochrane	Public Safety	$ 1.76	5471510
45096	862399	Archie Cochrane	Public Safety	$ 39.93	5471510
45096	862399	Archie Cochrane	Public Safety	$ 931.15	5471510
45096	862399	Archie Cochrane	Public Safety	$ 400.00	5471510
45096	862399	Archie Cochrane	Public Safety	$ 3.10	5471510
45096	862399	Archie Cochrane	Public Safety	$ 1.07	5471510
45096	862399	Archie Cochrane	Public Safety	$ 2.27	5471510
45096	862399	Archie Cochrane	Public Safety	$ 187.00	5471510
45096	862399	Archie Cochrane	Public Safety	$ 143.00	5471510
45096	862399	Archie Cochrane	Public Safety	$ 265.00	5471510
45096	862399	Archie Cochrane	Public Safety	$ 36.23	5471719
45096	862399	Archie Cochrane	Public Safety	$ 64.63	5472095
45096	862399	Archie Cochrane	Public Safety	$ 14.62	5472110
45096	862399	Archie Cochrane	Public Safety	$ 1.07	5472138
45096	862399	Archie Cochrane	Public Safety	$ 931.15	5472138
45096	862399	Archie Cochrane	Public Safety	$ 1.76	5472138
45096	862399	Archie Cochrane	Public Safety	$ 187.00	5472138
45096	862399	Archie Cochrane	Public Safety	$ 1.55	5472138
45096	862399	Archie Cochrane	Public Safety	$ 400.00	5472138
45096	862399	Archie Cochrane	Public Safety	$ 30.25	5472138
45096	862399	Archie Cochrane	Public Safety	$ 79.86	5472138
45096	862399	Archie Cochrane	Public Safety	$ 99.42	5472138
45096	862399	Archie Cochrane	Public Safety	$ 128.70	5472138

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862399	Archie Cochrane	Public Safety	$ 265.00	5472138
45096	862399	Archie Cochrane	Public Safety	$ 143.00	5472138
45096	862399	Archie Cochrane	Public Safety	$ 97.83	5472138
45096	862399	Archie Cochrane	Water	$ 38.06	5471463
45096	862400	Askin Construction	Sidewalk Const	$ 144,317.19	WO 22-21 Brewington Drive Reconstruction; Payment 3
45096	862400	Askin Construction	St Maint Dist	$ 115,271.50	WO 22-21 Brewington Drive Reconstruction; Payment 3
45096	862400	Askin Construction	Storm Sewer	$ 1,198.10	WO 22-21 Brewington Drive Reconstruction; Payment 3
45096	862400	Askin Construction	Tax Incrmnt S	$ 4,898.57	Retainage Release
45096	862400	Askin Construction	Water	$ 2,327.29	Retainage Release
45096	862400	Askin Construction	Water	$ 141,698.70	WO 22-01 Water and Sewer Main Replacement; Payment 7
45096	862403	Azteca System	IT Resources	$ 75,000.00	Annual CityWorks Renewal. IT $75k and PUD $27K
45096	862403	Azteca System	Street/Traffic	$ 8,910.00	Annual CityWorks Renewal. IT $75k and PUD $27K
45096	862403	Azteca System	Wastewater	$ 8,910.00	Annual CityWorks Renewal. IT $75k and PUD $27K
45096	862403	Azteca System	Water	$ 9,180.00	Annual CityWorks Renewal. IT $75k and PUD $27K
45096	862404	Bcs Scrip	Fleet	$ 5,400.00	Mechanic/Lube tool Allowance Incentive
45096	862405	Beartooth Enviro	Solid Waste	$ 12,306.45	Bulk oil removal, Drummed waste 5/31/23.
45096	862410	Billings Clinic	Public Safety	$ 600.00	2023054
45096	862410	Billings Clinic	Public Safety	$ 600.00	2023057
45096	862410	Billings Clinic	Public Safety	$ 600.00	2023058
45096	862410	Billings Clinic	Public Safety	$ 44.00	516357869
45096	862410	Billings Clinic	Public Safety	$ 176.00	553850864, legal blood draw
45096	862410	Billings Clinic	Public Safety	$ 66.00	BLS E-CARDS (couse taught 5/25/2023
45096	862410	Billings Clinic	Public Safety	$ 10.00	PALS E CARD (Course taught Dec 30,2022
45096	862410	Billings Clinic	Public Safety	$ 600.00	SANE 2021119
45096	862410	Billings Clinic	Public Safety	$ 600.00	SANE2021090
45096	862410	Billings Clinic	Public Safety	$ 600.00	SANE2021114
45096	862410	Billings Clinic	Public Safety	$ 600.00	SANE2023032
45096	862414	Billings Tourism	Tourism BID #2	$ 846,163.27	Paid May Distributed June, 2023
45096	ACH	Burns & McDonnell	Water	$ 55,344.92	WO 19-42 West End Water Treatment Plant Project; Payment 35
45096	862428	Collaborative Design	Wastewater	$ 9,230.00	WO 23-24 Belknap Office Remodel Phase 2; Payment 2
45096	862436	Cummins - Rocky Mt	Public Safety	$ 4,683.01	38-81442
45096	862436	Cummins - Rocky Mt	Solid Waste	$ 504.00	38-81487
45096	862436	Cummins - Rocky Mt	Solid Waste	$ 1,218.15	38-81680
45096	862436	Cummins - Rocky Mt	Solid Waste	$ 459.00	38-81680

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862437	Cushing Terrell	Park Dist 1	$ -	adjustment to po due to incorrect change order amount entered
45096	862437	Cushing Terrell	Park Dist 1	$ -	amendment to contract for services; increase amount by 3,900
45096	862437	Cushing Terrell	Park Dist 1	$ 1,800.00	consultant on the reconstruction of the north parking lot
45096	862437	Cushing Terrell	Park Dist 1	$ 13,228.67	consultant on the reconstruction of the north parking lot
45096	862437	Cushing Terrell	Park Dist 1	$ 4,500.00	consultant on the reconstruction of the north parking lot
45096	862437	Cushing Terrell	Park Dist 1	$ 4,300.00	consultant on the reconstruction of the north parking lot
45096	862437	Cushing Terrell	Park Dist 1	$ 2,000.00	consultant on the reconstruction of the north parking lot
45096	862437	Cushing Terrell	Park Dist 1	$ 992.31	consulting on the CastleRock playground-invoices 176482, 175918
45096	862437	Cushing Terrell	Park Dist 1	$ 122.69	consulting on the CastleRock playground-invoices 176482, 175918
45096	862438	Dakota Supply	Water	$ 4,139.04	FTW system Screen Bldg
45096	862438	Dakota Supply	Water	$ 75.79	Poly for services
45096	862439	Dana Safety Supply	Public Safety	$ 450.00	851112
45096	862439	Dana Safety Supply	Public Safety	$ 1,467.00	851114
45096	862439	Dana Safety Supply	Public Safety	$ 2,164.50	851114
45096	862439	Dana Safety Supply	Public Safety	$ 1,350.00	851114
45096	862439	Dana Safety Supply	Public Safety	$ 478.50	851114
45096	862439	Dana Safety Supply	Public Safety	$ 1,350.00	851115
45096	862439	Dana Safety Supply	Public Safety	$ 2,164.50	851115
45096	862439	Dana Safety Supply	Public Safety	$ 478.50	851115
45096	862439	Dana Safety Supply	Public Safety	$ 1,467.00	851115
45096	862440	Dick Anderson Const	Building	$ 276.25	BP-20-04346
45096	862440	Dick Anderson Const	Water	$ 140,361.43	WO 19-12 West End Reservoir Project, GC/CM Preconstruction Services
45096	862441	Dorsey & Whitney	Sidewalk Const	$ 12,592.34	Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds
45096	862441	Dorsey & Whitney	Sidewalk Const	$ 2,407.66	Pooled Special Sidewalk, Curb, Gutter and Alley Approach Bonds
45096	862442	DOWL	Storm Sewer	$ 19,275.70	WO 23-42 BBWA Canal Unloaders Consultant Agreement
45096	862442	DOWL	Wastewater	$ 15,757.98	WO 22-01 Schedules 1 & 2: Water & Sanitary Sewer Main Replacements
45096	862442	DOWL	Water	$ 13,646.72	WO 22-01 Schedules 1 & 2: Water & Sanitary Sewer Main Replacements
45096	862442	DOWL	Water	$ 2,810.00	WO 22-44 Zone 1 Water Storage Improvements
45096	862443	Downtown Blgs BID	Downtown BID	$ 149,233.61	BID Assessment; Paid May Distributed June, 2023
45096	862447	Ecoverse Industries	Solid Waste	$ 344,950.00	Purchase compost trommel screen for compost facility- Landfill
45096	ACH	Endress & Hauser	Water	$ 17,617.62	WO 23-21 Flow meter
45096	ACH	Endress & Hauser	Water	$ 1,872.83	WO 23-21 Extended warranty for flow mete
45096	862449	Energy Laboratories	Wastewater	$ 1,221.00	Work Order B23050548, Analysis
45096	862449	Energy Laboratories	Water	$ 3,030.00	Work Order B23051770 WTP Lab analysis

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862455	Fisher Sand & Gravel	Street/Traffic	$ 931.38	asphalt
45096	862455	Fisher Sand & Gravel	Street/Traffic	$ 2,968.61	asphalt
45096	862455	Fisher Sand & Gravel	Street/Traffic	$ 129.65	asphalt
45096	862455	Fisher Sand & Gravel	Street/Traffic	$ 1,430.61	asphalt
45096	862455	Fisher Sand & Gravel	Street/Traffic	$ 579.00	concrete
45096	862457	Golden Eagle Const	Building	$ 10,192.00	Landscape Fee overpayment refund
45096	862462	Grt W Eng	Solid Waste	$ 6,412.65	WO 20-46 Lanfill Compost Facility
45096	862467	Hardrives Const	St Maint Dist	$ 407,381.24	WO 23-03 Contract #2 City Chip Seal, Sch 1
45096	862469	Hawkins	Water	$ 29,820.42	Coagulant for process...WTP
45096	ACH	HDR	Arterial Streets	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Arterial Streets	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Arterial Streets	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Gas Tax	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Gas Tax	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Gas Tax	$ -	WO 22-07 Mullowney Lane, Consultant Agreement
45096	ACH	HDR	Gas Tax	$ 10,691.33	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 16
45096	ACH	HDR	Gas Tax	$ 15,036.08	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 17
45096	ACH	HDR	Gas Tax	$ 11,600.17	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 18
45096	ACH	HDR	Sidewalk Const	$ 8,753.66	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 16
45096	ACH	HDR	Sidewalk Const	$ 12,311.00	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 17
45096	ACH	HDR	Sidewalk Const	$ 9,497.80	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 18
45096	ACH	HDR	Solid Waste	$ 7,872.15	WO 23-16 Landfill Scale Addition, Professional Services Contract; Payment 2
45096	ACH	HDR	Solid Waste	$ 29,841.55	WO 23-16 Landfill Scale Addition, Professional Services Contract; Payment 3
45096	ACH	HDR	St Maint Dist	$ 3,351.01	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 16
45096	ACH	HDR	St Maint Dist	$ 4,712.80	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 17
45096	ACH	HDR	St Maint Dist	$ 3,635.87	WO 22-07 Mullowney Lane, Consultant Agreement; Payment 18
45096	862471	High Point Network	IT Resources	$ 4,623.00	Juniper switch maintenance renewal
45096	862471	High Point Network	Library	$ 245.00	226802 Firewall monthly service
45096	862473	Hill, Ron	SID Const	$ 18,694.06	SID 1416 Gleneagles...Cash Contribution
45096	862478	Iaff	Payroll Clearing	$ 5,663.08	Payroll Summary
45096	862480	Insight Public Sector	EOC 911	$ 93.31	Surface Pro 9, i7, 16GB RAM, 1TB SSD, dock, keyboard cover and service
45096	862480	Insight Public Sector	EOC 911	$ 354.24	Surface Pro 9, i7, 16GB RAM, 1TB SSD, dock, keyboard cover and service
45096	862480	Insight Public Sector	EOC 911	$ 2,207.55	Surface Pro 9, i7, 16GB RAM, 1TB SSD, dock, keyboard cover and service
45096	862477	I-State Truck	Solid Waste	$ 244.37	C251356341.01

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862477	I-State Truck	Solid Waste	$ 732.92	C251356341.01
45096	862477	I-State Truck	Solid Waste	$ (244.37)	C251356341.02
45096	862477	I-State Truck	Solid Waste	$ 244.37	C251356341.02
45096	862477	I-State Truck	Solid Waste	$ 754.99	C251356341.02
45096	862477	I-State Truck	Solid Waste	$ (244.37)	C251356354.01
45096	862477	I-State Truck	Solid Waste	$ 560.27	C251356606.01
45096	862477	I-State Truck	Solid Waste	$ 143.75	C251356606.01
45096	862477	I-State Truck	Solid Waste	$ (143.75)	C251356767.01
45096	862477	I-State Truck	Street/Traffic	$ 599.70	C251356590.01
45096	862477	I-State Truck	Street/Traffic	$ 181.78	C251356623.01
45096	862477	I-State Truck	Street/Traffic	$ 50.00	C251356623.01
45096	862477	I-State Truck	Street/Traffic	$ 116.00	C251356637.01
45096	862477	I-State Truck	Street/Traffic	$ 66.36	C251356641.01
45096	862477	I-State Truck	Wastewater	$ 159.80	C251356453.01
45096	862483	J & J Concrete	Gas Tax	$ 119,851.18	WO 23-02 Missing Sidewalk Project Schedule 1
45096	862483	J & J Concrete	Sidewalk Const	$ 36,424.58	WO 23-02 Missing Sidewalk Project Schedule 1
45096	ACH	Joe Johnson Equipt	Street/Traffic	$ 3,685.29	inv#P00897rear brooms for sweepers
45096	ACH	Joe Johnson Equipt	Wastewater	$ 619.46	P00898
45096	862490	Kent D. Bruce Co	Public Safety	$ 55.90	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 185.00	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 185.00	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 298.68	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 39.26	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 697.32	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 355.00	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 355.00	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 372.50	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 5,562.50	13408
45096	862490	Kent D. Bruce Co	Public Safety	$ 108.28	13408
45096	862491	Knife River	Arterial Streets	$ 2,128.50	S 32nd Street W; payment 8 Final
45096	862491	Knife River	Street/Traffic	$ 6,958.00	inv#866934asphalt
45096	862506	Madison Agency	Airport	$ 12,475.00	Amendment #1 Marketing & Selling Strategy/Social Media Management
45096	862509	Mail Tech Service	Library	$ 1,333.99	LIBR Library mailing May 2023
45096	862509	Mail Tech Service	Water	$ 1,302.45	Zone 4 water usage mailing

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862503	M-B Companies	Airport	$ 3,500.00	Repairs to A-18 Snow Blower
45096	862512	McMaster-Carr Supply	Water	$ 2,965.20	Ice Maker Replacement
45096	862523	MFPE	Payroll Clearing	$ 2,672.50	Payroll Summary
45096	862520	Montana CSED	Payroll Clearing	$ 3,959.89	Payroll Summary
45096	862532	Motorola Solution	ARPA	$ 2,000,000.00	PUBLIC SAFETY RADIO SYSTEM REPLACEMENT
45096	862532	Motorola Solution	Capital Replace	$ 700,000.00	PUBLIC SAFETY RADIO SYSTEM REPLACEMENT
45096	862532	Motorola Solution	Public Safety	$ 7,440.00	V300 Body Worn Cams, molle
45096	862532	Motorola Solution	Radio	$ 7,710.00	PUBLIC SAFETY RADIO SYSTEM REPLACEMENT
45096	862533	MPPA	Payroll Clearing	$ 3,811.08	Payroll Summary
45096	862534	MT Dept Rev- CGR2	St Maint Dist	$ 4,114.96	WO 23-03 Contract 2 City Chip Seal Schedule 1; Payment 1
45096	862534	MT Dept Rev- CGR3	General	$ 121.07	STAR SERVICE FOR MOUNTVIEW IRRIGATION REPAIR
45096	862534	MT Dept Rev- CGR4	Park Dist 1	$ 121.07	STAR SERVICE FOR MOUNTVIEW IRRIGATION REPAIR
45096	862524	MT Law Enforce Acad	Public Safety	$ 7,500.00	MLEA 21407
45096	862524	MT Law Enforce Acad	Public Safety	$ 1,152.00	MLEA 21572
45096	862527	MT Peterbilt	Fleet	$ 101.04	73217BL
45096	862527	MT Peterbilt	Fleet	$ 88.36	73217BL
45096	862527	MT Peterbilt	Fleet	$ 41.60	73217BL
45096	862527	MT Peterbilt	Fleet	$ 20.30	73278BL
45096	862527	MT Peterbilt	Solid Waste	$ 22.94	71966B
45096	862527	MT Peterbilt	Solid Waste	$ 28.00	71966B
45096	862527	MT Peterbilt	Solid Waste	$ 39.36	72294B
45096	862527	MT Peterbilt	Solid Waste	$ 65.32	72294B
45096	862527	MT Peterbilt	Solid Waste	$ 881.60	72517BL
45096	862527	MT Peterbilt	Solid Waste	$ 20.82	72534BL
45096	862527	MT Peterbilt	Solid Waste	$ 56.67	72619BL
45096	862527	MT Peterbilt	Solid Waste	$ 123.88	72646BL
45096	862527	MT Peterbilt	Solid Waste	$ 157.77	72646BL
45096	862527	MT Peterbilt	Solid Waste	$ 19.37	72696BL
45096	862527	MT Peterbilt	Solid Waste	$ 228.63	72733BL
45096	862527	MT Peterbilt	Solid Waste	$ 55.24	72733BL
45096	862527	MT Peterbilt	Solid Waste	$ 34.70	72802BL
45096	862527	MT Peterbilt	Solid Waste	$ 512.89	72836BL
45096	862527	MT Peterbilt	Solid Waste	$ (6.94)	CM72802BL
45096	862527	MT Peterbilt	Street/Traffic	$ 502.82	72814BL

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862530	MT State Firemen	Payroll Clearing	$ 5,223.24	Payroll Summary
45096	862538	Newman Traffic Signs	Street/Traffic	$ 2,520.20	sign blanks
45096	ACH	NorMont Equipt	Street/Traffic	$ 2,570.00	inv#29793emulsion for road patcher
45096	862541	NorthWestern Energy	General	$ 45.65	0712387-0
45096	862541	NorthWestern Energy	General	$ 53.89	0712536-2
45096	862541	NorthWestern Energy	General	$ 34.61	0720818-4
45096	862541	NorthWestern Energy	General	$ 1,539.21	0720821-8
45096	862542	NorthWestern Energy	Light Maint	$ 1,287.62	SILMD 10 Acct# 0712546-1
45096	862542	NorthWestern Energy	Light Maint	$ 2,460.87	SILMD 100 Acct# 0712559-4
45096	862542	NorthWestern Energy	Light Maint	$ 2,111.80	SILMD 107 Acct# 0712560-2
45096	862542	NorthWestern Energy	Light Maint	$ 5,296.23	SILMD 109 Acct# 0712561-0
45096	862542	NorthWestern Energy	Light Maint	$ 238.78	SILMD 113 Acct# 0712562-8
45096	862542	NorthWestern Energy	Light Maint	$ 1,139.70	SILMD 114 Acct# 0712563-6
45096	862542	NorthWestern Energy	Light Maint	$ 268.17	SILMD 115 Acct# 0712564-4
45096	862542	NorthWestern Energy	Light Maint	$ 703.93	SILMD 116 Acct# 0712565-1
45096	862542	NorthWestern Energy	Light Maint	$ 3,792.08	SILMD 117 Acct# 0712566-9
45096	862542	NorthWestern Energy	Light Maint	$ 239.24	SILMD 118 Acct# 0712567-7
45096	862542	NorthWestern Energy	Light Maint	$ 143.02	SILMD 119 Acct# 0712568-5
45096	862542	NorthWestern Energy	Light Maint	$ 3,016.85	SILMD 121 Acct# 0712570-1
45096	862542	NorthWestern Energy	Light Maint	$ 225.77	SILMD 122 Acct# 0712571-9
45096	862542	NorthWestern Energy	Light Maint	$ 402.25	SILMD 123 Acct# 0712572-7
45096	862542	NorthWestern Energy	Light Maint	$ 1,173.24	SILMD 124 Acct# 0712573-5
45096	862542	NorthWestern Energy	Light Maint	$ 469.28	SILMD 125 Acct# 0712574-3
45096	862542	NorthWestern Energy	Light Maint	$ 234.66	SILMD 126 Acct# 0712575-0
45096	862542	NorthWestern Energy	Light Maint	$ 846.61	SILMD 127 Acct# 0712576-8
45096	862542	NorthWestern Energy	Light Maint	$ 592.63	SILMD 128 Acct# 0712577-6
45096	862542	NorthWestern Energy	Light Maint	$ 402.25	SILMD 129 Acct# 0712578-4
45096	862542	NorthWestern Energy	Light Maint	$ 5,296.43	SILMD 13 Acct# 0721276-4
45096	862542	NorthWestern Energy	Light Maint	$ 142.19	SILMD 130 Acct# 0712579-2
45096	862542	NorthWestern Energy	Light Maint	$ 1,039.13	SILMD 131 Acct# 0712580-0
45096	862542	NorthWestern Energy	Light Maint	$ 264.02	SILMD 133 Acct# 0712581-8
45096	862542	NorthWestern Energy	Light Maint	$ 609.34	SILMD 134 Acct# 0712582-6
45096	862542	NorthWestern Energy	Light Maint	$ 620.84	SILMD 135 Acct# 0712583-4
45096	862542	NorthWestern Energy	Light Maint	$ 569.85	SILMD 136 Acct# 0712584-2

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862542	NorthWestern Energy	Light Maint	$ 439.79	SILMD 137 Acct# 0712585-9
45096	862542	NorthWestern Energy	Light Maint	$ 905.06	SILMD 138 Acct# 0712586-7
45096	862542	NorthWestern Energy	Light Maint	$ 301.69	SILMD 139 Acct# 0712587-5
45096	862542	NorthWestern Energy	Light Maint	$ 2,661.05	SILMD 14 Acct# 0721277-2
45096	862542	NorthWestern Energy	Light Maint	$ 703.93	SILMD 143 Acct# 0712588-3
45096	862542	NorthWestern Energy	Light Maint	$ 33.51	SILMD 144 Acct# 0712589-1
45096	862542	NorthWestern Energy	Light Maint	$ 564.41	SILMD 145 Acct# 0712590-9
45096	862542	NorthWestern Energy	Light Maint	$ 435.75	SILMD 146 Acct# 0712591-7
45096	862542	NorthWestern Energy	Light Maint	$ 527.39	SILMD 147 Acct# 0712592-5
45096	862542	NorthWestern Energy	Light Maint	$ 1,811.15	SILMD 149 Acct# 0712593-3
45096	862542	NorthWestern Energy	Light Maint	$ 903.05	SILMD 150 Acct# 0712594-1
45096	862542	NorthWestern Energy	Light Maint	$ 770.97	SILMD 151 Acct# 0712595-8
45096	862542	NorthWestern Energy	Light Maint	$ 5,200.77	SILMD 152 Acct# 0712596-6
45096	862542	NorthWestern Energy	Light Maint	$ 649.07	SILMD 153 Acct# 0712597-4
45096	862542	NorthWestern Energy	Light Maint	$ 1,467.48	SILMD 154 Acct# 0712598-2
45096	862542	NorthWestern Energy	Light Maint	$ 603.38	SILMD 155 Acct# 0712599-0
45096	862542	NorthWestern Energy	Light Maint	$ 1,100.59	SILMD 157 Acct# 0712600-6
45096	862542	NorthWestern Energy	Light Maint	$ 972.11	SILMD 158 Acct# 0712601-4
45096	862542	NorthWestern Energy	Light Maint	$ 1,161.97	SILMD 159 Acct# 0712602-2
45096	862542	NorthWestern Energy	Light Maint	$ 871.54	SILMD 160 Acct# 0712603-0
45096	862542	NorthWestern Energy	Light Maint	$ 1,269.93	SILMD 161 Acct# 0712604-8
45096	862542	NorthWestern Energy	Light Maint	$ 54.06	SILMD 162 Acct# 0712605-5
45096	862542	NorthWestern Energy	Light Maint	$ 862.06	SILMD 163 Acct# 0712606-3
45096	862542	NorthWestern Energy	Light Maint	$ 451.52	SILMD 164 Acct# 0712607-1
45096	862542	NorthWestern Energy	Light Maint	$ 1,072.65	SILMD 165 Acct# 0712608-9
45096	862542	NorthWestern Energy	Light Maint	$ 282.20	SILMD 167 Acct# 0712609-7
45096	862542	NorthWestern Energy	Light Maint	$ 1,362.90	SILMD 17 Acct# 0712553-7
45096	862542	NorthWestern Energy	Light Maint	$ 677.31	SILMD 171 Acct# 0712610-5
45096	862542	NorthWestern Energy	Light Maint	$ 609.31	SILMD 172 Acct# 0712611-3
45096	862542	NorthWestern Energy	Light Maint	$ 1,411.02	SILMD 173 Acct# 0712612-1
45096	862542	NorthWestern Energy	Light Maint	$ 1,185.25	SILMD 174 Acct# 0712613-9
45096	862542	NorthWestern Energy	Light Maint	$ 395.08	SILMD 175 Acct# 0712614-7
45096	862542	NorthWestern Energy	Light Maint	$ 38.60	SILMD 176 Acct# 0712615-4
45096	862542	NorthWestern Energy	Light Maint	$ 310.43	SILMD 178 Acct# 0712616-2

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45096	862542	NorthWestern Energy	Light Maint	$ 620.84	SILMD 179 Acct# 0712617-0
45096	862542	NorthWestern Energy	Light Maint	$ 116.63	SILMD 18 Acct# 0712554-5
45096	862542	NorthWestern Energy	Light Maint	$ 423.32	SILMD 180 Acct# 0712618-8
45096	862542	NorthWestern Energy	Light Maint	$ 2,044.76	SILMD 181 Acct# 0712619-6
45096	862542	NorthWestern Energy	Light Maint	$ 705.51	SILMD 182 Acct# 0712620-4
45096	862542	NorthWestern Energy	Light Maint	$ 1,411.01	SILMD 183 Acct# 0712621-2
45096	862542	NorthWestern Energy	Light Maint	$ 451.52	SILMD 184 Acct# 0712622-0
45096	862542	NorthWestern Energy	Light Maint	$ 169.33	SILMD 185 Acct# 0712623-8
45096	862542	NorthWestern Energy	Light Maint	$ 792.03	SILMD 186 Acct# 0712624-6
45096	862542	NorthWestern Energy	Light Maint	$ 282.20	SILMD 187 Acct# 0712625-3
45096	862542	NorthWestern Energy	Light Maint	$ 338.65	SILMD 188 Acct# 0712626-1
45096	862542	NorthWestern Energy	Light Maint	$ 282.20	SILMD 189 Acct# 0712627-9
45096	862542	NorthWestern Energy	Light Maint	$ 1,467.48	SILMD 190 Acct# 0712628-7
45096	862542	NorthWestern Energy	Light Maint	$ 503.58	SILMD 191 Acct# 0712629-5
45096	862542	NorthWestern Energy	Light Maint	$ 366.85	SILMD 192 Acct# 0712630-3
45096	862542	NorthWestern Energy	Light Maint	$ 903.05	SILMD 193 Acct# 0712631-1
45096	862542	NorthWestern Energy	Light Maint	$ 353.59	SILMD 194 Acct# 0712632-9
45096	862542	NorthWestern Energy	Light Maint	$ 282.88	SILMD 195 Acct# 0712633-7
45096	862542	NorthWestern Energy	Light Maint	$ 90.33	SILMD 196 Acct# 0712634-5
45096	862542	NorthWestern Energy	Light Maint	$ 90.33	SILMD 197 Acct# 0712635-2
45096	862542	NorthWestern Energy	Light Maint	$ 141.10	SILMD 198 Acct# 0712636-0
45096	862542	NorthWestern Energy	Light Maint	$ 103.47	SILMD 200 Acct# 0712637-8
45096	862542	NorthWestern Energy	Light Maint	$ 592.63	SILMD 201 Acct# 0712638-6
45096	862542	NorthWestern Energy	Light Maint	$ 815.12	SILMD 202 Acct# 0712639-4
45096	862542	NorthWestern Energy	Light Maint	$ 24.08	SILMD 203 Acct# 0712640-2
45096	862542	NorthWestern Energy	Light Maint	$ 479.04	SILMD 204 Acct# 0712641-0
45096	862542	NorthWestern Energy	Light Maint	$ 30.89	SILMD 205 Acct# 0712642-8
45096	862542	NorthWestern Energy	Light Maint	$ 395.08	SILMD 206 Acct# 0712643-6
45096	862542	NorthWestern Energy	Light Maint	$ 451.52	SILMD 207 Acct# 0712644-4
45096	862542	NorthWestern Energy	Light Maint	$ 292.24	SILMD 208 Acct# 0712645-1
45096	862542	NorthWestern Energy	Light Maint	$ 649.07	SILMD 209 Acct# 0712646-9
45096	862542	NorthWestern Energy	Light Maint	$ 108.40	SILMD 210 Acct# 0712647-7
45096	862542	NorthWestern Energy	Light Maint	$ 60.22	SILMD 211 Acct# 0712648-5
45096	862542	NorthWestern Energy	Light Maint	$ 60.22	SILMD 212 Acct# 0712649-3

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862542	NorthWestern Energy	Light Maint	$ 36.13	SILMD 213 Acct# 0712650-1
45096	862542	NorthWestern Energy	Light Maint	$ 455.54	SILMD 214 Acct# 0712651-9
45096	862542	NorthWestern Energy	Light Maint	$ 169.33	SILMD 216 Acct# 0712652-7
45096	862542	NorthWestern Energy	Light Maint	$ 459.29	SILMD 217 Acct# 0712653-5
45096	862542	NorthWestern Energy	Light Maint	$ 326.41	SILMD 220 Acct# 0712654-3
45096	862542	NorthWestern Energy	Light Maint	$ 7.73	SILMD 221 Acct# 0712655-0
45096	862542	NorthWestern Energy	Light Maint	$ 95.51	SILMD 222 Acct# 0712656-8
45096	862542	NorthWestern Energy	Light Maint	$ 144.52	SILMD 223 Acct# 0712657-6
45096	862542	NorthWestern Energy	Light Maint	$ 1,702.93	SILMD 224 Acct# 0712658-4
45096	862542	NorthWestern Energy	Light Maint	$ 460.44	SILMD 225 Acct# 0712659-2
45096	862542	NorthWestern Energy	Light Maint	$ 266.49	SILMD 226 Acct# 0712660-0
45096	862542	NorthWestern Energy	Light Maint	$ 715.84	SILMD 227 Acct# 0712661-8
45096	862542	NorthWestern Energy	Light Maint	$ 972.11	SILMD 228 Acct# 0712662-6
45096	862542	NorthWestern Energy	Light Maint	$ 502.82	SILMD 229 Acct# 0712663-4
45096	862542	NorthWestern Energy	Light Maint	$ 1,173.23	SILMD 230 Acct# 0712664-2
45096	862542	NorthWestern Energy	Light Maint	$ 703.93	SILMD 231 Acct# 0712665-9
45096	862542	NorthWestern Energy	Light Maint	$ 3,050.36	SILMD 232 Acct# 0712666-7
45096	862542	NorthWestern Energy	Light Maint	$ 1,055.57	SILMD 233 Acct# 0712667-5
45096	862542	NorthWestern Energy	Light Maint	$ 574.15	SILMD 234 Acct# 0712668-3
45096	862542	NorthWestern Energy	Light Maint	$ 667.84	SILMD 235 Acct# 0712669-1
45096	862542	NorthWestern Energy	Light Maint	$ 212.14	SILMD 236 Acct# 0712670-9
45096	862542	NorthWestern Energy	Light Maint	$ 479.75	SILMD 237 Acct# 0712671-7
45096	862542	NorthWestern Energy	Light Maint	$ 15.44	SILMD 238 Acct# 0712672-5
45096	862542	NorthWestern Energy	Light Maint	$ 112.89	SILMD 239 Acct# 0712673-3
45096	862542	NorthWestern Energy	Light Maint	$ 509.15	SILMD 240 Acct# 0712674-1
45096	862542	NorthWestern Energy	Light Maint	$ 703.99	SILMD 241 Acct# 0712675-8
45096	862542	NorthWestern Energy	Light Maint	$ 100.57	SILMD 242 Acct# 0712676-6
45096	862542	NorthWestern Energy	Light Maint	$ 134.09	SILMD 244 Acct# 0712677-4
45096	862542	NorthWestern Energy	Light Maint	$ 89.00	SILMD 245 Acct# 0712678-2
45096	862542	NorthWestern Energy	Light Maint	$ 402.25	SILMD 246 Acct# 0712679-0
45096	862542	NorthWestern Energy	Light Maint	$ 1,179.75	SILMD 247 Acct# 0712680-8
45096	862542	NorthWestern Energy	Light Maint	$ 3,318.52	SILMD 249 Acct# 0718734-7
45096	862542	NorthWestern Energy	Light Maint	$ 254.58	SILMD 250 Acct# 0719001-0
45096	862542	NorthWestern Energy	Light Maint	$ 4,696.43	SILMD 251 Acct# 0718801-4

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862542	NorthWestern Energy	Light Maint	$ 670.41	SILMD 252 Acct# 0719162-0
45096	862542	NorthWestern Energy	Light Maint	$ 2,198.50	SILMD 253 Acct# 0719644-7
45096	862542	NorthWestern Energy	Light Maint	$ 191.00	SILMD 254 Acct# 0719763-5
45096	862542	NorthWestern Energy	Light Maint	$ 194.36	SILMD 255 Acct# 0720813-5
45096	862542	NorthWestern Energy	Light Maint	$ 1,136.06	SILMD 257 Acct# 0720360-7
45096	862542	NorthWestern Energy	Light Maint	$ 3,156.49	SILMD 258 Acct# 0720606-3
45096	862542	NorthWestern Energy	Light Maint	$ 1,720.14	SILMD 259 Acct# 0720810-1
45096	862542	NorthWestern Energy	Light Maint	$ 603.38	SILMD 261 Acct# 0720705-3
45096	862542	NorthWestern Energy	Light Maint	$ 3,747.75	SILMD 262 Acct# 0720937-2
45096	862542	NorthWestern Energy	Light Maint	$ 1,184.67	SILMD 263 Acct# 0720716-0
45096	862542	NorthWestern Energy	Light Maint	$ 208.36	SILMD 264 Acct# 0721427-3
45096	862542	NorthWestern Energy	Light Maint	$ 441.50	SILMD 265 Acct# 0721556-9
45096	862542	NorthWestern Energy	Light Maint	$ 46.36	SILMD 266 Acct# 0721684-9
45096	862542	NorthWestern Energy	Light Maint	$ 555.93	SILMD 270 Acct# 0906944-4
45096	862542	NorthWestern Energy	Light Maint	$ 1,158.51	SILMD 271 Acct# 0995095-7
45096	862542	NorthWestern Energy	Light Maint	$ 3,448.44	SILMD 272 Acct# 0905005-5
45096	862542	NorthWestern Energy	Light Maint	$ 248.95	SILMD 273 Acct# 0926386-4
45096	862542	NorthWestern Energy	Light Maint	$ 606.06	SILMD 276 Acct# 0961926-3
45096	862542	NorthWestern Energy	Light Maint	$ 1,040.81	SILMD 277 Acct# 1058710-3
45096	862542	NorthWestern Energy	Light Maint	$ 268.71	SILMD 278 Acct# 1087619-1
45096	862542	NorthWestern Energy	Light Maint	$ 71.47	SILMD 279 Acct# 1124127-0
45096	862542	NorthWestern Energy	Light Maint	$ 735.44	SILMD 280 Acct# 1045653-1
45096	862542	NorthWestern Energy	Light Maint	$ 547.96	SILMD 283 Acct# 1172743-5
45096	862542	NorthWestern Energy	Light Maint	$ 396.01	SILMD 285 Acct# 1206985-2
45096	862542	NorthWestern Energy	Light Maint	$ 296.65	SILMD 286 Acct# 1296582-8
45096	862542	NorthWestern Energy	Light Maint	$ 2,266.11	SILMD 288 Acct# 1303978-9
45096	862542	NorthWestern Energy	Light Maint	$ 283.84	SILMD 289 Acct# 1685375-6
45096	862542	NorthWestern Energy	Light Maint	$ 133.44	SILMD 290 Acct# 1433921-2
45096	862542	NorthWestern Energy	Light Maint	$ 737.44	SILMD 292 Acct# 1481532-8
45096	862542	NorthWestern Energy	Light Maint	$ 282.20	SILMD 293 Acct# 1481534-4
45096	862542	NorthWestern Energy	Light Maint	$ 564.41	SILMD 294 Acct# 1481535-1
45096	862542	NorthWestern Energy	Light Maint	$ 134.09	SILMD 295 Acct# 1481536-9
45096	862542	NorthWestern Energy	Light Maint	$ 1,495.69	SILMD 296 Acct# 1481537-7
45096	862542	NorthWestern Energy	Light Maint	$ 253.99	SILMD 297 Acct# 1481539-3

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862542	NorthWestern Energy	Light Maint	$ 225.77	SILMD 298 Acct# 1481540-1
45096	862542	NorthWestern Energy	Light Maint	$ 497.77	SILMD 300 Acct# 1662840-6
45096	862542	NorthWestern Energy	Light Maint	$ 6,685.59	SILMD 301 Acct# 1687005-7
45096	862542	NorthWestern Energy	Light Maint	$ 307.23	SILMD 302 Acct# 1607534-3
45096	862542	NorthWestern Energy	Light Maint	$ 1,019.03	SILMD 305 Acct# 1695873-8
45096	862542	NorthWestern Energy	Light Maint	$ 222.24	SILMD 306 Acct# 1740353-6
45096	862542	NorthWestern Energy	Light Maint	$ 2,622.94	SILMD 307 Acct# 2049005-8
45096	862542	NorthWestern Energy	Light Maint	$ 329.60	SILMD 308 Acct# 2072459-7
45096	862542	NorthWestern Energy	Light Maint	$ 342.96	SILMD 309 Acct# 2001311-6
45096	862542	NorthWestern Energy	Light Maint	$ 224.33	SILMD 310 Acct# 2060519-2
45096	862542	NorthWestern Energy	Light Maint	$ 233.71	SILMD 311 Acct# 3014475-2
45096	862542	NorthWestern Energy	Light Maint	$ 234.70	SILMD 312 Acct# 3146127-0
45096	862542	NorthWestern Energy	Light Maint	$ 403.15	SILMD 315 Acct# 3305804-1
45096	862542	NorthWestern Energy	Light Maint	$ 1,478.64	SILMD 316 Acct# 3291842-7
45096	862542	NorthWestern Energy	Light Maint	$ 94.39	SILMD 317 Acct# 3253826-6
45096	862542	NorthWestern Energy	Light Maint	$ 994.75	SILMD 318 Acct# 3372018-6
45096	862542	NorthWestern Energy	Light Maint	$ 69.45	SILMD 320 Acct# 0712569-3
45096	862542	NorthWestern Energy	Light Maint	$ 407.03	SILMD 321 Acct# 3338917-2
45096	862542	NorthWestern Energy	Light Maint	$ 91.87	SILMD 322 Acct# 3402033-9
45096	862542	NorthWestern Energy	Light Maint	$ 738.65	SILMD 323 Acct# 3597170-4
45096	862542	NorthWestern Energy	Light Maint	$ 331.45	SILMD 324 Acct# 1246537-3
45096	862542	NorthWestern Energy	Light Maint	$ 255.40	SILMD 325 Acct# 3587598-8
45096	862542	NorthWestern Energy	Light Maint	$ 107.96	SILMD 326 Acct# 3840455-4
45096	862542	NorthWestern Energy	Light Maint	$ 225.77	SILMD 327 Acct# 3810801-5
45096	862542	NorthWestern Energy	Light Maint	$ 641.62	SILMD 328 Acct# 3894879-0
45096	862542	NorthWestern Energy	Light Maint	$ 80.66	SILMD 329 Acct# 3939032-3
45096	862542	NorthWestern Energy	Light Maint	$ 254.71	SILMD 330 Acct# 3951594-5
45096	862542	NorthWestern Energy	Light Maint	$ 451.08	SILMD 8 Acct# 0712544-6
45096	862542	NorthWestern Energy	Light Maint	$ 418.01	SILMD 9 Acct# 0712545-3
45096	862542	NorthWestern Energy	Light Maint	$ 609.69	SILMD 95 Acct# 0712556-0
45096	862542	NorthWestern Energy	Light Maint	$ 1,305.79	SILMD 99 Acct# 0712558-6
45096	862541	NorthWestern Energy	Park Dist 1	$ 726.53	0722287-0
45096	862541	NorthWestern Energy	Park Dist 1	$ 479.50	0723045-1
45096	862541	NorthWestern Energy	Park Dist 1	$ 235.86	1191404-1

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862541	NorthWestern Energy	Park Dist 1	$ 12.74	1836666-6
45096	862541	NorthWestern Energy	Public Safety	$ 672.95	0871546-8
45096	862541	NorthWestern Energy	Street/Traffic	$ 0.42	1740357-7
45096	862541	NorthWestern Energy	Street/Traffic	$ 1.51	1748896-6
45096	862542	NorthWestern Energy	Street/Traffic	$ 13,543.44	Signal Bills 06-13-23
45096	862541	NorthWestern Energy	Transit	$ 304.21	0719225-5
45096	862541	NorthWestern Energy	Wastewater	$ 77,648.28	0100591-7
45096	862541	NorthWestern Energy	Wastewater	$ 1,582.80	0100606-3
45096	862541	NorthWestern Energy	Wastewater	$ 239.77	389 62nd St Lift Entrance - May 2023
45096	862541	NorthWestern Energy	Water	$ 120,293.43	0100606-3
45096	862541	NorthWestern Energy	Water	$ 4,748.43	0100606-3
45096	862541	NorthWestern Energy	Water	$ 11,019.26	0722264-9
45096	862541	NorthWestern Energy	Water	$ 7,114.22	0723040-2
45096	862541	NorthWestern Energy	Water	$ 6.00	0723059-2
45096	862541	NorthWestern Energy	Water	$ 164.71	1142253-2
45096	862541	NorthWestern Energy	Water	$ 1,219.56	5809 Canyonwoods Dr - May 2023
45096	862548	Perimeter Solutions	Public Safety	$ 7,584.00	WD 881, 5-GALLON PAIL FIRE FOAM
45096	862549	Pioneer Technical	Solid Waste	$ 4,374.00	WO 22-47 Landfill Slope Stability Improvements
45096	862550	Power Service	Wastewater	$ 9,107.97	Spare TSP Pump
45096	862553	Public Utilities	Park Dist 1	$ 104.97	255552
45096	862553	Public Utilities	Parking	$ 88.80	102086
45096	862553	Public Utilities	Parking	$ 827.17	102980
45096	862553	Public Utilities	Parking	$ 10.85	102981
45096	862553	Public Utilities	Parks Maint	$ 29.94	136113
45096	862553	Public Utilities	Street/Traffic	$ 656.13	180332
45096	862553	Public Utilities	Street/Traffic	$ 869.85	180334
45096	862553	Public Utilities	Street/Traffic	$ 97.17	181505
45096	862553	Public Utilities	Street/Traffic	$ 56.27	243346
45096	862553	Public Utilities	Street/Traffic	$ 279.08	259589
45096	862553	Public Utilities	Street/Traffic	$ 980.52	259590
45096	862553	Public Utilities	Street/Traffic	$ -	259591
45096	862553	Public Utilities	Street/Traffic	$ 1,296.36	261854
45096	862554	PW-Administration	Water	$ 21,230.00	PWU Engineering Permits
45096	ACH	RDO Equipt	Solid Waste	$ (45,813.94)	Credit for warranty on P0867412 Unit 0263. Please see attached email.

Check Date	Check#	Name	Fund Name		Amount	Item Desc
45096	ACH	RDO Equipt	Solid Waste	$	200.43	P1265312 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	200.43	P1265312 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	700.98	P1265312 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	700.98	P1265312 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	86.50	P1309812 -AIR FILTER
45096	ACH	RDO Equipt	Solid Waste	$	86.50	P1309812 -AIR FILTER
45096	ACH	RDO Equipt	Solid Waste	$	200.43	P1309812 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	200.43	P1309812 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	700.98	P1309812 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	700.98	P1309812 -FILTER ELEMENT
45096	ACH	RDO Equipt	Solid Waste	$	1,884.00	W3834012 -LABOR
45096	ACH	RDO Equipt	Solid Waste	$	1,841.97	W3834012 -PARTS: HSE FT; ELB FT; BLK HS; ORNG; ADP FT; HZ MT; SRV ACC
45096	ACH	RDO Equipt	Solid Waste	$	24.60	W3834012 -SHIPPING/HANDLE
45096	ACH	RDO Equipt	Solid Waste	$	356.00	W3863712 -LABOR
45096	ACH	RDO Equipt	Solid Waste	$	14.71	W3863712 -SHIP/HANDLING
45096	ACH	RDO Equipt	Solid Waste	$	1,600.00	W3888112 -LABOR
45096	ACH	RDO Equipt	Solid Waste	$	269.84	W3888112 -PARTS:ORNG; ADPTR; HZ MTL; SRV ACC
45096	ACH	RDO Equipt	Solid Waste	$	47.14	W3888112 -SHIPPING/HANDLING
45096	ACH	RDO Equipt	Solid Waste	$	1,444.00	W3905612 -LABOR
45096	ACH	RDO Equipt	Solid Waste	$	496.13	W3905612 -PARTS: HEATER VALVE; HZ MTL; SRV ACC
45096	ACH	RDO Equipt	Solid Waste	$	45,813.94	Warranty incorrectly invoiced on Unit 0263. Landfill
45096	862560	Rimrock Foundation	Court Grants	$	2,991.50	23 May Rimrock DUI Treatment Services
45096	862560	Rimrock Foundation	Court Grants	$	6,258.10	23 May Rimrock Treatment Services
45096	862562	Rocky Mt Health	City Ins Fund	$	29,715.00	Healthy Is Wellness and Health Behavior & Bio 2.0 Event
45096	862562	Rocky Mt Health	City Ins Fund	$	2,325.00	Inv. 49293 April EAP
45096	862563	Rocky Mt Health	City Ins Fund	$	2,325.00	May 2023 EAP
45096	862563	Rocky Mt Health	City Ins Fund	$	7,800.00	May 2023 Healthy Is Corporate Wellness and Health
45096	862564	Salt Lake Wholesale	Public Safety	$	6,215.00	SLWS 223 55 gold dot
45096	862565	Sanderson Stewart	Planning	$	9,880.50	Invoice 54598
45096	862565	Sanderson Stewart	Planning	$	19,908.50	Safe Routes to School - Phase II Invoice 54325
45096	862573	SHI International	Capital Replace	$	1,373.60	136 Email Only to G1 O365 Licenses -Police
45096	862573	SHI International	Capital Replace	$	3,703.00	Qty. 70 G1 to G3 O365 Licenses Police
45096	862578	Solid Waste System	Solid Waste	$	13.38	156635
45096	862578	Solid Waste System	Solid Waste	$	80.14	156635

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	862578	Solid Waste System	Solid Waste	$ 2,642.44	156636
45096	862578	Solid Waste System	Solid Waste	$ 36.97	156636
45096	862578	Solid Waste System	Solid Waste	$ 220.39	156643
45096	862578	Solid Waste System	Solid Waste	$ 15.92	156643
45096	862578	Solid Waste System	Solid Waste	$ 515.92	156715
45096	862578	Solid Waste System	Solid Waste	$ 91.04	156715
45096	862578	Solid Waste System	Solid Waste	$ 358,370.76	front-load collection truck- Crane Carrier chassis & Newway trash body
45096	862578	Solid Waste System	Street/Traffic	$ 13.76	156338
45096	862578	Solid Waste System	Street/Traffic	$ 142.37	156338
45096	862578	Solid Waste System	Street/Traffic	$ 70.80	156422
45096	862578	Solid Waste System	Street/Traffic	$ 667.42	156422
45096	862578	Solid Waste System	Street/Traffic	$ 448.09	156480
45096	862578	Solid Waste System	Street/Traffic	$ 1,102.37	156480
45096	862579	Spencer Industries	Solid Waste	$ 3,136.55	32228769
45096	862580	Star Service	Park Dist 1	$ 14,070.98	Irrigation line repair to Mountview Cememtery
45096	862580	Star Service	General	$ 9,900.88	Irrigation line repair to Mountview Cememtery
45096	862590	Tel Net Systems	Stillwater Const	$ 3,877.82	Retainage Release
45096	862591	Tire-Rama	Solid Waste	$ 430.00	2 axle bearing pack. Repack wheel bearing. Collections.
45096	862591	Tire-Rama	Solid Waste	$ 306.99	Tire purchase for unit 0027. Landfill.
45096	862591	Tire-Rama	Solid Waste	$ 695.00	Tire repair and purchase. Collections.
45096	862591	Tire-Rama	Solid Waste	$ 4,044.45	Tire repair and purchase. Collections.
45096	862591	Tire-Rama	Solid Waste	$ 4,797.45	Tire repair and purchase. Collections.
45096	862591	Tire-Rama	Street/Traffic	$ 60.90	1050047071
45096	862591	Tire-Rama	Street/Traffic	$ 136.97	1050047090
45096	862591	Tire-Rama	Street/Traffic	$ 121.10	1050047221
45096	862591	Tire-Rama	Street/Traffic	$ 25.00	1050046596 - TIRE
45096	862593	Torgerson's	Street/Traffic	$ 5,677.82	P04566 - HYD MOTOR
45096	862593	Torgerson's	Street/Traffic	$ 540.00	P28118
45096	862593	Torgerson's	Street/Traffic	$ 73.56	P28118
45096	ACH	Town & Co Supply	Airport	$ 28,084.80	Invoice #436517. QTA Car Rental Fuel
45096	ACH	Town & Co Supply	Fleet	$ 8,298.45	435783
45096	ACH	Town & Co Supply	Fleet	$ 10,484.05	435783
45096	ACH	Town & Co Supply	Fleet	$ 17,192.41	435783
45096	ACH	Town & Co Supply	Fleet	$ 8,180.09	435783

Check Date	Check#	Name	Fund Name	Amount	Item Desc
45096	ACH	Town & Co Supply	Public Safety	$ 667.38	436756 FIRE 5 - DIESEL
45096	ACH	Town & Co Supply	Public Safety	$ 500.54	436757 DIESEL
45096	ACH	Town & Co Supply	Public Safety	$ 683.91	436757 UNLEADED
45096	ACH	Town & Co Supply	Public Safety	$ 834.23	436758 FIRE 2 - DIESEL
45096	862596	Tru Pipe	Wastewater	$ 2,850.00	WO 23-01 Cameras to inspect sewer lines
45096	862597	Tyler Technologies	Capital Replace	$ 55,462.50	Qty. 40 Mobile Licenses, LE Dispatch and field reporting -New Toughbooks
45096	862600	United Way- Ylwstn	Public Safety	$ 62,663.53	Low Barrier Shelter Grant Agreement with Continuum of Care-Final Payment
45096	862604	Verizon Wireless	Engineering	$ 27.32	PW-Engineering
45096	862604	Verizon Wireless	Fleet	$ 107.29	Motor Pool
45096	862604	Verizon Wireless	General	$ 162.73	City Administrator
45096	862604	Verizon Wireless	General	$ 40.01	Tina Hoeger Laptop
45096	862604	Verizon Wireless	General	$ 27.32	Victoria Hill -Laptop
45096	862604	Verizon Wireless	PD Program	$ 414.70	CCSIU Cell/PTT
45096	862604	Verizon Wireless	PD Program	$ 80.02	CCSIU RAVEN
45096	862604	Verizon Wireless	Phone System	$ 80.06	WRF Cradle Point, Belknap Cradle Point
45096	862604	Verizon Wireless	Public Safety	$ 206.02	Fire MDT
45096	862604	Verizon Wireless	Public Safety	$ 120.03	Fire MDT
45096	862604	Verizon Wireless	Public Safety	$ 450.49	MDT Toughbooks
45096	862604	Verizon Wireless	Public Safety	$ 57.85	Police Bait Car
45096	862604	Verizon Wireless	Public Safety	$ 80.02	Police iPads
45096	862604	Verizon Wireless	Public Safety	$ 10.02	Police MiFi
45096	862604	Verizon Wireless	Solid Waste	$ 109.28	PW-Solid Waste
45096	862604	Verizon Wireless	Solid Waste	$ 147.00	PW-SW-ON CALL Solid Waste On Call
45096	862604	Verizon Wireless	Solid Waste	$ 23.68	PW-SW-ON CALL Solid Waste On Call
45096	862604	Verizon Wireless	Solid Waste	$ 524.52	Solid Waste Tablets -Routware
45096	862604	Verizon Wireless	Street/Traffic	$ 174.67	PW-Streets iPads
45096	862604	Verizon Wireless	Street/Traffic	$ 230.03	PW-STRT TRFC Streets
45096	862604	Verizon Wireless	Transit	$ 309.02	MET AVL
45096	862604	Verizon Wireless	Transit	$ 970.30	MET Max Transit
45096	862604	Verizon Wireless	Transit	$ 1,120.28	MET Max Transit
45096	862604	Verizon Wireless	Wastewater	$ 400.10	MET Tablets
45096	862604	Verizon Wireless	Water	$ 27.32	PWBLKNP Water Treatment
45096	862604	Verizon Wireless	Water	$ 40.01	PWBLNP Comm-Meter CityWorks/Neptune
45096	862604	Verizon Wireless	Water	$ 94.65	PWBLNP Comm-Meter CityWorks/Neptune

Check Date	Check#	Name	Fund Name		Amount	Item Desc
45096	862605	Voegele Acquisition	Street/Traffic	$	2,987.05	roundup application on row
45096	862607	Warren Transport	Trl Donate	$	472,762.62	WO 21-38 Schedule II Skyline Trail
45096	862612	Wright Co MT	Water	$	530.00	Applied Bareground weed control at Fox P
45096	862612	Wright Co MT	Water	$	530.00	applied ground sterilant at Briarwood ar
45096	862612	Wright Co MT	Water	$	530.00	Applied ground sterilant on Chapple road
45096	862612	Wright Co MT	Water	$	4,399.00	Ground Sterilant for 8.3 acres around po

City Council Regular
Date: 07/24/2023
Title: FY2023 Budget Amendments
Presented by: Andy Zoeller, Finance Director
Department: Finance
Presentation: Yes
Legal Review: Not Applicable
Project Number: N/A

RECOMMENDATION
The City Council Budget and Finance Committee and Staff recommend City Council hold a public hearing and approve the FY2023 budget amendments

BACKGROUND (Consistency with Adopted Plans and Policies, if applicable)
City Hall Construction Funding
On 12/19/2022 City Council approved funding options for the new city hall construction project. These funds were identified at that time, but budget authority to transfer the funds into the construction fund is needed. This amendment will establish the FY23 budget authority consistent with prior council approval.

Fund	Amount	Description
Equipment Replacement Plan	$500,000	Fund balance accumulated from contributions
Parks Programs	$225,000	Fund balance accumulated from cell tower leases
American Rescue Plan	$165,753	Interest income earned on ARPA funds
Police Programs	$500,000	Transfer of drug forfeiture funds for Police Department expenses
	$1,390,753	Funds transferred to City Hall Construction Fund

City Hall Construction Fund
On 5/22/2023 City Council approved the Bid Package #2 contract amendment for City Hall construction. This contract was higher than what was originally budgeted in FY23, but in-line with the estimated construction costs that were identified in the December 2022 funding options. The budget amendment for $8,300,000 will increase the authority in the City Hall Construction Fund, which will be funded with transfers in from other resources that were identified at the 12/19/2022 Council Meeting.

Fleet Services
Budget authority is needed in the Fleet Services Fund to cover the costs for paying out Sick and Vacation accruals for retirees. These payments were not anticipated in the FY23 budget, and were therefore not included in the original budget. Fund balance in the Fleet Services Fund exists to cover the increase in budget authority of $107,000.

Property and Liability Insurance Funds
Property and liability insurance premiums have been increasing at rates greater than what was anticipated in FY23. In FY23 the premiums increased approximately 33% over the prior year, but were only budgeted at a 20% increase. As such a budget amendment is needed for the additional increases in premium at $466,183. Fund balance in the Property and Liability Fund will be used to cover the additional costs, but will ultimately be allocated to departments in future years budgets.

East Tax Increment Fund
The East Tax Increment fund is requesting budget authority for development incentives paid in FY23. The original FY23 budget included $150,000 for development incentives. Actual payments for projects were $229,752 to Yellowstone Ice and Water and Stir LLC. Additional budget authority for annual debt administration is requested in the amount of $550 for a total budget amendment of $80,286. These will be paid for through accumulated tax increment from this fund.

ALTERNATIVES
City Council may:

- Approve; or,
- Not Approve

FISCAL EFFECTS

The FY23 budget amendments will increase the FY23 amended budget by $10,344,222

Fund	Requested Budget Increase
Various Transfers to City Hall Construction (see above)	$1,390,753
City Hall Construction Fund	8,300,000
Fleet Services	107,000
Property & Liability Insurance Fund	466,183
East Tax Increment Fund	80,286
Total increase in FY23 Budget Authority	$10,344,222

Attachments

Budget Amendment Resolution

RESOLUTION 23-

A RESOLUTION ADOPTING **FISCAL YEAR 2023** ADJUSTMENTS TO APPROPRIATIONS PURSUANT TO M.C.A. 7-6-4006 AS AMENDED, AND PROVIDING TRANSFERS AND REVISIONS WITHIN THE GENERAL CLASS OF SALARIES AND WAGES, MAINTENANCE AND SUPPORT AND CAPITAL OUTLAY.

WHEREAS, M.C.A. 7-6-4006 provides that the City Council, upon proper resolution, adopted by said Council at a regular meeting and entered into its Minutes, may transfer or revise appropriations within the general class of salaries and wages, maintenance and support, and capital outlay, and

WHEREAS, based upon a Budget Review **(FY 2023**), it is necessary to alter and change said appropriations.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

That the attached transfers or revisions are hereby adopted.

(SEE EXHIBIT A)

PASSED AND APPROVED by the City Council, this 24th day of July, 2023

THE CITY OF BILLINGS:

BY:_____
William A. Cole, MAYOR

ATTEST:

BY:_____
Denise R. Bohlman, CITY CLERK

EXHIBIT A

	Revenue	Expenditure

Equipment Replacement, Parks Programs, American Rescue Plan, Police Programs transfer to City Hall Construction

On 12/19/2022 City Council approved funding options for the new city hall construction project. These funds were identified at that time, but budget authority to transfer the funds into the construction fund is needed. This amendment will establish the FY23 budget authority consistent with prior council approval. This budget amendment will be funded through accumulated fund balance within these funds.

Equipment Replacement	500,000	Transfer Out
Parks Programs	225,000	Transfer Out
American Rescue Plan	165,753	Transfer Out
Police Programs	500,000	Transfer Out

City Hall Construction Fund

On 5/22/2023 City Council approved the Bid Package #2 contract amendment for City Hall construction. This contract was higher than what was originally budgeted in FY23, but in-line with the estimated construction costs that were identified in the December 2022 funding options. The budget amendment for $8,300,000 will increase the authority in the City Hall Construction Fund, which will be funded with transfers in from other resources that were identified at the 12/19/2022 Council Meeting.

City Hall Construction Fund	8,300,000	Capital Outlay

Fleet Services

Budget authority is needed in the Fleet Services Fund to cover the costs for paying out Sick and Vacation accruals for retirees. These payments were not anticipated in the FY23 budget, and were therefore not included. Fund balance in the Fleet Services Fund exists to cover the increase in budget authority of $107,000.

Fleet Services	107,000	Sick and Vacation Payoff

Property and Liability Insurance

Property and liability insurance premiums have been increasing at rates greater than what was anticipated in FY23. In FY23 the premiums increased approximately 33% over the prior year, but were only budgeted at a 20% increase. As such a budget amendment is needed for the additional increases in premium at $466,183. Fund balance in the Property and Liability Fund will be used to cover the additional costs, but will ultimately be allocated to departments in future years budgets.

Property & Liability Insurance	466,183	Insurance Premiums

EXHIBIT A Continued

East Tax Increment Fund

The East Tax Increment fund is requesting budget authority for development incentives paid in FY23. The original FY23 budget included $150,000 for development incentives. Actual payments for projects were $229,752 to Yellowstone Ice and Water and Stir LLC. Additional budget authority for annual debt administration is requested in the amount of $550 for a total budget amendment of $80,286. These will be paid for through accumulated tax increment from this fund.

East Tax Increment Fund	80,286	Development Incentives

City Council Regular

Date:	07/24/2023
Title:	Public Hearing and First Reading Ordinance Amending BMCC, Article 21-200, Solid Waste Collection and Disposal
Presented by:	Jennifer Duray
Department:	Public Works
Presentation:	Yes
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends the City Council hold a public hearing and approve first reading of the ordinance amending Billings, Montana City Code (BMCC), Article 21-200, Solid Waste Collection and Disposal.

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

BMCC, Article 21-200 establishes general and cost methodology for Solid Waste Collection and Disposal. The primary purpose of the ordinance amendment is to revise the service for "extras" collection to cardboard only as approved unanimously by Council at the June 26, 2023 business meeting. The parameters of additional collection services as an on-call, per fee basis and acceptable cardboard guidelines are also described. Additionally, amendments are proposed to delete obsolete language in BMCC, Article 21-200, as well as minor amendments to the verbiage. Other proposed amendments are:

- Remove the $500 permit fee for infectious wastes from city code and instead include the fee in the annual solid rate resolution;
- Specify that a residential collection customer can have up to two residential black containers and up to two yard waste containers:
- Allow for residential customers to have either a 64 gallon or 96 gallon containers and designate that a customer with a 64 gallon container cannot have a second black container;
- Require that all trash placed in black residential containers be bagged and tied;
- Specify that lids on residential containers should be able to close and overfilled containers will not be emptied;
- Define the allowable time period that residential containers can be set out in the city right-of-way as the night before and day of solid waste collection;
- Add verbiage regarding illegal dumping of solid waste;
- Revise the unsecured load language to include the uncovered load fee;
- Add parameters for disposal of contaminate material and asbestos; and
- Include information regarding delinquent bill procedures.

ALTERNATIVES

City Council may:

- Approve the amendment to BMCC, Article 21-200 Solid Waste Collection and Disposal; or,
- Not approve the amendment.

FISCAL EFFECTS

There are no significant fiscal effects as a result of this amendment to city code.

Attachments

Ordinance Redlined
Ordinance Clean

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE (BMCC) BE AMENDED BY REVISING ARTICLE 21-200 OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 21-200 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

DIVISION 1. – GENERALLY

Sec. 21-201. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

~~*Animal* as a class of refuse, dead animals means those that die naturally or from disease, are accidently killed, or disposed of administratively. Animals or parts of animals from slaughter houses or similar places are not included in this term, but are regarded as industrial refuse.~~

Black container means a 64 gallon, 96 gallon, or other size container as designated by the city for residential solid waste.

~~*Cinders and a*~~*Ashes* means the residue from the burning of wood, coal, coke, or other combustible materials in homes, stores, institutions and small industrial establishments, for the purpose of heating, cooking and disposing of waste combustible materials. Cinders produced in steam generating plants are included within the meaning of this term.

~~*Collection of solid waste* means the city's operation of gathering together and transporting of solid waste to the point of disposal.~~

Commercial means all business, industrial, institutional or agricultural establishments and all other properties that do not meet the residential definition. The city may allow multi-plex units to be classified as commercial at the owner's request.

Customer means a person or entity that has an established solid waste account and is billed directly by the city for collection of solid waste.

~~*Garbage* includes animal and vegetable waste resulting from the handling, preparation, cooking and consumption of foods. It is composed largely of organic matters and their natural moisture content. The term includes within its meaning, food processing wastes from canneries, slaughter houses, packing plants or similar~~

~~industries, or large quantities of condemned food products. Garbage also originates in kitchens, wholesale and retail stores and markets, restaurants, hotels and other places where food is stored, prepared, cooked or consumed.~~

Infectious waste is waste defined as "infectious waste" in Section 75-10-1003, Montana Code Annotated.

~~*Refuse* means all solid waste of any kindor type legally disposed through the operations of the city.~~

Residential means any property used as a permanent dwelling or abode by one (1) or more families including but not limited to single and multi-family, multi-plex, townhouse, apartment house, condominium, or any other housing unit, which receives once-a-week automated collection of black containers ~~receptacles~~ provided by the city designed for use by one or more families. Transient quarters, generally used as temporary residences, such as motels and hotels, are specifically excluded from the residential classification.

Residential service is defined as once-a-week automated collection of black containers provided by the city from residential properties.

Rubbish means all refuse not included in ~~garbage~~ solid waste and ashes. It consists of a great variety of combustible and noncombustible waste materials from households, stores and institutions. This waste is defined more specifically as "combustible rubbish" and "noncombustible rubbish," but whenever the word "rubbish" is used alone, it means a mixture of both. Trash is synonymous with rubbish.

(1) *Building rubbish* means the waste materials from construction, remodeling and repairs on houses, commercial buildings and other structures. It comprises, among a great variety of other rejected matter, excavated earth, stones, bricks, plaster, wallpaper, lumber, shingles, concrete and waste parts.

(2) *Combustible rubbish* comprises miscellaneous flammable materials. Generally, it is the organic component of rubbish, such as paper, rags, cartons, boxes, wood, excelsior, furniture, bedding, rubber, leather, tree branches, yard trimmings and similar material.

(3) *Noncombustible rubbish* comprises miscellaneous solid waste ~~refuse~~ materials that are nonflammable at ordinary temperatures. For the most part, it is the inorganic component of rubbish, such as tin cans, metals, mineral matter, glass, crockery, dust, metal furniture, etc.

(4) *Yard rubbish* consists of trimmings from trees, shrubs and hedges, branches, twigs, limbs, and trunks less than six (6) inches at the large end. ~~grass and shrub clippings, cut weeds, fallen leaves and general yard and garden waste materials.~~

~~*Service* means the frequency of collection each week and the size of containers used. Residential service is specifically defined as once-a-week automated collection of residential receptacles provided by the city from residential properties.~~

Solid waste means all trash consisting of everyday nonhazardous disposable materials generated by households, institutions, industries, and agriculture made up of waste, organics, and recyclable materials.

Yard waste service means once-a-week automated collection of green residential ~~receptacles~~ containers for yard waste provided by the city to ~~from~~ residential properties for anticipated collection between ~~from~~ the first full week of April until the last full week of November. ~~Yard waste may include garden waste, grass clippings, leaves, shrub pruning, smaller branches or twigs, and weeds. Yard waste specifically excludes dirt, sod, rocks, and animal drippings. Plastic bags must not be included in yard waste receptacles.~~

Sec. 21-202. Duty of owner or occupant.

(a) It shall be the duty of the owner or occupant of any premises within the city limits to keep such premises and one-half of the alley immediately adjacent thereto and the gutter in front of or adjoining his or her property clean, open and free of wastepaper, cans, leaves or any unhealthy materials of any kind.

(b) Before a complaint can be filed charging a violation of this section, the person to be charged must first be given written notice of the violation, setting forth in the notice the nature of the violation, and a period of five (5) days after receiving such notice to remedy the violation.

(c) A violation of this section is designated as a municipal infraction and punishable by civil penalties as specified in section 18-1304.

Sec. 21-203. Infectious wastes.

(a~~b~~) "Infectious waste" shall not be placed with other noninfectious wastes or solid waste ~~refuse~~ for normal collection by the city.

(b~~c~~) The city administrator, or his designee, is authorized to issue written special permits to private individuals or entities permitting them to collect and remove infectious wastes within the city.

(1) Permits shall be issued only to those individuals or entities holding the licenses or permits required by Section 75-10-1006, MCA.

(2) Permits shall be issued on an annual basis.

(3) The permit fee shall be specified in the annual rate resolution. ~~five hundred dollars ($500.00) annually~~. Such fee shall be paid at the time of issuance of the permit and is nonrefundable.

(4) All permits shall contain a provision prohibiting disposal in the city landfill of infectious wastes which have not been treated so as to render them noninfectious.

(5) All permits shall contain a provision stating that the city may, in its sole discretion, refuse to renew the permit at the end of the annual period and elect to provide such services exclusively with city facilities and personnel.

(cd) It is unlawful for any person to dispose of or deposit in the city landfill any infectious wastes which have not been treated as described in Section 75-10-1005, MCA, so as to render them noninfectious and no longer biological hazardous.

Sec. 21-204. Inflammable waste; acids and explosives.

No person shall place or cause to be placed in or near the container receptacle provided for the removal of solid waste refuse, any highly inflammable wastes, acids or explosives of any kind whatsoever. All such materials shall be disposed of by the producer of the inflammable waste in a manner directed by the city.

Sec. 21-205. Yard waste rubbish.

All trimmings from trees, shrubs and hedges shall be securely tied in bundles not heavier than seventy-five (75) pounds, nor more than four (4) feet in length, nor more than two (2) feet in diameter, and shall be left at or near the place specified for receptacles. Tree branches, limbs or the trunks placed for collection shall not exceed six (6) inches at the large end. Any rubbish not meeting these specifications may or may not be collected at the option of the city. Yard waste may include garden waste, grass clippings, leaves, shrub pruning, smaller branches or twigs, and weeds. Yard waste specifically excludes dirt, sod, rocks, and animal droppings. Plastic bags must not be included in yard waste containers. Residential customers in subdivisions that do not have available on-site storage for yard waste containers are not eligible for yard waste service and will not be provided with yard waste containers. Such subdivisions are designated as ineligible by the Public Works Department.

All yard waste rubbish resulting from the work of a contractor or the like shall be removed by means provided by and at the sole expense and cost of the contractor. Yard waste service is not available for commercial customers.

Sec. 21-206. Refuse Solid waste containers and receptacles—Duty to provide.

It is the duty of every owner or his or her agent or the occupant of any premises and all other persons occupying business premises wherein or whereon any solid waste is created in the city to provide or cause to be provided, and at all times to keep or cause to be kept in such places as the city may from time to time direct, containers, receptacles or racks that conform to the provision of this article. Whenever the city provides individual black containers barrels for curb collection or community barrels for alley collection of residential garbage solid waste, residents shall only use these black containers receptacles.

Sec. 21-207. Same Solid waste containers—Number required.

(a) *Residential properties.* There shall be a sufficient number of receptacles black containers to adequately hold the accumulation of garbage refuse residential solid waste for a period of seven (7) days. The city shall provide up to two containers for residential service and up to two containers for yard waste service to residential customers.

(b) *Commercial properties.* There shall be sufficient ~~receptacles~~ containers to ~~contain~~ hold all ~~refuse~~ solid waste generated between scheduled collection times. More frequent collections, additional or larger receptacles may be required at the direction of the city if there is an insufficient available capacity to contain the ~~refuse~~ solid waste generated.

(c) Except as provided in Section 21-218, it is unlawful to cause or allow solid waste to be placed at the designated point of collection without being contained in a suitable container as herein described.

Sec. 21-208. ~~Same~~ Solid waste containers—Condition.

It is at all times the responsibility of the property owner or occupant to maintain ~~receptacles~~ containers in a good, clean and useable condition. ~~Receptacles~~ Containers that are not provided by the city and that have deteriorated to the extent of having jagged or sharp edges capable of causing injury to the collectors or others whose duty it is to handle the containers, or to the extent that the covers will not fit tightly or to the extent of allowing the ~~refuse~~ solid waste to be scattered, will be condemned by the city. Replacement will be required upon notification. Commercial type containers shall be in good condition at all times with proper and functional lids, wheels where applicable, not bent and free from holes. Barrels provided by the city will be repaired and replaced by the city.

Sec. 21-209. ~~Same~~ Solid waste containers—Size of residential containers.

Residential customers may be provided a 64 gallon black container or a 96 gallon black container, or some other size as designated by the city. A residential customer provided a 64 gallon black container may not have a second black container for residential service. ~~The city shall provide all containers to residential customers for residential service and yard waste service. Plastic containers, receptacles, bags or sacks designed for the accumulating, storage and handling of refuse are also acceptable and will be picked up per approved published schedule or frequency.~~

Sec. 21-210. ~~Same~~ Solid waste containers—Storage.

(a) Underground container storage is not permitted. When collection is made from the street, storage of containers shall not be close to the curb area except on collection days.

(b) Commercial properties will provide suitable facilities for ~~receptacle~~ container storage to protect against the accidental dispersal of ~~refuse~~ solid waste about the property or alleys and streets of the city.

Sec. 21-211. Preparation of solid waste ~~refuse~~ for collection.

(a) Ashes to be collected shall not contain any hot coals or ashes and shall be placed in a proper container. Hot coals or ashes will not be collected. ~~The collectors are not required to collect hot ashes.~~

(b) Solid Waste ~~Refuse~~ resulting from contract operations, tree trimming or removal including earth, plaster, metal, tile, brick, terra cotta, slate, shingles, roofing, tin, iron and construction litter in general shall be removed and disposed of by the person responsible for its production and in a manner and place approved by the city; provided, however, that small quantities of building rubbish resulting from minor alterations, or tree trimming done solely by the householder, will be collected by the city if properly contained.

(c) Combustible rubbish of every kind whatsoever shall be securely wrapped, packed or contained in a manner that will prevent scattering by the wind and shall be deposited in a proper receptacle.

(d) All city provided residential containers are to keep the area clean around the container. The recommended clearance is four (4) feet around the container.

(e) All solid waste placed in black containers for residential service and all commercial containers shall be in bags, designed for the accumulation of trash, and tied.

(f) Do not overfill the containers. The lids on green containers used for yard waste and black containers for residential services shall be able to close. Overfilled containers will not be emptied and customers will not receive service until the next scheduled service day.

(g) Black and green residential containers will be allowed to be placed for collection within, but without obstructing, the right-of-way the night before and on the day of solid waste collection only. Containers must be stored off the right-of-way the remainder of the time.

Sec. 21-212. Disturbing solid waste containers ~~refuse receptacles~~.

No person shall remove, handle, pick up or otherwise disturb the solid waste containers ~~refuse receptacles~~ or the contents thereof which have been properly placed for collection. This section shall not apply to the owner, occupant, lessee of residence, dwelling or other building so placing the solid waste ~~refuse~~ and container ~~receptacle~~ or to others whose legal duty it is to handle the containers ~~receptacles~~ or contents, or to those who have been issued a permit for such purpose. This section shall not restrict the authority of law enforcement officials to conduct a search of solid waste containers. ~~refuse receptacles~~. It is unlawful for any person or business to dump or place solid waste in a solid waste container belonging to another person or upon any other premises without the consent of the owner of such container or premises.

Sec. 21-213. Use of landfill by persons other than city.

(a) Use of the landfill by persons other than the city shall be in accordance with the use agreements between the city and all other entities. Use of the landfill shall be subject to the fees set forth in an annual resolution. Solid waste ~~Refuse~~ shall be

acceptable to the city and be deposited in strict accordance with all rules and regulations governing the city landfill.

(b) City residents hauling non-business waste from their primary residence will not be charged if the waste is hauled in a vehicle no larger than a one-ton pickup truck, or equivalent size trailer. Fees will apply for special waste in accordance with the disposal fee resolution adopted by the city council annually.

(c) Employees of the city in charge of maintaining the landfill are authorized to request of any person to produce proper registration of any vehicle, issued by the state, to certify that the vehicle is owned by a resident or nonresident of the city. Employees in charge of maintaining the landfill are further authorized to request any other suitable identification from operators or owners of vehicles to determine whether such person is a resident or nonresident.

(d) Payment of landfill fees by private solid waste ~~refuse~~ haulers and contractors shall be allowed by monthly billing after establishment of acceptable credit. Any account which is delinquent more than sixty (60) days shall be refused the right to dispose of any solid waste ~~refuse~~ at the city landfill until the account is paid in full.

Sec. 21-214. Collection by city exclusive.

(a) It is unlawful for any person other than the city to engage in the business of collecting, removing and disposing of solid waste ~~refuse~~ within the jurisdiction of the city, or for any person other than the city, its agents or employees to do or perform any of the things herein required to be done or performed by the city, except:

(1) As provided in sections 21-215 and 21-203;

(2) For drop-box service on construction sites; ~~and~~

(3) Per a written agreement approved by the city council; and

(~~3~~4) As provided by MCA 7-2-4736, preservation of existing garbage or solid waste service in the event of annexation.

(b) The city administrator with the consent of the city council, may call for bids on any areas that may be opened for competitive bidding by private haulers.

Sec. 21-215. Special permits.

In the case of isolated premises or where reasonable access cannot be had by truck, solid waste ~~refuse~~ therefrom may, upon written special permission of the city, be collected, removed and disposed of in such manner as the city shall in and by such permit approve and direct.

Sec. 21-216. Supervision of disposal.

All matters relating to the collection, removal and disposal of solid waste ~~refuse~~, unless specifically placed under the direction of the city/county board of health, shall be done and performed under the supervision, direction and control of the city administrator or designee, and in strict conformity with the provisions of this article and with any additional rules and regulations that may be made from time to time by the city administrator.

Sec. 21-217. Load security.

No person for himself or herself or on behalf of any other person shall operate a vehicle within the city or between the city and the city landfill disposal site transporting material or solid waste ~~refuse~~ of any kind or nature which is not fully secured. "Unsecured loads" are defined as a load of any quantity of any material or solid waste ~~refuse~~ that is not fully tied, covered or enclosed in such a manner that material being transported cannot be spilled, blown, dropped or otherwise lost from the transporting vehicle. Any person violating this section on load security shall pay the uncovered load fee as designated by resolution. ~~be guilty of a misdemeanor, shall be issued a citation and notice to appear, shall be required to unload in a designated landfill area and shall pay a minimum fine of thirty-five dollars ($35.00).~~

~~The maximum fine is as provided in section 1-110. Upon subsequent offenses by the same person, the offender will be subject to a penalty as provided for other violations of this article as provided in section 1-110. For the purposes of this section the solid waste superintendent, or designee(s), is authorized as the enforcement officer and is granted the authority to enforce the provisions of this section and issue citations.~~

A person operating a loaded vehicle on a public highway with an unsecured load shall also be subject to a misdemeanor as specified in Section61-8-370, MCA.

Sec. 21-218. Additional residential collection and special pickups.

The city will collect cardboard placed next to a residential container per a published schedule by the Public Works Department. Residents shall not set cardboard out when it is raining. Cardboard must not be wet and must be free of food, oil stains, packing peanuts, plastic bags, and bubble wrap. Cardboard boxes shall be flattened except a large cardboard box may be used to placed other smaller flattened cardboard boxes.

The city will collect extra and bulky solid waste from residential customers on an on-call basis. Extra solid waste includes items equivalent to a 32 gallon container or approximately 2 feet by 2 feet and will be charged per the annual rate resolution. Yard rubbish can also be collected as an on-call extra item. Yard rubbish should be securely tied in bundles not heavier than 75 pounds, no more than (4) feet in length, and no more than two (2) feet in diameter. Bulky solid waste includes items greater than 75 pounds or larger than a 32 gallon container or 2 feet by 2 feet size such as furniture, televisions, and mattresses.

Sec. 21-219. Outdoor dumping of solid waste prohibited.

Any deposit of solid waste upon the city right-of-way, city property or the premises or property of another without the express permission or consent of the city, owner, or occupant of such premises is forbidden and prohibited. A violation of this section is designated as a municipal infraction and punishable by civil penalties as specified in section 18-1304.

Sec. 21-220. Contaminated materials and asbestos.

Disposal of all contaminated material is regulated by the Landfill Acceptance Criteria for total and/or total toxicity characteristic leaching procedure (TCLP) concentration limits for the following parameters: petroleum hydrocarbons, total organic halogens (TOX), semi-volatile organics and heavy RCRA metals.

Disposal of asbestos containing material greater than 1% both friable and non-friable is regulated by the Montana DEQ Asbestos Control Program, EPA, OSHA, and landfill disposal requirements.

Secs. 21-2211~~8~~—21-225. Reserved.

DIVISION 2. – COSTS

Sec. 21-226. Assessment against property; monthly billing authorized.

The cost of collecting and/or disposing of solid waste ~~refuse~~, from the streets, alleys and private premises of the city shall be billed at the monthly rate established by this division to each customer on the monthly public works utilities water and wastewater billing statements.

Sec. 21-227. Costs borne proportionately.

Each property from which solid waste ~~refuse~~ is produced or collected shall, as far as practicable, bear its share of the expense of collecting and/or disposing of the solid waste ~~refuse~~ in proportion to the amount of solid waste ~~refuse~~ collected and/or disposal of and the frequency of collection.

Sec. 21-228. Cost estimate.

It is the duty of the city administrator to provide the council an estimate, as near as practicable, of the cost of collecting and disposing of solid waste ~~refuse~~ in the city.

Sec. 21-229. Annual determination of charges for services rendered.

The council shall hold a public hearing annually and pass and adopt a resolution setting the commercial and residential services collection and disposal rates, landfill fees and any other miscellaneous fees or charges deemed appropriate and necessary. The resolution shall list the fee schedules.

Sec. 21-230—233. Reserved.

Sec. 21-234. Hearing of objections; changes; final passage.

At the time set for hearings objections to the final passage of the resolution referred to in section 21-229, or at a time to which such meeting may be adjourned, the city council shall pass upon all objections and make such changes in the assessments as it shall deem necessary and proper after hearing such objections, and shall adopt such

resolution. Thereafter, the city clerk shall incorporate such changes in the list of charges as extended.

Secs. 21-235. Delinquent bills.

Bills shall become delinquent 25 days from the date of billing if not paid. If the bill is not paid within 40 days after the billing date, the solid waste service to the customer shall be discontinued after written notice is mailed to the customer until the delinquent assessed amount is paid. The city invokes the use of the procedures set forth under MCA 7-13-4108 for collection of delinquent assessed bills, which imparts the payment as a tax against the property involved and also permits the city to bring suit to collect payment of delinquent solid waste charges.

Secs. 21-23~~5~~6—21-237. Reserved

Sec. 21-238. Refunds.

No refunds of charges collected under this division shall be made except in cases of obvious error or change of service.

Sec. 21-239. Residential lots involving off-street collection.

For each residential property where the collection is made from beyond the curb, sidewalk or alley area in which a documented medical necessity is obtained from the resident, the monthly charge shall be equal to the monthly residential service rate established under this division. For each residential property where collection is required to be made from beyond the curb, sidewalk or alley area due to the way in which the property was constructed, one hundred (100) percent shall be added to the residential rate established under this division.

Sec. 21-240. Solid waste ~~Refuse~~ requiring special handling.

Disposal of solid waste ~~refuse~~ of a kind for which other provision is not made shall be made pursuant to this section. Any solid waste ~~refuse~~ placed upon the alleys or streets which does not come within the provisions of this article may be removed therefrom at the expense of the owner of the property from which such solid waste ~~refuse~~ originates. The city may submit a bill to the persons liable for the removal of such refuse. If the amount is not paid within ten (10) days after the bill is submitted, then the charge shall be collected in the same manner as the collection of other solid waste ~~refuse~~ fees, as provided in this chapter.

Sec. 21-241. Removal of solid waste ~~refuse~~ at owner's expense.

Nothing contained in this article shall prevent the city council from requiring the owner or occupant of premises to remove therefrom the solid waste ~~refuse~~ or a portion thereof at his or her own expense, under the supervision and control of the city and adjusting the fee.

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 ARTICLE 21-200 OF SAID CODE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. That Article 21-200 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such section shall read as follows:

DIVISION 1. – GENERALLY

Sec. 21-201. Definitions.

The following words and phrases, when used in this article, shall have the following meanings:

Ashes means the residue from the burning of wood, coal, coke, or other combustible materials in homes, stores, institutions and small industrial establishments, for the purpose of heating, cooking and disposing of waste combustible materials. Cinders produced in steam generating plants are included within the meaning of this term.

Black container means a 64 gallon, 96 gallon, or other size container as designated by the city for residential solid waste.

Commercial means all business, industrial, institutional or agricultural establishments and all other properties that do not meet the residential definition. The city may allow multi-plex units to be classified as commercial at the owner's request.

Customer means a person or entity that has an established solid waste account and is billed directly by the city for collection of solid waste.

Infectious waste is waste defined as "infectious waste" in Section 75-10-1003, Montana Code Annotated.

Residential means any property used as a permanent dwelling or abode by one (1) or more families including but not limited to single and multi-family, multi-plex, townhouse, apartment house, condominium, or any other housing unit, which receives once-a-week automated collection of black containers provided by the city designed for use by one or more families. Transient quarters, generally used as temporary residences, such as motels and hotels, are specifically excluded from the residential classification.

Residential service is defined as once-a-week automated collection of black containers provided by the city from residential properties.

Rubbish means all refuse not included in solid waste and ashes. It consists of a great variety of combustible and noncombustible waste materials from households, stores and institutions. This waste is defined more specifically as "combustible rubbish" and "noncombustible rubbish," but whenever the word "rubbish" is used alone, it means a mixture of both. Trash is synonymous with rubbish.

(1) *Building rubbish* means the waste materials from construction, remodeling and repairs on houses, commercial buildings and other structures. It comprises, among a great variety of other rejected matter, excavated earth, stones, bricks, plaster, wallpaper, lumber, shingles, concrete and waste parts.

(2) *Combustible rubbish* comprises miscellaneous flammable materials. Generally, it is the organic component of rubbish, such as paper, rags, cartons, boxes, wood, excelsior, furniture, bedding, rubber, leather, tree branches, yard trimmings and similar material.

(3) *Noncombustible rubbish* comprises miscellaneous solid waste ~~refuse~~ materials that are nonflammable at ordinary temperatures. For the most part, it is the inorganic component of rubbish, such as tin cans, metals, mineral matter, glass, crockery, dust, metal furniture, etc.

(4) *Yard rubbish* consists of trimmings from trees, shrubs and hedges, branches, twigs, limbs, and trunks less than six (6) inches at the large end.

Solid waste means all trash consisting of everyday nonhazardous disposable materials generated by households, institutions, industries, and agriculture made up of waste, organics, and recyclable materials.

Yard waste service means once-a-week automated collection of green residential containers for yard waste provided by the city to residential properties for anticipated collection between the first full week of April until the last full week of November.

Sec. 21-202. Duty of owner or occupant.

(a) It shall be the duty of the owner or occupant of any premises within the city limits to keep such premises and one-half of the alley immediately adjacent thereto and the gutter in front of or adjoining his or her property clean, open and free of wastepaper, cans, leaves or any unhealthy materials of any kind.

(b) Before a complaint can be filed charging a violation of this section, the person to be charged must first be given written notice of the violation, setting forth in the notice the nature of the violation, and a period of five (5) days after receiving such notice to remedy the violation.

(c) A violation of this section is designated as a municipal infraction and punishable by civil penalties as specified in section 18-1304.

Sec. 21-203. Infectious wastes.

(a) "Infectious waste" shall not be placed with other noninfectious wastes or solid waste for normal collection by the city.

(b) The city administrator, or his designee, is authorized to issue written special permits to private individuals or entities permitting them to collect and remove infectious wastes within the city.

(1) Permits shall be issued only to those individuals or entities holding the licenses or permits required by Section 75-10-1006, MCA.

(2) Permits shall be issued on an annual basis.

(3) The permit fee shall be specified in the annual rate resolution. Such fee shall be paid at the time of issuance of the permit and is nonrefundable.

(4) All permits shall contain a provision prohibiting disposal in the city landfill of infectious wastes which have not been treated so as to render them noninfectious.

(5) All permits shall contain a provision stating that the city may, in its sole discretion, refuse to renew the permit at the end of the annual period and elect to provide such services exclusively with city facilities and personnel.

(c) It is unlawful for any person to dispose of or deposit in the city landfill any infectious wastes which have not been treated as described in Section 75-10-1005, MCA, so as to render them noninfectious and no longer biological hazardous.

Sec. 21-204. Inflammable waste; acids and explosives.

No person shall place or cause to be placed in or near the container provided for the removal of solid waste, any highly inflammable wastes, acids or explosives of any kind whatsoever. All such materials shall be disposed of by the producer of the inflammable waste in a manner directed by the city.

Sec. 21-205. Yard waste.

Yard waste may include garden waste, grass clippings, leaves, shrub pruning, smaller branches or twigs, and weeds. Yard waste specifically excludes dirt, sod, rocks, and animal droppings. Plastic bags must not be included in yard waste containers. Residential customers in subdivisions that do not have available on-site storage for yard waste containers are not eligible for yard waste service and will not be provided with yard waste containers. Such subdivisions are designated as ineligible by the Public Works Department.

All yard waste resulting from the work of a contractor or the like shall be removed by means provided by and at the sole expense and cost of the contractor. Yard waste service is not available for commercial customers.

Sec. 21-206. Solid waste containers—Duty to provide.

It is the duty of every owner or his or her agent or the occupant of any premises and all other persons occupying business premises wherein or whereon any solid waste is created in the city to provide or cause to be provided, and at all times to keep or cause to be kept in such places as the city may from time to time direct, containers, receptacles or racks that conform to the provision of this article. Whenever the city provides individual black containers for collection of residential solid waste, residents shall only use these black containers.

Sec. 21-207. Solid waste containers—Number required.

(a) *Residential properties.* There shall be a sufficient number of black containers to adequately hold the accumulation of residential solid waste for a period of seven (7) days. The city shall provide up to two containers for residential service and up to two containers for yard waste service to residential customers.

(b) *Commercial properties.* There shall be sufficient containers to hold all solid waste generated between scheduled collection times. More frequent collections, additional or larger receptacles may be required at the direction of the city if there is an insufficient available capacity to contain the solid waste generated.

(c) Except as provided in Section 21-218, it is unlawful to cause or allow solid waste to be placed at the designated point of collection without being contained in a suitable container as herein described.

Sec. 21-208. Solid waste containers—Condition.

It is at all times the responsibility of the property owner or occupant to maintain containers in a good, clean and useable condition. Containers that are not provided by the city and that have deteriorated to the extent of having jagged or sharp edges capable of causing injury to the collectors or others whose duty it is to handle the containers, or to the extent that the covers will not fit tightly or to the extent of allowing the solid waste to be scattered, will be condemned by the city. Replacement will be required upon notification. Commercial type containers shall be in good condition at all times with proper and functional lids, wheels where applicable, not bent and free from holes. Barrels provided by the city will be repaired and replaced by the city.

Sec. 21-209. Solid waste containers—Size of residential containers.

Residential customers may be provided a 64 gallon black container or a 96 gallon black container. A residential customer provided a 64 gallon black container may not have a second black container for residential service.

Sec. 21-210. Solid waste containers—Storage.

(a) Underground container storage is not permitted. When collection is made from the street, storage of containers shall not be close to the curb area except on collection days.

(b) Commercial properties will provide suitable facilities for container storage to protect against the accidental dispersal of solid waste about the property or alleys and streets of the city.

Sec. 21-211. Preparation of solid waste for collection.

(a) Ashes to be collected shall not contain any hot coals or ashes and shall be placed in a proper container. Hot coals or ashes will not be collected.

(b) Solid Waste resulting from contract operations, tree trimming or removal including earth, plaster, metal, tile, brick, terra cotta, slate, shingles, roofing, tin, iron and construction litter in general shall be removed and disposed of by the person responsible for its production and in a manner and place approved by the city; provided, however, that small quantities of building rubbish resulting from minor alterations, or tree trimming done solely by the householder, will be collected by the city if properly contained.

(c) Combustible rubbish of every kind whatsoever shall be securely wrapped, packed or contained in a manner that will prevent scattering by the wind and shall be deposited in a proper receptacle.

(d) All city provided residential containers are to keep the area clean around the container. The recommended clearance is four (4) feet around the container.

(e) All solid waste placed in black containers for residential service and all commercial containers shall be in bags, designed for the accumulation of trash, and tied.

(f) Do not overfill the containers. The lids on green containers used for yard waste and black containers for residential services shall be able to close. Overfilled containers will not be emptied and customers will not receive service until the next scheduled service day.

(g) Black and green residential containers will be allowed to be placed for collection within, but without obstructing, the right-of-way the night before and on the day of solid waste collection only. Containers must be stored off the right-of-way the remainder of the time.

Sec. 21-212. Disturbing solid waste containers.

No person shall remove, handle, pick up or otherwise disturb the solid waste containers or the contents thereof which have been properly placed for collection. This section shall not apply to the owner, occupant, lessee of residence, dwelling or other building so placing the solid waste and container or to others whose legal duty it is to handle the containers or contents, or to those who have been issued a permit for such purpose. This section shall not restrict the authority of law enforcement officials to conduct a search of solid waste containers. It is unlawful for any person or business to dump or place solid waste in a solid waste container belonging to another person or upon any other premises without the consent of the owner of such container or premises.

Sec. 21-213. Use of landfill by persons other than city.

(a) Use of the landfill by persons other than the city shall be in accordance with the use agreements between the city and all other entities. Use of the landfill shall be subject to the fees set forth in an annual resolution. Solid waste shall be acceptable

to the city and be deposited in strict accordance with all rules and regulations governing the city landfill.

(b) City residents hauling non-business waste from their primary residence will not be charged if the waste is hauled in a vehicle no larger than a one-ton pickup truck, or equivalent size trailer. Fees will apply for special waste in accordance with the disposal fee resolution adopted by the city council annually.

(c) Employees of the city in charge of maintaining the landfill are authorized to request of any person to produce proper registration of any vehicle, issued by the state, to certify that the vehicle is owned by a resident or nonresident of the city. Employees in charge of maintaining the landfill are further authorized to request any other suitable identification from operators or owners of vehicles to determine whether such person is a resident or nonresident.

(d) Payment of landfill fees by private solid waste haulers and contractors shall be allowed by monthly billing after establishment of acceptable credit. Any account which is delinquent more than sixty (60) days shall be refused the right to dispose of any solid waste ~~refuse~~ at the city landfill until the account is paid in full.

Sec. 21-214. Collection by city exclusive.

(a) It is unlawful for any person other than the city to engage in the business of collecting, removing and disposing of solid waste within the jurisdiction of the city, or for any person other than the city, its agents or employees to do or perform any of the things herein required to be done or performed by the city, except:

(1) As provided in sections 21-215 and 21-203;

(2) For drop-box service on construction sites;

(3) Per a written agreement approved by the city council; and

(4) As provided by MCA 7-2-4736, preservation of existing garbage or solid waste service in the event of annexation.

(b) The city administrator with the consent of the city council, may call for bids on any areas that may be opened for competitive bidding by private haulers.

Sec. 21-215. Special permits.

In the case of isolated premises or where reasonable access cannot be had by truck, solid waste therefrom may, upon written special permission of the city, be collected, removed and disposed of in such manner as the city shall in and by such permit approve and direct.

Sec. 21-216. Supervision of disposal.

All matters relating to the collection, removal and disposal of solid waste, unless specifically placed under the direction of the city/county board of health, shall be done and performed under the supervision, direction and control of the city administrator or designee, and in strict conformity with the provisions of this article and with any additional rules and regulations that may be made from time to time by the city administrator.

Sec. 21-217. Load security.

No person for himself or herself or on behalf of any other person shall operate a vehicle within the city or between the city and the city landfill disposal site transporting material or solid waste of any kind or nature which is not fully secured. "Unsecured loads" are defined as a load of any quantity of any material or solid waste that is not fully tied, covered or enclosed in such a manner that material being transported cannot be spilled, blown, dropped or otherwise lost from the transporting vehicle. Any person violating this section on load security shall pay the uncovered load fee as designated by resolution.

A person operating a loaded vehicle on a public highway with an unsecured load shall also be subject to a misdemeanor as specified in Section61-8-370, MCA.

Sec. 21-218. Additional residential collection and special pickups.

The city will collect cardboard placed next to a residential container per a published schedule by the Public Works Department. Residents shall not set cardboard out when it is raining. Cardboard must not be wet and must be free of food, oil stains, packing peanuts, plastic bags, and bubble wrap. Cardboard boxes shall be flattened except a large cardboard box may be used to placed other smaller flattened cardboard boxes.

The city will collect extra and bulky solid waste from residential customers on an on-call basis. Extra solid waste includes items equivalent to a 32 gallon container or approximately 2 feet by 2 feet and will be charged per the annual rate resolution. Yard rubbish can also be collected as an on-call extra item. Yard rubbish should be securely tied in bundles not heavier than 75 pounds, no more than (4) feet in length, and no more than two (2) feet in diameter. Bulky solid waste includes items greater than 75 pounds or larger than a 32 gallon container or 2 feet by 2 feet size such as furniture, televisions, and mattresses.

Sec. 21-219. Outdoor dumping of solid waste prohibited.

Any deposit of solid waste upon the city right-of-way, city property or the premises or property of another without the express permission or consent of the city, owner, or occupant of such premises is forbidden and prohibited. A violation of this section is designated as a municipal infraction and punishable by civil penalties as specified in section 18-1304.

Sec. 21-220. Contaminated materials and asbestos.

Disposal of all contaminated material is regulated by the Landfill Acceptance Criteria for total and/or total toxicity characteristic leaching procedure (TCLP) concentration limits for the following parameters: petroleum hydrocarbons, total organic halogens (TOX), semi-volatile organics and heavy RCRA metals.

Disposal of asbestos containing material greater than 1% both friable and non-friable is regulated by the Montana DEQ Asbestos Control Program, EPA, OSHA, and landfill disposal requirements.

Secs. 21-221~~18~~—21-225. Reserved.

DIVISION 2. – COSTS

Sec. 21-226. Assessment against property; monthly billing authorized.

The cost of collecting and/or disposing of solid waste, from the streets, alleys and private premises of the city shall be billed at the monthly rate established by this division to each customer on the monthly public works utilities water and wastewater billing statements.

Sec. 21-227. Costs borne proportionately.

Each property from which solid waste is produced or collected shall, as far as practicable, bear its share of the expense of collecting and/or disposing of the solid waste in proportion to the amount of solid waste collected and/or disposal of and the frequency of collection.

Sec. 21-228. Cost estimate.

It is the duty of the city administrator to provide the council an estimate, as near as practicable, of the cost of collecting and disposing of solid waste in the city.

Sec. 21-229. Annual determination of charges for services rendered.

The council shall hold a public hearing annually and pass and adopt a resolution setting the commercial and residential services collection and disposal rates, landfill fees and any other miscellaneous fees or charges deemed appropriate and necessary. The resolution shall list the fee schedules.

Sec. 21-230—233. Reserved.

Sec. 21-234. Hearing of objections; changes; final passage.

At the time set for hearings objections to the final passage of the resolution referred to in section 21-229, or at a time to which such meeting may be adjourned, the city council shall pass upon all objections and make such changes in the assessments as it shall deem necessary and proper after hearing such objections, and shall adopt such resolution. Thereafter, the city clerk shall incorporate such changes in the list of charges as extended.

Secs. 21-235. Delinquent bills.

Bills shall become delinquent 25 days from the date of billing if not paid. If the bill is not paid within 40 days after the billing date, the solid waste service to the customer shall be discontinued after written notice is mailed to the customer until the delinquent assessed amount is paid. The city invokes the use of the procedures set forth under MCA 7-13-4108 for collection of delinquent assessed bills, which imparts the payment as a tax against the property involved and also permits the city to bring suit to collect payment of delinquent solid waste charges.

Secs. 21-236—21-237. Reserved

Sec. 21-238. Refunds.

No refunds of charges collected under this division shall be made except in cases of obvious error or change of service.

Sec. 21-239. Residential lots involving off-street collection.

For each residential property where the collection is made from beyond the curb, sidewalk or alley area in which a documented medical necessity is obtained from the resident, the monthly charge shall be equal to the monthly residential service rate established under this division. For each residential property where collection is required to be made from beyond the curb, sidewalk or alley area due to the way in which the property was constructed, one hundred (100) percent shall be added to the residential rate established under this division.

Sec. 21-240. Solid waste requiring special handling.

Disposal of solid waste of a kind for which other provision is not made shall be made pursuant to this section. Any solid waste placed upon the alleys or streets which does not come within the provisions of this article may be removed therefrom at the expense of the owner of the property from which such solid waste originates. The city may submit a bill to the persons liable for the removal of such refuse. If the amount is not paid within ten (10) days after the bill is submitted, then the charge shall be collected in the same manner as the collection of other solid waste fees, as provided in this chapter.

Sec. 21-241. Removal of solid waste at owner's expense.

Nothing contained in this article shall prevent the city council from requiring the owner or occupant of premises to remove therefrom the solid waste ~~refuse~~ or a portion thereof at his or her own expense, under the supervision and control of the city and adjusting the fee.

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:	07/24/2023
Title:	Public Hearing and Resolution Annexation 23-05
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review:	Not Applicable
Project Number:	PZX-23-00094

RECOMMENDATION

Staff recommends the City Council hold a public hearing on the annexation. Upon completion of the hearing, staff recommends the City approve the Resolution of Annexation of the contiguous property.

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

On June 26, 2023, the City Council passed a Resolution of Intent to annex city owned land adjacent to the Billings-Logan International Airport. The annexation of this land will be for the protection of the airport. State Law under 7-2-44 MCA provides municipalities the authority to annex contiguous land. The subject properties are 133.55 gross acres of land owned by the City of Billings. The properties are legally described as Tracts 9, 10, and 12 of Certificate of Survey No. 2037, recorded December 23, 1980, under Document No. 1185840 on file and of record in the office of the Yellowstone County Clerk and Recorder and Tract C of Certificate of Survey No. 3795, recorded August 17, 2021, under Document No. 3985813 on file and of record in the office of the Yellowstone County Clerk and Recorder. The properties are west and north, respectively, of the Billings-Logan International Airport and are parcels that are controlled by the airport. There are no development plans for the parcels, but it is the desire of the city to have city-owned property be within City Limits. The City Council shall hold a public hearing and consider any written comments submitted during the 20-day comment period established by the Resolution of Intent prior to taking action on the Resolution of Annexation.

Tracts 9, 10, and 12 of Certificate of Survey No. 2037 are zoned P2 (Public 2). This is a zoning district recognized by the City. Tract C of Certificate of Survey No. 3795 is zoned A (Agriculture). This is not a zoning district recognized by the city. This tract is undergoing a concurrent zone change (ZC 1032) to bring the area into compliance as part of this annexation. The proposed new zoning is P2. The annexation of this land will be for the protection of the airport.

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.
4. All property owners within the area to be annexed must sign a Waiver of Right to Protest future Special Improvement Districts - Not Applicable
5. 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 - Not Applicable
6. If annexed, any proposed land use will comply with the zoning - Zone Change 1032 if approved, will bring Parcel C of C/S 3795 into conformance.
7. The proposed land use within the area to be annexed shall conform to the goals of the City of Billings Growth Policy

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. Tracts 9, 10, and 12 of Certificate of Survey No. 2037 will be served via mains in A J Way. Tract C of Certificate of Survey No. 3795 will be served via existing connections in the Billings-Logan international Airport.
- Storm water: Any development will be compliant with the adopted Stormwater Management Manual.
- Transportation: Tracts 9, 10, and 12 of Certificate of Survey No. 2037 will be accessed via A J Way. The Public

Right-of-way along AJ Way will be dedicated to the City of Billings. Tract C of Certificate of Survey No. 3795 is accessible from the fire access road along Billings-Logan International-Airport.

- 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 #1, located at 2305 8th Ave N, approximately 4.25 road miles or 9-10 minutes driving time to the subject property. However, the Billings Logan International Airport maintains its own Airport Rescue and Fire Fighting staff and equipment and responds to emergencies and fires on the Airport property.
- Parks: No Parkland or Trails will be required as part of this annexation.
- School facilities: The School district did not raise any special requests or concerns during their review of this proposal. This is typical for commercial development such as this.

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 Police 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. MET Transit Fixed Route bus system will continue to provide service to Billings-Logan International Airport, which currently operates through Terminal Circle, which is the nearest accessible point to the property.
- 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. The property will be served by City solid waste services.
- 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 applicable criteria of the annexation policy has been met. Further, coordination with other departments does not raise concerns that cannot be mitigated. Therefore, City Council is being provided with a recommendation of approval.

STAKEHOLDERS

Annexation of Contiguous Land requires a 20-day protest period be noticed to the public. Two notices of the protest period and public hearing were provided via the Billings Gazette on June 30th and July 7th, 2023. The protest period ends July 16, 2023. The Planning Division has not received any inquiries about this petition at the time this memo was prepared.

ALTERNATIVES

Section 7-2-44, Montana Code Annotated (MCA) provides the process for local governments to annex contiguous properties. To comply with Section 7-2-4406, MCA, the City must hold a public hearing prior to taking action on the Resolution of Annexation.
The Council may:

- Hold a Public Hearing and approve the Resolution of Annexation of the contiguous government property,
- Hold a Public Hearing and disapprove the Resolution of Annexation. Not annexing the property will result in the property remaining outside the City Limits and the application of City Ordinances would not be possible on the

property.

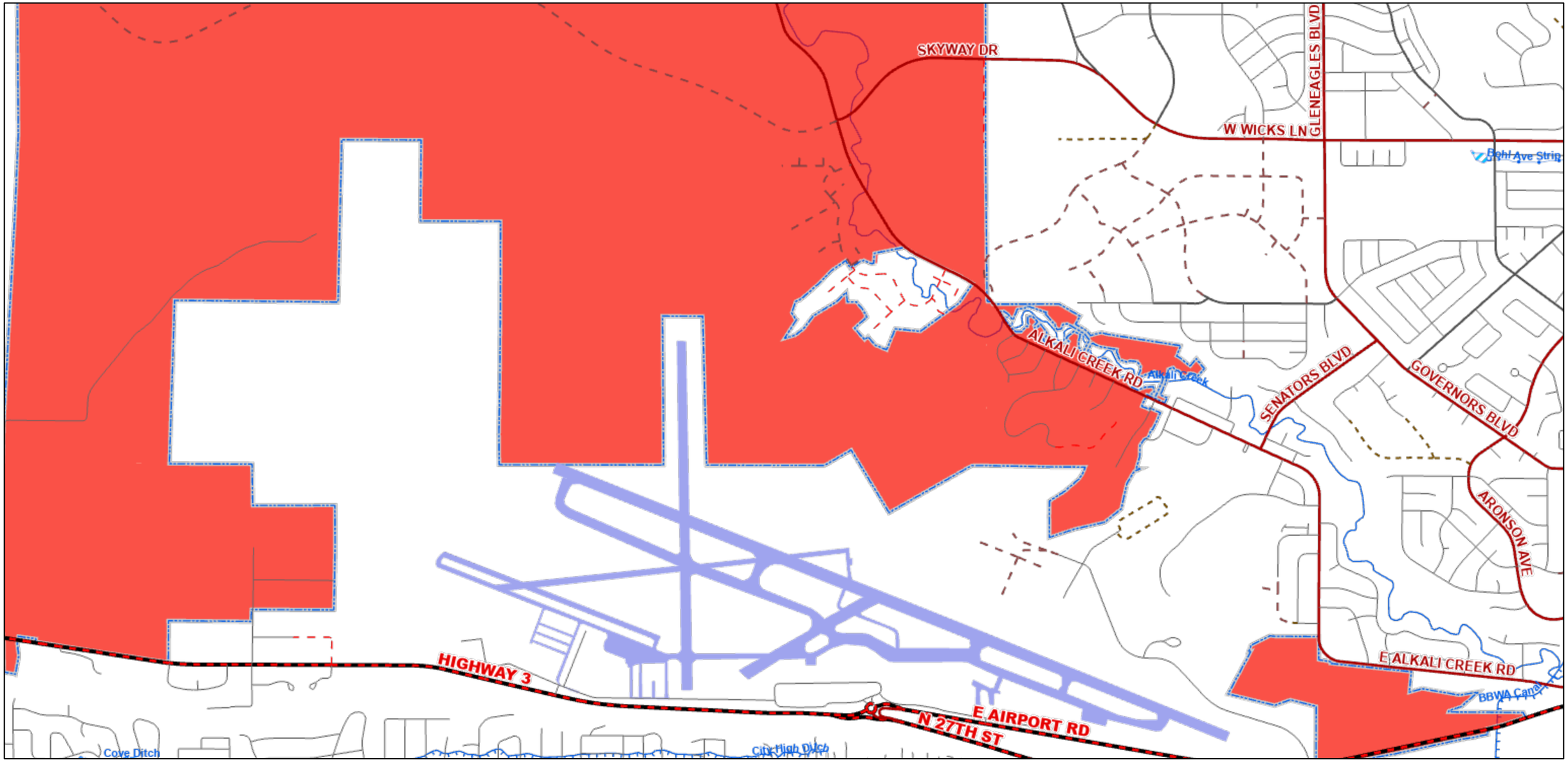
FISCAL EFFECTS

This application has no impact on the Planning Division.

Attachments

Limits of Annexation
Annexation Resolution

Limits of Annexation



6/21/2023, 12:11:46 PM

1:27,153

0 0.23 0.45 0.9 mi

0 0.35 0.7 1.4 km

Limits of Annexation

City Annexation Petition Area

Streams, Ditches, Canals

Canal or Ditch

Creek or Slough

Drain

Pipe

Other

Castlerock Reservoir

Billings City Limits

Airport Hard Surface

Road Centerline

STATE HIGHWAY

ARTERIAL

COLLECTOR

STREET

PROPOSED ROAD

UNDEVELOPED ROAD

PLACEHOLDER

Web AppBuilder for ArcGIS

RESOLUTION NO. 23 -

A RESOLUTION OF THE CITY OF BILLINGS ANNEXING TERRITORY UNDER TITLE 7, CHAPTER 2, PART 44 OF THE MONTANA CODE ANNOTATED.

WHEREAS, the City Council intends to annex said territory pursuant to Title 7, Chapter 2, Part 44 of the Montana Code Annotated; and

WHEREAS, the City Council of the City of Billings has determined that it is in the best interest of the City of Billings to annex the territory hereinafter described and passed a Resolution of Intent on June 26, 2023 pursuant to Title 7, Chapter 2 Part 4404; and

WHEREAS, the City of Billings provided notice and held a 20-day notice period pursuant to Title 7, Chapter 2, Part 4405 of the Montana Code Annotated; and

WHEREAS, the City of Billings provided notice and held public hearing pursuant to Title 7, Chapter 2, Part 4406 of the Montana Code Annotated; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA, AS FOLLOWS:

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 NE 1/4 of Section 26, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tracts 9, 10, and 12 of Certificate of Survey No. 2037, recorded December 23, 1980, under Document No. 1185840 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 60.783 gross net acres, more or less.

(# 23-05) See Exhibit “A” Attached

A parcel of Land situated in the SW 1/4 and the SE 1/4 of Section 19, T.1N., R.26E., Yellowstone County, Montana, more particularly described as follows:

Tract C of Certificate of Survey No. 3795, recorded August 17, 2021, under Document No. 3985813 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 72.77 gross net acres, more or less.

(# 23-05) See Exhibit “B” Attached

2. EFFECTIVE DATE. This resolution to annex the above-described territory shall be effective 30 days after its passage and approval, and thereafter the boundary of the City of Billings shall be as set forth in said resolution.

3. PROCEDURE. All procedures as required under M.C.A., Title 7, Chapter 2, Part 44, have been duly and properly followed and taken.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 24th Day of July, 2023.

CITY OF BILLINGS:

BY: _____

William A. Cole, Mayor

ATTEST:

BY: _____

Denise R. Bohlman, City Clerk
(# 23-05)

EXHIBIT "A"

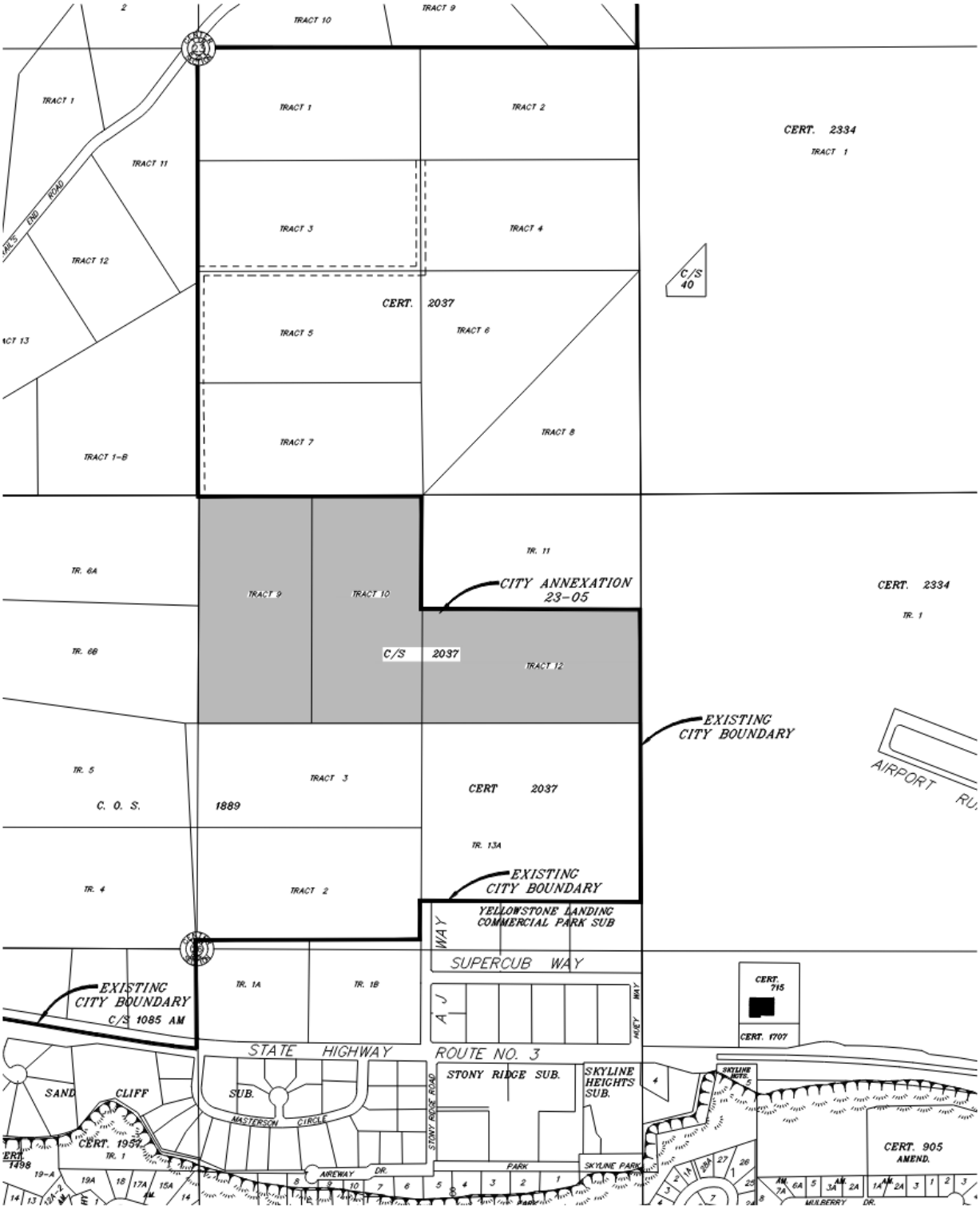
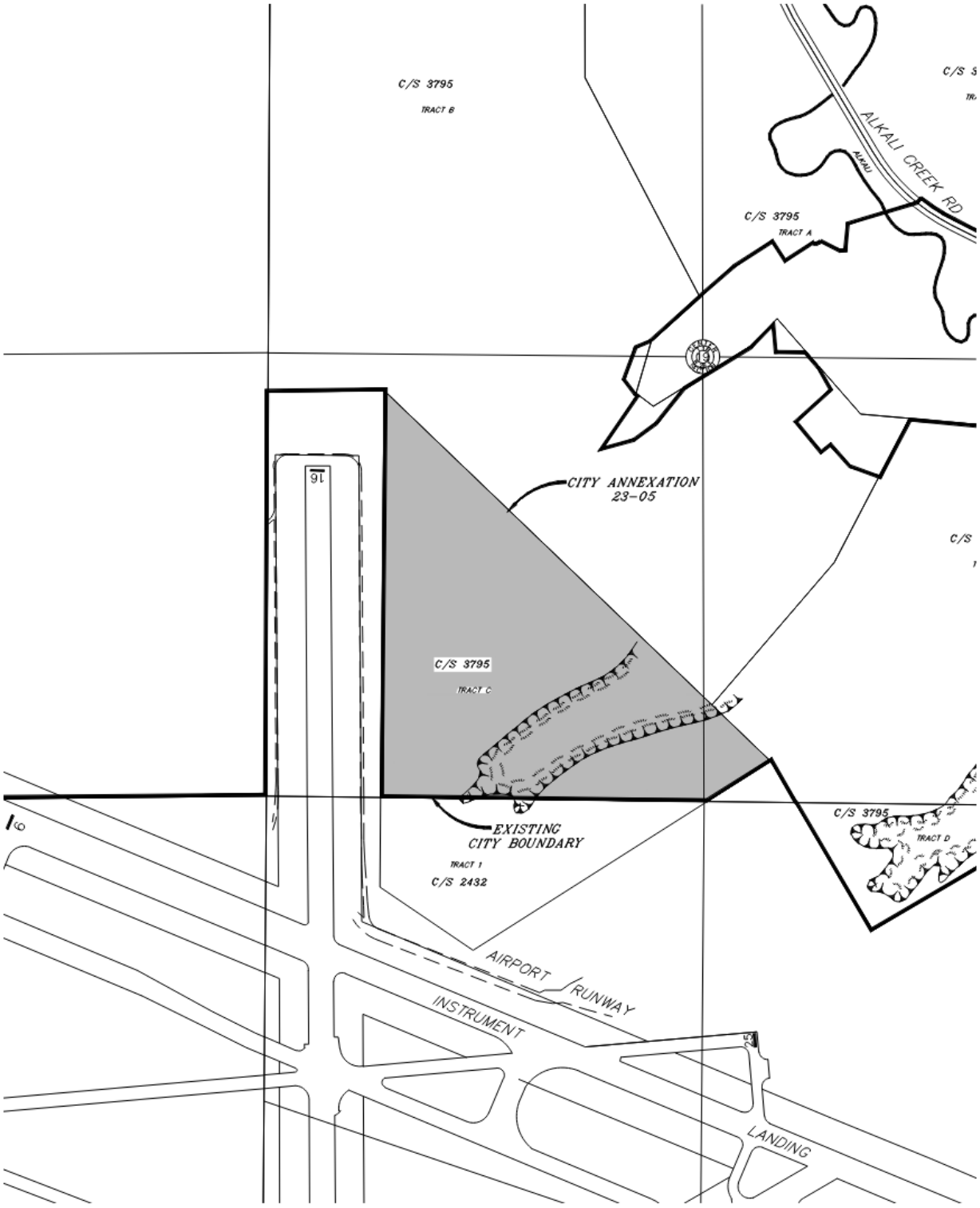

TRACT 1
TRACT 2
TRACT 3
TRACT 4
TRACT 5
TRACT 6
TRACT 7
TRACT 8
TRACT 9
TRACT 10
TRACT 11
TRACT 12
TRACT 1-B
CERT. 2037
CERT. 2334
TRACT 1
C/S 40
TR. 11
TR. 6A
TR. 6B
CITY ANNEXATION 23-05
C/S 2037
TRACT 12
EXISTING CITY BOUNDARY
TR. 5
TRACT 3
C. O. S. 1889
CERT 2037
TR. 13A
TR. 4
TRACT 2
YELLOWSTONE LANDING COMMERCIAL PARK SUB
SUPERCUB WAY
TR. 1A
TR. 1B
C/S 1085 AM
STATE HIGHWAY ROUTE NO. 3
STONY RIDGE SUB.
SKYLINE HEIGHTS SUB.
SAND CLIFF SUB.
MASTERSON CIRCLE
STONY RIDGE ROAD
AIRWAY DR.
PARK
SKYLINE PARK
CERT. 1952
CERT. 1498
CERT. 715
CERT. 1707
CERT. 905 AMEND.
MULBERRY DR.
AIRPORT

EXHIBIT "B"


C/S 3795
TRACT B
C/S 3795
TRACT A
ALKALI CREEK RD
CITY ANNEXATION
23-05
C/S 3795
TRACT C
EXISTING
CITY BOUNDARY
TRACT 1
C/S 2432
C/S 3795
TRACT D
AIRPORT
RUNWAY
INSTRUMENT
LANDING

City Council Regular

Date:	07/24/2023
Title:	City Zone Change 1032 â€“ Northeast of Billings Airport â€“ A to Public 2
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes

RECOMMENDATION

The Zoning Commission is recommending approval and adoption of the findings of the 10 review criteria for Zone Change 1032.

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

STAFF PROJECT NUMBER: PZX-23-00119

A zone change request from Agricultural-General (A) to Public 2 (P2) on Tract C of Certificate of Survey No. 3795, a 72.77 acre parcel of land. There is a concurrent petition for annexation.
Tax ID: D05250B

This zone change request is to allow the annexation of city-owned land adjacent to the Billings Logan International Airport and bring all current airport property into the City Limits. A requirement for all annexations into the city is the property must have a zoning designation recognized by the City Zoning Code. The property is currently zoned Agriculture which is not a zone recognized by the city, therefore requiring a zone a change.

APPLICATION DATA

OWNER: City of Billings
AGENT: City of Billings Administration and Airport
LEGAL DESCRIPTION: Tract C of Certificate of Survey No. 3795
ADDRESS: N/A
CURRENT ZONING: Agriculture (A) (County)
EXISTING LAND USE: Vacant
PROPOSED USE: Airport Facilities
SIZE OF PARCEL: 72.77 gross net acres

CONCURRENT APPLICATIONS:

Petition for Annexation 23-05

SURROUNDING ZONING AND LAND USE:
NORTH: Zoning: Agriculture (A)
Land Use: Vacant Land
SOUTH: Zoning: Public 2 (P2)
Land Use: Airport Terminal
EAST: Zoning: Agriculture (A)
Land Use: Vacant
WEST: Zoning: Public 2 (P2)
Land Use: Airport Runway

Once property is under airport ownership, airports are required by federal grant assurances to utilize airport property to generate the maximum revenue possible to make the airport self-sufficient. To generate the maximum amount of revenue from airport property, while protecting the operation of the airport, it is necessary to have the appropriate zoning and it is in the best interest of the airport to have all airport property within the City limits for full access to City services and governance over the land. The requested annexation will bring all current airport property into the City limits.

STAKEHOLDERS

The Zoning Commission is required to hold a public hearing prior to making a recommendation to City Council. The City Council will hold a subsequent hearing when considering the Zoning Commission's recommendation. The Hearing(s) are advertised in the *Yellowstone County News*. No surrounding owners contacted the Planning staff prior to the writing of this report.

Zoning Commission
The Zoning Commission conducted a public hearing on July 11 and received the staff recommendation at which there was no public testimony. Zoning Commissioner Gross inquired on the property ownership of the adjacent property to the north of the subject parcel, which was still under the ownership of Alkali Timbers LLC. There was no additional discussion. The public hearing was closed and Commission member Daniel Brooks made a motion to recommend approval and adoption of the findings of the ten review criteria for Zone Change 1030. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

ALTERNATIVES
The City Council may:

- Approve and adopt of the findings of the ten review criteria for Zone Change 1032; or,
- Deny and adopt different findings of the ten review criteria for Zone Change 1032; 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 proposed findings of the ten review criteria as recommended by the Zoning Commission:

1. Is the new zoning designed in accordance with the Growth Policy?
The proposed zoning does conform to the following City of Billings 2016 Growth Policy and guidelines:
Essential Investments (relating public and private expenditures to public values)
The safety of all users and the connectivity of the transportation system are important criteria to consider in roadway designs and transportation plans
Infill development and development near existing City infrastructure may be the most cost-effective.
Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable
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·
Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses·
Retaining and supporting existing businesses helps sustain a healthy economy·

2. Is the new zoning designed to secure from fire and other dangers?
The new zoning requires minimum setbacks, open and landscaped areas and building separations. The new zoning, as do all zoning districts, provides adequate building separations to provide security from fire and other dangers. Buildings developed within the city limits will comply with building and fire safety codes.

3. Whether the new zoning will promote public health, public safety and general welfare?
Yes, this zone change will provide for the future safety of the airport and airspace above it. The P2 zoning will enable the City to add to its service facilities.

4, Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: Tract C of Certificate of Survey No. 3795 is accessible from the fire access road along Billings-Logan International-Airport, but otherwise has no public access. Because this is airport controlled property security is important. The lack of other public access is not a concern.
Water and Sewer: The City will provide water and sewer to the property if facilities requiring them are developed, however, there are no plans for development. 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 would require minimum setbacks, maximum building heights and maximum lot coverage. These requirements should allow adequate light and air to reach the subject property and adjacent properties.

6. Will the new zoning effect motorized and non-motorized transportation?
The proposed zoning itself will not generate more traffic on any of the adjacent streets; there is no public access to the site. And the zone change does not contemplate additional development at this time.

7. Will the new zoning promote compatible urban growth?
The proposed zone change will not negatively impact urban growth. The parcel will continue to be used in support of airport facilities.

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 properties are similarly zoned P2, as is the rest of the airport campus. Other surrounding parcels are vacant lots with Agricultural zoning.

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 properties will need to meet the applicable site development requirements in the zoning code, including landscaping, screening, building heights and setbacks for the applicable commercial or residential district.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed zoning does encourage the most appropriate use of land in this area of the City. This parcel is already owned by the Billings-Logan International Airport, and the zone change will reflect is existing and future public infrastructure use.

Attachments

Zoning Ordinance
Petition
Zoning Map and Site Photos
Zoning History

ORDINANCE 23-_____

**AN ORDINANCE OF THE CITY OF BILLINGS,
PROVIDING THE ZONE CLASSIFICATION ON C.O.S. 3795,
PARCEL C, 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 *Section 27-1628, 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. 3795, PARCEL C,** is presently zoned **Agricultural (A)** 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. 3795, PARCEL C,** is hereby changed from **Agricultural (A)** 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 **Public 2 (P2)**, 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 24th day of July, 2023.

PASSED, ADOPTED and APPROVED on second reading this 14th day of August, 2023

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1032 - COS 3795, Parcel C

CITY OF
Billings

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

January 9, 2023

MEMORANDUM

TO: Monica Plecker Planning Division Manager
Denise Bohlman, City Clerk

FROM: Chis Kukulski, City Administrator

SUBJECT: **ANNEXATION OF CITY OWNED AIRPORT PARCELS**

In accordance with the requirements of Montana Code Annotated (MCA) 7-2-4403, this memo is a request to annex into the incorporated limits of the City of Billings, properties owned by the City of Billings adjacent to the Airport, purchased by the Airport for the protection of the Airport. The property tax ID and legal description of the properties which are the subject for this annexation request are as follows:

72.77 acres located on the north side of the Airport better identified as Tract C, Certificate of Survey No. 3795; located in the southeast one-quarter (SE 1/4) and the southwest one-quarter (SW 1/4) of Section 19, Township 1 North, Range 26 east, Principal Meridian Montana, Yellowstone County, Montana. Tax ID - D05250B.

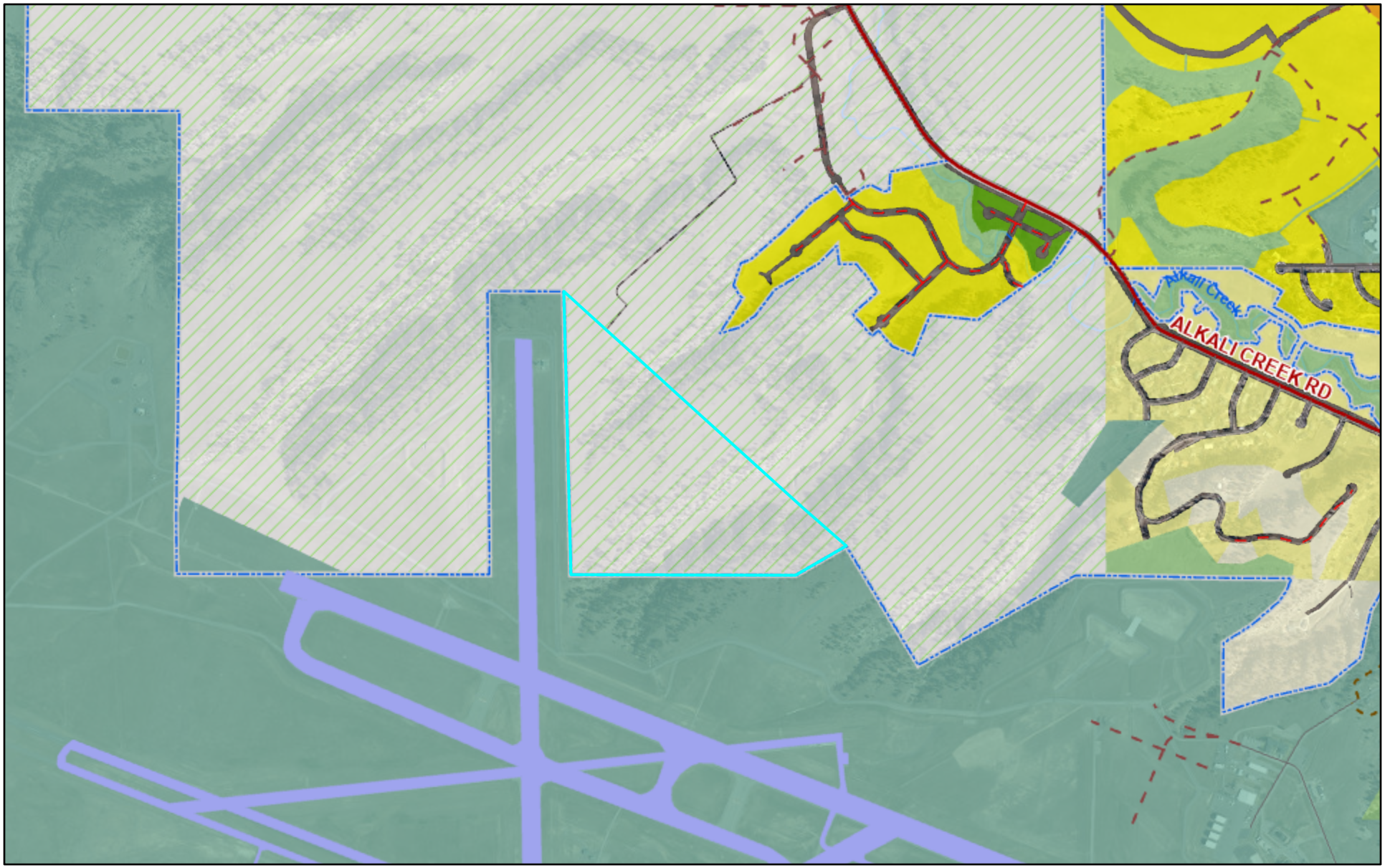
60.78 acres located on the west side of the Airport better identified as Lots 9, 10, and 12 of the Certificate of Survey 2037; located in the northeast one-quarter (NE 1/4) of Section 26, Township 1 North, Range 25 east of Principal Montana Meridian, Yellowstone County, Montana. Tax ID - DO4575.

Thank you for your assistance with this.

KP:mdb

cc: Chrono
Wyeth Friday, Planning Director
M. Burson
M. Herold

ArcGIS Web Map



6/26/2023, 9:31:54 AM

Billings - County Zoning

- A - Agriculture (10+ acres)*
- N3 - Suburban Neighborhood
- N4 - Large Lot Surburban Neighborhood*
- NX1 - Mixed Residential 1 (1-4 du/structure)
- NX3 - Mixed Residential 3 (=/>5 du/structure)
- P1 - Open Space, Parks, Recreation
- P2 - Public- Civic, Institutional
- RR1 - Rural Residential (1 to 2.99 acres)*

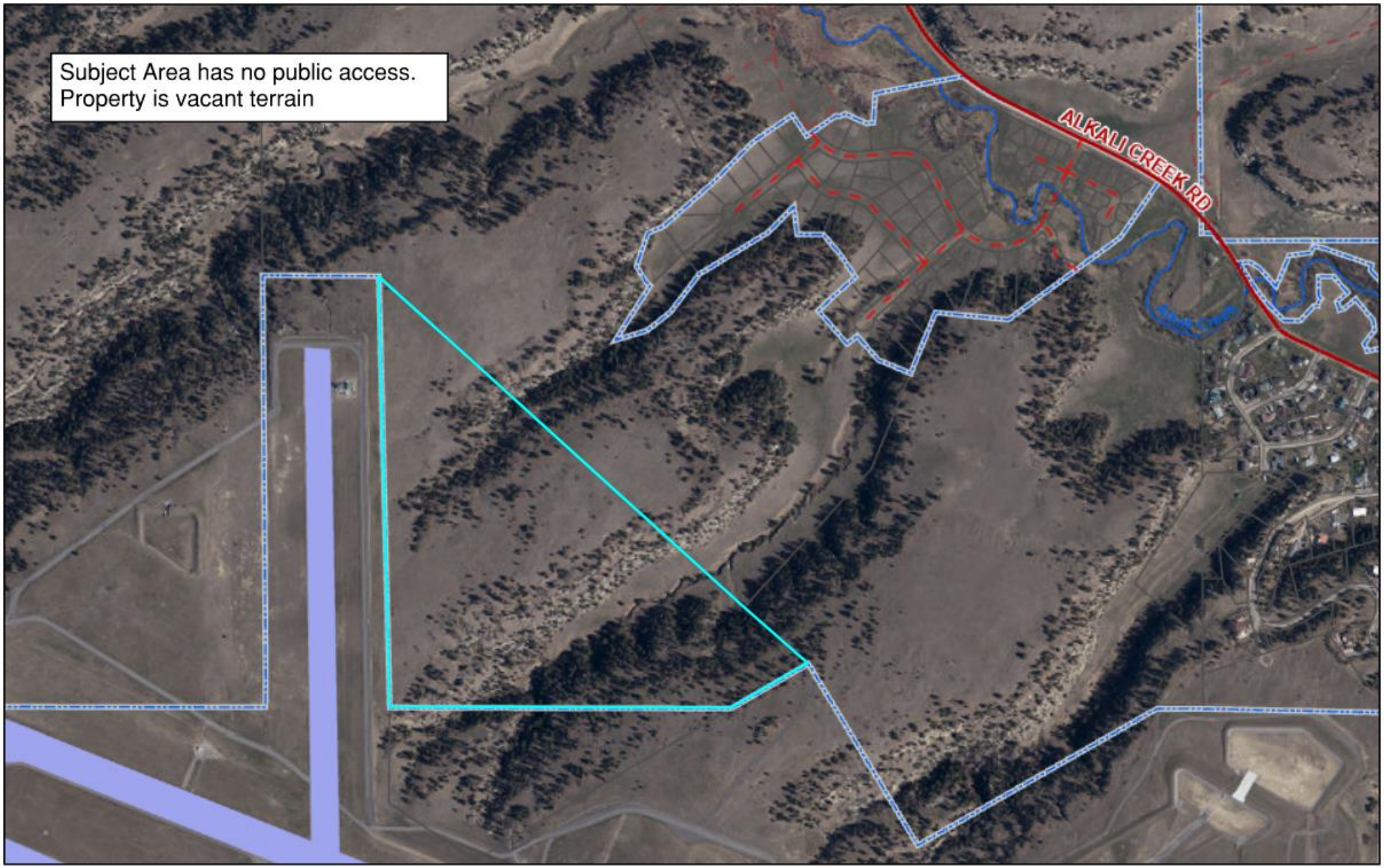
1:20,160

0 500 1,000 2,000 ft

0 195 390 780 m

Web AppBuilder for ArcGIS

ArcGIS Web Map



6/28/2023, 10:31:07 AM

Streams, Ditches, Canals
Creek or Slough
Tax Parcels
Billings City Limits
Airport Hard Surface
Road Centerline
ARTERIAL
STREET
PROPOSED ROAD
PLACEHOLDER
Billings_2020_Imagery
Red: Band_1
Green: Band_2

1:13,258

0 425 850 1,700 ft
0 130 260 520 m

Web AppBuilder for ArcGIS

ZONING
REQUEST
ZONE
CHANGE
1032
SPECIAL
REVIEW
VARIANCE




ZIMMERMAN
TRAIL
3 MILES
OPEN
Yellowstone County Museum

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
COS 3795, Tract C	**City ZC 1032**	July 24, 2023	Annexation of airport owned property	-	Not constructed "A" zone district
SURROUNDING PROPERTY	**Zone Change #**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
C/S 2037, HWY 3	City ZC 987	2/22/2021	A- Agriculture I1 (Light Industrial) and CX (Heavy Commerical)	Yes	"A" zone district
3648 AJ Way	City ZC 1026	6/12/2023	A- Agriculture to P3 – Public 3	Yes	National Guard Base
6014 S Billings Blvd	City ZC 993	7/12/2021	A- Agriculture to P2 – Public 2	Yes	"A" zone district
Billings Operation Center	City ZC 706	12/9/2002	A1 to Public and EGC	Yes	Currently P2 & CMU2

City Council Regular

Date:	07/24/2023
Title:	Public Hearing - Ward Boundary Expansion Ordinance First Reading - Annexation 23-05
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review:	Not Applicable
Project Number:	PZX-23-00094

RECOMMENDATION

Staff recommends the City Council hold a public hearing and approve this ordinance on first reading, adding recently annexed property to Ward I.

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

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexation of property into the City. The City Council approved the annexation of city owned property (Annexation #23-05) on July 24, 2023. The properties are legally described as Tracts 9, 10, and 12 of Certificate of Survey No. 2037, recorded December 23, 1980, under Document No. 1185840 on file and of record in the office of the Yellowstone County Clerk and Recorder and Tract C of Certificate of Survey No. 3795, recorded August 17, 2021, under Document No. 3985813 on file and of record in the office of the Yellowstone County Clerk and Recorder. The properties are west and north, respectively, of the Billings-Logan International Airport. Said annexation containing 133.55 gross net acres, more or less.

Upon Council approval, this annexation requires a change in the boundaries of Ward I. Two readings are required for this action. The first reading and public hearing is scheduled for July 24. Upon approval the second reading will occur on August 14, 2023.

ALTERNATIVES

City Council may:

- Approve adding the subject property to Ward I, or;
- Disapprove adding the subject property to Ward I. Disapproval will not modify the boundary of the ward 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.

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 I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward I the following described real property:

Parcels of Land situated in the NE 1/4 of Section 26, T.1N., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tracts 9, 10, and 12 of Certificate of Survey No. 2037, recorded December 23, 1980, under Document No. 1185840 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 60.783 gross net acres, more or less.

(# 23-05) See Exhibit "A" Attached

A parcel of Land situated in the SW 1/4 and the SE 1/4 of Section 19, T.1N., R.26E., Yellowstone County, Montana, more particularly described as follows:

Tract C of Certificate of Survey No. 3795, recorded August 17, 2021, under Document No. 3985813 on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 72.77 gross net acres, more or less.

(# 23-05) See Exhibit "B" 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 24th day of July, 2023.

PASSED by the City Council on the second reading this 14th day of August, 2023.

THE CITY OF BILLINGS:

_____
William A. Cole, MAYOR

ATTEST:

BY: _____
Denise Bohlman, CITY CLERK

(#23-05)

EXHIBIT "A"

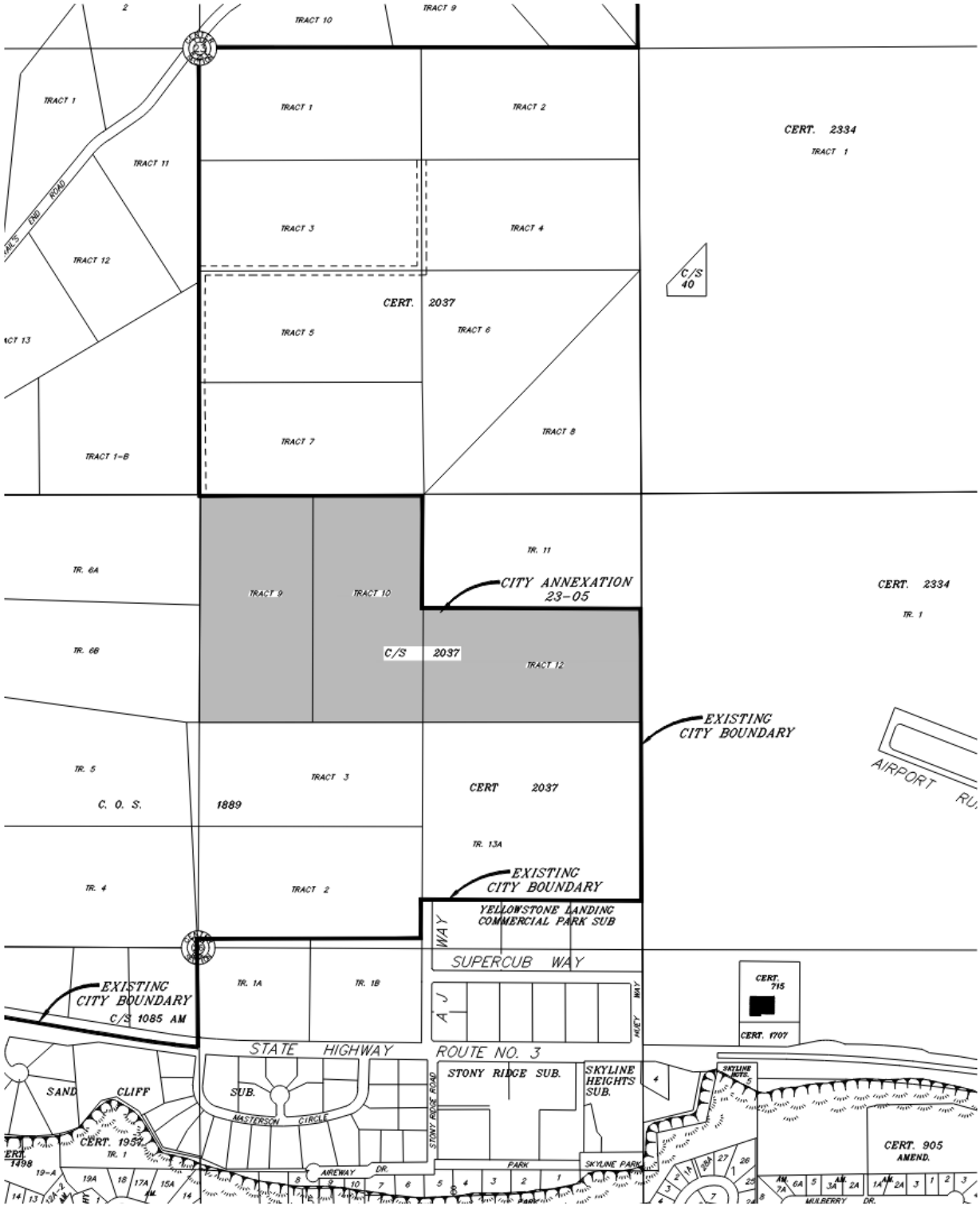
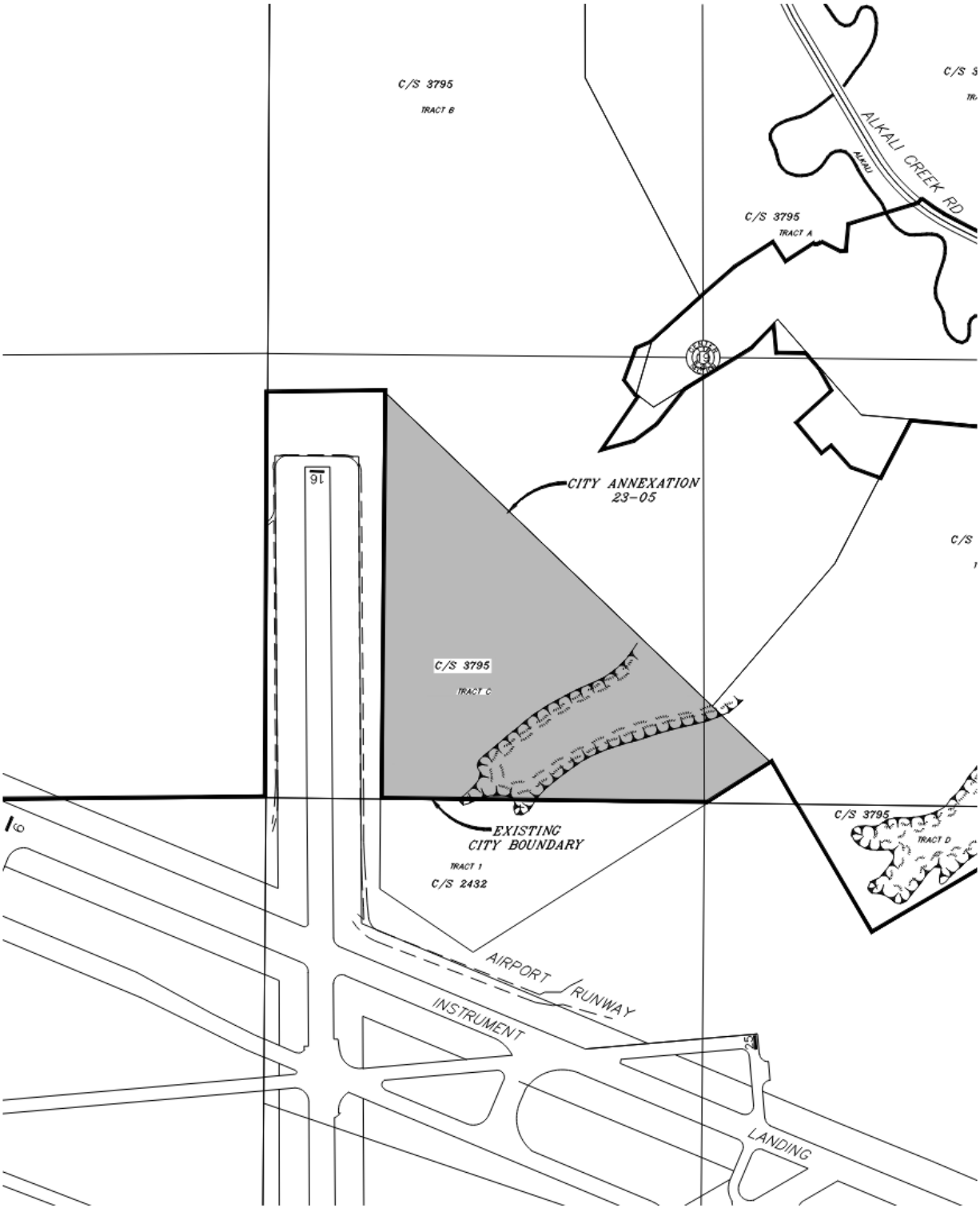

TRACT 10
TRACT 9
TRACT 1
TRACT 2
TRACT 11
TRACT 3
TRACT 4
TRACT 12
CERT. 2334
TRACT 1
C/S 40
CERT. 2037
TRACT 5
TRACT 6
TRACT 7
TRACT 8
TRACT 1-B
TR. 11
TR. 6A
TRACT 9
TRACT 10
CITY ANNEXATION 23-05
CERT. 2334
TR. 1
TR. 6B
C/S 2037
TRACT 12
EXISTING CITY BOUNDARY
AIRPORT
TR. 5
TRACT 3
CERT 2037
C. O. S. 1889
TR. 13A
TR. 4
TRACT 2
EXISTING CITY BOUNDARY
YELLOWSTONE LANDING COMMERCIAL PARK SUB
SUPERCUB WAY
TR. 1A
TR. 1B
EXISTING CITY BOUNDARY
C/S 1085 AM
CERT. 715
CERT. 1707
STATE HIGHWAY ROUTE NO. 3
STONY RIDGE SUB.
SKYLINE HEIGHTS SUB.
SAND CLIFF SUB.
MASTERSON CIRCLE
STONY RIDGE ROAD
CERT. 1952
CERT. 1498
AIRWAY DR.
PARK
SKYLINE PARK
CERT. 905 AMEND.
MULBERRY DR.

EXHIBIT "B"


C/S 3795
TRACT B
C/S 3795
TRACT A
ALKALI CREEK RD
CITY ANNEXATION
23-05
C/S 3795
TRACT C
EXISTING
CITY BOUNDARY
TRACT 1
C/S 2432
C/S 3795
TRACT D
AIRPORT
RUNWAY
INSTRUMENT
LANDING

City Council Regular

Date:	07/24/2023
Title:	Public Hearing and Resolution Annexation 23-06
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	Yes
Legal Review:	Not Applicable
Project Number:	PZX-23-00104

RECOMMENDATION

Staff recommends the City Council hold a public hearing on the annexation. Upon completion of the hearing, staff recommends the City annex the petitioned property with the staff recommended conditions of approval.

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

Sanderson Stewart on behalf of Michele Mack and Molly & Darrell Spaeny submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located north of King Avenue West, West of Saint Mary Way and East of South 44th Street West. The land being annexed is described as being Tract 1 of Certificate of Survey No. 1400, recorded April 15, 1974, under Document No. 960326; Tract 6-B of Amended Tract 6 Certificate of Survey No. 2064, recorded February 8, 2002, under Document No. 3163883; Tracts 2A and 2B of Amended Tract 2 Certificate of Survey No. 3125, recorded March 17, 2009, under Document No. 3499049, Tract 2B being deeded to the City of Billings as a right-of-way site (King Avenue West) per Quitclaim Deed, recorded March 17, 2009, under Document No. 3499051; containing 6.096 gross acres and 5.897 net acres, more or less.
The property is zoned Rural Residential (RR1). This is not a zoning district recognized by the City.

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. The Annexation Agreement (conditional approval) is the binding contractual agreement that identifies requirements of the City and the Developer to ensure services are provided in a mutually agreed upon time. The Annexation Agreement will be considered at a subsequent City Council meeting with its accompanying preliminary plat. The developer is required to meet this condition within 45 days.
3. Existing or proposed public improvements within the area to be annexed will meet City standards.The Annexation Agreement which is a condition of approval outlines public improvements required of the developer as part of annexing in the City. The property does present opportunity to be redeveloped in the future. Related to redevelopment, 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. It is required and standard practice that prior to the issuance of any building permit, the building and site plans will undergo planning review to confirm it is designed in accordance with zoning regulations.
4. All property owners within the area to be annexed must sign a Waiver of Right to Protest future Special Improvement Districts. The waiver is provided as part of the Annexation Agreement. This waiver is good in perpetuity and is not subject to the 20-year provision identified in the Montana Subdivision and Platting Act.
5. If annexed, any proposed land use will comply with the zoning. This property is concurrently undergoing a zone change (ZC 1030). The proposed zoning contemplates potential redevelopment, but does not create any illegal nonconforming uses with the existing structures.
6. 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. The property as currently development does not meet this range, but the associated zone change does allow for redevelopment of the property in accordance with desirable range. This property is being proposed to be rezoned to Neighborhood Mixed-Use 2 (NX2) through Zone change 1030. The NX2 Zoning allows for densities of 2-8 dwelling units per structure. Future development will be able to support densities of 4/7 dwelling units per acre with this zoning.
7. The proposed land use within the area to be annexed shall conform to the goals of the City of Billings Growth Policy. The goals most similar to the proposed development are listed below.
    1. **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
- Neighborhoods that are safe and attractive and provide essential services are much desired
- Implementation of the Infill Policy is important to encourage development of underutilized properties

2. **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

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 a sanitary sewer main and a water main in King Avenue West along the frontage of the above-described property. The purpose of this annexation is to tie into existing city services due to a failing septic system.
- Storm water: Any development will be compliant with the adopted Stormwater Management Manual.
- Transportation: The Developer Tract will be accessed from King Avenue West. The Public Right-of-way along King Avenue 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 #5, located at 605 S 24th Street W, approximately 2.68 road miles or 7 minutes driving time to the subject property.
- Parks: No Parkland or Trails will be required as part of this annexation.
- School facilities: The School district did not raise any special requests or concerns during their review of this proposal but did note the three nearby schools (Meadowlark Elementary, Ben Steele Middle School, and West High School) are over 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. MET will begin to directly service the intersection of King Ave W and 44th St W in the Autumn of 2023 and does not object to this annexation.
- 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. Continued development and annexation without commensurate resources has adversely affected our ability to deliver services.
- 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 effect, 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 development agreement and ward boundary ordinance. On June 1, 2023, the annexation petition was submitted to the Planning Division by the owner's agent. On July 24, 2023, the City Council is scheduled to take action on the petition.

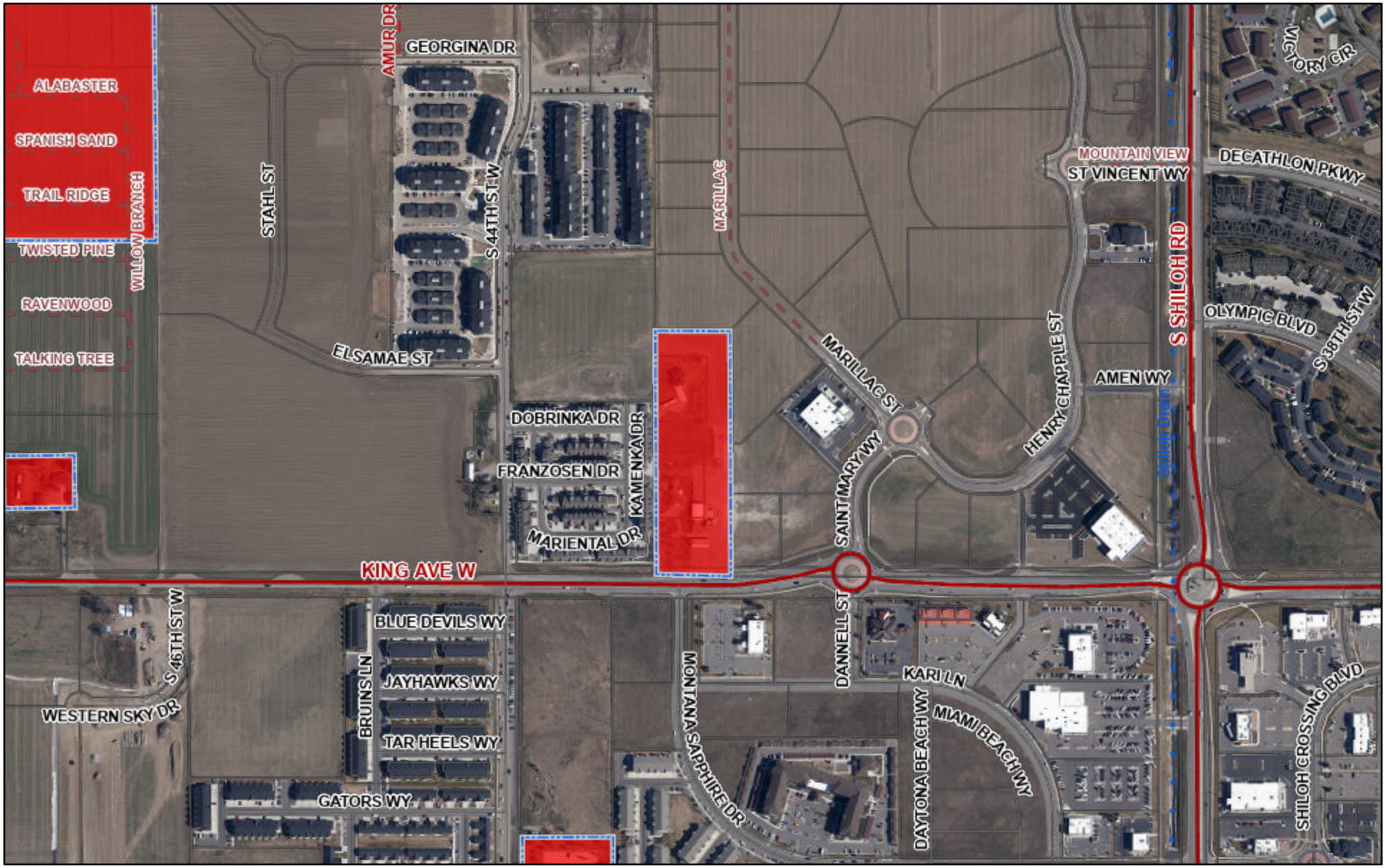
FISCAL EFFECTS

This application has no impact on the Planning Division Budget.

Attachments

Limits of Annexation
Annexation Resoultion

Limits of Annexation



6/26/2023, 3:14:58 PM

1:9,028

0 287.5 575 1,150 ft

0 87.5 175 350 m

Limits of Annexation

City Annexation Petition Area

Streams, Ditches, Canals

Drain

Tax Parcels

Billings City Limits

Road Centerline

ARTERIAL

STREET

PROPOSED ROAD

PLACEHOLDER

Web AppBuilder for ArcGIS

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 SE 1/4 of Section 10, T.1S., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tract 1 of Certificate of Survey No. 1400, recorded April 15, 1974, under Document No. 960326;

Tract 6-B of Amended Tract 6 Certificate of Survey No. 2064, recorded February 8, 2002, under Document No. 3163883;

Tracts 2A and 2B of Amended Tract 2 Certificate of Survey No. 3125, recorded March 17, 2009, under Document No. 3499049, Tract 2B being deeded to the City of Billings as a right-of-way site (King Avenue West) per Quitclaim Deed, recorded March 17, 2009, under Document No. 3499051;

All documents are on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 6.096 gross acres and 5.897 net acres, more or less.

(# 23-06) 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 mutually acceptable Development Agreement shall be executed between the owner(s) and the City that shall stipulate, among other things, specific infrastructure improvements and right-of-way dedication, provide guarantees for said improvements, and include a Waiver of Right to Protest the Creation of Special Improvement Districts which will be recorded with the Yellowstone County Clerk and Recorder.

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 24th day of July, 2023.

CITY OF BILLINGS:

BY: _____

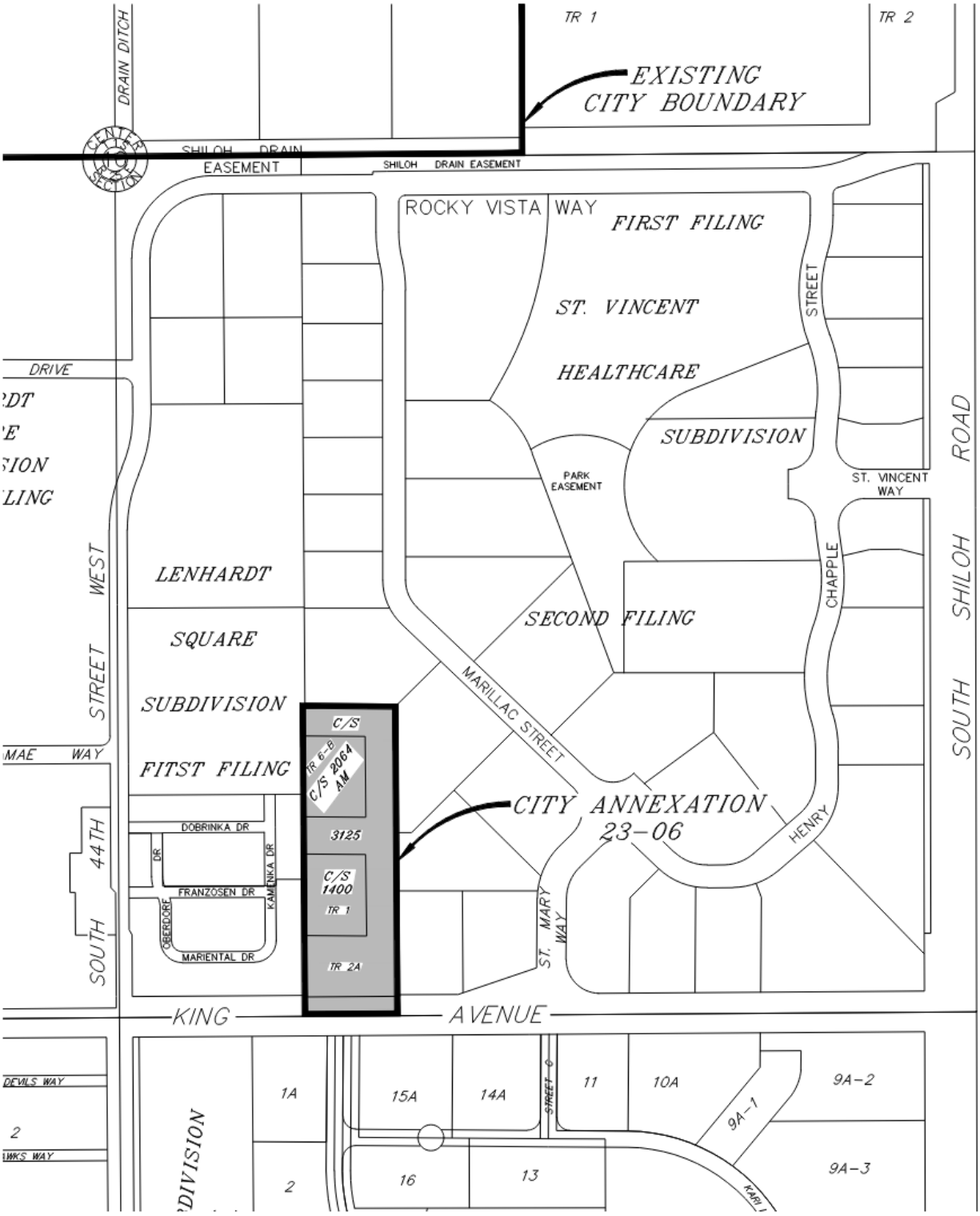
William A. Cole, Mayor

ATTEST:

BY: _____

Denise R. Bohlman, City Clerk
(# 23-06)

EXHIBIT "A"


TR 1
TR 2
DRAIN DITCH
EXISTING CITY BOUNDARY
SHILOH DRAIN EASEMENT
SHILOH DRAIN EASEMENT
ROCKY VISTA WAY
FIRST FILING
ST. VINCENT HEALTHCARE SUBDIVISION
STREET
DRIVE
PARK EASEMENT
ST. VINCENT WAY
CHAPPLE
SOUTH SHILOH ROAD
WEST STREET
LENHARDT SQUARE SUBDIVISION FITST FILING
SECOND FILING
MARILLAC STREET
HENRY
C/S
TR 6-B
C/S 2064 AM
3125
C/S 1400
TR 1
TR 2A
CITY ANNEXATION 23-06
DOBRINKA DR
FRANZOSEN DR
MARIENTAL DR
KAMENKA DR
OBERDORF
44TH SOUTH
ST. MARY WAY
KING AVENUE
DEVILS WAY
1A
15A
14A
11
10A
9A-2
9A-1
9A-3
16
13
2

City Council Regular

Date:	07/24/2023
Title:	Zone Change 1030 - 4245, 4249 and 4253 King Ave W - RR1 to NX2
Presented by:	Nicole Cromwell
Department:	Planning & Community Services
Presentation:	Yes
Legal Review:	Not Applicable
Project Number:	PZX-23-00105

RECOMMENDATION

The Zoning Commission recommends approval for Zone Change 1030 and adoption of the findings of the 10 review criteria on a 4-0 vote.

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

This is a zone change request for three parcels of land located on King Ave. W. between the St. Vincent's Healthcare Subdivision and the Lenhardt Square Subdivision. These parcels are wholly surrounded by the city limits and are petitioning for annexation to access city services. The two homes on the property are experiencing failure of both on site water(well) and wastewater systems (septic). The proposed zoning of Mixed Residential 2 (NX2) would allow the future re-development of the parcels and will allow continuation of the existing residential uses. This is an area of rapid development and the mixed residential zoning is appropriate given the adjacent zoning and development.

There are no existing plans to redevelop the property. The NX2 zoning would allow future redevelopment with duplexes or multifamily structures with up to 8 dwelling units per building. The parcels currently share one access point on King Ave West. No additional access would be allowed on to King Ave West due to the volume and speed of traffic as well as complexity of the traffic environment. The redevelopment could be incorporated into existing development to the west (KWO Apartments) or be a stand-alone development. A traffic signal is planned at the intersection of 44th St West and King Ave West. This will help manage the existing and future traffic from the surrounding developments. The average daily traffic on King Ave West has more than doubled in the past decade. The current ADT on King is about 13,000 vehicles per day. Shiloh Road is about 19,000 vehicle trips per day. Both of these averages are 3-year rolling averages taken from counts only during the non-school months of the summer. Actual daily traffic on any given day and during the school year may be much higher or lower than the average daily traffic. Future contributions to the traffic volume will include some traffic from Vista West (north of Rocky Vista Way), Ridgeline Development (48th St W and King Ave W) as well as ongoing development in the Western Sky Subdivision and Montana Sapphire Subdivisions to the south of the subject property. Lenhardt Square is also building out with multifamily apartments. A large parcel in Lenhardt Square with frontage on King Ave West (~23 acres) is slated for mixed uses including additional apartment units.

The Billings 2016 Growth Policy and West Billings Neighborhood Plan both support the proposed zoning as appropriate along an arterial street frontage between major intersections, and for the provision of access to housing choices. The Shiloh Road and King Ave West intersection was identified more than two decades ago as the major regional commercial hub for West Billings. The surrounding developments are the result of planning for this growth and include zoning for mixed housing choices, transportation for all types of mobility and combining the need for open space and water quality improvements at the Shiloh Conservation Area. A new water reservoir system to the south will also provide long-term water security for the city while also preserving land for open space. Any redevelopment of land will trigger the installation of street frontage landscaping making the corridor between Shiloh Road and 44th St West complete on the north side of King Ave W.

The Planning staff reviewed the application, the neighborhood and city growth policy plans, and the history of zoning in the area, and recommended approval to the Zoning Commission. The Zoning Commission concurred. The proposed zoning fits in with the adjacent development to the west and is compatible with the St Vincent's Healthcare Planned Development to the east and north. The St Vincent's zoning plan includes mixed uses with an emphasis on medical uses with the possibility of integrating housing options. The pre-application neighborhood meeting was attended by Gene Culver, on of the surrounding property owners. Mr. Culver stated his parcel on the southwest corner of 44th St W and King Ave West is not directly adjacent, but ongoing development in the area has created some traffic concerns and traffic management challenges. Mr. Steve Zeier, Chair of the West End Task Force, attended as well to learn more about the project. One of the property owners, Mickey Amen-Mack, also attended the meeting. As of the writing of this staff report, no comments or concerns have been received from the surrounding property owners.

STAKEHOLDERS

The applicant conducted a pre-application neighborhood meeting at the agent's offices at 1300 N Transtech Way. One surrounding property owner attended out of the 14 owners notified. The Zoning Commission held a public hearing for this zone change and the public was provided the opportunity to participate. The City Council will hold a subsequent hearing when considering the Zoning Commission's recommendation. The Hearing(s) are advertised in the Yellowstone County News. No surrounding owners contacted the Planning staff prior to the writing of this report.

Zoning Commission

The Zoning Commission conducted a public hearing on July 11 and received the staff recommendation and testimony from the applicant's agent, John Halverson of Sanderson Stewart. No other public testimony was received. Mr. Gene Culver attended the hearing and stated he was not concerned with this zone change request but was concerned with the lack of traffic control at 44th St West and King Avenue West.

The public hearing was closed and Commission member Trina White made a motion to recommend approval and adoption of the findings of the ten review criteria for Zone Change 1030. The motion was seconded by Commission member Dan Brooks and was approved on a 4 to 0 vote.

ALTERNATIVES

The City Council may:

- Approve and adopt the findings of the ten review criteria for Zone Change 1030; or,
- Deny and adopt different findings of the ten review criteria for Zone Change 1030; or,
- Delay action on the zone change request for up to 30 days; or,
- Allow the applicant to withdraw the zone change request.

The applicant has not requested a delay or a withdrawal of the application at this time.

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 proposed findings of the ten review criteria as recommended by the Zoning Commission.

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 also conforms to the West Billings Neighborhood Plan. 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 NX2 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."

The proposed zoning would allow the annexation of these parcels to provide services. Future development or re-development of the land could provide a range of housing options including duplexes, townhomes or apartment. 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 could be redeveloped in line with the surrounding property. There is no longer a "default" zone district when annexing property to the city. A property owner is allowed to propose a zone or consult with the Planning staff on the most appropriate zone district for an annexed parcel. The new zone is compatible with the adjacent developed and developing 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 27-308 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 (NX2) would allow the owner to ensure development is not intrusive to neighboring property and still allow compatible uses with the Planned Development zoning to the east and west. The site and structure regulations found in 27-300.7 in the NX2 district promote the minimum standards to ensure public health and safety and promote general welfare. The existing private utilities for the parcels are failing. Annexation and zoning of the property will promote public health and public safety.

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 when redevelopment occurs. The NX2 zone is intended to be along arterial corridors between intersections. King Ave West is an arterial street designed to handle the potential additional traffic. Assessment of any traffic impacts will occur at the time of re-development.
Water and Sewer: The property will have city water and sewer services upon annexation. Water service is already stubbed to the property line. Sewer services are in King Ave West and a lateral could be installed to replace the on-site septic systems.
Schools and Parks: The proposed zoning itself should not affect schools and parks, this will depend on the new residents when a redevelopment plan moves forward. No plans for redevelopment are in the works. Schools and parks should not be negatively affected by the proposed zoning. The School district provided no comments on this zone change.
Fire and Police: The subject property will be served by city public safety services. The Police and Fire Departments had no concerns with the zone change.

5. Will the new zoning provide adequate light and air?
Similar to criteria 2 and 3, the proposed NX2 zone, like all zones, requires minimum setbacks to allow for adequate separation between structures and adequate light and air. This parcel is presently developed with two single family homes and some agricultural buildings. Any new structure or structures will be required to meet the standards required by Section 27-300.7 under the NX2 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 redeveloped, there may be increased volume to the transportation network, both motorized and non-motorized. Off-street parking for any new dwellings will be provided as per code Section 27-1300. The multi-use path along King Ave West already exists along the property frontage. Internal sidewalks may be required at the time of redevelopment.

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 in the future and will allow the existing residents to have access to clean drinking water and safe wastewater disposal.

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 the existing uses to continue while creating opportunity for future redevelopment. The NX2 zone is compatible with the surrounding planned development zones 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 existing and possible future uses.

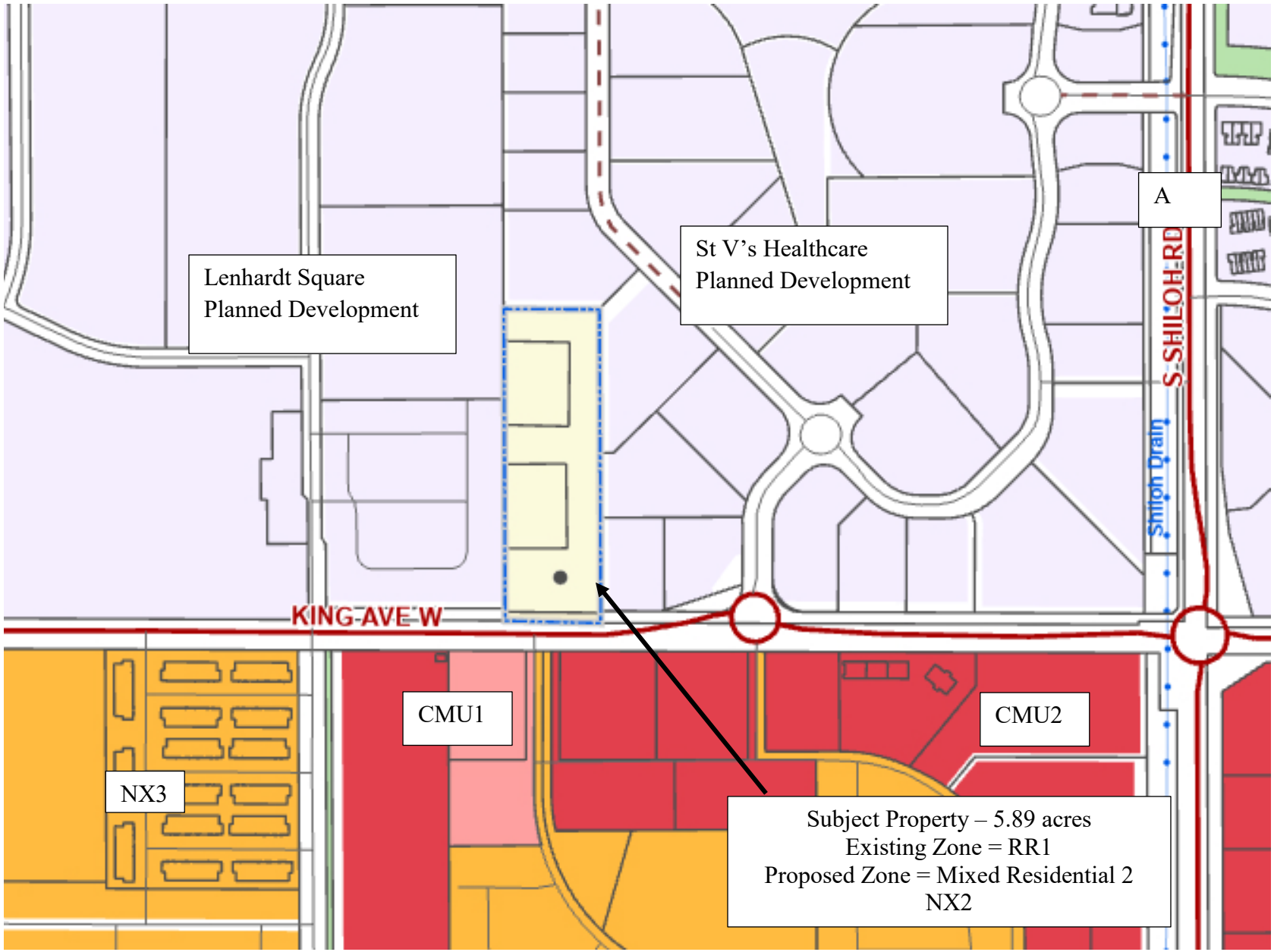
9. Will the new zoning conserve the value of buildings?
The new zoning is not expected to alter the value of any buildings in the area. Any development of the property will need to meet the site development requirements in the zoning code. For the NX2 zone, this includes, but is not limited to, building heights, setbacks, and window and door facade coverage. In general, new building improves property value in the area.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?
The proposed zoning will allow existing uses and any proposed uses for redevelopment including duplexes, townhomes or multifamily dwellings. 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 undeveloped but allows mixed uses including multifamily. The property to the west is already developed as a multifamily complex.

Attachments

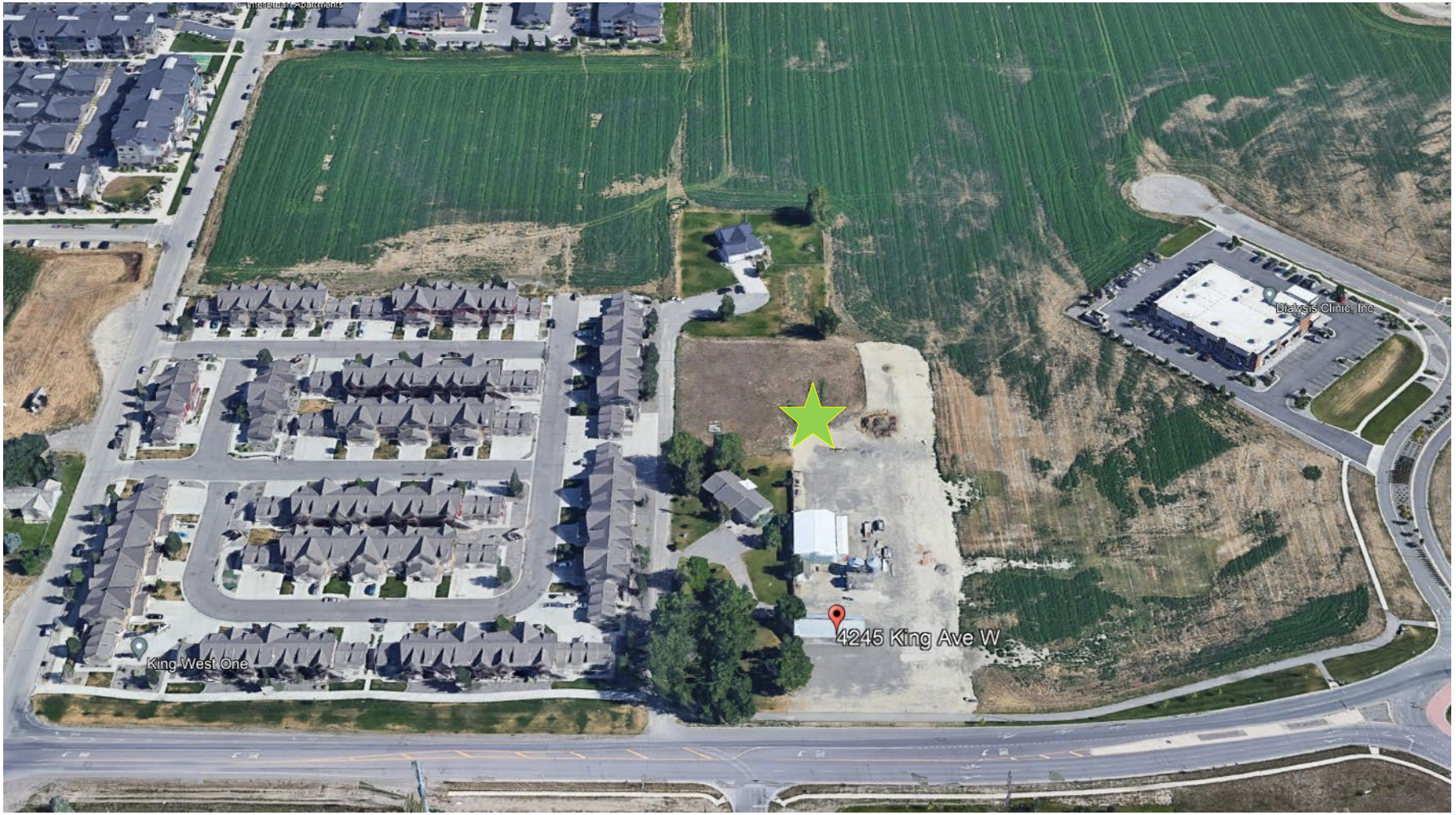
Zoning Map and Site Photos
Charting of Zoning History
Pre application and meeting notes
Application and Letter
Ordinance ZC 1030

City Zone Change 1030 – 4245, 4249 and 4253 King Ave W – A to NX2
Zoning Map and Site Photos





Subject Property



Subject Property



Subject Property view from King Ave West



View west on King Ave W



View south east across King Ave W



View north east – agricultural buildings on subject property



View north west – agricultural operations on subject property



View north east to Billings Dialysis Clinic

Zoning History for City ZC 1030 – 4245, 4249 & 4253 King Ave W

SUBJECT PROPERTY	Zone Change	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
	None				
SURROUNDING PROPERTY	**Zone Change**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
Vista West	City ZC 894	5/12/2012	A-1 to RMF-R	Withdrawn	
Vista West	City ZC 1004	2/25/2021	A to N2, NX2/NX3 and P1	Withdrawn	
Vista West	City ZC 1021	2/12/2023	A to PND N1, NX2/NX3 & P1	Y	
Ridgeline Development	City ZC 997	9/13/2021	A-1 to MU-PND – NX2, N2, CMU1, P1	Y	First PND zone change
Lenhardt Square	City ZC 991	6/14/2021	Update to PD agreement	Y	Increased density and normalized height measurements
Western Sky Sub	City ZC 977	July 13, 2020	Adjust Zone District Boundaries	Y	
Western Sky Sub	City ZC 975	Jan 27, 2020	Underlying zoning amendment	Y	
Western Sky Sub	City ZC 802	May 17, 2007	A-1 to CC, RMF-R, R-50, R-70, R-96 & Public	Y	Included entire NW section of 160 acres
Western Sky Sub	City ZC 957	Sept 11, 2017	CC, RMF-R, R-50, R-70, R-96 & Public to Planned Development	Y	Underlying zones CC, NC RMF & RMH
Hoop Dreams – Apartments	City ZC 900	Aug 13, 2012	R-50 to RMF-R	Y	Apartment Developments at 44th St W and King Ave W
Hoop Dreams – Apartments	City ZC 912	July 8, 2013	Public & R-50 to RMF-R	Y	Additional apartments
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 722	May 24, 2004	A-1 to Planned Development	Y	PD for healthcare & ancillary commercial uses
St. Vincent Healthcare Shiloh Rd & King Ave W	City ZC 870	Jan 24, 2011	PD Amendment	Y	Adjustment to allow flexibility
Montana Sapphire Sub	City ZC 673	July 9, 2001	A-1 to Entryway Light Industrial (ELI)	Y	New industrial park
Montana Sapphire Sub	City ZC 903	Sept 24, 2012	ELI to HC	Y	Affinity of Billings Fuel Fitness Divide Bar & Grill
Montana Sapphire Sub Long Beach Apts	City ZC 878	Aug 22, 2011	ELI to HC	Y	New apartments
3815 Hesper Road	City ZC 907	March 25, 2013	A-1 to CI	Y	New FedEx Ground Terminal

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**: RR1

2. **Written description of the Zone Change Plan** including existing and proposed new zoning:

Existing RR1 residential use to be changed to NX2 Residential

3. **Subject Property Map**: please attach to this form Exhibit A
4. **Legal Description of Property**:

Exhibit B

5. **Neighborhood Task Force Area**: Yes /// No . If Yes, Name of Task Force and mailing address of Chairperson:

West End Neighborhood Task Force

6. **Roster of persons who attended the pre-application neighborhood meeting**: please attach to this form Exhibit C
7. **A copy of the meeting notice.** please attach to this form Exhibit D
8. **A brief synopsis of the meeting results including any written minutes or audio recording.** please attach to this form Exhibit E
9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 10th, day of May, 2023.

2) The zone change application is based on materials presented at the meeting.

Owner (s): Exhibit F Telephone:_____

Address: _____ Email:_____

Agent (s): _____ Telephone:_____

Address: _____ Email: _____

Exhibit A

ZONING EXHIBIT

CERTIFICATE OF SURVEY NO.3125 TRACT 2A AMENDED,
CERTIFICATE OF SURVEY NO.1400 PARCEL 1 &
CERTIFICATE OF SURVEY NO.2064 PARCEL 6B AMENDED

PREPARED FOR : MICKEY MACK

PREPARED BY : SANDERSON STEWART

APRIL, 2023

BILLINGS, MONTANA

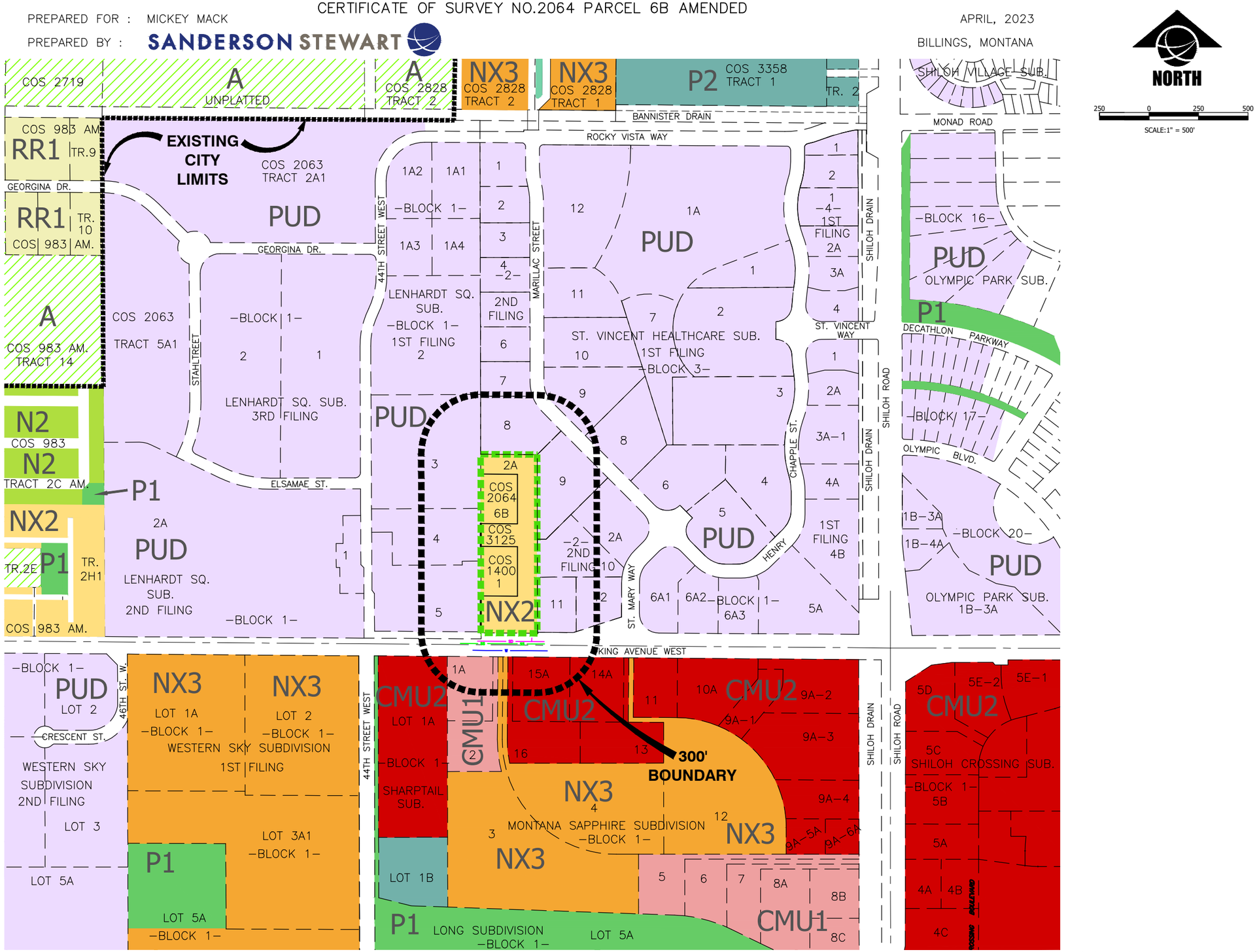


Exhibit B

Tax ID	Legal Description
D12680	S10, T01 S, R25 E, C.O.S. 2064, PARCEL 6B, AMND TR 6 1.062 AC (03)
D00515E	S10, T01 S, R25 E, C.O.S. 3125, PARCEL 2A, AMD (10)
D00516	S10, T01 S, R25 E, C.O.S. 1400, PARCEL 1

Exhibit C

NEIGHBORHOOD MEETING
ATTENDANCE SIGN-IN SHEET

Date: May 10, 2023 Time: 5:30 P.M.

Project: Mack King Ave W Annexation Project No.: 01019.01

Meeting Location: Sanderson Stewart Office
1300 N Transtech Way, Billings, MT 59102

Name and Title: *(Please Print)*	*Representing:*	*Phone Numbers* *Office*	*Mobile*	*Email Address*
Gene Culver	Kincaid Land		406-698-9346	Culver620@gmail.com
Mickey Amen Mack			406-672-5481	micmack6@aol.com
Steve Zeier			406-670-6969	Steve@trinityrem.com

Exhibit D

SANDERSON STEWART

Billings
Bozeman
Fort Collins

May 3, 2023

Reference: Notice of Pre-Application Neighborhood Meeting for Annexation and Zone Change Certificate of Survey No. 2064, 3125, 14001

Dear Neighbors:

You are receiving this letter because the City of Billings requires a pre-application neighborhood meeting for any zone change request on property located within or intending to be annexed to the City. By City Code, the surrounding property owners within 300 feet are notified of this meeting so you can ask questions of the materials described in this letter. This is not your last time to comment on this proposal, as future public hearings by the Zoning Commission and City Council will be scheduled.

The request for this property involves annexation of the three parcels of land, as noted in the enclosed exhibit, and a zone change from RR1-Rural Residential 1 to NX2-Mixed Residential 2 (2-8 dwelling units per structure).

The Neighborhood Pre-Application Meeting will be held on **Wednesday, May 10, 2023, at 5:30 p.m.** This meeting will be held in-person at Sanderson Stewart's offices at 1300 N Transtech Way, Billings, MT 59102. You may also receive log-in credentials so that you can join remotely via Teams. If you plan on attending or would like the log in information, please email John Halverson at jhalverson@sandersonstewart.com so that we can verify accommodations for the in-person meeting and have a list of attendees that will be joining via Teams.

Please plan on attending this Neighborhood Pre-Application meeting if you have comments or questions regarding the proposed Annexation and Zone Change. If you have immediate questions or cannot attend the meeting, please contact me at (406) 869-3311 or via my email at jhalverson@sandersonstewart.com

Respectfully,

John Halverson, LEED AP, Land Planner

JDH/vp
Enc.
c: Nicole Cromwell, Zoning Coordinator / Code Enforcement Supervisor, City of Billings
Mickey Mack

Exhibit D Cont'd

ZONING EXHIBIT

CERTIFICATE OF SURVEY NO.3125 TRACT 2A AMENDED,
CERTIFICATE OF SURVEY NO.1400 PARCEL 1 &
CERTIFICATE OF SURVEY NO.2064 PARCEL 6B AMENDED

PREPARED FOR : MICKEY MACK

PREPARED BY : SANDERSON STEWART

APRIL, 2023

BILLINGS, MONTANA

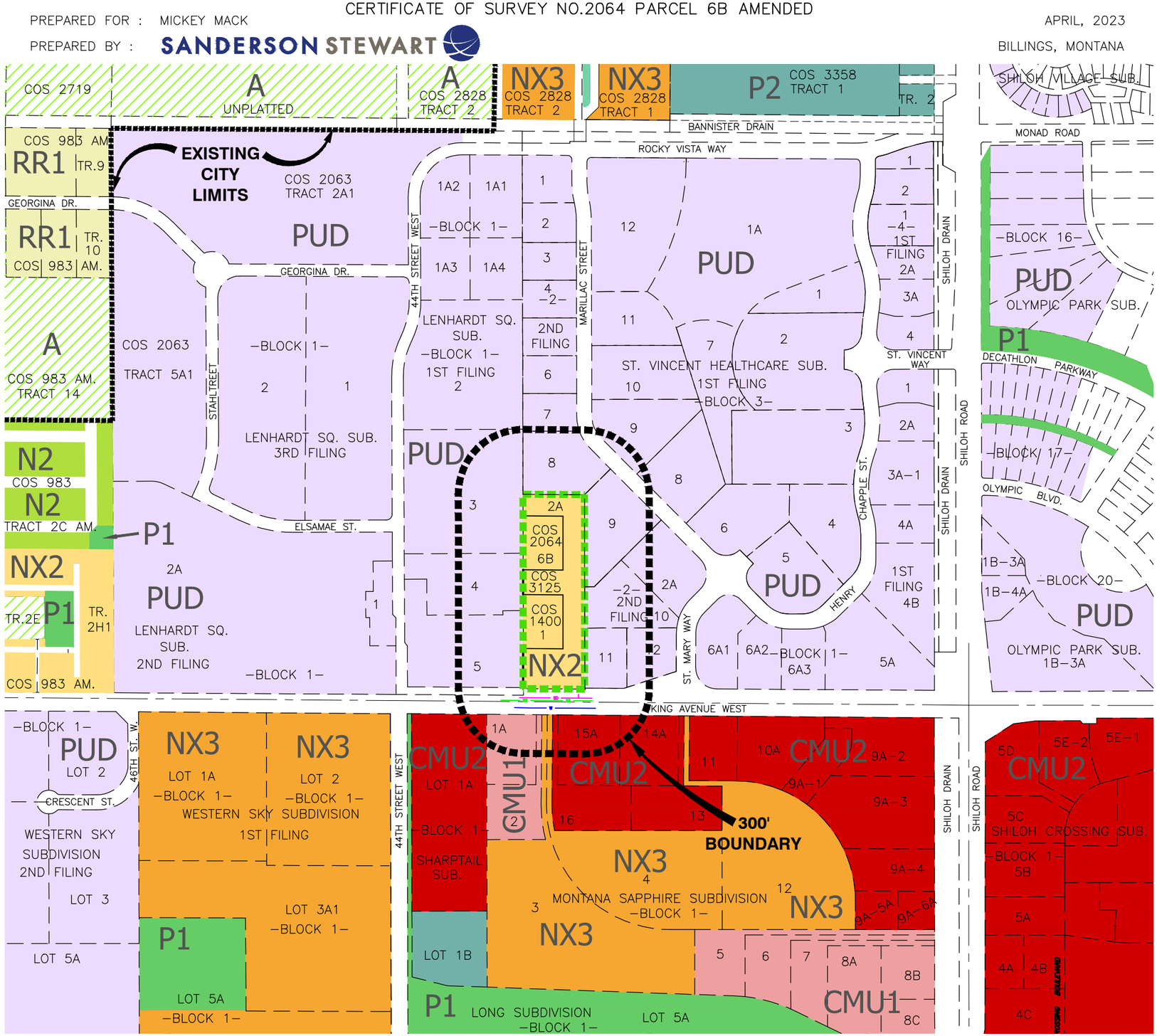


Exhibit E

MEETING MINUTES

PROJECT: Mack Annexation & Zone Change			
Project No: 01019.01			
Meeting Location: Sanderson Stewart Offices 1300 N Transtech Way Billings MT 59102		Meeting Date: 05/10/23 5:30 PM	
Meeting Subject: Zone Change Neighborhood Pre-Application Meeting		Prepared by: John Halverson	
Attending:	(See attached sign-in sheet)		
Sanderson Stewart:	John Halverson		
	Erica Gilrein		
Date of Issue: 05/18/2023			

Minutes:

- Mr. Halverson began the meeting at 5:30 by explaining the reason for the annexation (failing septic system) and the process of annexation and zone change.
- Mr. Zeier stated that DEQ would not allow a new septic system on the property.
- Mr. Gene Culver expressed access concerns from his property, which is south across King Avenue from the subject parcel, onto King Avenue. He expressed the opinion that the P1 lot shown on the exhibit distributed with the meeting notice was incorrect in showing a P1 parcel along the east side of 44th St. West.
- Mr. Culver stated that he had granted the city an easement for a bike path on his land near 44th St. West. He stated that north-bound traffic on 44th St. south of King Ave. was extremely congested, and that congestion would worsen when continued development occurs south of the Hoop Dreams development. He asked if there is a plan to alleviate that condition.

- Ms. Gilrein answered that a traffic impact study had indicated that a signal is warranted @ 44th and King.
- Mr. Culver stated that 44th St. W is not wide enough and that he would be willing to donate land for another lane.
- Ms. Gilrein explained the methods that go into producing a TIS.
- Mr. Zeier expressed a desire to delineate the property lines on the segment of 44th St West south of King Ave. and to understand whose land the current informal parking is occurring on.
- Mr. Halverson stated that he would be willing to send Mr. Culver an email regarding the schedule of anticipated improvements to 44th St West.
- Ms. Mack, the applicant expressed her opinion that MT Sapphire road is too narrow. She stated that her property's well would be kept in place to use for irrigation and asked questions about the routing of the new water line to her property, and its impact on the underground sprinkler system. She also stated that a fireworks stand that has used her property would be doing so again this season, for the last time.
- Attendees left at 6:00 PM. Mr. Halverson remained to receive any late-comers until 6:15 at which time he adjourned the meeting.

Exhibit F

SPAENY, MOLLY M & DARRELL
S10, T01 S, R25 E, C.O.S. 2064, PARCEL 6B, AMND TR 6 1.062 AC (03)

9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 10th, day of May, 2023.

2) The zone change application is based on materials presented at the meeting.

Owner (s): [signature] Telephone: 406-671-0020

Address: _____ Email: _____

Agent (s): _____ Telephone: _____

Address: _____ Email: _____

AMEN, JACK L IRREV SURVIVORS TRUST
S10, T01 S, R25 E, C.O.S. 3125, PARCEL 2A, AMD (10)

9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 10th, day of May, 2023.

2) The zone change application is based on materials presented at the meeting.

Owner (s): Michele Amen Mack Telephone: _____

Address: _____ Email: _____

Agent (s): _____ Telephone: _____

Address: _____ Email: _____

AMEN, MICHELE
S10, T01 S, R25 E, C.O.S. 1400, PARCEL 1

9. **The undersigned affirm the following:**

1) The pre-application neighborhood meeting was held on the 10th, day of May, 2023.

2) The zone change application is based on materials presented at the meeting.

Owner (s): Michele Amen Mack Telephone: _____

Address: _____ Email: _____

Agent (s): _____ Telephone: _____

Address: _____ Email: _____

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 RR1

Proposed Zoning: NX2

TAX ID# D12680, D00515E, D00516 CITY ELECTION WARD 5

Legal Description of Property: See Exhibit A attached

Address or General Location (If unknown, contact City Engineering): 4253, 4249, 4245 King Ave. West

Size of Parcel (Area & Dimensions): 5.89 Acres

Present Land-Use: Residential

Proposed Land-Use: Residential

Covenants or Deed Restrictions on Property: Yes_____ No_____

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): Spaeny, Molly M &* Darrell

(Recorded Owner)

Tax ID: D12680

4253 King Ave W. Billings, MT 59106

(Address)

(Phone Number) (email)

Agent(s): Erica Gilrein, John Halverson

(Name)

1300 N Transtech Way, Billings, MT 59102

(Address)

406-656-5255 jhalverson@sandersonstewart.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: 5.30.23

(Recorded Owner)

Date Stamp

Exhibit A

Tax ID	Legal Description
D12680	S10, T01 S, R25 E, C.O.S. 2064, PARCEL 6B, AMND TR 6 1.062 AC (03)
D00515E	S10, T01 S, R25 E, C.O.S. 3125, PARCEL 2A, AMD (10)
D00516	S10, T01 S, R25 E, C.O.S. 1400, PARCEL 1

Owner(s): Amen, Jack L Irrev Survivors Trust

(Recorded Owner) 4249 King Ave W, Billings, MT 59106

Tax ID: D00515E

(Address)

(Phone Number) (email)

Agent(s): Erica Gilrein, John Halverson

(Name) 1300 N Transtech Way, Billings, MT 59102

(Address) 406-656-5255 jhalverson@sandersonstewart.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: Michele Amen Mack Date: 5/30/23

(Recorded Owner)

Date Stamp

Zone Change Application Packet 2023/2024

Owner(s): Amen, Michele

(Recorded Owner) 4249 King Ave W, Billings, MT 59106

Tax ID: D00516

(Address)

(Phone Number) (email)

Agent(s): Erica Gilrein, John Halverson

(Name) 1300 N Transtech Way, Billings, MT 59102

(Address) 406-656-5255 jhalverson@sandersonstewart.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: Michele Amen Mack Date: 5/30/23

(Recorded Owner)

Date Stamp

Zone Change Application Packet 2023/2024

Certificate of Survey 2064 Tract 6B,
Certificate of Survey 3125 Tract 2A,
Certificate of Survey 1400 Tract 1

Zone Change Request from RR1 Rural Residential to NX2 Mixed Residential 2

Statement of Proposal

Michele Amen Mack, on behalf of Molly and Darrell Spaeny, and the Jack L Irrev Amen Survivors Trust are seeking to Annex and Rezone Certificates of Survey 2064 Tract 6B, 3125 Tract 2A, and 1400 Tract 1.

This zone change request accompanies an annexation petition, which is intended to bring municipal water service to the existing uses on the subject parcels, whereas their present well and septic systems are failing.

The proposed NX2 zone allows the existing uses on the subject parcels and provides for the possibility of re-developing the parcels in a manor that would be compatible with surrounding uses.

Responses to Questions in Zoning Application

a. In what ways is your proposal consistent with the statutory criteria, guidelines, and policies of the adopted Growth Policy?

The Growth Policy states:

In the next 20 years, Billings will manage its growth by encouraging development within and adjacent to the existing City limits, but preference will be given to areas where City infrastructure exists 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.

The subject parcels are surrounded on all sides by annexed land. City water and sewer services exist under King Avenue West, which is located immediately south of the subject parcels.

The requested zoning is in compliance with the following growth guidelines:

Essential Investments (Relating Public and Private Expenditures to Public Values)

- ***Infill development and development near existing City infrastructure may be the most cost effective.***

  Yes. The subject parcels are completely surrounded by parcels which have already been annexed into the city. Municipal water and sewer services exist in the King Avenue West right of way immediately south of the subject parcels.

- ***Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable.***

  Yes. Extending municipal water and sewer service to the subject parcels will be extremely cost effective.

- ***A cost/benefit study is important to make cost effective land use decisions.***

  Yes. Because services have already been extended to parcels surrounding the subject parcels, providing municipal water and sewer service to the subject parcels will be extremely cost effective.

Community Fabric (Attractive, Aesthetically Pleasing, Uniquely Billings)

- ***Attractive streetscapes provide a pleasant and calming travel experience in urban and***
  suburban neighborhoods

  Yes. This Annexation and Zone Change will allow the multi-use path along the north side of King Avenue West to be completed to city standards.

Strong Neighborhoods (Livable, Safe, Social and Resilient Neighborhoods)

- ***Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels***

  The NX2 zoning proposed for the subject parcels will allow for a wide range of residential uses, including the existing, single-home use, through townhomes, duplexes, and up to eight units per structure.

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

  The subject parcels are a walkable distance from such destinations as the Rocky Vista medical school, commercial and business uses in St. Vincent's Healthcare Subdivision, and Shiloh Crossing. If the subject parcels re-develop under the proposed zoning of

NX2, it is likely that a higher-than-usual portion of the trips generated will be undertaken on foot, allowing residents and neighbors to interact socially.

Home Base (healthy, safe and diverse housing options)

- ***A mix of housing types that meet the needs of a diverse population is important.***

  The NX2 zoning proposed for the subject parcels will allow for a wide range of residential uses, including the existing, single-home use, through townhomes, duplexes, and up to eight units per structure.

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

  Because the subject parcel is surrounded by annexed parcels which already receive city services, approval of the proposed annexation and zone change will not adversely affect response times for emergency services.

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.***

  Residents at the subject parcels have access to a range of transportation choices. The parcels are within walking distance of such destinations as the Rocky Vista medical school, commercial and business uses in St. Vincent's Healthcare Subdivision, and Shiloh Crossing. A MET transit route runs along King Avenue West, just south of the subject parcels.

Prosperity (Promoting Equal Opportunity and Economic Advancement)

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

  If the subject parcels re-develop under the proposed zoning, the densities that will result change will promote efficient use of city services and high tax revenues per acre.

The 10 Zone Change Criteria:

- ***Whether the new zoning is designed in accordance with the Growth Policy***

Yes, COS 2064 Tract 6B, COS 3125 Tract 2A, and COS 1400 Tract 1 are being re-zoned under the consideration of the Growth Policy statement and guidelines on previous pages. It is a site surrounded by parcels where municipal services exist and is compatible with the uses on those parcels.

- ***Whether the new zoning is designed to secure from fire and other dangers***

  Yes, The subject parcels will be serviced by City fire and police services and, if re-developed, will be designed in accordance with City of Billings rules and regulations thus assuring protection from common dangers.

- ***Whether the new zoning will promote public health, public safety and general welfare***

  Yes. Any uses on COS 2064 Tract 6B, COS 3125 Tract 2A, and COS 1400 Tract 1 will be subject to City of Billings building codes, and the utility and surface infrastructure will be constructed in accordance with City of Billings rules and regulations assuring compliance to this criterion.

  The proposed annexation and new zoning will allow the property to connect to public water and sewer. These services will allow for the removal of the on-site septic system, thereby reducing potential public health issues resulting from a failure of an aging system.

- ***Whether the new zoning will facilitate the adequate provision of transportation, water sewerage, schools, parks and other public requirements***

  Yes, the annexation and zoning of this property will allow for continuity of services along King Avenue. Any future water, sewer and storm facilities on the subject parcels will be constructed in accordance with all relevant regulations.

- ***Whether the new zoning will provide adequate light and air***

  Yes. All future improvements on COS 2064 Tract 6B, COS 3125 Tract 2A, and COS 1400 Tract 1 will be constructed in accordance with City of Billings rules and regulations and therefore meets this requirement.

- ***Whether the new zoning will affect motorized and nonmotorized transportation***

  The subject parcels share a common access from King Avenue West, which is a Principal Arterial and will not be significantly affected by trips generated by continuing the existing residential use on this parcel. Any future development would need to comply with current development standards.

- ***Whether the new zoning will promote compatible urban growth***

Yes, the subject parcels are directly adjacent to multi-plex residential uses to the west, which were developed under a PUD before the RE:code update, but which would comply with the NX2 zone proposed in this application. The St. Vincent's Healthcare Subdivision to the east and north of the site hosts commercial uses with allowances for future inclusion of multi-home residential uses like those allowed in the proposed NX2 zone.

- ***Whether the new zoning considers the character of the district and the peculiar suitability of the property for the particular use***

  Yes. The property is located just south of the Lenhardt Square residential development which is an emerging multi-home residential node on Billings' West End. The subject parcels are also located very near to the hub of commercial development happening around the intersection of Shiloh Rd. and King Ave. Although there are no plans for re-development on the subject parcels, if it were to re-develop under the proposed zoning, it would be reasonable to anticipate a significant percentage of the trips generated would be captured through active and public transportation, given the proximity and preponderance of destinations.

- ***Whether the new zoning will conserve the value of buildings***

  Yes. The proposed zoning will allow the existing uses to continue as compliant uses once the subject parcels are annexed into the City of Billings. Although there are no plans to re-develop the subject parcels under the proposed zoning, such re-development would be similar and compatible to existing uses in the area and would therefore have no negative effect on the value of existing structures in the area. a

- ***Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings***

  Yes. It is appropriate to promote zoning that allows the existing use to continue and accommodates the potential for compact development near the City Limits boundaries. This zone change helps support the potential for an appropriate level of development which will serve the City both now and in the future. It is also beneficial to have greater densities near the new medical school campus and other business and commercial uses to reduce overall vehicular loads on local area streets.

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE ZONE CLASSIFICATION for C/S 2064 Parcel 6B, C/S 3125, Parcel 2A and C/S 1400, Parcel 1, 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 27-1628, 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 2064 Parcel 6B, C/S 3125, Parcel 2A and C/S 1400, Parcel 1,** is presently zoned **Rural Residential 1 (RR1)** 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/S 2064 Parcel 6B, C/S 3125, Parcel 2A and C/S 1400, Parcel 1,** is hereby changed from **Rural Residential 1 (RR1)** a county zone, to **Mixed Residential 2 (NX2),** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Mixed Residential 2 (NX2)** 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 24th day of July, 2023.

PASSED, ADOPTED and APPROVED on second reading this 14th day of August, 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change 1030 – 4245, 4249 and 4253 King Ave W

City Council Regular

Date:	07/24/2023
Title:	Annexation Agreement with Molly and Darrell Spaeny and Michelle Amen
Presented by:	Debi Meling
Department:	Public Works
Presentation:	No
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

Staff recommends that the City Council approve the Annexation Agreement with Molly & Darrell Spaeny and Michelle Amen.

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

City Council will consider annexation of Tract 1 of Certificate of Survey 1400, Tract 2-B of Certificate of Survey 2064 Amended, and Tract 2A of Certificate of Survey 3125. The property proposed to be annexed is located north of King Avenue West, west of Shiloh Road. Typically, as a condition of approval of the annexation, the property owner enters into an Annexation Agreement with the City of Billings outlining necessary public improvements. The Annexation Agreement outlines the off-site improvements necessary for development including access to the site and construction of water, sanitary sewer, and storm drain. The Annexation Agreement provides for City required off-site improvements should the property be annexed and developed without a subdivision plat.

Currently, all of these properties are developed and King Avenue West is completed along the frontage of the properties. They are annexing in order to obtain utilities. The Annexation Agreement for this Council action generally includes the following conditions or improvements:

- Completion of a portion of the multi-use path; and
- Waiver of Right to Protest.

ALTERNATIVES

City Council may:

- If the annexation is approved, then approve the Annexation Agreement with the property owner; or
- Not approve the Annexation Agreement. If the agreement is not approved, the responsibility for infrastructure improvements would be in accordance with policies in place at the time of re-development.

FISCAL EFFECTS

If the annexation agreement is approved, the property owners will be required to install the multi-use path. If it is not approved, the city would bear the cost for the trail.

Attachments

Annexation Agreement

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT is made this _____ day of _____, 2022, by and between Molly & Darrell Spaeny, 4253 King Avenue West, Billings, MT 59106 and Michelle Amen, 4249 King Avenue West, Billings, MT 59106 hereinafter referred to as "DEVELOPERS," and THE CITY OF BILLINGS, MONTANA, a municipal corporation, c/o City Hall, 210 North 27th Street, Billings, Montana, 59101, hereinafter referred to as the "CITY." DEVELOPERS and CITY are sometimes referred to in this Agreement individually as "Party" and collectively as the "Parties."

WHEREAS, DEVELOPERS are the owners of certain real property situated in Yellowstone County, Montana, more particularly described as follows:

Lot 1 of Certificate of Survey 1400, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 960326

Lot 6-B of Certificate of Survey 2064 Amended, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3163883

Lot 2A of Certificate of Survey 3125, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3499049

hereinafter referred to as "Developer Tracts"

WHEREAS, DEVELOPERS have submitted to the City a Petition for Annexation to the City for Developer Tracts; and

WHEREAS, DEVELOPERS desire to annex Developer Tracts to the City; and

WHEREAS, CITY has approved the Petition for Annexation by Resolution No. _____ for the Developer Tracts contingent upon a Annexation Agreement being

executed between CITY and DEVELOPERS to identify required off-site infrastructure improvements and guarantees of those improvements.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties do hereby agree as follows:

1. *Roads and Access.* The Developer Tracts currently have access for the single family residences from King Avenue West. If re-developed in the future, access would be determined by the City or MDT.

2. *Sanitary Sewer.* The Developer Tracts will be served by an existing sanitary sewer main located in King Avenue West. Construction of any sanitary sewer services shall be at the DEVELOPER's expense.

   DEVELOPERS shall be responsible for payment of the City wastewater system development fee prior to hooking up to the sanitary sewer.

3. *Water.* The Developer Tracts will be served by an existing water main located in King Avenue West. Construction of any water services shall be at the DEVELOPERS' expense.

   DEVELOPERS shall be responsible for payment of the City water system development fee prior to hooking up to water.

4. *Storm Drain.* If the Developer Tracts are re-developed or changed from the existing condition, as defined by the City of Billings Stormwater Management Manual, in the future, DEVELOPERS will manage storm drainage within the Developer Tract in accordance with the City of Billings Stormwater Management Manual (2018).

5. *Right-of-Way.* Public right-of-way will be dedicated at no cost to the City of Billings in accordance with the 2018 Billings Urban Area Long Range Transportation Plan, in accordance with the City of Billings Subdivision Regulations. There is not any right-of-way dedication anticipated with the annexation.

6. *Street Construction, Widening and Sidewalks.* King Avenue West is an MDT controlled street. DEVELOPERS may be required construct or financially participate in a City or MDT project to install curb and gutter, and a drive approach in the future and will be included in the waiver of right to protest.

7. *Multi-use Trail*. There is an existing multi-use trail along King Avenue West along the Developer Tracts. There is small missing gap in the multi-use path.

DEVELOPERS shall construct the multi-use path to fill in the gap at the time of sanitary sewer service connection. The trail connection shall be reviewed and approved by the City and MDT.

DEVELOPERS shall be responsible for the maintenance of the multi-use path fronting the Developer Tracts.

8. *Future Intersection Contributions.* A traffic impact study will not be required at this time. A traffic impact study will be required if Developer Tracts are re-developed to determine DEVELOPERS contributions to future intersection improvements if re-development exceeds 500 trips/day. The preparation of the traffic impact study and any fees to mitigate impacts to future intersection improvements will be at the expense of the DEVELOPERS.

9. *Other Public Improvements.* For any other improvements not specifically listed in this Agreement, the CITY shall rely on the attached Waiver filed concurrently herewith, to ensure the installation of any or all remaining public improvements. Said improvements shall include, but not be limited to, construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and park maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require. The attached Waiver, waiving the right to protest the creation of one or more Special Improvement Districts, by this reference is expressly incorporated herein and part hereof. All of the Developer Tracts can be included in a Special Improvements District for improvements identified in Annexation Agreement regardless of location of individual properties in relation to the improvements.

10. *Compliance.* Nothing herein shall be deemed to exempt the Developer Tracts from compliance with any current or future City laws, rules, regulations, policies, and fees that are applicable to the development, redevelopment, or use of the subject property. Final plats or other dedications of the Developer Tract will be transmitted to the City for City Council acceptance of dedication of right-of-way and public easements. Dedications, deeds or conveyances will be in the name of the City after the effective date of the annexation and will be forwarded to the City Council for acceptance.

11. *Runs with Land.* The covenants, agreements, and all statements in this Agreement and in the incorporated and attached Waiver shall run with the land and shall be binding on the heirs, personal representatives, successors, and assigns of the respective parties.

12. *Attorney's Fees.* 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, including those fees and costs of in-house counsel.

13. *Amendments and Modifications.* Any amendments or modifications of this Agreement 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.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"DEVELOPERS" By: _____
Darrell Spaeny
By: _____
Molly Spaeny

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 persons who signed the foregoing instrument as the _____ _____as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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 Montana
Printed name:_____
Residing at:_____
My commission expires:_____

"DEVELOPERS" By: _____
Michelle Amen

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 person who signed the foregoing instrument as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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 Montana
Printed name:_____
Residing at:_____
My commission expires:_____

This Agreement is hereby approved and accepted by 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 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:_____

Approved as to Form:

_____
City Attorney

WAIVER OF RIGHT TO PROTEST

FOR VALUABLE CONSIDERATION, the undersigned, Owners of the hereinafter described real property, do hereby waive the right to protest the formation of one or more Special Improvement Districts (SID) for the construction, reconstruction or maintenance of streets, curbs, gutter, concrete ribbons, sidewalks, multi-use trails, driveways, survey monuments, street name signs, street lights, street light energy and maintenance, parks and park maintenance, traffic control devices on-site and off-site inclusive as determined by an overall traffic accessibility study, specific realignments or relocation of sanitary sewer lines and water lines, valley gutters, culverts, storm sewer lines, if any, either within or without the area, and other improvements which the City of Billings may require.

The Waiver and Agreement shall run with the land and shall be binding upon the undersigned, its successors and assigns, and shall be recorded in the office of County Clerk and Recorder of Yellowstone County, Montana.

The real property hereinabove mentioned is more particularly described as follows:

Lot 1 of Certificate of Survey 1400, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 960326

Lot 6-B of Certificate of Survey 2064 Amended, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3163883

Lot 2A of Certificate of Survey 3125, according to the official plat of file and of record in the office of the Clerk and Recorder of said County, under Document No. 3499049

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"DEVELOPERS"

By: _____
Darrell Spaeny

By: _____
Molly Spaeny

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 persons who signed the foregoing instrument as the _____ _____as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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 Montana
Printed name:_____
Residing at:_____
My commission expires:_____

"DEVELOPERS" By: _____
Michelle Amen

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 person who signed the foregoing instrument as the DEVELOPERS and who acknowledged to me that said DEVELOPERS 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 Montana
Printed name:_____
Residing at:_____
My commission expires:_____

City Council Regular

Date:	07/24/2023
Title:	Public Hearing - Ward Boundary Expansion Ordinance First Reading - Annexation 23-06
Presented by:	Hunter Kelly, Planner 1
Department:	Planning & Community Services
Presentation:	No
Legal Review:	Not Applicable
Project Number:	PZX-23-00104

RECOMMENDATION

Staff recommends the City Council hold a public hearing and approve this ordinance on first reading, adding recently annexed property to Ward V.

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

Sanderson Stewart behalf of Michele Mack and Molly & Darrell Spaeny submitted a petition to annex land using the provisions of Section 7-2-4600, MCA. The property is located north of King Avenue West, West of Saint Mary Way and East of South 44th Street West. The land being annexed is described as being Tract 1 of Certificate of Survey No. 1400, recorded April 15, 1974, under Document No. 960326; Tract 6-B of Amended Tract 6 Certificate of Survey No. 2064, recorded February 8, 2002, under Document No. 3163883; Tracts 2A and 2B of Amended Tract 2 Certificate of Survey No. 3125, recorded March 17, 2009, under Document No. 3499049, Tract 2B being deeded to the City of Billings as a right-of-way site (King Avenue West) per Quitclaim Deed, recorded March 17, 2009, under Document No. 3499051; containing 6.096 gross acres and 5.897 net acres, more or less.

Upon Council approval, this annexation requires a change in the boundaries of Ward V. Two readings are required for this action. The first reading and public hearing is scheduled for July 24. Upon approval the second reading will occur on August 14, 2023.

ALTERNATIVES

City Council may:

- Approve adding the subject property to Ward V, or;
- Disapprove adding the subject property to Ward V. Disapproval will not modify the boundary of the ward 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.

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 V 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 V the following described real property:

Parcels of Land situated in the SE 1/4 of Section 10, T.1S., R.25E., Yellowstone County, Montana, more particularly described as follows:

Tract 1 of Certificate of Survey No. 1400, recorded April 15, 1974, under Document No. 960326;

Tract 6-B of Amended Tract 6 Certificate of Survey No. 2064, recorded February 8, 2002, under Document No. 3163883;

Tracts 2A and 2B of Amended Tract 2 Certificate of Survey No. 3125, recorded March 17, 2009, under Document No. 3499049, Tract 2B being deeded to the City of Billings as a right-of-way site (King Avenue West) per Quitclaim Deed, recorded March 17, 2009, under Document No. 3499051;

All documents are on file and of record in the office of the Yellowstone County Clerk and Recorder.

Said annexation containing 6.096 gross acres and 5.897 net acres, more or less.
(# 23-06) See Exhibit “A” Attached

2. EFFECTIVE DATE. This ordinance shall be effective either thirty (30) days after second reading and final adoption as provided by law, or upon the effective date of Resolution No. 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 24th day of July, 2023.

PASSED by the City Council on the second reading this 14th day of August, 2023.

THE CITY OF BILLINGS:

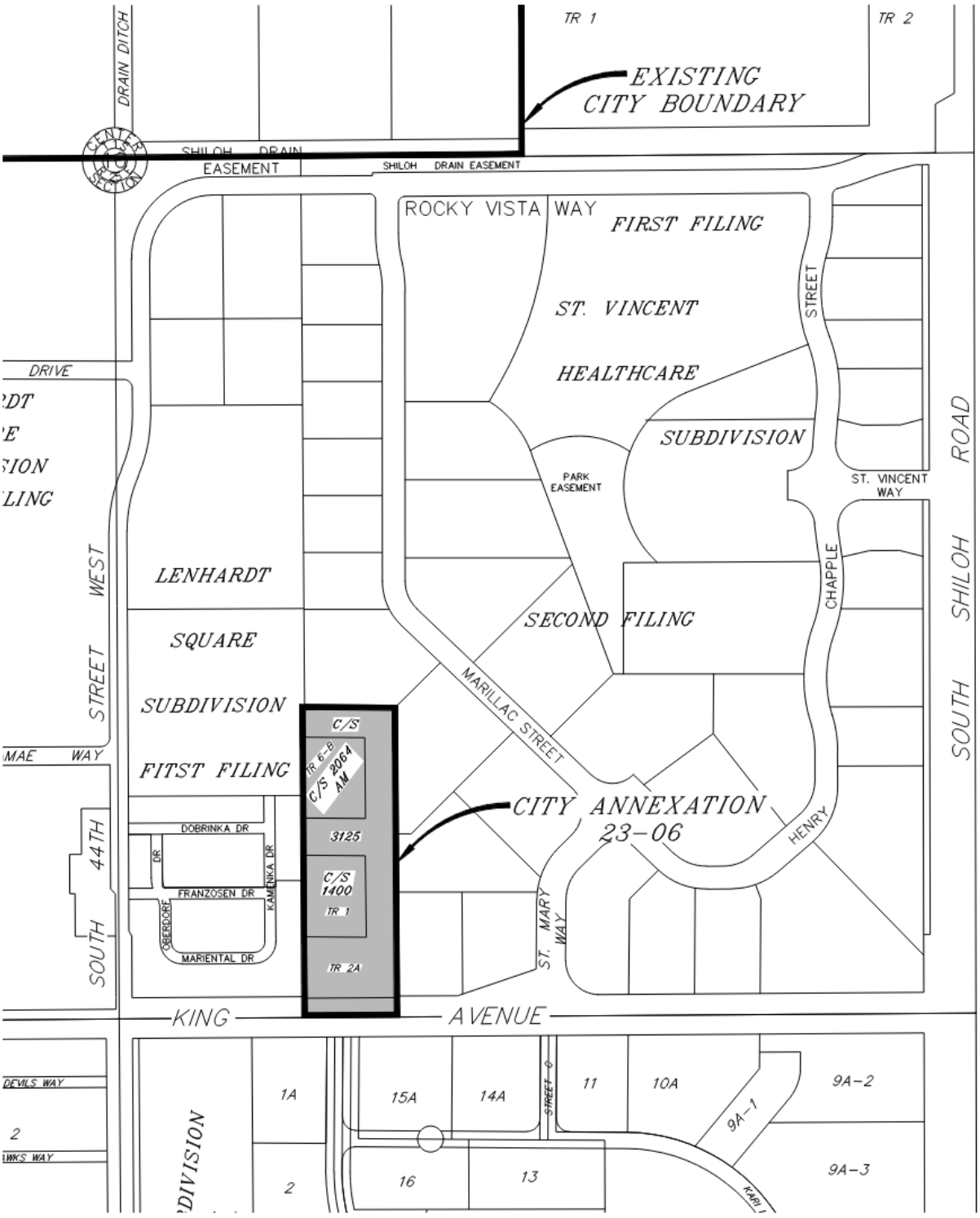
_____
William A. Cole, MAYOR

ATTEST:

BY: _____
Denise Bohlman, CITY CLERK

(#23-06)

EXHIBIT "A"


TR 1
TR 2
DRAIN DITCH
EXISTING
CITY BOUNDARY
SHILOH DRAIN
EASEMENT
SHILOH DRAIN EASEMENT
ROCKY VISTA WAY
FIRST FILING
ST. VINCENT
HEALTHCARE
SUBDIVISION
STREET
PARK
EASEMENT
ST. VINCENT
WAY
CHAPPLE
SHILOH ROAD
SOUTH
LENHARDT
SQUARE
SUBDIVISION
FITST FILING
SECOND FILING
MARILLAC STREET
HENRY
C/S
TR 6-B
C/S 2064
AM
3125
C/S
1400
TR 1
TR 2A
CITY ANNEXATION
23-06
ST. MARY
WAY
WEST
STREET
44TH
SOUTH
DOBRINKA DR
FRANZOSEN DR
MARIENTAL DR
KAMENKA DR
KING
AVENUE
1A
15A
14A
11
10A
9A-2
9A-1
9A-3
16
13
2

City Council Regular

Date:	07/24/2023
Title:	Zone Change 1031 - Text Amendments - Phase II - Action Options for Zoning Commission and City Council; Open Space in NX districts and PND; Rebuild of Residential in Commercial and Mixed Use; Step-backs for structures in NX2/NX3
Presented by:	Nicole Cromwell
Department:	Planning & Community Services
Presentation:	Yes
Legal Review:	Yes
Project Number:	N/A

RECOMMENDATION

The Zoning Commission recommends the following for each amendment:

- The Zoning Commission recommends approval of the Text amendment for Action Options on Special Review and Zone Changes (Sec. 27-1623 and 27-1628) and adoption of the ten review criteria on a 3-1 vote.
- The Zoning Commission recommends approval of the Open Space in NX districts and PND (Sec. 27-307, 27-308, 27-802 and 27-803) and adoption of the findings of the ten review criteria on a 4-0 vote.
- The Zoning Commission recommends approval of the Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504) and adoption of the findings of the ten review criteria on a 4-0 vote.
- The Zoning Commission recommends denial of the Step-backs for taller structures in NX adjacent to N districts (Sec 27-308) and adoption of the findings of the ten review criteria on a 4-0 vote.

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 Council action options for special reviews and zone changes, open space provisions in NX and PND district assembly, allowing rebuild of residential uses in commercial and mixed use zones by right, and step-backs of taller buildings between neighborhood and mixed neighborhood zones. 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 two phases. The first phase of amendments was adopted by Council in May 2023. This second phase will include changes to the administrative procedures for special review and zone changes, open space provision in multifamily and PND district assemblies, rebuild of residential uses in commercial and mixed use zones, and step-backs between taller buildings in mixed residential districts adjacent to neighborhood districts. 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.

Council action options for special review and zone changes - Sections 27-1623 and 27-1628

The current code for Zoning Commission and Council actions on zone changes or special review requests is a limited set using the non-discretionary verb of "shall". It is important to applicants and the community to have predictability built in to a regulation, however, there also needs to be flexibility to balance the code and allow options and choices. The code as currently written does not allow much flexibility in decision-making. For example, the Zoning Commission does not have the option of granting a delay of action on a special review even though this option is allowed for a zone change. The City Council would also like the ability to return zone changes or special review requests to the Zoning Commission for further hearings including when changes to a site plan or zoning boundary are contemplated after the Zoning Commission hearing is complete.

The Zoning Commission met on June 6 and discussed the draft amendments. The Commission was concerned the amendment might create unintended loopholes and potentially put applications in an endless loop of delay and reviews. Planning staff updated the amendment based on these concerns. Staff has recommended a "one-time-only" limitation for hearing delays or Council sending an application back to the Zoning Commission for another hearing. Staff believes the changes to the draft diminish the concerns with loopholes and delays. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

Open space provision in NX zones and PND district assembly - Sections 27-307, 27-308, 27-802 and 27-803

The new 2021 code incorporated the requirement to provide open space and recreation space in multifamily developments of 3 acres or more and within any new property annexed to the city through the Planned Neighborhood Development (PND) process. Previously, the only way to require open space within a neighborhood was through the subdivision process. Some multifamily developments did not need to go through a subdivision process and the subdivision regulations allow the developer to "opt-out" from providing any on-site park or recreation space by giving the city an equivalent cash amount in lieu of dedicating parkland. The code for new multifamily developments over 3 acres does not specify any amount of open space or that it must be developed. There are three choices of open space type allowed. The language is also vague and hard to implement. Council directed staff to correct the code language to eliminate the vagueness and to be more specific on the size of open space and base it on the total area of multifamily development.

The Planned Neighborhood Development zone change process requires a minimum of 2 percent of the net area be designated as open space. There are 5 types of open space to choose from, but two of those are restricted to mixed use type developments. This code section requires development of the open space and continued maintenance either by a homeowner's association or by the city if it is accepted as public park land. Most of the open space designated through the PND process has not been accepted as public parkland because of its size and intended uses. The City Council has expressed concern the types of open space designated through the PND process are too small or provide little recreational opportunity in these new neighborhoods. The Council directed staff to increase the minimum percentage and put in some criteria for choosing an open space type. The proposed revisions eliminate the vagueness from the NX zone district requirements and increase the minimum designation of the open space through the PND process from 2 percent to 5 percent.

The Zoning Commission discussed the draft amendment on June 6, and was concerned with potential loopholes created by specifying a certain minimum acreage when the requirement would kick in, the lack of flexibility for mixed residential development in subdivisions that have already dedicated parkland or are within walking distance of a developed park. The Commission also expressed concern that open space did not have a minimum "depth or width" provision so un-useable areas might be designated for recreation. The Commission was also concerned with the added burden this places on mixed residential developments especially considering the crisis in housing the Billings area is currently experiencing. Mr. Doug Wild from the Home Builders Association also expressed concerns with the proposed revisions in light of the housing challenges.

Planning staff revised the draft amendment to address these concerns except for the potential to cost burden new mixed residential developments where no open space has been previously dedicated or developed. Until the 2021 zoning code amendments, open space provisions for new developments were exclusively handled through the subdivision process. The subdivision regulations do not require development of any dedicated parkland, only that it be provided. The open space dedicated through subdivision also must meet the city's standards for area, suitability for active recreation, and other park policies set by the city. In many cases, this leads a developer to provide cash-in-lieu of parkland dedication. While this provides revenue to the Parks Department, it does not provide the types of open space that are most usable for everyday outdoor activities in apartment communities such as outdoor dining, pocket park areas to accommodate a variety of recreation (sand boxes, play structures, benches, small areas fenced for dog play, etc.). Developers who provide these small spaces have to arrange for long term maintenance and cover liability. These amenities do add cost to monthly rents. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

Allow re-build of residential uses in commercial and mixed use zones - Section 27-1504
The new code for Mixed Use and commercial zone districts requires that a commercial (nonresidential) use be either on the same property or within the same building as a residential use. Many properties previously zoned commercial were allowed to have residential use as the sole use of the property without any paired commercial uses on the same property or in the same building. There are approximately 52 properties in commercial or mixed use zone districts in the Heights that are only developed with residential uses. There are about 95 such properties in the downtown area, about 70 properties between downtown and 24th St W, and about 35 properties in the Southwest Corridor and West Billings. While this is not a large number, many of these properties are owner occupied and for many are the only substantial family investment. These properties cannot receive a standard mortgage or insurance because the code does not allow a full re-build of the residence as it is.

The current code for re-build in any neighborhood zone district allows any residential use to be re-built in the district even if it is not conforming to the specific use limitations. For example, if there is a 4-unit structure in the N3 zone, a single family zone, then we can issue a re-build letter for a 4-unit structure. This amendment would extend this residential re-build allowance into the mixed use and commercial zones where residential uses are allowed but are required to be on the same lot as a commercial use or in the same structure as a commercial use.

The Zoning Commission discussed the draft ordinance on June 6, and had no concerns. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

Step-backs of taller buildings between neighborhood and mixed residential neighborhood zone districts - Section 27-308
The current code allows NX zones and N zones to be adjacent to each other. The NX2 and NX3 zone allows building heights up to 4 stories, while most N districts allow buildings between 1 and 3 stories. The code requires a larger setback for any structure in an NX2 or NX3 zone where the adjoining zone is a Neighborhood or Residential Manufactured Home zone. The additional rear setback is 20 feet and the additional side yard setback is 15 feet from property lines. Many Billings' homes in the N districts are single story with some 1-1/2 story or two-story homes. A four-story structure adjacent to a single story structure can be an abrupt change. In the Mixed Use (MU) zone districts any new structure where the property adjoins or is across an alley from a neighborhood zone district requires building setbacks of 30 to 50 ft depending on the number of stories on the commercial building. The City Council received complaints from residents in a neighborhood south of a new multifamily development on Central Avenue. The new multifamily structures met the required additional rear and side setbacks. The Council was concerned about the height difference between the homes - 1.5-story homes setback about 20 ft from rear property lines - and the new 3-story apartment buildings also setback 20 ft from the rear property line. The distance between the new multifamily and the existing single family homes is approximately 40 feet. The numerical height of the new 3-story multifamily buildings are about 35 to 36 feet. The numerical height of the existing homes is about 24 feet.

The Zoning Commission reviewed the draft amendment on June 6, and had concerns with the proposal. The primary concern was with the large setback required from a rear or side property line whenever a part of a structure is either over 2 stories or 35 ft above grade. The Commission was concerned the step back was disproportional to any negative impact between buildings. The Commission was concerned the 50-foot setback required for a building 36 feet tall was not necessary to maintain compatibility between essentially the same land use - residential dwellings. The Zoning Commission directed staff to research the requirement further to determine what is the potential for this issue to arise in the future - map where N districts are adjacent to NX2 or NX3 vacant parcels - and to provide schematic scaled drawings of different step backs between buildings and property lines. City GIS staff developed a map showing where the potential exists for the step backs to be applied in the future. There are a handful of potential locations and all are on small lots. A 50 ft step-back for a building over 2 stories on these lots would likely require a variance or the redesign of the project to fit a 2-story or 35 ft maximum. It is likely fewer dwelling units would be available. In addition, it appears the potential future conflicts are not widespread. The map of these areas is attached.

The schematic drawings were prepared by Planning staff as hand sketches, but are scaled to show separation distances. Comfortable viewing angles (neck flexion) of either elevation or depression ranges between 40 and 80 degrees above or below the 0^{O} angle of the horizon. For example, a viewer looking out a 3rd floor window could comfortably view objects below the window to a maximum of 80 degrees below their horizon. The viewer would have to lower their head to see at this angle. Similarly, a person standing in a backyard could comfortably elevate their head to see up to 80 degrees above their horizon to see a taller structure. Without moving the neck or head the maximum field of vision is less than 40 degrees either above or below the horizon. This information is important to understand the "view shed" of people within a taller structure or people on the ground. It also changes based on the location of the viewer. For example, if people on both properties are on ground level and there is a 6-ft tall opaque fence between the yards, there is zero visibility between the two groups of people. Trees and vegetation along property lines can also block a field of view between properties. Natural surveillance to and from public spaces such

as a street or parking lot provides a good level of crime prevention. The backyard space has always been considered a private space. A privacy fence may or may not provide security for the backyard. The backyard can be a place where burglars and other criminals can commit crimes without anyone noticing. Taller fences - more than 6 feet - can be a deterrent as these are not easy to scale, but will not prevent a determined person from getting into a backyard. There are strategies that can be used to make a privacy fence more secure from trespassers including planting shrubs with thorns that make scaling a fence hazardous or building a fence that has alternating privacy and more open fence panels (trellis panels) to eliminate hiding places within the backyard.

There are several existing examples where multifamily developments adjoin neighborhood zone districts. This includes apartment buildings at 3430 Lynn Avenue, 640 Lake Elmo Drive, Killarney Street, S 28th St apartments, Avenues D and E apartments and several other locations. Most of these apartment developments fit in well with the surrounding uses. Many communities in the Midwest and in the Rock Mountains have a similar development style that includes small to medium apartment complexes adjacent to single or two family dwellings. Examples of this common urban form are attached.

Planning staff did not modify the proposed amendment for the increased step backs between new multifamily apartments and property lines adjoining or across and alley from an N zone district. The draft ordinance is attached and the Zoning Commission consideration and hearing is summarized in the Stakeholder section of this memo.

STAKEHOLDERS

Planning staff worked with several groups of stakeholders over the last two years while implementing the new zoning code including the City Council, Home Builders Association, Billings Area Realtors, architects, engineers, planners and property owners. The amendments were produced by monitoring real life application of the code and collecting feedback over time from the various stakeholder groups. Planning staff shared the draft amendments with the stakeholders through direct email, placed a legal ad and posted the drafts on the Planning division's webpage and the Zoning Commission discussed the items during their June 6th meeting. Since posting the legal ad and prior to this Zoning Commission hearing, staff has received comment from Doug Wild, a member of the Home Builders Association. Generally the comments suggest that each amendment creates a slightly tougher regulatory environment which will impact cost. There were additional concerns specific to parkland requirements, step-backs and creating delays with applications. The Home Builder's Association sent in a letter of comment on the text amendments. There was general concern with adding requirements for mixed residential zones in a housing market that is very constrained.

Zoning Commission

The Zoning Commission held a hearing on July 11, and reviewed the text amendments and received the staff recommendation and testimony from the public including John Halverson of Sanderson Stewart. The comments, discussion and motions are summarized by topic area below.

Zoning Commission and Council Options text amendment (Sections 27-1623 and 27-1628)

The Commission asked questions regarding the potential for unnecessary delays because of disagreement over a recommendation rather than "new information" presented at the City Council hearing. The Commission was concerned the option for a "send back" to the Zoning Commission from the City Council might be overly used creating bottlenecks and further delays. Staff clarified that Council and legal staff believe the option to send any item back to the Zoning Commission already exists, and the amendment may put sideboards on how this can be done. Staff explained the once-only limitation would not create too much delay particularly if the alternative is to withdraw or receive a denial. Both of those outcomes either require a 4-month or 12-month waiting period to re-apply. Commission member Goss stated he sat on a Planning Commission in another state that worked under similar provisions and send backs from the governing body were rare. He stated there are also some state laws that require a "raise it or waive it" limitation on land use hearings. Staff explained the conditions to send back an item to the Zoning Commission are the same limitations that apply to sending back a subdivision to the Planning Board for an additional review. The City Council only rarely has used this provision to send a subdivision back to the Planning Board. John Halverson stated he would like to ensure the imperative word "shall" remains within the administrative section of the code so that applications are not caught in an endless loop of indecision. He stated predictability is one of the hallmarks of a good zoning and land use regulation, so he urged the Commission to carefully weigh the benefits of the change.

The public hearing on this ordinance was closed and Commission member Dan Brooks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member David Goss and was approved on a 3 to 1 vote, with Commission member Trina White voting in opposition. Ms. White stated she believed the changes would not be beneficial to the development community.

Open Space in NX districts and PND text amendment (Sec. 27-307, 27-308, 27-802 and 27-803)

The Zoning Commission received the staff report on this particular amendment concerning clarification and updates to the provision of open space for newly annexed property of 10 acres or more and to new mixed residential developments of 3 acres or more. The Commission also received testimony from John Halverson of Sanderson Stewart. The Zoning Commission asked about how this would be administered and whether the exemptions provided any loopholes that could be exploited. Staff pointed out the potential loopholes were closed in the re-drafted amendment. The Commission members had some concern the requirements may push up the costs of renting an apartment or may deter builders from developing new mixed residential neighborhoods. Staff explained the provisions are modest - 5% of the gross area of 3 acres is only 6,500 square feet. Mr. Halverson stated he wanted to make sure that a developer could put in several small parklets that equal 6,500 square feet in total but not each parklet is 6,500 square feet. Staff explained this is how they would calculate the submitted plans for open space areas as a cumulative amount for all areas for open space and recreation.

The public hearing on this ordinance was closed and Commission member David Goss made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

Rebuild of Residential uses in Commercial and Mixed Use districts (Sec 27-1504)
The Zoning Commission receive the staff report and recommendation for approval of this particular amendment. The Commission agreed it was important to preserve owner's equity in home-ownership and allow these residences to be re-built in commercial or mixed use zones. There was no other testimony on this amendment.

The public hearing on this ordinance was closed and Commission member Dan Brooks made a motion to recommend approval for this amendment and adoption of the findings of the 10 review criteria. The motion was seconded by Commission member Trina White and was approved on a 4 to 0 vote.

Step-backs for taller structures in NX adjacent to N districts (Sec 27-308)
The Zoning Commission received the staff report and recommendation to approve the proposed amendment. The Zoning Commission voiced several concerns based on the draft ordinance and the research information presented by the Planning staff. The Zoning Commission did not believe the proposed step backs would improve any of the potential future locations where this might be an issue. The Zoning Commission looked at the handful of existing vacant NX zoned lots adjacent to N zoned lots and found the proposed amendment would not be beneficial to the stated growth policy of encouraging infill. Chair Michael Larson stated it appeared the issue seems to be an isolated situation and rare. Commission member Goss was concerned that if approved, the same sort of regulation could be adopted for structures in identical zone districts. He stated this would be especially challenging for areas north of Rimrock Rd. Commission members were curious what project spurred the initiation of the amendment. Staff explained the new Hunter's Point apartments in the 2900 block of Central was the catalyst. Mr. Halverson testified he was opposed the amendment. He stated the proposed amendment is a bad amendment, the step-back is arbitrary, is not compliant with Montana Supreme Court decisions that residential of any kind is compatible with residential development. He stated the amendment would defeat in-fill efforts and is discriminatory based on housing choice and socio-economic class. He stated a 3-story mansion in an N3 zone can be 5 ft from the rear property line but a 3-story apartment building has to setback at least 50 feet from the same property line.

The public hearing on this ordinance was closed and Commission member Trina White moved to recommend denial finding that the proposal was not conforming to the goals of growth policy. The motion was seconded by Commission member Brooks. Mr. Brooks stated he believes the amendment is excessive and arbitrary. He stated the properties that would be effected by the amendment do fit into the neighborhoods where they are located. The motion to recommend denial was approved on a 4-0 vote. Commission member Greg McCall arrived late to the hearing and abstained from voting.

ALTERNATIVES
The City Council may take one of the following actions, including the Zoning Commission recommendations on the proposed amendments:

- Approve and adopt of the findings of the ten review criteria for Zone Change 1031; or,
- Approve with specific changes to the draft ordinances for Zone Change 1031; or
- Deny one or more of the proposed amendments and adopt different findings of the ten review criteria for Zone Change 1031; or,
- Delay action on the zone change 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 amendments, the City Council shall consider the proposed findings of the ten review criteria as recommended by the City Zoning Commission. Please not the zoning commission recommends approval of all amendments except the step-back amendment related to 27-308. Findings specific to the denial are shown separately below. If the Council wishes to approve this amendment it will need to state alternative findings in it's discussion on the motion.

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. The Zoning Commissions findings are grouped
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.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The Zoning Commission found the proposed increased setbacks in the NX zone districts to be not conforming to the growth policy goals and guidelines. The Zoning Commission found the proposed amendment to be unnecessary and would be in direct conflict with the city growth policy to promote housing choice, in-fill development and encourage compact development.

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 Zoning Commission and City Council action options or rebuild of residential uses in commercial zones, but is more so applicable to the amendments related to open space provisions in mixed residential zones and PND zones.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The Commission found the proposed amendment to increase setbacks in the NX zone would not improve public safety from fire or other dangers over the current setback requirements in the code. The existing code was found to be appropriate for this purpose. 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 provision of open space in mixed residential areas will provide more outdoor recreation space close to apartments and townhomes. The allowance for rebuild of residential structures in the commercial or mixed use districts will benefit the general welfare by preserving property investments in these areas.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The proposed step backs between mixed residential and neighborhood districts does not promote or increase the public health, safety or general welfare from existing conditions. 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.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The proposed amendment to increase the setbacks in the NX zones is contrary to improving transportation systems and choices. The proposed amendment would contribute to the preserving a sprawling development pattern that increases the number and length of vehicle trips.
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.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The amendment proposed to increase setbacks from 20 feet to 50 feet for new multifamily structures over 2 stories or 35 feet in the NX2/NX3 zones would not provide any additional benefit when those properties adjoin neighborhood zone districts. The proposed step back is not proportional and is arbitrary.

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. The proposed standards for the provision of open space in mixed residential and PND developments may help reduce trips from this area to access recreational areas.

7) Whether the new zoning will promote compatible urban growth;
The zoning amendments will promote compatibility with urban growth through adjustments to add certainty and flexibility, 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 builders with predictability.

Recommendation of Denial finding specific to Text Amendment 27-308 Step-backs
The proposed amendment to increase setbacks in the NX zone district is not compatible with urban growth patterns. It promotes and encourages a sprawling pattern more appropriate for suburbs of cities.

8) Whether the new zoning considers the character of the district and the peculiar suitability of the property for particular uses;
All 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 open space, administrative options, preservation of property investments and building separations can provide certainty and integrate in existing built environments. Generally, these amendments are consistent with existing fabric of both commercial and residential neighborhoods. Residential uses in commercial and mixed use areas fit into the neighborhoods where they are located. Ideally, commercial and mixed use zones would re-develop over time and make the next incremental investment in property improvements. Until that time, allowing these existing residences to be re-built will assist in preserving property value and prevent disinvestment.

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 Zoning Commission and Council Action Options
Draft Ordinance Open Space in NX and PND
Draft Ordinance allow rebuild of residences in commercial and mixed use
Draft Ordinance step backs between NX and N districts
Map of vacant NX to N districts
Examples of multifamily adjacent to single family
Schematic drawings - step backs
HBA Comments on Proposed amendments

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Section 27-1623 SPECIAL REVIEW and 27-1628 ZONE CHANGE, 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 *Section 27-1628, BMCC,* provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment 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 27-1623 and Section 27-1628 be amended to allow the Zoning Commission and the City Council more options for decisions related to special reviews and zone changes.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-1623.E is amended as follows:

Sec. 27-1623. - Special review uses.

E. Review and decision-making.

1. City zoning commission.

(a) The zoning commission shall consider each application in accordance with the provisions of this section, and at a public hearing at which time the application has been legally advertised.

(b) The zoning commission shall make a recommendation to the city council to:

(1) Approve the application;

(2) Conditionally approve the application;

(3) Deny the application.

(c) Prior to closure of the public hearing, the zoning commission may also grant a request of the applicant to:

(1) Allow the withdrawal of the application; or

(2) Allow a delay not to exceed 60 days.

(3) Only one delay request from the applicant will be granted by the zoning commission.

(d) The Zoning Commission on its own motion, may continue the public hearing to a date certain, in response to a finding for any of the decision criteria in subsection 27-1623.D., that requires additional information from the applicant. Only one continuance on its own motion can be considered by the zoning commission.

~~(c)~~ (e) Recommendations from the zoning commission shall be based on findings of fact for each criterion and shall be transmitted to the applicant or applicant's agent, and the

city council within fifteen (15) calendar days of the conclusion date of the public hearing before the commission.
~~(d)~~ (f) The recommendation of the zoning commission shall be published in a newspaper of general circulation.

2. City council action.
(a) At least fifteen (15) calendar days after the first publication of notice of the zoning commission recommendations, a public hearing shall be held by the city council.
(b) Before taking any action on an application for a special review use, the city council shall first consider the findings and recommendations of the zoning commission.
(c) The city council shall:

(1) Approve the application;
(2) Conditionally approve the application;
(3) Deny the application;
(4) Allow withdrawal of the application; ~~or~~
(5) Delay the application for a period not to exceed thirty (30) calendar days~~.~~ ; or
(6) Refer the application back to the zoning commission for an additional public hearing based on a determination that 1) new information has been submitted that the applicant and public has not had a reasonable opportunity to examine and comment on, or 2) new information has been presented that was never submitted or considered by the zoning commission or staff. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property. A referral back to the commission under this section may only be done once by the City Council.

Section 4. **ZONE TEXT AMENDMENT.** The text of Section 27-1628.E is amended as follows:

Sec. 27-1628. - Zone change.
E. Review and decision-making.
1. City zoning commission recommendation.
(a) The city zoning commission shall make a recommendation to the city council to:
(1) Deny the application;
(2) Approve the application~~; or~~ .
~~(3) Allow the application to be withdrawn.~~

(b) Prior to closure of the public hearing, the zoning commission may also grant a request, without prejudice to the applicant, to allow:
(1) Withdrawal of the application; or
(2) A delay of the public hearing not to exceed 60 days.
(3) Only one delay request by the applicant will be granted by the zoning commission.

(c) The Zoning Commission on its own motion, may continue the public hearing to a date certain, in response to a finding for any of the decision criteria in subsection 27-1628.D., that requires additional information from the applicant. Only one continuance on its own motion can be considered by the zoning commission.

~~(b)~~ (d) Recommendations from the zoning commission shall be based on findings of fact and shall be transmitted to the applicant or applicant's agent, and the city council within fifteen (15) calendar days of the conclusion date of the public hearing before the zoning commission.
~~(c)~~ (e) The recommendation of the zoning commission shall be published in a newspaper of general circulation.
~~(d)~~ (f) ~~The zoning commission may, by a majority vote of the members present, delay action for a period not to exceed thirty (30) calendar days, without prejudice to the applicant.~~ A report of the commission's recommendation**,** ~~and the zoning coordinator's~~ findings and conclusions shall be submitted to the city council.

2. City council action.
(a) The city council shall hold a public hearing within thirty (30) calendar days after the publication of the zoning commission recommendation.
(b) Before taking action on a zone change application, and after presentation of the zoning commission report, the city council shall hold a public hearing on the application.
(c) A second reading of the ordinance ~~as~~ is required by BMCC section 2-232.
(d) The city council shall:
(1) Approve the application;
(2) Deny the application;
(3) Allow withdrawal of the application; ~~or~~
(4) Delay the application for a period not to exceed thirty (30) calendar days~~.~~; or
(5) Refer the application back to the zoning commission for an additional public hearing based on a determination that 1) new information has been submitted that the applicant and public has not had a reasonable opportunity to examine and comment on, or 2) new information has been presented that was never submitted or considered by the zoning commission or staff. A city council referral back to the zoning commission will require publication of a new legal ad, posting of the property and mailing to the surrounding property. A referral back to the commission under this section may only be done once by the City Council.

Section 5. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 6. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 7**.** **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 July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___day of August 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Zoning Commission and Council actions on special review or zone changes

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Sections 27-307, 27-308 and 27-802 and 27-803 related to the provision of open space in multifamily zone districts and in Planned Neighborhood Development applications, 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 *Section 27-1628, BMCC,* provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment 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. **ZONE TEXT AMENDMENT.** The text of Section 27-307 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

Sec. 27-307. - NX1 district.

D. Supplemental regulations.

5. Open space.

(a) One or more of the following open space types equal to or more than 6,500 square feet must be provided for ~~every~~ each three (3) contiguous acres of NX1 district or combination of NX1, NX2 or NX3 districts ~~.~~ : All abutting land owned or under contract for purchase by owners of the subject property shall be considered part of the calculation of contiguous acres. Previously exempt parcels, may be subject to this subsection if contiguous parcels are added to the existing development.

(b) Exemptions

(i) Developments of less than three contiguous acres are exempt from this requirement. See above for the calculation of area.

(ii) NX1 or a combination of NX1, NX2 or NX3 developments where the most distant structure is ½-mile (radius) or less of a developed public park or publicly accessible open space are exempt from providing open space.

(iii) Developments within a subdivision that dedicated and developed public parkland.

(c) Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six-acre development consisting of both NX1 and NX3 districts must provide and develop at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a “Green” as defined below.

~~(a)~~ (i) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. Parklets are

intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.

~~(b)~~ (ii) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.

~~(c)~~ (iii) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

(iv) Linear park with trail or bike path. A linear park with a developed trail or bike path is allowed if it is identified in the Billings Area Bike and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the master plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered.

Section 3. **ZONE TEXT AMENDMENT.** The text of Section 27-308 be amended to revise the requirements for provision of open space in developments of three acres or more as follows:

Sec. 27-308. - NX2 and NX3 district.

D. Supplemental regulations.

5. Open space.

(a) One or more of the following open space types equal to or more than 6,500 square feet must be provided for ~~every~~ each three (3) contiguous acres of NX2 or NX3 district or combination of NX1, NX2 or NX3 districts ~~:~~. All abutting land owned or under contract for purchase by owners of the subject property shall be considered part of the calculation of contiguous acres. Previously exempt parcels, may be subject to this subsection if contiguous parcels are added to the existing development.

(b) Exemptions

(i) Developments of less than three contiguous acres are exempt from this requirement. See above for the calculation of area.

(ii) NX1 or a combination of NX1, NX2 or NX3 developments where the most distant structure is ½-mile (radius) or less of a developed public park or publicly accessible open space are exempt from providing open space.

(iii) Developments within a subdivision that dedicated and developed public parkland.

(c) Unless otherwise exempt, developments of more than 3 contiguous acres, shall provide a developed open space type or types equal to or greater than 5% of the gross contiguous area. For example, a contiguous six acre development consisting of both NX2 and NX3 districts must provide at least 13,068 square feet of one or more of the open space types. Fractions of square feet shall be rounded up to the next whole number. Developments of 10 or more contiguous acres shall provide at least two types of open space, one of which shall be a “Green”, “Plaza” or “Square” as defined below.

~~(a)~~ (i) Parklet. A parklet is a landscaped open space with a minimum seventy (70) percent living plant material, with at least twenty (20) feet of street frontage. Parklets are

intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.

~~(b)~~ (ii) Green. A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.

~~(c)~~ (iii) Natural area. A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.

(iv) Linear park with trail or bike path. A linear park with a developed trail or bike path is an area of at least 30 feet in width that has a trail or bike path that is constructed in manner compliant with city adopted construction specifications. The designation and development of a linear park is allowed if it is identified in the Billings Area Bikeway and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the Billings Area Bikeway and Trail Master Plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered. Such amenity may be part of a “Green” or “Natural areas” as defined herein.

(v) Plaza. A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza will be developed with landscaping and pedestrian facilities throughout.

(vi) Square. A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities throughout.

Section 4. **ZONE TEXT AMENDMENT.** The text of Section 27-802, Table 27-800.1. Types of Planned Neighborhood Districts, and Section 27-802.B.3 Minimum District Mix are amended as follows:

Sec. 27-802. - Zoning districts.

Table 27-800.1. Types of Planned Neighborhood Districts.

Zoning Districts															
Required Min. Acres	Types of PND	CMU1	CMU2	NMU	NO	NX1	NX2	NX3	N1	N2	N3	RMH	P1	P2	P3
10	**Mixed-Use MU PND** Choose at least 2 districts: Pick 1 MU and Pick 1 NX or 1 N Min. % of net acres	L	L	P	P	P	P	L	P	P	P	P	R ~~2~~ **5**	P	P 3 buildings
10	**Mixed Residential MR PND** Choose at least 2 districts: Pick 1 NX and Pick 1 N Min. % of net acres	-	-	L	P	P	P	P	P	P	P	P	R ~~2~~ **5**	P	P 3 buildings
10	**Neighborhood N PND** Choose at least 2 N/NX districts Min. % of net acres	-	-	L	L	L	L	L	P	P	P	P	R ~~2~~ **5**	P	P 3 buildings

B.3 Minimum district mix regulations.

(a) Unless Table 27-800.1 indicates otherwise, each type of planned neighborhood development requires a combination of at least two (2) development zoning districts with a percentage mix of ~~eight-eight (88)~~ eighty-five (85) percent maximum and ten (10) percent minimum measured by total net parcel area, plus the minimum required open space (~~two (2)~~ five (5) percent minimum). ~~For example, an applicant with a 12-net acre lot may choose to create a Neighborhood PND (N-PND) with a mix of: (1) 10.56 acres (eight-eight (88) percent) N3, 1.2 acres (ten (10) percent) N2, and the required .24 acres of P1 open space.~~

Section 5. **ZONE TEXT AMENDMENT.** The text of Section 27-803. Private Open Space Requirements is amended as follows:

Sec. 27-803. - Private open space requirements.

All PNDs must provide open space to ensure the walkability, sociability, and safety of residents and visitors.

A. *Natural features.* Where significant tree canopy or natural feature exist on the site, the open space shall be located in order to preserve the maximum amount of the existing trees or natural feature and maximize buffers from waterways and natural features.

B. *Types of open space.* The following types of open space are required.

1. The PNDs are required to provide one or more of the following:
(a) *Plaza.* A plaza must share street frontage with a CMU, NMU, NO, NX or P2 zone district. A plaza may provide areas for seasonal shopping or similar community activities. A plaza may be used to meet the required minimum dedication of open space for a subdivision. A plaza will be developed with landscaping and pedestrian facilities throughout.
(b) *Square.* A square is similar to a plaza except it is surrounded by street frontage on all sides. A square must be developed with landscaping and pedestrian facilities throughout. A square may be used to meet the required minimum dedication of open space for a subdivision.
(c) *Parklet.* A parklet is a landscaped open space with a minimum seventy (70) percent living plant material and at least twenty (20) feet of street frontage. Parklets are intended to provide a small resting space adjacent to the street and may include benches, bicycle parking, and small play areas for children.
(d) *Green.* A green is a larger, landscaped space, with at least fifty (50) feet of street frontage. A green need not have designated or developed play areas but can have benches, a playground with equipment or be large enough for informal recreational games such as kick ball, badminton, croquet or similar activities. Permanent installations are allowed such as picnic shelters, grilling stations, protected dog play areas, nets and fencing, back boards for basketball or horseshoes, or other outdoor recreational activities.
(e) Linear park with trail or bike path. A linear park with a developed trail or bike path is an area of at least 30 feet in width that has a trail or bike path that is constructed in manner compliant with city adopted construction specifications. The designation and development of a linear park is allowed if it is identified in the Billings Area Bikeway and Trail Master Plan or provides a connection between two existing trails or bike paths already developed and part of the Billings Area Bikeway and Trail Master Plan. Linear parks with trails or bike paths that are circular, internal only to the development and do not connect to adjacent trails or bike paths will not be considered. Such amenity may be part of a “Green” or “Natural areas” as defined herein.
~~(e)~~ (f) *Natural area.* A natural area is a large area, defined to conserve a natural feature, such as a stream, wetland or woodland. At least fifty (50) feet of street frontage is required for a natural area.
2) All of the above required open space may be counted towards the minimum required dedication of open space for a subdivision.

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 ___day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___day of August 2023.

CITY OF BILLINGS

BY:_____
William A. Cole, Mayor

Attest:

BY:_____
Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Open Space provisions in NX districts and PND applications

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THE REGULATIONS IN SECTIONS 27-1500, BE AMENDED TO ALLOW THE RECONSTRUCTION OF RESIDENTIAL STRUCTURES IN COMMERCIAL AND MIXED USE ZONE DISTRICTS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS THAT:

Section 1. **RECITALS.** *Title 76, Chapter 2, Part 3, MCA,* and *Section 27-1628, BMCC,* provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment 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. **ZONE REGULATION AMENDMENT** Section 27-1504.C(3)(a).2 is amended as follows:

Sec. 27-1504. Nonconforming Uses

C. Discontinuance.

3. Demolition, destruction, or obsolescence.

(a) Where nonconforming use status applies to: (1) a structure specific to a use (such as a gas station), or (2) structure and land in combination specific to a use, (such as an automobile dealership) removal or destruction of the structure shall presumptively eliminate the nonconforming status of the land and reconstruction shall be done in compliance with this zoning code.

1. Destruction for the purpose of this subsection is defined as damage to an extent of more than fifty (50) percent of the replacement cost of the at time of destruction.

2. The operation of a nonconforming residential use located in an N1-4, NX1-3, ~~or~~ RMH, NMU, CMU1, CMU2, CX, I1, DX, CBD, EBURD, or Public zone district shall not be terminated regardless of the amount of damage or destruction suffered by the structure in which the use is operated.

Section 3. **EFFECTIVE DATE**. This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

Section 4. **REPEALER**. All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

Section 5. **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 July 2023.

PASSED, ADOPTED and APPROVED on second reading this ___day of August 2023

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zoning Code Allow rebuild of all R structures in all zone districts except HI

ORDINANCE 23-_____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING Section 27-308 related to the location and height of new structures adjacent to or close to Neighborhood (N) zone districts, 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 *Section 27-1628, BMCC,* provide for amendment to the text of the City Zoning regulations from time to time. The City Zoning Commission and staff have reviewed the proposed text amendment 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 27-308 be amended to allow additional stepbacks for new structures adjacent to or close to N zone districts.

Section 3. **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			
5	Side Setback (feet) Space Between Principal Buildings on Lot (feet)	5 minimum; ~~15 abutting~~ Stepbacks required within 50 ft of N1, N2, N3, or RMH districts 10 minimum		See subsection 27-308.E for stepped-back stories.
6	Rear Setback (feet)	10 minimum; ~~20 abutting~~ Stepbacks required within 50 ft of N1, N2, N3, or RMH districts		See subsection 27-308.E for stepped-back stories.

Sec. 27-308.E Height Step-backs within 50 feet of N1, N2, N3, or RMH districts.

Where N, or RMH zoning districts abut the parcel or are located across an alley from the parcel, any story over the second story or over thirty-five (35) feet above grade shall be set back from the rear or side property line a minimum of fifty (50) feet.

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 ___ day of July 2023.

PASSED, ADOPTED and APPROVED on second reading this __ day of August 2023.

CITY OF BILLINGS

BY:_____

William A. Cole, Mayor

Attest:

BY:_____

Denise R. Bohlman, City Clerk

Zone Change _____, Text Amendment for Stepbacks between NX and N/RMH zone districts

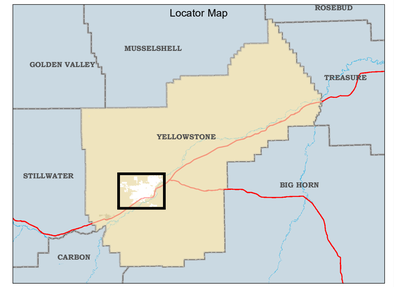
Notes:

1. Vacant NX2 or NX3 parcels may share other zone properties with N2, N3, NX1, and P1.
2. Vacant or developed zone properties include N 1-3, NO, PD, and RMH.

City of Bllings

Vacant NX2 or NX3 Zone Parcels adjacent to N 1-3, NO, PD, and RMH Zone District Parcels

Billings PLANNING & COMMUNITY SERVICES



The parcel data mapped hereon does not constitute a legal survey. Inaccuracies exist with both the mapped data and the Montana Department of Revenue CAMA data; when seeking the definitive description of real property, consult the deed recorded at the Yellowstone County court house.

Legend

- Interstate Highway
- Interstate Ramp
- US or State Route
- Arterial Steet
- Collector Street
- Residential Street
- Alleyway
- NX2 Vacant Parcel
- NX3 Vacant Parcel
- N 1-3, NO, PD, & RMH
- Tax Parcel
- Billings City Limits
- Yellowstone County

N W E S

Scale in Miles
0 0.75 1.5

Document Path: \\pwu-w12s07\GIS_Files\Mapping_Projects\Projects\Planning\2023\RFI_0883_NX2_NX3_Zoning_ADJ_Parcels\RFI_0883_NX2_NX3_Zoning_ADJ_Parcel_Map_v2.mxd Date: 6/27/2023



Oak Park Neighborhood Chicago IL



Oak Park Neighborhood, Chicago, IL



Humboldt Ave Minneapolis MN



Humbolt Ave Minneapolis MN



N Terrace Fargo, ND



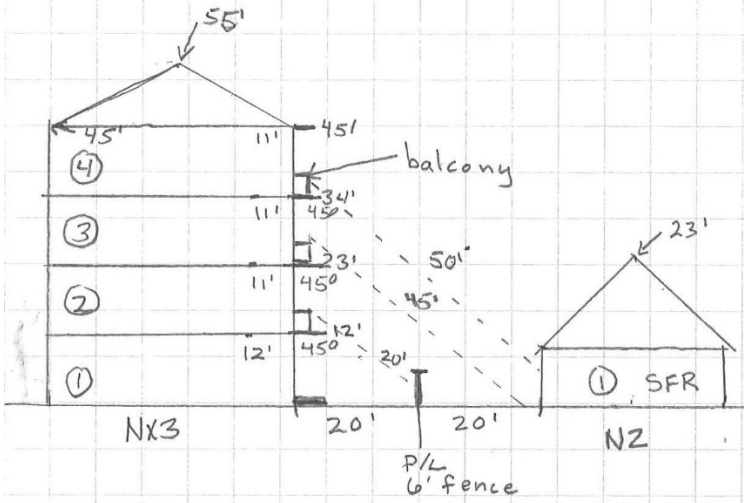
Franklin St Rapid City, SD



West St Patrick Street, Rapid City, SD

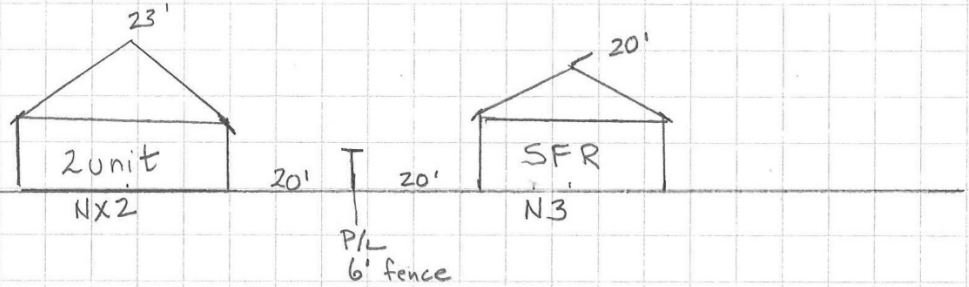


4th Ave N, Great Falls, MT



Current Code NX3

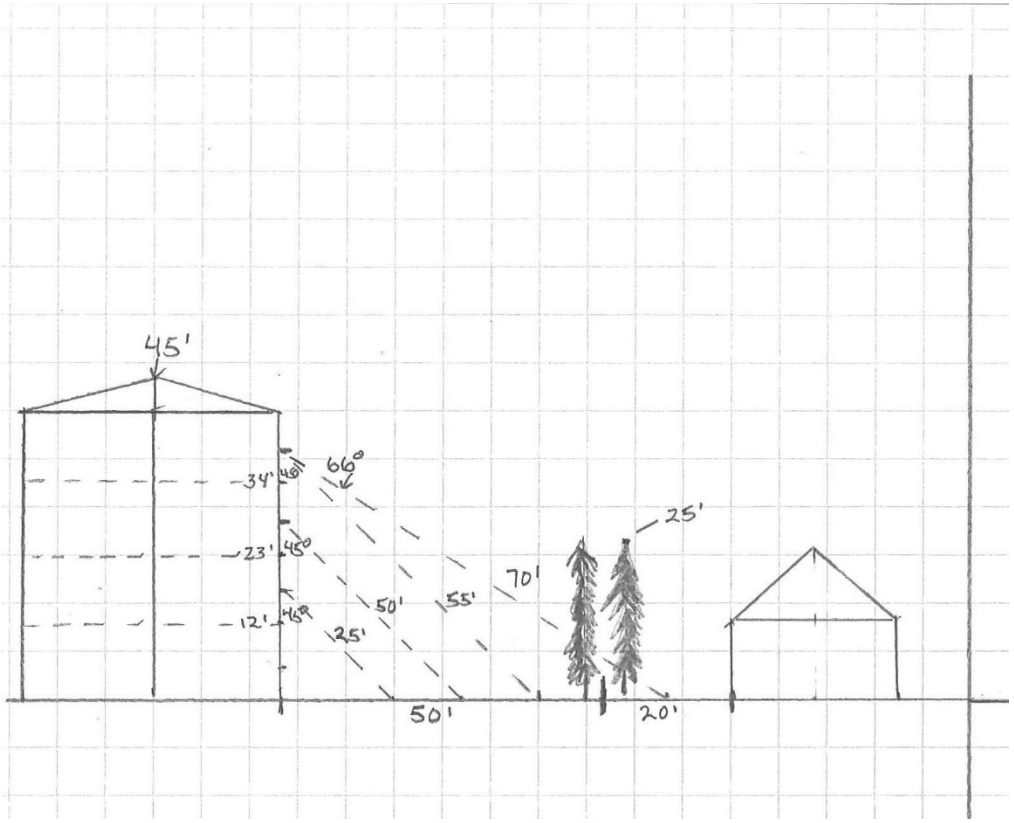
20' from rear property line
next to N zone districts
45° angle —— of depression (view) from apts
and elevation (view) from SFR backyard
more acute angles could allow observation
of activity between rear yards



Current Code NX2 requires
20' from rear property line for new NX2 bldg
next to N zone district
regardless of building height

Maximum flexion of a human neck is 80° without pain

1 inch = 30'



Proposed NX2/NX3 50 ft setback for new structures greater than 2 stories or 35 ft in height

Visual perception at distances greater than 25 feet drops off

Human faces cannot be identified at distances greater than 150 feet

Feedback on Proposed Zoning Code Amendments

1. Each one of them by itself may not be a major issue but they all do make development slightly tougher by adding additional requirements or timelines, so I am somewhat concerned with the overall approach since every time additional burden is added, development gets slightly tougher/more expensive, and housing attainability goes down.

Zoning code amendment 27-307 27-308

1. In general, I think that the 5% of open space for a larger NX projects is appropriate. I suspect it is well over 2%, probably over 5%. I think that if this is the case, we should oppose the change.

Zone Code Amendments - Stepbacks for 2+ stories abutting N and NX

1. It seems arbitrary and excessive, and what caused this to come up? How does this fit into the city's long term growth plan?
2. This is a bad idea. 50' height is arbitrary and excessive. Where's this amendment coming from? What prompted staff to take this up?
3. This change would require already approved 3 story plans to be reduced to 2 stories.
4. Changing the step-backs will have little impact on what neighboring homes can see from their homes. Additionally, rooftops and yards would still be visible from an upper floor. Visibility is 12 miles from a height of 50ft.

Zone Change 27-1623 and 27-1628

1. This proposed amendment appears to be in violation of new state law signed into effect this legislative season. The Bill that passed and was signed by the Governor is SB131, requiring reviews to be completed within 20 working days.
2. This amendment would allow the zoning commission to delay their recommendation of a zone change by up to 60 days. Pushing an application off to a subsequent meeting. It also gives the option for the City Council to push a zone change request back to the zoning commission for another public hearing. If they "feel" that there are issues brought up during council meetings that were not addressed during the Zoning Commissions public meeting. My general opinion of these proposed code amendments is that it could easily end up delaying a zone change request by 3-4 months. Depending on the size of the project, costing a land developer $30-40k in time and financing cost.