

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

The City Council meeting will be held in a hybrid format that may include both in-person AND virtual attendance via Zoom. Unless they have cause to appear virtually, Councilmembers will attend the meeting in person in Council Chambers, second floor of City Hall, 220 N. 27th Street. In order to honor the Right of Participation and the Right to Know in Article II, Sections 8 and 9, of the Montana Constitution, the City of Billings and City Council are making every effort to meet the requirements of the open meeting laws.

Citizens are invited to:

- Review the Agenda Packet on the City's website at: [www.billingsmt.gov](http://www.billingsmt.gov) and click on "Your Government," "City Council," and "Agendas & Minutes".
- View the meeting:
  - On Community 7 TV - Channel 7 or Channel 507 -- Spectrum Cable. *(On evenings when there is a conflict with School District No. 2 Board meetings, the City Council meeting will be broadcast on Channel 8 - Spectrum Cable.)* Channel 7 or Channel 978 - TDS Fiber.
  - Online at [www.comm7tv.com](http://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](http://www.billingsmt.gov) and click on "Watch Meetings Online" on the homepage.
  - In-Person.
  - Virtually via Zoom (see the link below).

Citizens may submit public comment via the following methods:

- Mail: City Clerk, P.O. Box 1178, Billings, MT 59103
- Email: [Council@billingsmt.gov](mailto:Council@billingsmt.gov).
  - Emails received after 3:00 PM on the day of the meeting, may be posted on the Council's webpage the following day for public viewing.
- Attend the meeting in person.
- Attend the meeting virtually through Zoom by entering the Webinar ID and Passcode indicated below. Click on *Zoom Meeting Instructions* and *Zoom Hybrid Meeting Details* below for more information. The link will allow you to attend, view and participate in the meeting on your computer, laptop or smart phone. (You must have the Zoom App on your device [Click Here to Download Zoom App](#)) To provide public comment at the appropriate time, click on the "raise hand" icon located at the bottom of the screen and the moderator will unmute your device.
  - **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](mailto:bohlmand@billingsmt.gov), or at 406.657.8210, with any questions.



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

**CITY COUNCIL  
REGULAR BUSINESS MEETING**

**AGENDA  
JANUARY 22, 2024**

**5:30 P.M.**

**COUNCIL CHAMBERS**

**CALL TO ORDER:** Mayor Cole

**PLEDGE OF ALLEGIANCE:** Mayor Cole

**INVOCATION:** Councilmember Shaw

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

**MINUTES:** January 8, 2024

**COURTESIES:**

**PROCLAMATIONS:**

**COUNCIL REPORTS:**

**ADMINISTRATOR REPORTS - CHRIS KUKULSKI**

**PUBLIC COMMENT on "NON-PUBLIC HEARING" Agenda Items: 1 and 4 ONLY. Speaker sign-in required.** (Comments are limited to three (3) minutes or as set by the Mayor. Please sign the roster at the cart located at the back of the Council chambers or at the podium. Comments on items listed as public hearing items will be heard **ONLY** during the designated public hearing time for each respective item. For items not on this agenda, public comment will be taken at the end of the agenda.)

1. **CONSENT AGENDA** -- Separations:
  - A. Bid Awards: None
  - B. Change Order No. 1, New City Hall Access Control and Camera System; Pine Cove Consulting.
  - C. Contract with Morrison Maierle, Inc. for Airport Master Plan Update.
  - D. Memorandum of Understanding (MOU) with Yellowstone County for West Billings Neighborhood Plan and the West Billings Multi-modal Transportation Plan.
  - E. Amendment to Memorandum of Understanding (MOU) with Yellowstone Conservation District and acceptance of a \$50,000 grant for West End Reservoir Master Plan.
  - F. Amend Park Development Council 2024 Proposed Annual Budget and Fee Structure.
  - G. Acceptance of Annual Federal Aviation Administration Airport Improvement Program Grants.
  - H. Submission, Support and Acceptance of Montana Community Reinvestment Plan Act Planning Grant to support a comprehensive planning (SB 382), AKA a growth policy.
  - I. Donation to Parks and Recreation Department from Billings Go Kickball for Youth Scholarship Fund.

- J. **Donation** to Parks and Recreation Department from Scheels for Youth Scholarship Fund.
- K. **Release** of certain perpetual right-of-way easements in vacated portions of North 28th Street and Normal Subdivision, Block 1 Alley, affecting Intermountain Health f/k/a Sisters of Charity of Leavenworth Health Services (St. Vincent's Hospital) new hospital construction.
- L. **Preliminary Plat Extension** for Annafeld North Subdivision, 2nd Filing. \*Quasi-Judicial
- M. **Resolution** authorizing the issuance and private negotiated sale of Expanded North 27th Street Tax Increment Bonds.
- N. **Resolution** authorizing the filing and acceptance of Transit Grant Funds.
- O. **Resolution of Intent** to create SID 1426 Arvin Lane and set a public hearing for February 12, 2024.
- P. **Resolution of Intent** to create SID 1427 Hancock Drive and set a public hearing for February 12, 2024.
- Q. **Second/Final Reading Ordinance** for Zone Change 1040: located at 1404 and 1406 Avenue B. \*Quasi-Judicial
- R. **Second/Final Reading Ordinance** amending Billings, Montana City Code, Article 8-300, Cemetery Rules and Regulations, and repealing Ordinance 03-5240.
- S. **Bills for the Weeks of:**
  - 1. December 18, 2023
  - 2. December 26, 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** allowing the City to submit a grant application to the Montana Department of Commerce. Staff recommends approval.
 

**Recommended Motion:** Having conducted a public hearing, considered written and spoken public testimony, I move to approve the submission of a grant application to the Montana Department of Commerce, as recommended by staff.
- 3. **PUBLIC HEARING AND FIRST READING ORDINANCE** amending Billings, Montana City Code (BMCC), Chapter 26, Water and Wastewater Utilities. Staff recommends approval.
 

**Recommended Motion:** Having conducted a public hearing, considered written and spoken public testimony, I move to approve the First Reading Ordinance amending BMCC, Chapter 26, Water and Wastewater Utilities, as recommended by staff.
- 4. **COUNCIL APPOINTMENTS TO COMMUNITY BOARDS AND/OR COMMITTEES AND COUNCIL SUBCOMMITTEES.** Staff recommends City Council determine which Councilmembers will fill vacancies and serve on various community boards and/or committees and Council subcommittees.
 

**Recommended Motion:** I nominate XXXXX to be appointed to serve on the Big Sky Economic Development Board; and XXXX to be appointed to serve on the Beartooth Resource C&D Board.

**Recommended Motion:** I nominate XXXX to be appointed to Council Subcommittee - Legislative and Local Affairs; and XXXX to be appointed to Budget and Finance; and XXXX to be appointed to Council Operations.

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

**COUNCIL INITIATIVES:**

**ADJOURN:**

*Council Chambers are readily accessible to individuals with physical disabilities.*

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

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

**City Council Regular**

**Date:** 01/22/2024  
**Title:** New City Hall Access Control and Camera Procurement and Install - Change Order No. 1  
**Presented by:** John Caterino, Facilities Manager  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that Council approve and award a change order to prime contract of Verkada access control and camera system at New City Hall to Pine Cove Consulting for \$104,981.15

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

The City requested additional quotes for the cabling in an effort to reduce project costs. Pricing was favorable for the security vendor to provide cable versus the electrical subcontractor, resulting in a savings of \$22,119.

The scope for the project includes cabling from City provided switches to controllers, and controllers to devices. Additionally, there was an increase in bonding fees.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

The increased cost of the project will be funded by the New City Hall construction fund, which is primarily covered by the General Fund.

The overall total construction budget is approximately \$24 million, which includes an Owner soft cost allowance of \$575,000 for access control and cameras.

The total cost for the prime contract is \$392,902.40

The total cost of change order #1 is \$104,981.15

New contract total is \$497,883.55

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**Attachments**

Pine Cove Change Order #1



CHANGE ORDER FORM

No. 001

PROJECT: New City Hall Access Control and Cameras
CONTRACT DATE: 1/2/2024
CO DATE OF ISSUANCE: 1/3/2024

OWNER: City of Billings
CONTRACTOR: Pine Cove Consulting, LLC
OWNERS REP: JOHN CATERINO
CONTRACT FOR: New City Hall Security Bid Pack

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

Description: Additive change order to original prime contractor for New City Hall (316 N 26th St.) security bid pack.

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

Structured Cabling: installation of CAT 6 cable from City provided switches to Verkada controllers and from Verkada controllers to devices on five floors and parking garage.

- Blue CAT 6 composite cable
- Keystone jacks
- Biscuit jacks
- 3/4 j hooks
- Velcro

Bond: Increase fee for bonding amount to cover prime contract and change order #1.

Attachments: Quote #008959 version 2 from Pine Cove Consulting dated 12/29/2023.

CHANGE IN CONTRACT PRICE:

CHANGE IN CONTRACT TIME:

Original Contract Price
\$ 392,902.40

Original Contract Time
August 31, 2024
days or date

Previous Change Orders No.
\$

Net Change from previous Change Orders
days or date

Contract Price prior to this Change Order
\$ 392,902.40

Contract Time prior to this Change Order
August 31, 2024
days or date

Net Increase (decrease) of this Change
\$ 104,981.15

Net Increase (decrease) of this Change
days



Contract Price with approved Change Order  
\$ 497,883.55

Contract Time with approved Change Order  
August 31, 2024  
days or date

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**APPROVED:**  
**CITY OF BILLINGS, MONTANA**

**APPROVED:**  
**PINE COVE CONSULTING, LLC**

By \_\_\_\_\_  
Owner Signature

By \_\_\_\_\_  
Contractor Signature

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Approval of Award for Morrison Maierle, Inc. to complete the Airport Master Plan Update  
**Presented by:** Shane Ketterling, Assistant Director of Aviation and Transit  
**Department:** Airport  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that the City Council approve the award for Morrison Maierle, Inc. to complete the Airport's Master Plan Update for the Aviation Department and authorize the Mayor to sign the Contract.

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

The Federal Aviation Administration (FAA) requires an Airport Master Plan Update (MPU) to be conducted at regular intervals. The last plan was finalized in 2010 and most of the consultants' recommendations have been implemented over the past fourteen (14) years; subsequently, a new MPU is needed. This new document will provide staff with a comprehensive plan and road map in order to improve the Airport over the next twenty (20) years. The plan will reflect industry changes, updated forecast and growth projections, and establishment of airport priorities in consideration of recent and pending improvements to airport facilities and infrastructure and consist of three (3) parts. The first part will define the goals and objectives of the MPU, develop a realistic implementation schedule for the delivery of services outlined in the scope of work, engage stakeholders, gather data, and establish facility requirements. The second part will develop and evaluate defined alternatives to meet the projected requirements and update the Airport Layout Plan (ALP). The third part will prepare an implementation plan and a financial feasibility analysis, as well as the final Master Plan Report. Additionally, a Professional Firm must comply with Federal Aviation Regulation Advisory Circular 150/5070-6 (Airport Master Plans) and specifically address the following:

- Complete Inventory of Existing Conditions - what do we have?
- Conduct Historical and Future Aviation Forecasts - what demand do we expect?
- Define and Determine Facility Requirements - what do we need to meet the expected demand?
- Identify Required Environmental Considerations
- Complete Alternatives Development and Evaluation - what do we need to change to meet demand?
- Establish Facilities Implementation Plan
- Update Airport Layout Plan Drawing Set - what do these changes look like?
- Complete Financial Feasibility Analysis; to include identification of funding sources, financial feasibility, revenue enhancement, and cost benefit analysis
- Final Master Plan Presentation and Documents

Staff developed a Request for Qualifications (RFQ) for these services, and distributed it to 10 consulting, engineering and aviation planning firms. The RFQ was advertised in the *Yellowstone County News* and on the Airport's and City websites on December 1, 8, and 15, 2023. Three firms initially showed interest; however, the City of Billings only received one proposal from Morrison Maierle, Inc (M-M). The single proposal received from M-M was reviewed by the RFQ selection committee and was determined to have met all requested evaluation criteria regarding the requirements, qualifications, proposal, and scope of work. M-M is extremely qualified and has successfully completed a MPU for Airports in Montana to include Bozeman, Missoula, Helena, and others. Due to the complexity and amount of information required, staff anticipates this process will take approximately two years to complete. M-M has been the Airport's Engineering firm for the past 30 years and has an enormous amount of historical information, data and plans to immediately begin work and provide the Airport with an excellent MPU that staff can reference for the next twenty (20) years.

**ALTERNATIVES**

City Council may:

- Approve the award of the Master Plan Update with Morrison Maierle, Inc; or,
- Not Approve the award and advise staff on how to proceed.

**FISCAL EFFECTS**

There is no immediate financial impact from this Council action. The total cost of the Master Plan Update is anticipated to cost approximately \$850,000 and the final negotiated fees will be reviewed and approved by the FAA. Ninety percent (90%) of this MPU is eligible for FAA Grant Funding and will be paid with Airport Improvement Entitlement funds. The 10% local share match will be paid from the Airport's Capital Account and is eligible to be reimbursed with Passenger Facility Charge (PFC) funds.

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**City Council Regular**

**Date:** 01/22/2024  
**Title:** Memorandum of Understanding with Yellowstone County - West End Neighborhood Plan Update  
**Presented by:** Lora Mattox  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council approve the Memorandum of Agreement (MOU) with Yellowstone County that would enable coordinated financial support for the update to the West Billings Neighborhood Plan and the West Billings Multi-modal Transportation Plan.

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

Yellowstone County has been granted \$50,000 in Community Development Block Grant (CDBG) funds for the update to the West Billings Neighborhood Plan and the West Billings Multi-modal Transportation Plan. To fulfill the local match for the CDBG grant, the City has earmarked \$12,500 in the Planning Division budget. Additionally, the Billings Metropolitan Planning Organization (MPO) has allocated \$75,000 in PL funding to update the West Billings Multi-modal Transportation Plan. The County has engaged Sanderson Stewart through a consultant contract to carry out the necessary work for the plan's update.

The execution of this MOU will allow the city to provide a check to the County in the amount of \$12,500 for the local match and to directly pay Sanderson Stewart for the Multi-modal plan in the amount of \$75,000. Both parties agree to collaborate and coordinate efforts to ensure the successful and timely completion of the Neighborhood Plan elements. The MOU shall commence on the date of execution and shall remain in effect until completion of the West Billings Neighborhood Plan and Multi-modal Transportation Plan.

**STAKEHOLDERS**

N/A

**ALTERNATIVES**

City Council may:

- Approve the MOU, enabling the City to provide local funds for the comprehensive update of the West Billings Neighborhood Plan and the West Billings Multi-modal Transportation Plan; or,
- Not Approve the MOU, thereby putting at risk the successful funding coordination and completion of the update to the West Billings Neighborhood Plan and West Billings Multi-modal Transportation.

**FISCAL EFFECTS**

The signing of this MOU would allocate \$12,500 in City funds and \$75,000 in MPO funds towards the completion of the West End Neighborhood Plan and the Multi-Modal Transportation Plan.

**SUMMARY**

Signing the MOU is crucial for the City to secure successful funding from multiple sources for the neighborhood plan elements, ensuring the successful completion of the update to the West Billings Neighborhood Plan and Multi-modal Transportation Plan.

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**Attachments**

Executed Contract County and Sanderson Stewart  
City\_County MOU West Billings Plan

**Contract for Professional Consulting, and Planning Services  
for  
Yellowstone County**

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In consideration of the mutual promises herein, Yellowstone County and Sanderson Stewart agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 17 Sections of General Provisions;

Appendix A consisting of 5 pages (Basic Services of Consultant);

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

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

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

Appendix E consisting of 1 page (Project Schedule);

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

**PART I  
SPECIAL PROVISIONS**

Section 1. Definitions.

In this Contract:

- A. "County" means the Yellowstone County
- B. "Consultant" means Sanderson Stewart
- C. "Contractor" means any third party responsible for the physical construction of a project

Section 2. Scope of Services.

- A. The Consultant shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this section by reference.
- B. The County shall pay the Consultant in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services performed under this Contract.
- C. The County shall not allow any claim for services other than those described in this section. However, the Consultant may provide, at its own expense, any other services that are consistent with this Contract.

- D. For projects containing a construction phase, the Consultant shall provide record drawings as specified hereafter, as approved by the County public works director, to the County within 90 days after the project substantial completion date. Final payment will be withheld until the record drawings are received by the County. Sealed hard copy and electronic copies of record drawings shall be provided to the County.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of the County.
- B. The Consultant shall commence performance of the work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2024, but may be extended additional calendar years in one-year increments, at the discretion of both the County, as authorized by the County Commission, and Sanderson Stewart.

Section 4. Compensation; Method of Payment.

- A. Subject to the Consultant's satisfactory performance, the County shall pay the Consultant in accordance with the schedule of fees in Appendix D.
- B. The Consultant is not entitled to any compensation under this Contract, other than is expressly provided for in this section.

Section 5. Termination of the Consultant's Services.

The Consultant's services under Section 2 of this part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of the County, provided that the County, acting through the County commission notifies the Consultant in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this subsection is subject to the condition that the terminating party notifies the other party of its intent to terminate, stating with reasonable specific grounds therefore, and the other party fails to cure the default within 30 days after receiving the notice.
- D. If the County chooses not to follow recommendations of the Consultant, it is at the County's own risk and may be considered grounds for termination under this section by Consultant.

Section 6. Duties Upon Termination

- A. If the County terminates the Consultant's services for convenience, the County shall pay the Consultant for its actual costs reasonably incurred in performing before termination. All finished and unfinished documents and materials prepared by the Consultant shall become the property of the County.

- B. If the Consultant's services are terminated for cause, the County shall pay the Consultant the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by the County because of the Consultant's failure to perform satisfactorily. Any finished or unfinished documents or materials prepared by the Consultant under this Contract shall become the property of the County at its option.
- C. The Consultant shall not be entitled to any compensation under this Section until the Consultant has delivered to the County all documents, records, work product, materials and equipment owned by the County and requested by the County.
- D. If the Consultant's services are terminated for whatever reason, the Consultant shall not claim any compensation under this Contract, other than that allowed under this section.
- E. Except as provided in this section, termination of the Consultant's services under Section 5 of this part does not affect any other right or obligation of a party under this Contract.

Section 7. Insurance.

- A. The Consultant shall maintain in good standing the insurance described in Subsection B of this section. Before rendering any services under this Contract, the Consultant shall furnish the County with proof of insurance in accordance with Subsection B of this section.
- B. 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 and personal injury coverage -- \$1,500,000 per occurrence.
  - 3. Commercial automobile liability -- \$500,000 per accident.
  - 4. Professional liability in the amount of \$1,500,000.
- C. Each policy of insurance required by this section shall provide for no less than 30 days' advance notice to the County prior to cancellation.
- D. The County shall be listed as an additional insured on all policies except Professional Liability and Workers Compensation Policies. In addition, all policies except Professional Liability and Workers Compensation shall contain a waiver of subrogation against the County.

Section 8. Assignments.

No assignment without consent: Neither party may assign this Agreement without the written agreement of the other party.

Section 9. Publication, Reproduction and Use of Material.

- A. Should the County elect to reuse work products provided under this Contract for other than the original project and/or purpose, the County will indemnify and hold harmless the Consultant from any and all claims, demands and causes of action

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

Section 10. Notices.

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

Yellowstone County: Monica Plecker  
Yellowstone County  
P.O. Box 35003  
Billings, MT 59101  
Phone: (406) 256-2735 / Fax: (406) 254-7946

Consultant: John Halverson  
Sanderson Stewart  
1300 North Transtech Way  
Billings, Montana 59102  
Phone: (406) 869-3320

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

Section 11. Contract Budget.

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

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of the County or neglect of the County not otherwise governed by the terms of this Contract.
  - 2. Strikes or work stoppages.

3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
4. Order of court, administrative agencies or governmental officers other than the County.

Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;
- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Consultant's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Provides accounting records supported by source documentation.

Section 14. Funding Requirements.

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

Section 15. Subcontracts.

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

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid thereof.
- B. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

**PART II**  
**GENERAL CONTRACT PROVISIONS**

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. 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 Contract. All actions taken by the Consultant under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Consultant shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Consultant: DJ Clark, PE, PTOE, Principal  
(title of position)

Yellowstone County: Monica Plecker, Planning Division Manager

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

The Consultant shall indemnify, defend, save, and hold the County harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Consultant or any subcontractor as a result of the Consultant's or any subcontractor's performance pursuant to this Contract.

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

The County shall indemnify, defend, save, and hold the Consultant harmless from any claims, lawsuits or liability, including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the County as a result of the County's performance pursuant to this Contract.

- A. The County shall not indemnify, defend, save and hold the Consultant harmless from claims, lawsuits liability, or attorneys' fees and costs arising from wrongful or negligent acts, error or omission of the Consultant occurring during the course of or as a result of the performance of the Contract.
- B. Where claims, lawsuits or liability, including attorneys' fees and costs arise from wrongful or negligent act of both the County and the Consultant, the County shall indemnify, defend, save, and hold the Consultant harmless from only that portion of claims, lawsuits or liability, including attorneys' fees and costs, which result from the County's wrongful or negligent acts occurring as a result from the County's performance pursuant to this Contract.

#### Section 10. Interest, Suspension, and Collection Costs.

Any invoice not paid within 30 days of date of invoice shall bear interest at 1.5 percent per month on the unpaid balance. If County fails to make payment within 45 days of the date of any invoice, Consultant shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full, including interest, is received. Consultant shall have no liability whatsoever to the County for any costs or damages as a result of such suspension. If Consultant resumes services after payment by County, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for Consultant to resume performance.

If an invoice remains unpaid for more than 90 days, Consultant shall have the right, but not the obligation, to initiate collection procedures. If the County fails to make payment when due and Consultant incurs any costs in order to collect sums from the County, the County agrees that all such collection costs incurred shall immediately become due and payable to Consultant. Collection costs shall include, but are not limited to, legal fees, collection agency fees and expenses, court costs, collection bonds, and reasonable staff costs for Consultant's staff for time spent in efforts to collect. This obligation of County to pay Consultant's collection costs shall survive the term of this Agreement or any termination by either party.

It is understood and agreed that Consultant's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental

Agreement may be negotiated between the County and Consultant describing the services desired and providing a basis for compensation to Consultant.

Section 11. Information Provided By the County or Others.

The County agrees to provide to Consultant all available information necessary to perform duties as outlined in the attached scope of services. The County shall furnish, at the County's expense, all information, requirements, reports, data, surveys, and instructions required. Consultant is entitled to rely on the accuracy and completeness of all such information provided.

The County shall furnish right-of-way entry onto the project site for Consultant to perform necessary field measurements or studies.

Section 12. Ownership of Instruments of Service.

All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by Consultant as instruments of service shall remain the property of Consultant. Consultant acknowledges that the County is a public agency with full disclosure and dissemination of information. Consultant retains all common law, statutory and other reserved rights, including the copyright to all instruments of service. If any instruments of service must be filed with governmental agencies, Consultant will furnish copies to the County upon request. The County will not reuse or modify the instruments of service without Consultant's prior written authorization. The County agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Consultant, its officers, directors, employees, and agents, from and against any and all damages, claims, liabilities, costs, or suits, including reasonable attorney's fees and defense costs, arising from, allegedly arising from, or in any way connected with the unauthorized reuse or modification, caused or authorized by the County, of any instrument of service by any person or entity other than Consultant.

Section 13. Electronic Files.

Consultant may furnish drawings, reports, or data on electronic media generated and furnished by Consultant. The Consultant shall provide electronic copies of information to the County upon request by the County and said electronic copies of information shall not be unreasonably withheld by Consultant. The County understands and agrees that all such electronic files are instruments of service of Consultant, that Consultant shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights. The County agrees not to reuse these electronic files, in whole or in part, for any other purpose other than for the project. The County agrees not to transfer these electronic files to others without the prior written consent of Consultant. The County further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than Consultant.

The County is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

Additionally, the County agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless Consultant, its officers, directors, employees, and agents, against all damages, liabilities, claims, or suits, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than Consultant, or from any reuse of the electronic files without the prior written consent of Consultant.

Under no circumstances shall delivery of electronic files for use by the County be deemed a sale by Consultant; and Consultant makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. Consultant shall not be liable for indirect or consequential damages as a result of the County's use or reuse of electronic files.

#### Section 14. Opinions of Probable Cost.

The County hereby acknowledges that Consultant cannot warrant that any opinions of probable cost provided by Consultant will not vary from actual costs incurred by the County. The County understands that Consultant has no control over the cost or availability of labor, equipment, materials, or over market conditions or the Contractor's method of pricing. Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from Consultant's opinion of probable cost.

#### Section 15. Consequential Damages.

Notwithstanding any other provision in this Agreement, neither the County nor Consultant, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

#### Section 16. Standards of Performance.

The standard of care for all professional consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services.

#### Section 17. Inspection and Retention of Records.

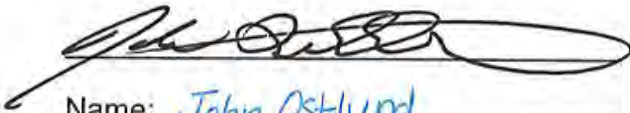
The Consultant shall, at any time during normal business hours and as often as the County may deem necessary, make available to the County, for examination, all its records with respect to all matters covered by this Contract for a period ending three years after the date the Consultant is to complete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

Contract. The County may, at its option, permit the Consultant to submit its records to the County in lieu of the retention requirements of this section.

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

Yellowstone County

Sanderson Stewart




Name: John Ostlund  
Title: Board Chair  
Date: 11-14-23

Name: D.J. Clark  
Title: Principal/Billings Region Manager  
Date: 11-15-2023

ATTEST:

IRS Tax ID # 81-0304565

  
\_\_\_\_\_  
Jeff Martin  
Clerk & Recorder

Date: November 14, 2023

STATE OF MONTANA            )  
                                          :ss.  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_ day of \_\_\_\_\_, 2023, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

## Appendix A

### Basic Services of Consultant

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#### Section 1. Consultant's Rights and Duties

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Consultant's portion of the project as defined in the scope of work and to prepare and deliver to the County all plans, specifications, bid documents, and other material as designated herein, or as designated by the scope of the specific task or project.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides the County but shall keep the County advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for the County to pass critical judgment on the features of the work. The Consultant shall make changes, amendments, or revisions in the detail of the work as may be required by the County. When alternates are being considered, the County shall have the right of selection.
- D. Consultant's work shall be in accordance with the standards of engineering and planning and represent City, County, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Consultant shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as the County's representative in those phases of the project to which this agreement applies.
- H. Where Federal or State funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Name a task director who shall be the liaison between the County and the Consultant. For this project, the task director designated for the Consultant is John Halverson, LEED AP, Project Manager working under D.J. Clark, PE, PTOE, Principal.

## Section 2. County Rights and Duties

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the County's portion of the project as designated in the scope of work.
- B. Name a task director who shall be the liaison between the Consultant and the County. For this project, the task director designated is Monica Plecker, Planning Division Manager. Other task directors may be identified based on the specific project identified under this Contract.

## Section 3. Scope of Work

The project description (from the RFP) is as follows:

*The primary objective of this project is to provide a comprehensive update to the West Billings Neighborhood Plan (adopted in 2002) and align its mission with the current and future needs of the City of Billings and Yellowstone County. This updated plan should:*

- (1) *Promote a growth plan that includes a compatible and serviceable development pattern for residential and commercial uses and consider the services available by Yellowstone County and the City of Billings. Growth patterns and uses will differ between the jurisdictions;*
- (2) *focus on public participation and engagement;*
- (3) *evaluate and update existing goals, policies, and implementation strategies; and*
- (4) *integrate a comprehensive transportation analysis into the planning process.*

*The existing study area is approximately 35 square miles and includes land located in the City of Billings and Yellowstone County. This plan will need to consider and guide growth and development appropriately based on available infrastructure and services, environmental constraints, etc.*

### Phase 1: Project Administration

- a) General project management, including internal meetings and administrative tasks.
- b) Meetings and general correspondence with City and County staff on project related items.
- c) Weekly project emails to be sent to the County project manager (Monica Plecker) and other recipients as directed by the City and County.
- d) Monthly project invoices will be prepared and provided to the County.

### Phase 2: Project Initiation

- a) Convene staff and stakeholders in kickoff meeting to complete the following:
  - i) Review and refine project objectives.
  - ii) Review and refine project timeline.
  - iii) Confirm plan elements.
  - iv) Review and recommend study area boundary for endorsement by Billings City Council and Yellowstone County Commissioners.
- b) Form Project Steering Committee
  - i) Coordinate with County staff to identify representatives, local officials, and stakeholders to serve on the committee.
  - ii) Identify meeting schedule, with a maximum of one meeting per month, up to 14 months.

- c) Create Project Coordination Plan
  - i) Refine project schedule based on kickoff meeting.
  - ii) Identify key decision points.

#### Phase 3: Public Participation and Engagement

- a) Create a Public Outreach Plan, consistent with the MPO Public Participation Plan, to ensure continuous public engagement. The plan will reflect the following activities, with any additional elements to be included resulting from the project kick off meeting.
- b) Create a project specific website to host information, project updates and engagement opportunities. The website will also include an interactive map of the project area for the public to provide input during the data collection phase of the project.
- c) Create social media posts to provide project updates.
- d) Create in-person community engagement events, including the following:
  - i) Hold two (2) open house events.
  - ii) Hold four (4) pop-up events.
  - iii) Hold four (4) interest group meetings (focused on housing, commercial development, parks and open space, and transportation).
  - iv) Attend two (2) public meetings to update local elected officials on project progress at the mid-project point.
  - v) Attend (6) public meetings as part of the plan adoption process.

#### Phase 4: Comprehensive Analysis

- a) Review previous documents, including West End Multi-modal Plan, 2002 West Billings Plan, Montana Land Use Planning Act, area and local plans.
- b) Analyze population and demographic changes and trends, based on 2023 ACS data and data collected by the MPO for the 2023 LRTP update.
- c) Land use and zoning analysis including analysis of:
  - i) Existing development patterns, and land use.
  - ii) Annexation policy and map.
  - iii) Estimates of anticipated growth and demand for services.
- d) Housing Analysis
  - i) Analysis of availability, affordability, and future housing demand to comply with requirements of Section 10 of the Montana Land Use Planning Act.
- e) Commercial Market analysis
  - i) Analysis of publicly available data resources including Census, Bureau of Labor Statistics, State and County data as well as local commercial Realtor and MLS data to determine commercial land use needs.
- f) Existing Policy analysis
  - i) Prepare a SWOT (strengths, weaknesses, opportunities, and threats) analysis of existing City and County development standards and the existing 2002 West Billings Plan.

#### Phase 5: Transportation Analysis

- a) Update the *West End Multi Modal Plan* with data from the recently approved Billings Urban Area Long Range Transportation Plan, and Safe Routes to School Phase I and II studies.
- b) Collect and analyze traffic count data including vehicle, pedestrian, and bicycle within the study area. Average daily traffic counts available through the MPO will be used, with supplemental counts provided to fill gaps.
- c) Review identified transportation projects in the 2016 Plan, as well as the MPO TIP, City of Billings CIP, MDT STIP, and other appropriate plans and documents. Based on the

- review, a list of proposed transportation projects including motorized, non-motorized and City of Billings Complete Streets elements will be developed.
- d) In conjunction with Phase 6, land use and growth assumptions will be evaluated with transportation deficiencies. General recommendations for transportation improvements will be provided.
- e) Recommendations should include an inclusive review of the City of Billings complete streets policy elements and incorporate as appropriate within the study area.
- f) Compose two sets of transportation-related recommendations – one for the City of Billings and separate set for Yellowstone County.

#### Phase 6: Comprehensive Recommendations

- a) Draft a vision statement based on public engagement and steering committee input, comprehensive analysis phase, and the transportation analysis phase.
- b) Draft goals, objectives, and implementation strategies for the West Billings Neighborhood Plan to advance the vision.
- c) Develop recommendations for land use, zoning, and policy updates consistent with the vision statement, goals, CPTED principles and the Montana Land Use Planning Act.
- d) Develop a draft future land use map and narrative based on comprehensive analysis.
- e) Review the recommendations with the steering committee and staff.
- f) Present the comprehensive recommendations to the Billings city council and the Yellowstone county commissioners for review and comment.
- g) Modify the comprehensive recommendations as needed to address comments.
- h) Receive written confirmation from staff and steering committee of acceptance of draft recommendations prior to proceeding with the draft plan.

#### Phase 7: Draft Plan

- a) The plan document resulting from the above-listed tasks will be drafted to include:
  - i) Executive Summary
  - ii) Vision statement
  - iii) List of goals and objectives to achieve the vision
  - iv) Implementation strategies to meet those goals and objective.
  - v) All elements required by State of Montana statutes regulating neighborhood plans
  - vi) Supporting graphics and illustrations
  - vii) Summary of public engagement
  - viii) Summary of the background information completed as part of Phases 4 and 5
  - ix) Recommendations sorted into short, medium, and long-term

#### Phase 8: Plan Adoption

- a) Public Review Draft Plan
  - i) The public review draft will be available on the project website and provided to City/County staff, and project steering committee.
  - ii) Coordinate with City and County staff to evaluate all comments received during the review phase and agree on those to be addressed within the Final Draft Plan.
- b) Final Draft Neighborhood Plan
  - i) Submit the final Neighborhood Plan for review, recommendation, and adoption by the Yellowstone County board of planning (2 meetings), Billings city council (2 meetings), Yellowstone county commissioners (2 meetings), technical advisory committee (1 meetings), and the policy coordinating committee (1 meeting).

- ii) The final plan document will be made available to the public in print and electronic form during the approval process.

**Phase 9: Final Document**

- a) Upon final adoption the Consultant will prepare and deliver the following:
  - i) Prepare an implementation timeline consistent with current and future projects planned in the study area assigning responsibilities for each action item.
  - ii) Establish an evaluation framework to track progress toward meeting the plan goals.
  - iii) Prepare a report summarizing the update process, key findings, and recommendations of the plan.
  - iv) Deliver to the client a version of the plan document for electronic publication.
  - v) Deliver to the client up to ten printed copies of the plan.
  - vi) Deliver to the client a digital copy of the plan with native files.

## Appendix B Methods and Times of Payment

### Section 1. Payments for Basic Services.

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

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

- A. For services rendered, the Consultant shall be paid based upon actual time accrued, including any subconsultant fees according to the schedule of fees in Appendix D.
- B.

|    | Phase                               | Land Use        | Transportation  | Total            |
|----|-------------------------------------|-----------------|-----------------|------------------|
| 1. | Project Administration              | \$3,828         | \$5,742         | \$9,570          |
| 2. | Project Initiation                  | \$2,072         | \$3,108         | \$5,180          |
| 3. | Public Participation and Engagement | \$7,608         | \$11,412        | \$19,020         |
| 4. | Comprehensive Analysis              | \$18,848        |                 | \$18,848         |
| 5. | Transportation Analysis             |                 | \$28,272        | \$28,272         |
| 6. | Comprehensive Recommendations       | \$1,566         | \$2,349         | \$3,915          |
| 7. | Draft Plan                          | \$9,164         | \$13,746        | \$22,910         |
| 8. | Plan Adoption                       | \$4,842         | \$7,263         | \$12,105         |
| 9. | Final Document                      | \$2,072         | \$3,108         | \$5,180          |
|    | <b>Total</b>                        | <b>\$50,000</b> | <b>\$75,000</b> | <b>\$125,000</b> |

**TOTAL CONTRACT**

**\$125,000**

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

Section 2. Payments for Extra Services when Authorized by the County

Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study shall be paid for on an hourly basis at the applicable hourly rates as referenced in Appendix D and below in Section 4.

Section 3. Corrections.

Costs of County work that is required for the purpose of correcting the Consultant's work shall be deducted from any payments due the Consultant, if the Consultant fails to make the required corrections.

Section 3. Fee Increases

The above stated basic services payments in Appendix D shall be updated periodically to reflect market conditions.

## Appendix C

### Additional Services of Engineer

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Extra services of the Consultant will be paid only with written prior authorization by the County.

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

## Appendix D

### Schedule of Professional Fees

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See attached rate sheet (following pages)

**Appendix E**  
**PROJECT SCHEDULE**

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Based on a notice to proceed by the County by a date no later than November 14, 2023, the completion date for the Consultant's work shall be:

- |    |                               |                   |
|----|-------------------------------|-------------------|
| A. | Draft Plan Submittal          | August 01, 2024   |
| B. | Final Plan Document Submittal | November 31, 2024 |
| C. | Adoption of Final Plan        | December 31, 2024 |

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

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

## Appendix F

### Certificate(s) of Insurance

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(Attach Certificate(s) of Insurance)

# CHARGE OUT RATES

EFFECTIVE AUGUST 5, 2023

**SANDERSON  
STEWART** 

a sanderson bellecci company

## STAFF PERSONNEL SERVICES

|                                            |               |
|--------------------------------------------|---------------|
| Staff Engineer I                           | \$115.00/hour |
| Staff Engineer II                          | \$130.00/hour |
| Staff Engineer III                         | \$135.00/hour |
| Project Engineer I                         | \$145.00/hour |
| Project Engineer II                        | \$150.00/hour |
| Senior Engineer I                          | \$185.00/hour |
| Senior Engineer II                         | \$210.00/hour |
| Principal                                  | \$240.00/hour |
| Engineer Intern                            | \$75.00/hour  |
| Expert Witness/Special Consultant          | \$290.00/hour |
| Staff Planner I                            | \$100.00/hour |
| Staff Planner II                           | \$115.00/hour |
| Planner I                                  | \$130.00/hour |
| Planner II                                 | \$145.00/hour |
| Senior Planner I                           | \$155.00/hour |
| Senior Planner II                          | \$195.00/hour |
| Senior Planner III                         | \$200.00/hour |
| Right-of-Way Agent                         | \$168.00/hour |
| Staff Landscape Designer I                 | \$100.00/hour |
| Staff Landscape Designer II                | \$115.00/hour |
| Landscape Architect I                      | \$135.00/hour |
| Landscape Architect II                     | \$145.00/hour |
| Senior Landscape Architect I               | \$160.00/hour |
| Senior Landscape Architect II              | \$175.00/hour |
| Field Survey Technician I                  | \$85.00/hour  |
| Field Survey Technician II                 | \$88.00/hour  |
| Staff Surveyor I                           | \$110.00/hour |
| Staff Surveyor II                          | \$125.00/hour |
| Professional Land Surveyor I               | \$135.00/hour |
| Professional Land Surveyor II              | \$148.00/hour |
| Senior Professional Land Surveyor I        | \$160.00/hour |
| Senior Professional Land Surveyor II       | \$180.00/hour |
| Graphic Artist                             | \$105.00/hour |
| CADD Technician I                          | \$100.00/hour |
| CADD Technician II                         | \$105.00/hour |
| Designer I                                 | \$100.00/hour |
| Designer II                                | \$110.00/hour |
| Senior Designer I                          | \$120.00/hour |
| Senior Designer II                         | \$145.00/hour |
| Construction Inspector                     | \$88.00/hour  |
| Construction Engineering Technician        | \$100.00/hour |
| Senior Construction Engineering Technician | \$145.00/hour |
| Construction Engineer I                    | \$145.00/hour |
| Construction Engineer II                   | \$150.00/hour |

## STAFF PERSONNEL SERVICES CONTINUED

|                                |               |
|--------------------------------|---------------|
| Project Administrator          | \$100.00/hour |
| Senior Project Administrator   | \$115.00/hour |
| Administrative/Clerical        | \$95.00/hour  |
| Senior Administrative Director | \$185.00/hour |
| Marketing Coordinator          | \$110.00/hour |
| Senior Marketing Coordinator   | \$125.00/hour |
| Marketing Director             | \$175.00/hour |

## SURVEY CREW SERVICES

|                              |                             |
|------------------------------|-----------------------------|
| I-person/2-person Crew       | \$Per Job                   |
| Survey Equipment             | \$30.00 /fieldwork hour     |
| Survey Vehicle Mileage       | IRS Rate/Mile + \$0.10/Mile |
| Scanner Equipment            | \$150.00 /hour              |
| Scanner Equipment (Hourly)   | \$150 /hour                 |
| Scanner Equipment (Full Day) | \$1,050 /day                |

## OUTSIDE CONSULTANTS

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

## INDEPENDENT LABORATORIES

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

## ADMINISTRATIVE EXPENSES

Administrative expenses  
(including copies, prints, phone, postage, materials, and travel) 3.5% \*

\* based on professional services only, unless modified by contract

Vehicle Mileage IRS Rate

These rates are updated periodically to reflect market conditions. Rate increases will be reflected in future invoicing.



SANDBEL-02

CTHELEN

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/9/2023

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).

|                                                                                                                                                                                                         |  |                                                                                                                    |        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------|--------|
| <b>PRODUCER</b><br>Billings Office<br>Marsh McLennan Agency LLC<br>P.O. Box 30638<br>Billings, MT 59107-0638                                                                                            |  | <b>CONTACT NAME:</b><br>PHONE (A/C, No, Ext): (406) 238-1900      FAX (A/C, No): (406) 245-9887<br>E-MAIL ADDRESS: |        |
|                                                                                                                                                                                                         |  | INSURER(S) AFFORDING COVERAGE                                                                                      | NAIC # |
|                                                                                                                                                                                                         |  | INSURER A : Charter Oak Fire Insurance Company                                                                     | 25615  |
| <b>INSURED</b><br>Sanderson Bellecci, Inc., Engineering, Inc. dba Sanderson<br>Stewart, Bellecci & Associates, Inc.<br>Summit Engineering Corporation<br>1300 North Transtech Way<br>Billings, MT 59102 |  | INSURER B : Phoenix Insurance Company                                                                              | 25623  |
|                                                                                                                                                                                                         |  | INSURER C : Travelers Property Casualty Co of Amer                                                                 | 25674  |
|                                                                                                                                                                                                         |  | INSURER D : Zurich American Insurance Company                                                                      | 16535  |
|                                                                                                                                                                                                         |  | INSURER E : Travelers Casualty and Surety Company                                                                  | 19038  |
|                                                                                                                                                                                                         |  | INSURER F :                                                                                                        |        |

**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                                                                         |              |
|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|-----------------------|-------------------------|-------------------------|--------------------------------------------------------------------------------|--------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC<br>OTHER: | X         |          | P-660-7W723958-COF-23 | 5/19/2023               | 5/19/2024               | EACH OCCURRENCE                                                                | \$ 1,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence)                                      | \$ 300,000   |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | MED EXP (Any one person)                                                       | \$ 10,000    |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | PERSONAL & ADV INJURY                                                          | \$ 1,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | GENERAL AGGREGATE                                                              | \$ 2,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | PRODUCTS - COMP/OP AGG                                                         | \$ 2,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         |                                                                                | \$           |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         |                                                                                | \$           |
| B        | <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY                                                                                                                  |           |          | 810-7W72070A-23-43-G  | 5/19/2023               | 5/19/2024               | COMBINED SINGLE LIMIT (Ea accident)                                            | \$ 1,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | BODILY INJURY (Per person)                                                     | \$           |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | BODILY INJURY (Per accident)                                                   | \$           |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | PROPERTY DAMAGE (Per accident)                                                 | \$           |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         |                                                                                | \$           |
| C        | <input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR<br><input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE<br><input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000                                                   |           |          | CUP-7W728500-23-43    | 5/19/2023               | 5/19/2024               | EACH OCCURRENCE                                                                | \$ 5,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | AGGREGATE                                                                      | \$ 5,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         |                                                                                | \$           |
| D        | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY<br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                                                                                             | Y/N<br>Y  | N/A      | WC8664223-01          | 7/1/2023                | 7/1/2024                | <input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER |              |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | E.L. EACH ACCIDENT                                                             | \$ 1,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | E.L. DISEASE - EA EMPLOYEE                                                     | \$ 1,000,000 |
|          |                                                                                                                                                                                                                                                                                                                    |           |          |                       |                         |                         | E.L. DISEASE - POLICY LIMIT                                                    | \$ 1,000,000 |
| E        | Professional                                                                                                                                                                                                                                                                                                       |           |          | 105269194             | 4/17/2023               | 4/17/2024               | Liability                                                                      | 2,000,000    |
| E        | Pollution                                                                                                                                                                                                                                                                                                          |           |          | 105269194             | 4/17/2023               | 4/17/2024               | Liability                                                                      | 2,000,000    |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The County, the State, the Department, and their officers, officials, employees, and volunteers are additional insureds for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

|                                                          |                                                                                                                                                                                                                       |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CERTIFICATE HOLDER</b>                                | <b>CANCELLATION</b>                                                                                                                                                                                                   |
| Yellowstone County<br>PO Box 35015<br>Billings, MT 59107 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br><i>Cindy Helen</i> |

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **XTEND ENDORSEMENT FOR ARCHITECTS, ENGINEERS AND SURVEYORS**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**GENERAL DESCRIPTION OF COVERAGE** – This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>A. Non-Owned Watercraft – 75 Feet Long Or Less</li> <li>B. Who Is An Insured – Unnamed Subsidiaries</li> <li>C. Who Is An Insured – Retired Partners, Members, Directors And Employees</li> <li>D. Who Is An Insured – Employees And Volunteer Workers – Bodily Injury To Co-Employees, Co-Volunteer Workers And Retired Partners, Members, Directors And Employees</li> <li>E. Who Is An Insured – Newly Acquired Or Formed Limited Liability Companies</li> <li>F. Blanket Additional Insured – Controlling Interest</li> <li>G. Blanket Additional Insured – Mortgagees, Assignees, Successors Or Receivers</li> </ul> | <ul style="list-style-type: none"> <li>H. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Premises</li> <li>I. Blanket Additional Insured – Governmental Entities – Permits Or Authorizations Relating To Operations</li> <li>J. Incidental Medical Malpractice</li> <li>K. Medical Payments – Increased Limit</li> <li>L. Amendment Of Excess Insurance Condition – Professional Liability</li> <li>M. Blanket Waiver Of Subrogation – When Required By Written Contract Or Agreement</li> <li>N. Contractual Liability – Railroads</li> </ul> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **PROVISIONS**

#### **A. NON-OWNED WATERCRAFT – 75 FEET LONG OR LESS**

1. The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:
  - (2) A watercraft you do not own that is:
    - (a) 75 feet long or less; and
    - (b) Not being used to carry any person or property for a charge;
2. The following replaces Paragraph 2.e. of **SECTION II – WHO IS AN INSURED**:
  - e. Any person or organization that, with your express or implied consent, either

uses or is responsible for the use of a watercraft that you do not own that is:

- (1) 75 feet long or less; and
- (2) Not being used to carry any person or property for a charge;

#### **B. WHO IS AN INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You are the sole owner of, or maintain an ownership interest of more than 50% in, such subsidiary on the first day of the policy period; and

## COMMERCIAL GENERAL LIABILITY

- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal and advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

For purposes of Paragraph 1. of Section II – Who Is An Insured, each such subsidiary will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

### C. WHO IS AN INSURED – RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES

The following is added to Paragraph 2. of SECTION II – WHO IS AN INSURED:

Any person who is your retired partner, member, director or "employee" that is performing services for you under your direct supervision, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, no such retired partner, member, director or "employee" is an insured for:

#### (1) "Bodily injury":

- (a) To you, to your current partners or members (if you are a partnership or joint venture), to your current members (if you are a limited liability company) or to your current directors;
- (b) To the spouse, child, parent, brother or sister of that current partner, member or director as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your retired partners, members, directors or "employees", other than a doctor. Any such retired partners, members, directors or "employees" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

#### (2) "Personal injury":

- (a) To you, to your current or retired partners or members (if you are a partnership or joint venture), to your current or retired members (if you are a limited liability company), to your other current or retired directors or "employees" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that current or retired partner, member, director, "employee" or "volunteer worker" as a consequence of Paragraph (2)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (2)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

#### (3) "Property damage" to property:

- (a) Owned, occupied or used by; or
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your retired partners, members or directors, your current or retired "employees" or "volunteer workers", any current partner or member (if you are a partnership or joint venture), or any current member (if you are a limited liability company) or current director.

**D. WHO IS AN INSURED – EMPLOYEES AND VOLUNTEER WORKERS – BODILY INJURY TO CO-EMPLOYEES, CO-VOLUNTEER WORKERS AND RETIRED PARTNERS, MEMBERS, DIRECTORS AND EMPLOYEES**

The following is added to Paragraph 2.a.(1) of SECTION II – WHO IS AN INSURED:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" to a current or retired co-"employee" while in the course of the co-"employee's" employment by you or performing duties related to the conduct of your business, or to "bodily injury" to your other "volunteer workers" or retired partners, members or directors while performing duties related to the conduct of your business.

**E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES**

The following replaces Paragraph 3. of SECTION II – WHO IS AN INSURED:

3. Any organization you newly acquire or form, other than a partnership or joint venture, and of which you are the sole owner or in which you maintain an ownership interest of more than 50%, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only:

(1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

(2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

For the purposes of Paragraph 1. of Section II – Who Is An Insured, each such

organization will be deemed to be designated in the Declarations as:

- a. A limited liability company;
- b. An organization other than a partnership, joint venture or limited liability company; or
- c. A trust;

as indicated in its name or the documents that govern its structure.

**F. BLANKET ADDITIONAL INSURED – CONTROLLING INTEREST**

1. The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that has financial control of you is an insured with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" that arises out of:

- a. Such financial control; or
- b. Such person's or organization's ownership, maintenance or use of premises leased to or occupied by you.

The insurance provided to such person or organization does not apply to structural alterations, new construction or demolition operations performed by or on behalf of such person or organization.

2. The following is added to Paragraph 4. of SECTION II – WHO IS AN INSURED:

This paragraph does not apply to any premises owner, manager or lessor that has financial control of you.

**G. BLANKET ADDITIONAL INSURED – MORTGAGEES, ASSIGNEES, SUCCESSORS OR RECEIVERS**

The following is added to SECTION II – WHO IS AN INSURED:

Any person or organization that is a mortgagee, assignee, successor or receiver and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to its liability as mortgagee, assignee, successor or receiver for "bodily injury", "property damage" or "personal and advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal and advertising injury" caused by an offense that is committed,

## COMMERCIAL GENERAL LIABILITY

subsequent to the signing of that contract or agreement; and

- b. Arises out of the ownership, maintenance or use of the premises for which that mortgagee, assignee, successor or receiver is required under that contract or agreement to be included as an additional insured on this Coverage Part.

The insurance provided to such mortgagee, assignee, successor or receiver is subject to the following provisions:

- a. The limits of insurance provided to such mortgagee, assignee, successor or receiver will be the minimum limits that you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such person or organization does not apply to:
  - (1) Any "bodily injury" or "property damage" that occurs, or any "personal and advertising injury" caused by an offense that is committed, after such contract or agreement is no longer in effect; or
  - (2) Any "bodily injury", "property damage" or "personal and advertising injury" arising out of any structural alterations, new construction or demolition operations performed by or on behalf of such mortgagee, assignee, successor or receiver.

### H. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to premises owned or occupied by, or rented or loaned to, you and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of the existence, ownership, use, maintenance, repair, construction, erection or removal of any of the following for which that governmental entity has issued such permit or authorization: advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away

openings, sidewalk vaults, elevators, street banners or decorations.

### I. BLANKET ADDITIONAL INSURED – GOVERNMENTAL ENTITIES – PERMITS OR AUTHORIZATIONS RELATING TO OPERATIONS

The following is added to **SECTION II – WHO IS AN INSURED**:

Any governmental entity that has issued a permit or authorization with respect to operations performed by you or on your behalf and that you are required by any ordinance, law, building code or written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" arising out of such operations.

The insurance provided to such governmental entity does not apply to:

- a. Any "bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the governmental entity; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

### J. INCIDENTAL MEDICAL MALPRACTICE

1. The following replaces Paragraph **b.** of the definition of "occurrence" in the **DEFINITIONS** Section:

- b. An act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person, unless you are in the business or occupation of providing professional health care services.

2. The following replaces the last paragraph of Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide:

- (a) "Incidental medical services" by any of your "employees" who is a nurse, nurse assistant, emergency medical technician, paramedic, athletic trainer, audiologist, dietician, nutritionist,

occupational therapist or occupational therapy assistant, physical therapist or speech-language pathologist; or

- (b) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following replaces the last sentence of Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any valid and collectible other insurance, whether primary, excess, contingent or on any other basis,

that is available to any of your "employees" for "bodily injury" that arises out of providing or failing to provide "incidental medical services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**K. MEDICAL PAYMENTS – INCREASED LIMIT**

The following replaces Paragraph 7. of **SECTION III – LIMITS OF INSURANCE:**

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

- a. \$10,000; or
- b. The amount shown in the Declarations of this Coverage Part for Medical Expense Limit.

**L. AMENDMENT OF EXCESS INSURANCE CONDITION – PROFESSIONAL LIABILITY**

The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis, that is Professional Liability or similar coverage, to the extent the loss is not subject to the professional services exclusion of Coverage A or Coverage B.

**M. BLANKET WAIVER OF SUBROGATION – WHEN REQUIRED BY WRITTEN CONTRACT OR AGREEMENT**

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a written contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal and advertising injury" caused by an offense that is committed;

subsequent to the signing of that contract or agreement.

COMMERCIAL GENERAL LIABILITY

**N. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BLANKET ADDITIONAL INSURED – WRITTEN CONTRACTS (ARCHITECTS, ENGINEERS AND SURVEYORS)**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**1. The following is added to SECTION II – WHO IS AN INSURED:**

Any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:

- a. Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
- b. If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.

The insurance provided to such additional insured is limited as follows:

- c. In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
- d. This insurance does not apply to the rendering of or failure to render any "professional services" or construction management errors or omissions.
- e. This insurance does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured ap-

plies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

**2. The following is added to Paragraph 4.a. of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance provided to the additional insured is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover. However, if you specifically agree in the "written contract requiring insurance" that this insurance provided to the additional insured under this Coverage Part must apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But this insurance provided to the additional insured still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under any "other insurance".

**2. The following is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

**Duties Of An Additional Insured**

As a condition of coverage provided to the additional insured:

- a. The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:

## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.
- The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d. The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of other insurance which would cover the additional insured for a loss we cover. However, this condition does not affect whether this insurance provided to the additional insured is primary to that other insurance available to the additional insured which covers that person or organization as a named insured.

4. The following is added to the **DEFINITIONS** Section:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

## Memorandum of Understanding

This Memorandum of Understanding (MOU) is entered into on [Date], by and between the City of Billings (hereinafter referred to as "the City" and Yellowstone County (hereinafter referred to as "the County").

### BACKGROUND:

The County was awarded a \$50,000 CDBG planning grant for the completion of the West Billings Neighborhood Plan. The grant requires \$12,500 match. In addition to the Neighborhood Plan the project will also include an update to the West Billings Multi Modal Plan for \$75,000. The Total Project cost is \$125,000.00. The County has executed a contract with Sanderson Stewart to complete the scope of work within 14 months of the executed contract. (Exhibit A Attached)

### TERMS OF AGREEMENT

1. Financial Responsibility

The City agrees to be solely responsible for all costs associated with the update of the West Billings Multi-Modal Plan and pay the consultant, Sanderson Stewart directly. Additionally, the City will provide a check to the County in the amount of \$12,500 for the match requirement. The County will be responsible for paying all cost related to the Neighborhood Plan, not to exceed \$50,000. The County will pay Sanderson Stewart directly.

2. Project Oversight

Both parties agree to collaborate and coordinate efforts to ensure the successful and timely completion of the West Billings Plan and Multi Modal Plan update.

3. Term of Agreement

This MOU shall commence on the date of execution and shall remain in effect until the completion of the West Billings Plan Multi-Modal Plan update, unless terminated earlier by mutual written agreement of both parties.

4. Amendments

Any amendments or modifications to this MOU must be made in writing and require the mutual consent of both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first above written.

City of Billings

[Signature] \_\_\_\_\_

[Printed Name] \_\_\_\_\_

[Title] \_\_\_\_\_

Yellowstone County Board of County Commissioners

[Signature] \_\_\_\_\_

[Printed Name] \_\_\_\_\_

[Title] \_\_\_\_\_

Date \_\_\_\_\_

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Amendments to Memorandum of Understanding with the Yellowstone Conservation District  
**Presented by:** Pigg Michael, Superintendent  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends the approval of the Memorandum of Understanding (MOU) with the Yellowstone Conservation District (YCD) Amendment and the acceptance of the \$50,000 grant to fund the development of a Master Plan for the West End Reservoir.

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

This is an amendment to the original Memorandum of Understanding between the Yellowstone Conservation District and the City of Billings which was signed March 10th, 2023. The amendment includes a proposed grant to fund a Master Plan for the West End Reservoir.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

This is a reimbursement grant, the City will have to invoice the Conservation District for expenses incurred. The grant will save the City the expense of the Master Plan document.

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**Attachments**

West End Reservoir MOU Amendment  
Original MOU with Yellowstone Conservation District



*YELLOWSTONE CONSERVATION DISTRICT*

*1670 48<sup>th</sup> St. W Suite 2, Billings, MT 59106*

*Phone: 406.690.9326 email: lrvie@mt.gov*

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Memorandum of Understanding  
Between  
The Yellowstone Conservation District and the City of Billings  
For Funding, Construction and Maintenance of  
West End Reservoir Conservation and Recreation Amenities  
Amendment #1

The Yellowstone Conservation District (YCD) will partner with the City of Billings to ensure that the primary function of the City Lakes is to provide clean and safe water to the City of Billings.

YCD will facilitate the development of a master plan for the City Lakes addressing conservation amenities for the benefit of the community in a collaborative planning process.

At a minimum the Master Plan shall:

- 1-Include conservation, recreation, and educational opportunities that will create a valuable recreation and green space for the community
- 2-Provide coordination between the City of Billing, Yellowstone Conservation District and other entities who may join the conservation, recreation, and education efforts.
- 3-Plan development

YCD and the City of Billings will continue efforts to identify and acquire funding for conservation amenities. improvements

Details and operating agreements to ensure goals and objectives of the City of Billings and the YCD will be developed as the master plan is finalized and funding is identified

The City of Billings will invoice YCD upon completion of the Master Plan Update for a sum not to exceed **\$50,000.** These funds are made available from a Department of Natural Resources and Conservation grant to the Yellowstone Conservation District.

\_\_\_\_\_ Date: \_\_\_\_\_  
Chairman, Yellowstone Conservation District

\_\_\_\_\_ Date: \_\_\_\_\_  
Billings City Mayor

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE YELLOWSTONE CONSERVATION DISTRICT AND CITY OF BILLINGS  
FOR FUNDING, CONSTRUCTION AND MAINTENANCE OF  
WEST END RESERVOIR CONSERVATION AND RECREATION AMENITIES**

This MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into this 10 day of March, 2023, by and between the Yellowstone Conservation District, a governmental subdivision and public body of the State of Montana (the "District"), and the City of Billings, a municipal corporation of the State of Montana (the "City"), both, hereinafter, also referred to as "the Parties".

The Parties share mutual benefits and interests in providing public conservation and recreation amenities on real property owned by the City, known as the West End Reservoir and located within the District, as an auxiliary function to the primary function of the West End Reservoir in storing, conserving, and providing clean and safe water to the City of Billings.

A conservation district may execute a project for the conservation, development, storage, distribution, and utilization of water, including projects for recreation pursuant to §Sec. 76-15-403 (10)(e) MCA.

The purpose of this MOU is to outline the partnership between the Parties to fund, construct and maintain public conservation and recreation amenities at the West End Reservoir (the "Project").

Both the District and City agree to the following:

- To have open lines of communication and work collaboratively to achieve and fulfill the purposes of the Project.
- To form upon funding, a Volunteer Liaison Board including City, District and other interested community members to achieve and fulfill the purpose of this MOU.
- To ensure that the primary function of the West End Reservoir is to store, conserve, and provide clean and safe water to the City of Billings.
- To fund the Project's construction, operation and management, and maintenance to the extent the City and/or the District is appropriated monies from the Montana Legislature and/or other funding sources for the Project.
- To work together to design and develop the Project to promote and provide public conservation and recreation amenities as an auxiliary function to the primary function of the West End Reservoir.
- To facilitate the development of a master plan for the West End Reservoir addressing conservation and recreation amenities for the benefit of the community.
- To cooperate on details and operating agreements to ensure the goals and objectives of the District and the City will be developed as the master plan is finalized and funding is identified.
- To encourage and promote safe and appropriate conservation and recreation amenities for public use at the West End Reservoir.

- To develop and provide a consistent message to the public for conservation and recreation use of the Project, including education, rules and regulations, event and programming opportunities, notification of season closures, and to provide a positive public visitor experience.
- To provide a consistent message to potential donors, grantors, sponsors, and others contributing financially for conservation and recreation use and maintenance for the Project.
- To mutually agree upon a conceptual design of the Project.
- To mutually agree upon naming or naming rights sponsorship for the Project area to fund future operation, management and maintenance of the Project, once completed.
- To mutually agree upon estimated costs, time, and completion of construction and maintenance of the Project.
- Due to construction, maintenance and liability considerations, both Parties agree that the City will have final say on all Project decisions.

The District agrees:

- Pursuant to the Project, to strive to promote the District's mission of soil conservation, water conservation, and conservation education.
- To continue efforts to help identify and acquire funding for the Project.
- The City will have all final design, construction, and maintenance responsibilities for the Project.
- To attend meetings related to the Project.

The City agrees:

- Pursuant to the Project, to honor the District's mission of soil conservation, water conservation, and conservation education.
- To provide the real property site for the Project.
- To accept Legislative or other funding if appropriated for the Project and to assume all construction, operation, management and maintenance responsibilities for the Project.
- To earmark and use all Legislative or other funding received for construction, operation, management, and maintenance of the Project solely for the conservation and recreation amenities layer at the West End Reservoir.
- To satisfy all City, State and federal applicable plan review, permit, and inspection requirements for the Project
- To manage and insure the Project.
- To attend meetings related to the Project.

Indemnification: The City agrees to indemnify and hold harmless the District, its officers, employees, agents and volunteers from and against all liability, loss, damage, expense, and cost (including, without limitation, reasonable attorney's fees, and all other costs and fees of litigation) of every nature arising out of or in connection with the City's negligence, recklessness, or willful misconduct in the performance of construction and maintenance of the

Project and resultant West End Reservoir Recreational Area, except such loss or damage caused by the active negligence or sole negligence or willful misconduct of the District.

Entire Agreement: This MOU contains the entire understanding of the Parties, and there are no other promises or conditions, whether oral or written, concerning the subject matter of this MOU. The Parties agree that this MOU is not intended to be a binding agreement but merely an expression of intent regarding the contemplated purpose and objective stated herein unless and until the Montana Legislature approves funding to the City and/or the District for the Project. This MOU shall be governed by and construed in accordance with the laws of the State of Montana.

Term: This MOU is in effect for ten (10) years on the date adopted and signed. The Parties contemplate a long-term relationship and to that end, no later than 180 days prior to the end of the term, the Parties agree to commence discussions regarding extension of this MOU.

Amendment: This MOU may only be amended in writing with mutual consent and signatures of the Parties.

Notice: Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by mail, email, to the contacts below or to such address as one party may have furnished to the other in writing.

Contacts:

Chris A. Kukulski  
City Administrator  
City Hall  
P.O. Box 1178  
Billings, MT 59103  
(406) 657-8222  
[kukulskic@billingsmt.gov](mailto:kukulskic@billingsmt.gov)

LaVerne Ivie  
Yellowstone Conservation District Administrator  
1371 Rimtop Drive  
Billings, MT 59105  
(406) 690-9326  
[livie@mt.gov](mailto:livie@mt.gov)

**IN WITNESS WHEREOF**, the Parties hereto have caused this MOU to be executed by their duly authorized representatives as the date first above written.

**SIGNED:**

By:

DocuSigned by:  
*William A Cole*  
2CA11D5423334EE...

William A. Cole, Mayor of the City of Billings

By:



Chad Sedgwick, Chairman of the Yellowstone Conservation District

By:



Clint Peck, Vice-Chairman of the Yellowstone Conservation District

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Amend Park Development Council 2024 Budget  
**Presented by:** Pigg Michael, Superintendent  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

The Parks Department recommends the approval of Amend Park Development Council's (APDC) 2024 budget.

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

The use agreement for Amend Park between the City of Billings and the Amend Park Development Council (APDC) requires that APDC present a budget every year to the City Council for approval. This provides oversight into the equity of charges for use and scheduling of the fields. Under the use agreement, APDC schedules field use, striping the fields, day to day maintenance including restrooms and pavilion area, and they must contract with the City to perform all turf related maintenance.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

The charges for maintenance reimburse the City budget for the expenses of the turf maintenance.

**SUMMARY**

The partnership between APDC and the Parks Department has been working very well. The fields are in excellent shape and safe for play. The scheduling of the fields maximizes their use in an equitable fashion. The budget for APDC is a crucial step in the agreement.

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**Attachments**

APDC 2024 Budget

# AMEND PARK DEVELOPMENT COUNCIL

2023 ANNUAL REPORT



MICHAEL MAYOTT, EXECUTIVE DIRECTOR  
[admin@amendpark.org](mailto:admin@amendpark.org)

## AMEND PARK

Amend Park is a city park located at 5101 King Avenue East, operated and managed by Amend Park Development Council (APDC) under a Memorandum of Understanding (MOU) with the City of Billings, Montana. Amend Park is a pay to play park for scheduled events by APDC. Public use of the park is available at no cost outside of scheduled events. The park operates year round due to the addition of the turf field. The MOU requires APDC to provide a financial report of the years' activities and the next years' budget to the City of Billings Department of Parks and Recreation by its' January meeting for review and forwarding to the Billings City Council. This report and its attachments comply with the annual reporting requirements. Questions and/or comments may be directed to APDC Executive Director, Michael Mayott at [admin@amendpark.org](mailto:admin@amendpark.org) or by standard mail at Amend Park, PO Box 1231, Billings, MT 59103. APDC maintains a web site at: [www.amendpark.org](http://www.amendpark.org).

## AMEND PARK 2023 USEAGE

Amend Park is principally used for the sport of soccer for participants of all ages. The soccer user groups include:

- Billings United Soccer Club
- Real Billings Soccer Club
- Yellowstone Soccer Association
- Billings Catholic Schools
- Billings Christian School
- Billings Home School
- Billings School District 2 High School
- Yellowstone Valley Adult Soccer Association

Amend Park is utilized by Billings High School lacrosse teams, Big Sky State Games and the City of Billings Parks and Recreation Department. The following chart details the user paid user groups and their usage for 2023:

| <b>Organization</b>                   | <b>Total Participants</b> | <b>Training Hours</b> | <b>Match Hours</b> |
|---------------------------------------|---------------------------|-----------------------|--------------------|
| Real Billings Soccer Club             | 1000                      | 4800                  | 3200               |
| Scorpion Youth Lacrosse               | 183                       | 878.4                 | 586                |
| Yellowstone Soccer Association Spring | 2038                      | 0                     | 1630               |
| Yellowstone Soccer Association Fall   | 1659                      | 0                     | 1327               |
| Yellowstone Valley Adult              | 90                        | 0                     | 144                |
| School District 2                     | 320                       | 2048                  | 512                |
| Billings Catholic High School         | 80                        | 512                   | 128                |
| Billings Home School                  | 20                        | 128                   | 32                 |
| Billings Christian School             | 20                        | 0                     | 32                 |
| Spring Competitive 2023               | 276                       | 1766.4                | 221                |

|                                               |              |               |               |
|-----------------------------------------------|--------------|---------------|---------------|
| Billings United Timber Youth League Spring 23 | 53           | 339.2         | 85            |
| Billings United Timber Youth League Summer 23 | 54           | 345.6         | 43            |
| Billings United Tots April 23                 | 25           | 160           | 0             |
| Billings United Tots May 23                   | 51           | 326.4         | 0             |
| Billings United Tots July 23                  | 32           | 204.8         | 0             |
| Billings United Tots August 23                | 24           | 153.6         | 0             |
| Billings United 3v3 Summer 23                 | 50           | 320           | 30            |
| Billings United Fall Competitive 2023         | 129          | 825.6         | 206           |
| Billings United Timber Youth League Fall 23   | 38           | 243.2         | 30            |
| Billings United Tots Fall 23                  | 49           | 313.6         | 0             |
| Billings United Winter 23                     | 57           | 364.8         | 0             |
| Billings United Eagle Mount                   | 20           | 12            | 0             |
| Billings United Magic City Soccer Tournament  | 1400         | 0             | 1080          |
| Montana Youth Soccer Association Tournament   | 300          | 0             | 1080          |
| Big Sky State Games (soccer / flag football)  | 250          | 0             | 1080          |
| <b>Totals</b>                                 | <b>8,218</b> | <b>13,742</b> | <b>10,367</b> |

## FEE STRUCTURE

APDC prides itself in not raising the user fees for the past six years. User fees are based upon the size of the field being used and its duration. Field sizes are calculated upon standard soccer field sizes for various age groups. Match fields are composed of full fields while training fields are composed of 1/2 fields. The standard time period for use is 1 1/2 hours. Users are charged an additional fee for the cost of lighting on the turf field. The fee structure is as follows:

User Fees are based upon field size utilized for the events Match Field Size (Match/Contest or 1.5 hours)

11 v 11 \$100

9 v 9 \$ 80

7 v 7 \$ 64

5 v 5 \$ 50

4 v 4 \$ 50

3 v 3 \$ 20

Training Fields (1.5 hours)

½ 11 v 11 \$ 50

½ 9 v 9 \$ 40

½ 7 v 7 \$ 32

½ 5 v 5 \$ 25

½ 4 v 4 \$ 25

3 v 3 \$ 20

(There is no cap or refund to fees)

Seminar Room rental - \$100 per event

Pavilion rental - \$100 per event.

# CONCESSIONS AND EMPLOYEES

Concessions are open on Saturday's during the spring and fall soccer seasons. The proceeds from concessions are used to keep the costs of operations at Amend Park down which translates into lower user fees. APDC prides itself in providing opportunities for high school students to work in its concession's operation. These students are typically very active in their high school activities and academics which precludes them from holding regular part-time employment. Concessions employed 10 high school students during 2023.

# FINANCIAL STATEMENTS

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01/04/24  
Accrual Basis

## Amend Park Development Council STATEMENT OF NET ASSETS As of December 31, 2023

|                                       | Dec 31, 23 |
|---------------------------------------|------------|
| <b>ASSETS</b>                         |            |
| <b>Current Assets</b>                 |            |
| Checking/Savings                      |            |
| Ckg - AMEND PARK DEVELOPMENT CO       |            |
| Without Restrictions                  | 85,935.24  |
| Total Ckg - AMEND PARK DEVELOPMENT CO | 85,935.24  |
| DA Davidson RESTRICTED ACCOUNT        | 100,655.11 |
| Total Checking/Savings                | 186,590.35 |
| Accounts Receivable                   |            |
| Accounts Receivable                   | 22,597.97  |
| Total Accounts Receivable             | 22,597.97  |
| Total Current Assets                  | 209,188.32 |
| <b>Fixed Assets</b>                   |            |
| Sound System                          |            |
| Accumulated Depreciation              | -3,144.69  |
| Sound System - Other                  | 22,012.82  |
| Total Sound System                    | 18,868.13  |
| Soccer Goal - Fusion (7x21)           | 5,250.00   |
| Traulsen Freezer                      |            |
| Accumulated Depreciation              | -771.29    |
| Traulsen Freezer - Other              | 5,399.00   |
| Total Traulsen Freezer                | 4,627.71   |
| <b>Equipment</b>                      |            |
| 2018 John Deer Gator                  |            |
| Accumulated Depreciation              | -5,200.00  |
| 2018 John Deer Gator - Other          | 26,000.00  |
| Total 2018 John Deer Gator            | 20,800.00  |
| Generator                             |            |
| Accumulated Depreciation              | -499.99    |
| Generator - Other                     | 499.99     |
| Total Generator                       | 0.00       |
| <b>AED</b>                            |            |
| Accumulated Depreciation              | -1,443.24  |
| AED - Other                           | 1,699.00   |

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01/04/24

Accrual Basis

**Amend Park Development Council**  
**STATEMENT OF NET ASSETS**  
As of December 31, 2023

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|                                       | <u>Dec 31, 23</u> |
|---------------------------------------|-------------------|
| Total AED                             | 255.76            |
| Toro 3500D Groundmaster               |                   |
| Accumulated Depreciation              | -1,252.00         |
| Toro 3500D Groundmaster - Other       | 2,187.00          |
| Total Toro 3500D Groundmaster         | 935.00            |
| 2019 Refrigerator                     |                   |
| Accumulated Depreciation              | -2,378.71         |
| 2019 Refrigerator - Other             | 2,879.00          |
| Total 2019 Refrigerator               | 500.29            |
| 2019 Utility Trailer                  |                   |
| Accumulated Depreciation              | -1,432.00         |
| 2019 Utility Trailer - Other          | 2,096.00          |
| Total 2019 Utility Trailer            | 664.00            |
| Lacrosse Goals                        |                   |
| Accumulated Depreciation              | -785.14           |
| Lacrosse Goals - Other                | 1,089.30          |
| Total Lacrosse Goals                  | 304.16            |
| 2019 9v9 Goals (5)                    |                   |
| Accumulated Depreciation              | -4,295.00         |
| 2019 9v9 Goals (5) - Other            | 6,875.00          |
| Total 2019 9v9 Goals (5)              | 2,580.00          |
| 2018 Sheds                            |                   |
| Accumulated Depreciation              | -3,102.44         |
| 2018 Sheds - Other                    | 6,206.12          |
| Total 2018 Sheds                      | 3,103.68          |
| 2018 0618 Full Size Goals (6)         |                   |
| Accumulated Depreciation              | -13,710.00        |
| 2018 0618 Full Size Goals (6) - Other | 13,710.00         |
| Total 2018 0618 Full Size Goals (6)   | 0.00              |
| LED Projector                         |                   |
| Accumulated Depreciation              | -2,250.00         |
| LED Projector - Other                 | 2,250.00          |
| Total LED Projector                   | 0.00              |
| 20180618 9v9 Goal                     |                   |

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01/04/24

Accrual Basis

**Amend Park Development Council**  
**STATEMENT OF NET ASSETS**  
As of December 31, 2023

|                                          | <u>Dec 31, 23</u> |
|------------------------------------------|-------------------|
| Accumulated Depreciation                 | -1,350.00         |
| 20180618 9v9 Goal - Other                | 1,350.00          |
| <b>Total 20180618 9v9 Goal</b>           | <b>0.00</b>       |
| Painter - Kromer                         |                   |
| Accumulated Depreciation                 | -24,752.35        |
| Painter - Kromer - Other                 | 24,752.35         |
| <b>Total Painter - Kromer</b>            | <b>0.00</b>       |
| 20180213 Full Size Goals                 |                   |
| Accumulated Depreciation                 | -11,515.71        |
| 20180213 Full Size Goals - Other         | 10,890.00         |
| <b>Total 20180213 Full Size Goals</b>    | <b>-625.71</b>    |
| <b>Total Equipment</b>                   | <b>28,517.18</b>  |
| Furniture and Equipment                  |                   |
| Security System                          |                   |
| Accumulated Depreciation                 | -2,950.49         |
| Security System - Other                  | 2,950.49          |
| <b>Total Security System</b>             | <b>0.00</b>       |
| <b>Total Furniture and Equipment</b>     | <b>0.00</b>       |
| <b>Total Fixed Assets</b>                | <b>57,263.02</b>  |
| Other Assets                             |                   |
| 15 Foot Club Shelter                     |                   |
| Accumulated Depreciation                 | -1,086.79         |
| 15 Foot Club Shelter - Other             | 4,475.00          |
| <b>Total 15 Foot Club Shelter</b>        | <b>3,388.21</b>   |
| 21 Foot Portable Shelter #1              |                   |
| Accumulated Depreciation                 | -7,249.29         |
| 21 Foot Portable Shelter #1 - Other      | 29,850.00         |
| <b>Total 21 Foot Portable Shelter #1</b> | <b>22,600.71</b>  |
| <b>Total Other Assets</b>                | <b>25,988.92</b>  |
| <b>TOTAL ASSETS</b>                      | <b>292,440.26</b> |
| <b>LIABILITIES &amp; EQUITY</b>          |                   |
| Liabilities                              |                   |
| Current Liabilities                      |                   |
| Credit Cards                             |                   |

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 Accrual Basis

**Amend Park Development Council**  
**STATEMENT OF NET ASSETS**  
 As of December 31, 2023

|                                       | Dec 31, 23        |
|---------------------------------------|-------------------|
| Chase Inc                             | 556.85            |
| Total Credit Cards                    | 556.85            |
| Other Current Liabilities             |                   |
| *Payroll Liabilities                  | 1,873.77          |
| Total Other Current Liabilities       | 1,873.77          |
| Total Current Liabilities             | 2,430.62          |
| Total Liabilities                     | 2,430.62          |
| <b>Equity</b>                         |                   |
| <b>NET ASSETS</b>                     |                   |
| <b>With Restrictions</b>              |                   |
| Net Assets - Temp Restricted          |                   |
| DA Davidson Turf Field Fund           | 12,500.00         |
| Net Assets - Temp Restricted - Other  | 350.00            |
| Total Net Assets - Temp Restricted    | 12,850.00         |
| Total With Restrictions               | 12,850.00         |
| <b>Without Restrictions</b>           |                   |
| Net Assets - Unrestricted             |                   |
| Without Restrictions - Other          | 207,626.02        |
| Without Restrictions - Other          | 3,517.97          |
| Total Without Restrictions            | 211,143.99        |
| Total NET ASSETS                      | 223,993.99        |
| Retained Earnings                     | 17,711.74         |
| Net Income                            | 48,303.91         |
| Total Equity                          | 290,009.64        |
| <b>TOTAL LIABILITIES &amp; EQUITY</b> | <b>292,440.26</b> |

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01/04/24

Accrual Basis

**Amend Park Development Council**  
**Statement of Activities**  
**2020**

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|                                | Jan - Dec 23 |
|--------------------------------|--------------|
| Ordinary Income/Expense        |              |
| Income                         |              |
| Insurance Rebate               | 325.15       |
| Painting Service               | 7,285.00     |
| Advertising Income             | 1,500.00     |
| Concession Revenues            | 55,785.86    |
| Contributions - Unrestricted   | 18,390.00    |
| Interest Income                | 553.38       |
| Other Types of Income          |              |
| Miscellaneous Revenue          | 3,632.62     |
| Total Other Types of Income    | 3,632.62     |
| Park User Fees                 | 221,562.52   |
| Total Income                   | 309,034.53   |
| Cost of Goods Sold             |              |
| Cost of Goods Sold             | 4,842.50     |
| Total COGS                     | 4,842.50     |
| Gross Profit                   | 304,192.03   |
| Expense                        |              |
| Mileage                        | 573.82       |
| Vehicle Registration           | 94.23        |
| Security System                | 2,807.50     |
| Referee Expense                | 3,519.00     |
| Alarm System                   | 158.00       |
| Accounting Fees                | 1,900.00     |
| cleaning Supplies              | 3,228.62     |
| *Payroll Expenses              | 43,825.86    |
| Advertising                    | 3,141.00     |
| Bank Service Charges           | 504.78       |
| Concessions                    | 250.00       |
| Concessions - Food             | 26,014.19    |
| Depreciation Expense           | 22,955.27    |
| Dues and Subscriptions         | 736.00       |
| Facilities and Equipment       |              |
| Equip Rental and Maintenance   | 400.00       |
| Rent, Parking, Utilities       | 5,706.50     |
| Total Facilities and Equipment | 6,106.50     |
| Field Expenses                 |              |
| Fuel & Gas Expense             | 1,493.80     |
| Signs                          | 420.00       |
| Paint                          | 25,656.75    |

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01/04/24

Accrual Basis

**Amend Park Development Council**  
**Statement of Activities**  
**2020**

---

|                                 | Jan - Dec 23 |
|---------------------------------|--------------|
| Portable Toilets                | 4,015.45     |
| Turf Management                 |              |
| Turf Tank                       | 8,512.26     |
| Snow Plowing                    | 300.00       |
| 2nd Mowing                      | 7,172.34     |
| Grass Seed                      | 440.00       |
| Mowing, Weed Spraying Littler P | 0.00         |
| Turf Management - Other         | 39,667.82    |
| Total Turf Management           | 56,092.42    |
| Field Expenses - Other          | 800.00       |
| Total Field Expenses            | 88,478.42    |
| Insurance - Liability           | 4,764.32     |
| Insurance - Workers Comp        | 890.63       |
| Miscellaneous                   | 33.02        |
| Office Expense                  | 370.87       |
| Operations                      |              |
| Utilities                       |              |
| Gas & Electric                  | 10,258.20    |
| Pest Control                    | 842.22       |
| Water & Irrigation              | 1,074.48     |
| Total Utilities                 | 12,174.90    |
| Postage, Mailing Service        | 72.24        |
| Supplies                        | 480.37       |
| Telephone, Telecommunications   | 4,120.77     |
| Operations - Other              | -192.00      |
| Total Operations                | 16,656.28    |
| Payroll - Wages                 | 222.72       |
| Payroll Expenses                | 485.92       |
| Repairs                         |              |
| Building Repairs                | 17,656.58    |
| Equipment Repairs               | 10,413.84    |
| Field Maintenance               | 100.75       |
| Total Repairs                   | 28,171.17    |
| Total Expense                   | 255,888.12   |
| Net Ordinary Income             | 48,303.91    |
| Net Income                      | 48,303.91    |

|                                | Actual to Budget  |                   | \$ Over Budget   | Notes                           |
|--------------------------------|-------------------|-------------------|------------------|---------------------------------|
|                                | Jan - Dec 23      | Budget            |                  |                                 |
| <b>Ordinary Income/Expense</b> |                   |                   |                  |                                 |
| <b>Income</b>                  |                   |                   |                  |                                 |
| insurance Rebate               | 325.15            |                   |                  | State fund                      |
| Painting Service               | 7,285.00          |                   |                  | Painting other fields           |
| Advertising Income             | 1,500.00          | 4,000.00          | -2,500.00        |                                 |
| Concession Revenues            | 55,785.86         | 61,870.55         | -6,084.69        |                                 |
| Contributions - Unrestricted   | 18,390.00         |                   |                  | PA System                       |
| Interest Income                | 553.38            | 2.75              | 550.63           | DA Davidson                     |
| Other Types of Income          |                   |                   |                  |                                 |
| Miscellaneous Revenue          | 3,632.62          | 288.33            | 3,344.29         |                                 |
| Total Other Types of Income    | 3,632.62          | 288.33            | 3,344.29         |                                 |
| Park User Fees                 | 221,562.52        | 232,535.90        | -10,973.38       |                                 |
| <b>Total Income</b>            | <b>309,034.53</b> | <b>298,697.53</b> | <b>10,337.00</b> |                                 |
| <b>Cost of Goods Sold</b>      |                   |                   |                  |                                 |
| Cost of Goods Sold             |                   |                   |                  |                                 |
| <b>Total COGS</b>              | <b>4,842.50</b>   |                   |                  |                                 |
| <b>Gross Profit</b>            | <b>304,192.03</b> | <b>298,697.53</b> | <b>5,494.50</b>  |                                 |
| <b>Expense</b>                 |                   |                   |                  |                                 |
| Mileage                        | 573.82            |                   |                  |                                 |
| Vehicle Registration           | 94.23             |                   |                  | Trailer                         |
| Security System                | 2,807.50          |                   |                  | New System                      |
| Yellowstone Adult league       | 0.00              | 5,329.36          | -5,329.36        | Booked under Operations         |
| Referee Expense                | 3,519.00          |                   |                  | Yellowstone Adult Soccer League |
| Alarm System                   | 158.00            | 354.00            | -196.00          | Old System                      |
| Accounting Fees                | 1,900.00          | 100.00            | 1,800.00         |                                 |
| cleaning Supplies              | 3,228.62          |                   |                  | Bathroom Supplies               |
| *Payroll Expenses              | 43,825.86         | 31,103.04         | 12,722.82        |                                 |
| Advertising                    | 3,141.00          | 546.00            | 2,595.00         |                                 |
| Bank Service Charges           | 504.78            | 576.38            | -71.60           |                                 |
| Concessions                    | 4,842.50          | 6,728.35          | -1,885.85        |                                 |
| Concessions - Food             | 26,014.19         | 11,687.24         | 14,326.95        |                                 |
| Depreciation Expense           | 22,955.27         | 25,913.46         | -2,958.19        | Non Cash                        |
| Dues and Subscriptions         | 736.00            | 736.00            | 0.00             | Chamber Dues                    |
| Facilities and Equipment       |                   |                   |                  |                                 |
| Equip Rental and Maintenance   | 400.00            |                   |                  | Parking Lot Light Rental        |
| Rent, Parking, Utilities       | 5,706.50          |                   |                  | Rental Equipment                |
| Total Facilities and Equipment | 6,106.50          |                   |                  |                                 |
| Field Expenses                 |                   |                   |                  |                                 |
| Fuel & Gas Expense             | 1,493.80          | 35.56             | 1,458.24         |                                 |
| Signs                          | 420.00            | 436.30            | -16.30           |                                 |
| Layout                         | 0.00              | 36.96             | -36.96           |                                 |
| Nets                           | 0.00              | 1,137.50          | -1,137.50        |                                 |
| Paint                          | 25,656.75         | 11,475.18         | 14,181.57        | Off set by painting Income      |
| Portable Toilets               | 4,015.45          | 2,116.45          | 1,899.00         |                                 |

|                               |                   |                   |                     |
|-------------------------------|-------------------|-------------------|---------------------|
| <b>Turf Management</b>        |                   |                   |                     |
| Turf Tank                     | 8,512.26          |                   | Robot Lease Payment |
| Snow Plowing                  | 300.00            |                   |                     |
| 2nd Mowing                    | 7,172.34          |                   |                     |
| Grass Seed                    | 440.00            |                   |                     |
| Turf Management - Other       | 39,667.82         | 74,943.40         | -35,275.58          |
| <b>Total Turf Management</b>  | <b>56,092.42</b>  | <b>74,943.40</b>  | <b>-18,850.98</b>   |
| Field Expenses - Other        | 800.00            | 100.00            | 700.00              |
| <b>Total Field Expenses</b>   | <b>88,478.42</b>  | <b>90,281.35</b>  | <b>-1,802.93</b>    |
| Insurance - Liability         | 4,764.32          | 3,200.21          | 1,564.11            |
| Insurance - Workers Comp      | 890.63            |                   |                     |
| Miscellaneous                 | 33.02             | 50.00             | -16.98              |
| Office Expense                | 370.87            |                   |                     |
| <b>Operations</b>             |                   |                   |                     |
| <b>Utilities</b>              |                   |                   |                     |
| Gas & Electric                | 10,258.20         | 4,614.77          | 5,643.43            |
| Pest Control                  | 842.22            | 799.69            | 42.53               |
| Water & Irrigation            | 1,074.48          |                   |                     |
| Utilities - Other             | 0.00              | 2,554.34          | -2,554.34           |
| <b>Total Utilities</b>        | <b>12,174.90</b>  | <b>7,968.80</b>   | <b>4,206.10</b>     |
| Taxes & Licenses              | 0.00              | 2,187.34          | -2,187.34           |
| Postage, Mailing Service      | 72.24             | 79.05             | -6.81               |
| Supplies                      | 480.37            | 631.07            | -150.70             |
| Telephone, Telecommunications | 4,120.77          | 887.37            | 3,233.40            |
| Operations - Other            | -192.00           | 14,494.34         | -14,686.34          |
| <b>Total Operations</b>       | <b>16,656.28</b>  | <b>26,247.97</b>  | <b>-9,591.69</b>    |
| Other                         | 0.00              | -3.00             | 3.00                |
| Payroll - Wages               | 222.72            |                   |                     |
| Payroll Expenses              | 485.92            | 963.54            | -477.62             |
| <b>Repairs</b>                |                   |                   |                     |
| Building Repairs              | 17,656.58         |                   |                     |
| Equipment Repairs             | 10,413.84         |                   |                     |
| Field Maintenance             | 100.75            |                   |                     |
| <b>Total Repairs</b>          | <b>28,171.17</b>  |                   |                     |
| Uncategorized Expenses        | 0.00              | -1,093.64         | 1,093.64            |
| <b>Total Expense</b>          | <b>260,480.62</b> | <b>202,720.26</b> | <b>57,760.36</b>    |
| <b>Net Ordinary Income</b>    | <b>48,303.91</b>  | <b>95,977.27</b>  | <b>-47,673.36</b>   |
| <b>Net Income</b>             | <b>48,303.91</b>  | <b>95,977.27</b>  | <b>-47,673.36</b>   |

# 2024 BUDGET

|                                       | <u>Jan - Dec</u><br><u>24</u> |                     |                         |
|---------------------------------------|-------------------------------|---------------------|-------------------------|
| Ordinary Income/Expense               |                               | Capital Improvement |                         |
| Income                                |                               | Parking Lot Lights  | \$ 5,000                |
| insurance Rebate                      | 325.15                        | Turf Camera System  | <u>\$ 5,000</u>         |
| Painting Service                      | 7,285.00                      | <b>Total</b>        | <u><u>\$ 10,000</u></u> |
| Advertising Income                    | 1,500.00                      |                     |                         |
| Concession Revenues                   | 55,000.00                     |                     |                         |
| Contributions - Unrestricted          | 5,000.00                      |                     |                         |
| Interest Income                       | 500.00                        |                     |                         |
| Park User Fees                        | <u>221,562.52</u>             |                     |                         |
| <b>Total Income</b>                   | <u>291,172.67</u>             |                     |                         |
| <b>Gross Profit</b>                   | 291,172.67                    |                     |                         |
| Expense                               |                               |                     |                         |
| Mileage                               | 600.00                        |                     |                         |
| Security System                       | 3,000.00                      |                     |                         |
| Referee Expense                       | 3,500.00                      |                     |                         |
| Accounting Fees                       | 2,400.00                      |                     |                         |
| cleaning Supplies                     | 3,228.62                      |                     |                         |
| Advertising                           | 3,141.00                      |                     |                         |
| Bank Service Charges                  | 504.78                        |                     |                         |
| Concessions                           | 250.00                        |                     |                         |
| Concessions - Food                    | 26,014.19                     |                     |                         |
| Dues and Subscriptions                | 736.00                        |                     |                         |
| Facilities and Equipment              |                               |                     |                         |
| Equip Rental and Maintenance          | 1,200.00                      |                     |                         |
| Rent, Parking, Utilities              | <u>600.00</u>                 |                     |                         |
| <b>Total Facilities and Equipment</b> | 1,800.00                      |                     |                         |
| Field Expenses                        |                               |                     |                         |
| Fuel & Gas Expense                    | 1,500.00                      |                     |                         |
| Signs                                 | 500.00                        |                     |                         |
| Paint                                 | 25,656.75                     |                     |                         |
| Portable Toilets                      | 2,400.00                      |                     |                         |
| Turf Management                       |                               |                     |                         |
| Turf Tank                             | 8,000.00                      |                     |                         |
| Snow Plowing                          | 300.00                        |                     |                         |
| 2nd Mowing                            | 7,200.00                      |                     |                         |
| Grass Seed                            | 440.00                        |                     |                         |
| Turf Management - Other               | <u>40,000.00</u>              |                     |                         |
| <b>Total Turf Management</b>          | 55,940.00                     |                     |                         |
| Field Expenses - Other                | <u>800.00</u>                 |                     |                         |
| <b>Total Field Expenses</b>           | 86,796.75                     |                     |                         |

|                                      |                         |
|--------------------------------------|-------------------------|
| <b>Insurance - Liability</b>         | 4,764.32                |
| <b>Insurance - Workers Comp</b>      | 890.63                  |
| <b>Office Expense</b>                | 400.00                  |
| <b>Operations</b>                    |                         |
| <b>Utilities</b>                     |                         |
| <b>Gas &amp; Electric</b>            | 12,000.00               |
| <b>Pest Control</b>                  | <u>842.22</u>           |
| <b>Total Utilities</b>               | 12,842.22               |
| <b>Postage, Mailing Service</b>      | 120.00                  |
| <b>Supplies</b>                      | 600.00                  |
| <b>Telephone, Telecommunications</b> | <u>4,200.00</u>         |
| <b>Total Operations</b>              | 17,762.22               |
| <b>Payroll - Wages</b>               | 67,400.00               |
| <b>Payroll Expenses</b>              | 540.00                  |
| <b>Repairs</b>                       |                         |
| <b>Building Repairs</b>              | 12,000.00               |
| <b>Equipment Repairs</b>             | <u>12,000.00</u>        |
| <b>Total Repairs</b>                 | <u>24,000.00</u>        |
| <b>Total Expense</b>                 | <u>247,728.51</u>       |
| <b>Net Ordinary Income</b>           | <u>43,444.16</u>        |
| <b>Net Income</b>                    | <u><u>43,444.16</u></u> |

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Annual Acceptance of Federal Aviation Administration Airport Improvement Program Grants  
**Presented by:** Shane Ketterling, Assistant Director of Aviation and Transit  
**Department:** Airport  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that the City Council accept this year's Airport Improvement Program (AIP) Grants from the Federal Aviation Administration (FAA) and authorize the Mayor to execute each of the grant offers as they are received.

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

Each year the Airport seeks Federal grant funding through the FAA - AIP process to fund ongoing capital projects at the Airport. Annually, the Airport may be awarded a number of AIP grants due to funding allocation, varying projects, and grant scheduling issues. These grants are normally on a tight timeline for acceptance; subsequently, each year the Airport seeks the approval and authorization from the City Council for the Mayor to execute the FAA provided AIP grant offers as they are received. This year's grant offers should include funding from the Airport's annual entitlements, discretionary grant funding, and funds from the Bipartisan Infrastructure Law (BIL). These grants may provide funding for all or some of the following projects; approximately \$800,000 for a Master Plan Update, \$6,736,700 for a new aircraft cargo ramp, and \$840,000 to rehabilitate and repave the Aviation Place Access Road. Ultimately, Airport staff anticipates at least two grant offers with the potential of a third grant funded with AIP discretionary funds.

**ALTERNATIVES**

City Council may:

- Approve the acceptance of this year's AIP grants authorizing the Mayor to execute each grant offer as they are received; or,
- Not Approve the acceptance of this year's AIP grants and provide direction to staff on how to proceed.

**FISCAL EFFECTS**

This year the Airport expects funding from its regular AIP Grant entitlements, AIP discretionary, and funds from the Bipartisan Infrastructure Law (BIL) for a total of up to \$8,376,700. Regardless of the amounts received, the Airport will need to provide a 10% local share match and these funds are available in the Airport's Capital Fund.

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**City Council Regular**

**Date:** 01/22/2024

**Title:** Approval to Submit, Support and Accept if awarded a MT Community Reinvestment Plan Act Planning Grant to Support Comprehensive Planning (SB 382)

**Presented by:** Wyeth Friday

**Department:** Planning & Community Services

**Presentation:** No

**Legal Review:** Not Applicable

**Project Number:** N/A

**RECOMMENDATION**

Staff recommends that Council approve the submittal, support and acceptance, if awarded, of a Montana Community Reinvestment Plan Act Planning Grant of up to \$30,000 to support comprehensive planning (AKA a growth policy update per Senate Bill 382). A letter of support (draft attached) will be signed by the Mayor after Council action on this grant application.

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

In 2023, the Montana Legislature passed the Montana Community Reinvestment Plan Act, HB 819, with the purpose "to begin to address housing needs and offer a regional, community-based solution to creating affordable, attainable workforce housing infrastructure in the state." Section 22 of HB 819 appropriated \$1 million to the Department of Commerce to "provide planning grants to local governments and tribal governments for planning and zoning reforms to increase housing supply" and "cover administrative costs of the grant program."

The City of Billings per action by the 2023 Legislature in passing the Montana Land Use Planning Act (SB 382) is about to launch a new round of comprehensive planning (AKA growth policy update) in early 2024. The City Council budgeted \$200,000 in Fiscal Year 2024 to conduct this comprehensive planning effort over the next two and a half years. A major component of this work is to conduct a Housing Analysis that must inform, per SB 382, the future zoning and infrastructure plans of the City to accommodate the number of housing units in the next 20 years that the Housing Analysis finds is needed.

Staff is applying for this grant to help fund the Housing Analysis component of the comprehensive planning as this grant is specifically focused on this type of project to address housing needs. The most that may be applied for is \$30,000, which is what staff is proposing. The Montana Department of Commerce Community Division will administer the grant program. The Department anticipates providing at least \$1,000,000 in planning grants to eligible applicants during the current biennium (State Fiscal Years 2024 and 2025). The deadline for the grant submittal is February 9. Awards are expected in late spring 2024.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve submittal of the grant. There is no disadvantage to submitting this grant as it would increase the City's resources to complete the Housing Analysis component of the growth policy update.

**FISCAL EFFECTS**

If this grant is awarded, it will provide up to \$30,000 in support of the Housing Analysis component of the City's new comprehensive plan (AKA growth policy). The grant requires a 20% match of the amount of the total project and up to 50% of the match may be met by "in-kind" contributions, like salaried staff time or other services provided by the City. Since the total project budget is \$200,000, \$30,000 would be added to the total to make a total project of \$230,000. The City would put up to a total match of \$46,000 (\$23,000 cash/\$23,000 in-kind). That leaves \$177,000 in funds for the remaining comprehensive planning elements, required code audit and recommended code updates.

**Attachments**

COB LOS Commerce Housing Grant



January 22, 2024

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

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

Subject: Support for Grant Application – Montana Community Reinvestment Plan Act (HB 819)

To Whom it May Concern,

The Billings City Council is writing to express its support for the submittal of our grant application under the Montana Community Reinvestment Plan Act (HB 819). The purpose of this grant is to address housing needs and offer a regional, community-based solution to creating affordable, attainable workforce housing infrastructure in the state.

As per Section 22 of HB 819, \$1 million has been appropriated to the Department of Commerce to provide planning grants to local governments and tribal governments for planning and zoning reforms aimed at increasing housing supply. The City of Billings, in alignment with the 2023 Legislature's passing of the Montana Land Use Planning Act (SB 382), is set to launch a new round of comprehensive planning, specifically a growth policy update, in early 2024.

Our City Council has budgeted \$200,000 in Fiscal Year 2024 to conduct this comprehensive planning effort over the next two and a half years. A crucial component of this initiative is the Housing Analysis, mandated by SB 382, which will inform the future zoning and infrastructure plans of the city to accommodate the projected number of housing units needed in the next 20 years.

We are seeking your support for our grant application to fund the Housing Analysis component of the comprehensive planning. The grant, administered by the Montana Department of Commerce Community Division, has a maximum limit of \$30,000, and we are proposing the full amount to support this essential project addressing our city's housing needs.



---

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

Your support in this endeavor is crucial to the success of our comprehensive planning efforts and the realization of our shared goal to enhance housing opportunities for our community. We believe that this grant will significantly contribute to the success of our Housing Analysis, enabling us to plan for the future growth and development of our city effectively.

Thank you for your attention to this matter. We look forward to your support and collaboration in securing the necessary resources to address the housing needs of the City of Billings.

Sincerely,

William A. Cole, Mayor  
City of Billings



CITY OF  
**Billings**

---

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

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[billingsmt.gov](http://billingsmt.gov)

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Acceptance of Donation from Billings Go Kickball to Youth Scholarship Fund  
**Presented by:** Kory Thomson  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

---

**RECOMMENDATION**

Staff recommends that City Council accept the donation from Billings Go Kickball in the amount of \$1,637.54 to the Youth Scholarship Fund.

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

In 2023, the Billings Go Kickball league was in need of field lighting for their upcoming fall season after the lights at North Park were greatly damaged due to severe storms over the past year. Through the cooperation of the Billings Parks and Recreation Department and the Billings Mustangs, the league was able to utilize Dehler Park starting in September. With the proceeds from the season, Go Kickball chose the Youth Scholarship Fund as their project to benefit the community. Billings Go Kickball has utilized Billings City Parks since 2014 for their spring and fall kickball leagues.

**ALTERNATIVES**

City Council may:

- Approve the donation of \$1,637.54 from Billings Go Kickball to the Youth Scholarship Fund ; or,
- Not Approve the donation and provide staff with additional guidance.

**FISCAL EFFECTS**

There will be no additional fiscal impacts to the City's General Fund.

---

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Acceptance of Donation from Billings Scheels to Youth Scholarship Fund  
**Presented by:** Kory Thomson  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

---

**RECOMMENDATION**

Staff recommends that City Council accept the donation from Billings Scheels in the amount of \$3,000 to the Youth Scholarship Fund.

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

As part of their "Day of Giving", the Billings Scheels store donated \$3000 to the Youth Scholarship Fund, through the Partners for Parks Foundation, to benefit children in the Billings community. This is the third year in a row that Scheels has made a donation to the Youth Scholarship Fund through their "Day of Giving."

**ALTERNATIVES**

City Council may:

- Approve the donation of \$3000 from Scheels to the Youth Scholarship Fund; or,
- Not Approve the donation and provide staff with additional guidance.

**FISCAL EFFECTS**

There will be no additional fiscal impacts to the City's General Fund.

---

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Authorizing Release of Certain Easements in Vacated Portions of North 28th Street and Normal Sub Block 1  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** NA

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**RECOMMENDATION**

Staff recommends that the City Council approve the release of certain easements in vacated portions of North 28th Street and Normal Subdivision, Block 1 Alley.

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

North 28th Street between Poly Drive and 12th Avenue North and the Normal Subdivision Block 1 alley were vacated to the Sisters of Charity of Leavenworth Health Services (St. Vincent's Hospital) in 1999. In 1999, both rights-of-way contained public water, sanitary sewer, and storm drain mains. When the right-of-way was vacated in 1999, Sisters of Charity of Leavenworth Health Services granted the City of Billings perpetual right-of-way easements for the water, sanitary sewer, and storm drain mains that remained. Intermountain Health is constructing a new hospital and has re-located all the public utilities from within the previously vacated right-of-way and public easements. It now becomes necessary to release the perpetual right-of-way easements prior to construction of buildings in those locations. Attached are the easements (as exhibits to the release) to be released that no longer contain public utilities. This Council action is to approve the release of these easements.

**ALTERNATIVES**

The Council may:

- Approve the release of the easements;
- Not approve of the release. Not approving the release would require Intermountain Health to re-design the new hospital to be located outside the easement areas.

**FISCAL EFFECTS**

There is no significant fiscal effect resulting from approval of the release.

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**Attachments**

Release

## **RELEASE OF PERPETUAL RIGHT-OF-WAY EASEMENTS**

WHEREAS, the City discontinued and vacated a portion of the dedicated public right-of-way lying between Block 1, Normal Subdivision on the easterly side of the street and Block 2, Normal Subdivision on the westerly side of the street in Resolution No. 99-17476; and

WHEREAS, the City previously acquired certain Perpetual Right-of-Way Easements in 2000 shown in Exhibit A, Exhibit B, and Exhibit C, attached hereto and incorporated herein, for sanitary sewer, water and storm drain lines for public utility purposes located beneath this discontinued and vacated public right-of-way which are now inactive and abandoned for these intended purposes; and

WHEREAS, Intermountain Health, previously The Sisters of Charity of Leavenworth Health System, Inc. (SCL Health – Montana), will be submitting a building permit to build a replacement hospital over this discontinued and vacated public right-of-way and have petitioned the City to release these encumbering utility easements; and

WHEREAS, it is in the public interest to authorize the release of these certain City easements which are no longer necessary for public utility purposes and encumber the real property upon which this replacement hospital is to be built.

NOW, THEREFORE, the City of Billings does hereby release, relinquish, surrender, abandon, and quitclaim to the present owner of the surface lands described in said easements all rights, title, and interests in said easements.

**IN WITNESS WHEREOF** the Mayor of the City of Billings executed this instrument on the    day of           , 2024.

\_\_\_\_\_  
By: **WILLIAM A. COLE, MAYOR**

STATE OF MONTANA     )  
                                          : ss  
County of Yellowstone     )

This instrument was signed or acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_ 2024, by WILLIAM A. COLE, as the MAYOR OF THE CITY OF BILLINGS.

\_\_\_\_\_  
DENISE R. BOHLMAN, CITY CLERK

APPROVED AS TO FORM:

By \_\_\_\_\_

GINA DAHL, CITY ATTORNEY

### PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 14 day of June, 2000, the undersigned, **THE SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION, A Not For Profit Kansas Corporation**, of the address of 4200 South Fourth Street, Cantwell Hall, Leavenworth, Kansas 66048-5054, hereinafter called "Grantors", hereby grant and convey unto **THE CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under, and through the following described tracts of real property in Yellowstone County, Montana:

A strip of land situated in Lots 14 through 20, Block 1, and the vacated alley in Block 1, Normal Subdivision, Certificate of Survey No. 934 and Lot 2, Block 1, Normal Subdivision, Third Filing, more particularly described as follows:

Beginning at a point which is situated N34°38'00"W a distance of 10.58 feet from the northeast corner of Lot 14, Block 1, Normal Subdivision; thence, from said point of beginning, S47°41'58"W a distance of 146.31 feet; thence, N34°38'00"W a distance of 20.18 feet; thence, N47°41'58"E a distance of 134.09 feet; thence, N34°38'00"W a distance of 97.11 feet to a point on the south right-of-way line of Poly Drive; thence, along said right-of-way on a non-tangent curve to the left, having a radius of 540.85 feet a distance of 50.16 feet (chord bearing N65°45'31"E, chord 50.14 feet); thence S31°01'41"W a distance of 32.18 feet; thence S34°38'00"E a distance of 92.29 feet; thence S47°41'58"W a distance of 7.96 feet to said point of beginning; said easement containing an area of 5,218 square feet and as shown on attached "Exhibit A".

This perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing storm drain lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said storm drain lines and appurtenances, and adding additional storm drain lines.

Grantors shall continue to have the right to use and enjoy the above described property, except as to the rights herein granted, subject to the following restrictions:

- A. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape, or form, except as may be licensed by Grantee.



**3102094**  
Page: 1 of 4  
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City Clerk  
City of Billings  
P.O. Box 1170  
Billings, MT 59103  
97034 (5-3-00)

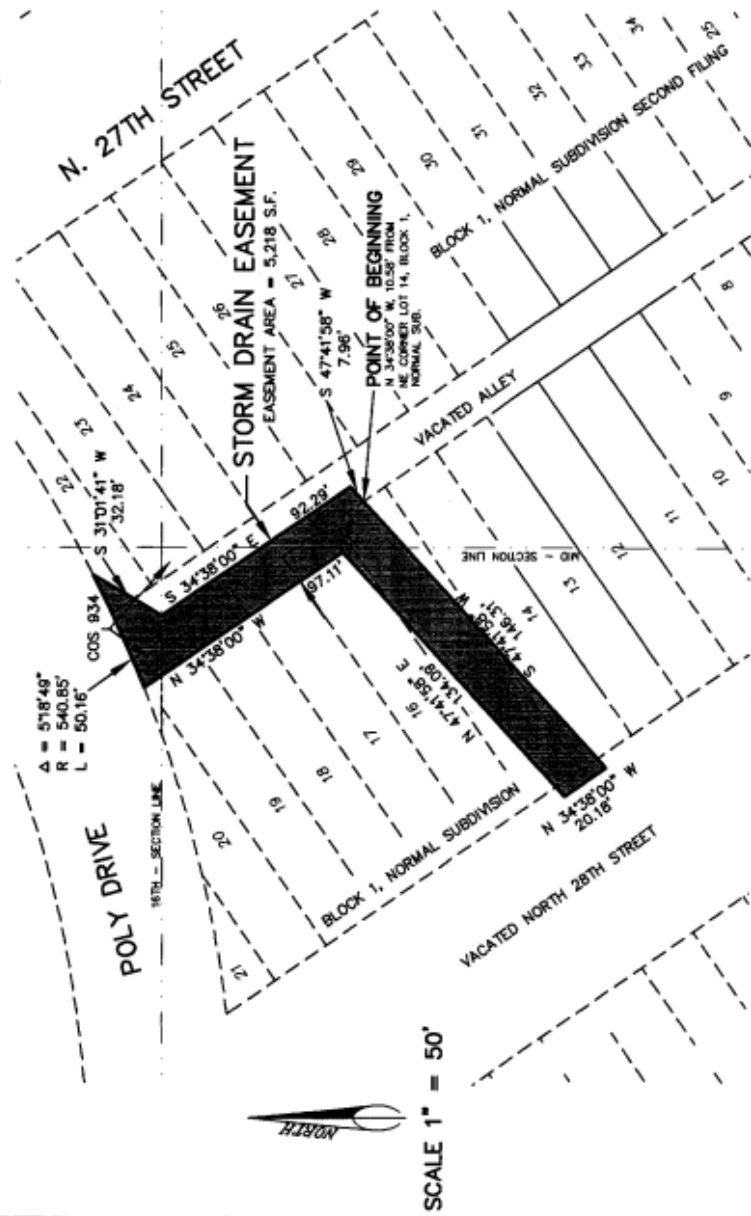
- B. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
- C. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
- D. Grantors agree to obtain the permission of the Public Utilities Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way, and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the Grantee.
- E. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.
- F. Hold Harmless Agreement:
1. Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from the easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
  2. Grantors agree the owners of the above described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of the rights, restrictions, obligations or responsibilities contained in this agreement.





**"EXHIBIT A"**

PERPETUAL RIGHT-OF-WAY EASEMENT FOR STORM DRAIN  
 ACROSS BLOCK 1, NORMAL SUBDIVISION AND COS 934,  
 SITUATED IN THE NE 1/4 AND NW 1/4 OF SECTION 32, T. 1 N., R. 26 E., P.M.M.  
 PREPARED FOR: SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION  
 PREPARED BY: ENGINEERING, INC. FEBRUARY, 2000



SCALE 1" = 50'



3102094  
 Page: 4 of 4  
 09/07/2000 09:33A

Yellowstone County ERSE 24.00

**PERPETUAL RIGHT-OF-WAY EASEMENT**

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged on this 29<sup>th</sup> day of September 29, 2000, the undersigned **SISTERS OF CHARITY OF LEAVENWORTH HEALTH SYSTEM, INC.** of the address of Cantwell Hall, 4200 South Fourth Street, Leavenworth, Kansas 66048, hereinafter called "Grantor", hereby grants and convey unto **THE CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under, and through the following described tracts of real property in Yellowstone County, Montana:

Alley: Normal Subdivision, Block 1.

Vacated under City Resolution No. 99-17440, previous alley in Block 1, Normal Subdivision, between streets 12<sup>th</sup> Avenue North and Poly Drive, and between North 27<sup>th</sup> Street and North 28<sup>th</sup> Street, depicted on Exhibit "A" attached hereto.

This perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing an existing sanitary sewer line over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said sanitary sewer lines and appurtenances, and adding additional sanitary sewer lines.

Grantor shall continue to have the right to use and enjoy the above-described property, except as to the rights herein granted, subject to the following restrictions.

- A. Grantor and its successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape, or form, except as may be licensed by Grantee.
- B. Grantor agrees not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
- C. Grantor agrees that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
- D. Grantor agrees to obtain the permission of the Public Utilities Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way, and, in addition, in the event such permission is granted, the Grantor agrees to perform any work necessary to modify the existing sanitary lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the Grantee.
- E. Grantor agrees that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the sanitary sewer lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.
- F. Hold Harmless Agreement:



1. Grantor agrees that the owner or owners of the above-described property shall at all times fully relieve and save harmless th City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from the easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
  2. Grantor agrees the owners of the above-described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such owner's failure to comply with any portion of their rights, restrictions, obligations or responsibilities contained in this agreement.
- G. The restrictions, Covenants and Hold Harmless Agreements herein contained shall attach to and run with the land and shall bind the parties, hereto and all persons claiming thereunder.

Grantor warrants and covenants that there are no liens or other encumbrances on the described tract or tracts.

Sisters of Charity of Leavenworth  
Health System Inc.

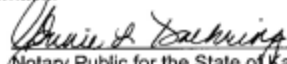
By   
Ed Barker  
Its Vice President, Legal Counsel

STATE OF KANSAS        )  
                                  : ss.  
County of Wyandotte    )

On this 29<sup>th</sup> day of September, 2000, before me, the undersigned, a Notary Public for the State of Kansas, personally appeared ED BARKER, known to me to be the Vice President and Legal Counsel of the corporation executing the within instrument, and acknowledged to me that he executed the within instrument on behalf of said corporation, having first been authorized so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.



  
Notary Public for the State of Kansas  
Residing at 3624 W. 10th St. Kansas  
My Commission Expires: 2/20/2003





### PERPETUAL RIGHT-OF-WAY EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged on this 14 day of June, 2000, the undersigned, **THE SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION, A Not For Profit Kansas Corporation**, of the address of 4200 South Fourth Street, Cantwell Hall, Leavenworth, Kansas 66048-5054, hereinafter called "Grantors", hereby grant and convey unto **THE CITY OF BILLINGS**, a municipal corporation and political subdivision of the State of Montana, of the address of City Hall, Billings, Montana 59101, hereinafter called "Grantee", a perpetual easement and right-of-way over, across, under, and through the following described tracts of real property in Yellowstone County, Montana:

A 70-foot wide strip of land situated in Lot 2, Block 1, Normal Subdivision, Third Filing, more particularly described as follows:

Beginning at a point on the north right-of-way line of 12th Avenue North which is situated S55°19'00"W a distance of 5.00 feet from the southwest corner of Lot 1, Block 1, Normal Subdivision; thence, from said point of beginning along said right-of-way line, S55°19'00"W a distance of 70.00 feet; thence, N34°38'00"W a distance of 375.00 feet; thence, N55°22'00"E a distance of 3.24 feet; thence, N34°38'00"W a distance of 29.51 feet; thence, along a non-tangent curve to the left, having a radius of 100.00 feet a distance of 150.97 feet (chord bearing N34°43'33"W, chord 137.04 feet); thence, N12°01'27"E a distance of 22.58 feet to a point on the south right-of-way line of Poly Drive; thence, along said right-of-way line on non-tangent curve to the left, having a radius of 540.85 feet a distance of 59.18 feet (chord bearing N86°37'55"E, chord 59.15 feet); thence S34°38'00"E a distance of 526.28 feet to said point of beginning; said easement containing an area of 34,927 square feet and as shown on attached "Exhibit A".

This perpetual easement to Grantee is for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing storm drains, sanitary sewers and/or water lines over, across, under and through the said real property, together with the right of free ingress and egress at all times for the purpose of constructing, reconstructing, maintaining, operating, servicing, repairing and replacing said storm drains, sanitary sewers and/or water lines and appurtenances, and adding additional storm drains, sanitary sewer and/or water lines.

Grantors shall continue to have the right to use and enjoy the above described property, except as to the rights herein granted, subject to the following restrictions:

- A. Grantors and their successors agree not to construct, nor cause to be constructed, within the easement right-of-way, any type of building or structure, such as, but

C57-SV ROW Easement



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Page: 1 of 4  
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City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

97034 (5-3-00)

not limited to, houses, garages, sheds, kennels, fences, nor any other fixed objects of any kind, shape, or form, except as may be licensed by Grantee.

- B. Grantors agree not to plant, nor cause to be planted within the easement right-of-way any trees, bushes, shrubs, hedges nor any other plantings of a similar nature, except as may be licensed by Grantee.
- C. Grantors agree that authorized representatives of the City of Billings can freely travel within the easement right-of-way with their equipment in the performance of their duties at any time, day or night, regardless of outside weather conditions.
- D. Grantors agree to obtain the permission of the Public Utilities Department or Grantee prior to placing or removing any fill dirt within the easement right-of-way, and, in addition, in the event such permission is granted, the Grantors agree to perform any work necessary to modify the existing storm drains, sanitary sewers and/or water lines and appurtenances, which work may be required prior to placing or removing any fill dirt within the easement right-of-way and all such work shall be done at the Grantor's expense and without expense to the Grantee.
- E. Grantors agree that the sole responsibility of the City of Billings for any surface restoration due to any construction, replacement, repair or service work to the storm drains, sanitary sewer and/or water lines by the City of Billings, shall be limited to trench backfill compaction and placement of backfill material to existing grade by the City of Billings.
- F. Hold Harmless Agreement:
  - 1. Grantors agree that the owner or owners of the above described property shall at all times fully relieve and save harmless the City of Billings and its authorized representatives for any and all damages of property that may be caused within said easement right-of-way, such as, but not limited to, ruts or deep tracks in lawns, gardens, or flower beds, broken or crushed shrubs, bushes, hedges, trees or any other type of plantings; crushed, cracked, split or otherwise damaged, irrigation piping and appurtenances; and, any other damage to any other type of object, material or equipment located within the easement right-of-way which cannot, with a minimum of human effort and within a few minutes time period, be removed from the easement right-of-way by authorized representatives of the City of Billings in exercise of any of their rights under this easement right-of-way.
  - 2. Grantors agree the owners of the above described real property shall reimburse the City of Billings for any and all damage claims paid by the City for damages of any type or nature to any and all persons and entities in the event such damage results from or was caused to happen by such



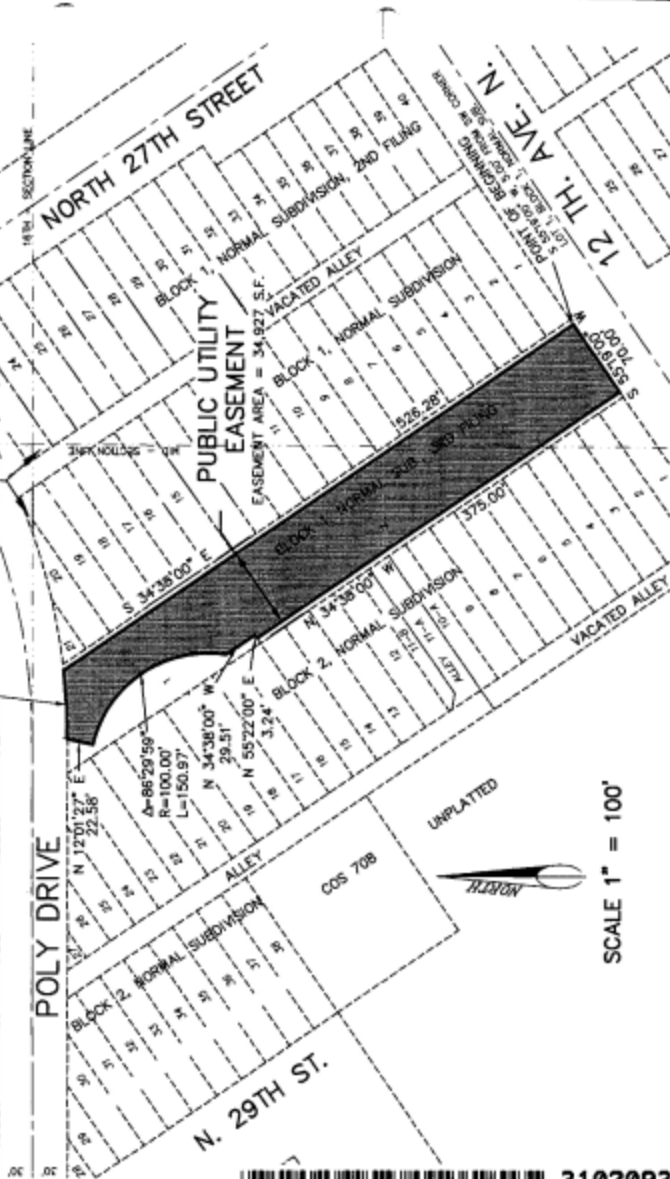


# "EXHIBIT A"

PERPETUAL RIGHT-OF-WAY EASEMENT FOR PUBLIC UTILITIES  
 A PORTION OF LOT 2, BLOCK 1, NORMAL SUBDIVISION, 3RD FILING  
 SITUATED IN THE NE 1/4 AND NW 1/4 OF SECTION 32, T. 1 N., R. 26 E., P.M.M.

PREPARED FOR: SISTERS OF CHARITY OF LEAVENWORTH HEALTH SERVICES CORPORATION  
 PREPARED BY: ENGINEERING, INC. FEBRUARY, 2000

$\Delta=616'10"$   
 $R=540.85'$   
 $L=59.18'$



SCALE 1" = 100'



3102093

Page: 4 of 4  
 09/07/2000 09:33A

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Preliminary plat extension request for Annafeld North Subdivision, 2nd Filing  
**Presented by:** David Green  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** PZX-20-00262

---

**RECOMMENDATION**

Staff recommends the City Council approve the preliminary plat extension request for Annafeld North Subdivision, 2nd Filing.

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

On December 6, 2023, Greg McCall for McCall Homes requested a preliminary plat extension for Annafeld North Subdivision, 2nd Filing. The subdivision received original preliminary plat approval on March 22, 2021. The preliminary plat would expire on March 22, 2024. McCall Homes are requesting an extension of two years to the preliminary approval. The new date for completion of the final plat, with the extension, would be March 22, 2026.

**ALTERNATIVES**

The City Council may approve or disapprove of the preliminary plat extension request of Annafeld North Subdivision, 2nd Filing. The City of Billings Subdivision Regulations state the following:

"The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period, the governing body may, at the request of the subdivider, extend its approval for a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension per BMCC 23-300 M.

When considering a request for an extension of the preliminary plat approval period, the governing body may use the following criteria to evaluate the request:

1. Changes to the subdivision regulations since the original approval and whether the subdivision as originally approved is essentially compliant with the new regulations;
2. Progress to date in completing the subdivision as a whole and any phases;
3. Phasing of the subdivision and the ability for the existing development to operate without the delayed development;
4. Dependence of infrastructure development on the subdivision;
5. Duration of the requested extension;
6. Demonstrated ability of the subdivider to complete the subdivision;
7. Such other factors or criteria as deemed material in the discretion of the governing body.

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA)." Staff found no reason under the extension criteria to deny this extension of the time period for the Annafeld North Subdivision, 2nd Filing Preliminary Plat.

**FISCAL EFFECTS**

The extension request for this subdivision will have no financial impact on the Planning Division.

---

**Attachments**

Preliminary Plat  
Preliminary SIA  
Extension Request  
Signed Preliminary Plat Conditions of approval

PRELIMINARY PLAT OF  
**ANNAFELD NORTH SUBDIVISION,**  
**SECOND FILING**

BEING LOT 5, BLOCK 3, OF ANNAFELD NORTH SUBDIVISION, FIRST FILING,  
 BILLINGS, YELLOWSTONE COUNTY, MONTANA

PREPARED FOR : MCCALL DEVELOPMENT, LLC

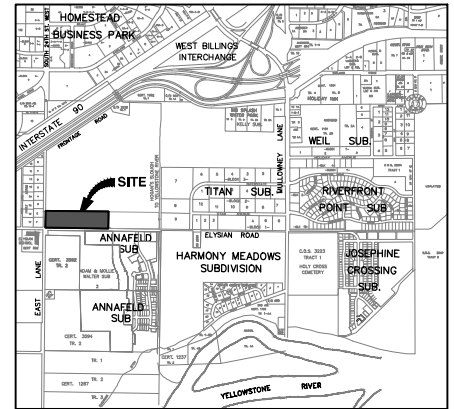
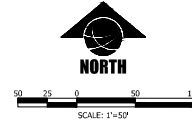
PREPARED BY : **SANDERSON STEWART**

DECEMBER, 2020

BILLINGS, MONTANA

PLAT DATA

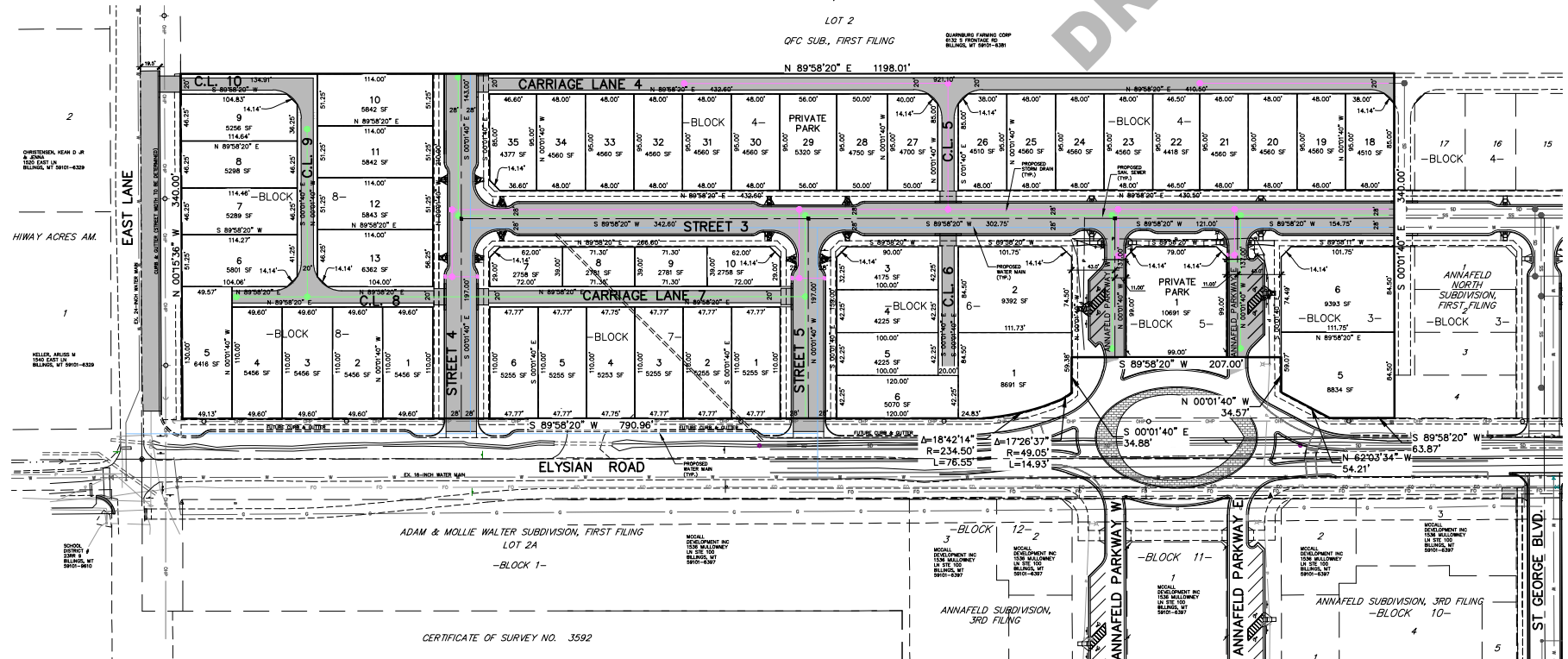
|                        |                                                                       |
|------------------------|-----------------------------------------------------------------------|
| GROSS AREA             | = ±9.03 ACRES                                                         |
| NET AREA               | = ±5.69 ACRES                                                         |
| NUMBER OF LOTS         | = 50                                                                  |
| MINIMUM LOT SIZE       | = 2,758 SF                                                            |
| MAXIMUM LOT SIZE       | = 9,393 SF                                                            |
| LINEAL FEET OF STREETS | = 1,732 L.F.                                                          |
| PARKLAND REQUIREMENT   | = ±0.626 ACRES                                                        |
| PARKLAND DEDICATION    | = ±0.368 ACRES WITH EXCESS DEDICATION WITH ANNAFELD NORTH, 1ST FILING |
| EXISTING ZONING        | = NEIGHBORHOOD COMMERCIAL                                             |
| SURROUNDING ZONING:    |                                                                       |
| NORTH                  | = HIGHWAY COMMERCIAL                                                  |
| SOUTH                  | = P.U.D                                                               |
| EAST                   | = NEIGHBORHOOD COMMERCIAL                                             |
| WEST                   | = RESIDENTIAL 15000                                                   |
| EXISTING LAND USE      | = VACANT                                                              |
| PROPOSED LAND USE      | = RESIDENTIAL/COMMERCIAL                                              |



VICINITY MAP  
 NOT TO SCALE

- FOUND SURVEY MONUMENT, REBAR WITH "SANDERSON STEWART" CAP OR AS NOTED.
- EXISTING BRASS CAP IN CAST IRON MONUMENT BOX.
- ✕ SET 5/8" X 18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART"
- SET INTERSECTION MONUMENT, 5/8"X18" REBAR WITH CAP MARKED WITH THE LICENSE NUMBER OF THE UNDERSIGNED LAND SURVEYOR AND "SANDERSON STEWART BILLINGS MT". WILL BE REPLACED WITH BRASS CAP MONUMENT BOX UPON COMPLETION OF STREET IMPROVEMENTS.

NOTE: ALL CURVES ARE TANGENT AND ALL PROPERTY LINES INTERSECTING CURVES ARE RADIAL UNLESS OTHERWISE NOTED.



CERTIFICATE OF SURVEY NO. 3592

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD NORTH SUBDIVISION, SECOND FILING  
CITY OF BILLINGS  
Table of Contents**

|              |                                                        |        |
|--------------|--------------------------------------------------------|--------|
| <b>I.</b>    | Variances                                              | SIA-2  |
| <b>II.</b>   | Property Conditions and Information for Lot Purchasers | SIA-2  |
| <b>III.</b>  | Transportation                                         | SIA-4  |
|              | A. Streets                                             | SIA-4  |
|              | B. Alleys                                              | SIA-5  |
|              | C. Sidewalks                                           | SIA-6  |
|              | D. Street Lighting                                     | SIA-6  |
|              | E. Traffic Control Devices                             | SIA-6  |
|              | F. Access                                              | SIA-7  |
|              | G. Billings Area Bikeway and Trail Master Plan         | SIA-7  |
|              | H. Public Transit                                      | SIA-7  |
| <b>IV.</b>   | Emergency Service                                      | SIA-7  |
| <b>V.</b>    | Storm Drainage                                         | SIA-8  |
| <b>VI.</b>   | Utilities                                              | SIA-9  |
|              | A. Water                                               | SIA-9  |
|              | B. Sanitary Sewer                                      | SIA-9  |
|              | C. Power, Telephone, Gas, and Cable Television         | SIA-10 |
| <b>VII.</b>  | Parks/Open Space                                       | SIA-10 |
| <b>VIII.</b> | Homeowner's Associations                               | SIA-10 |
| <b>IX.</b>   | Postal Delivery                                        | SIA-10 |
| <b>X.</b>    | Soils/Geotechnical Study                               | SIA-11 |
| <b>XI.</b>   | Financial Guarantees                                   | SIA-11 |
| <b>XII.</b>  | Legal Provisions                                       | SIA-11 |

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

**SUBDIVISION IMPROVEMENTS AGREEMENT  
& WAIVER OF RIGHT TO PROTEST FUTURE SPECIAL  
IMPROVEMENT DISTRICTS  
ANNAFELD NORTH SUBDIVISION, SECOND FILING**

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **MCCALL DEVELOPMENT, INC.**, whose address for the purpose of this agreement is 1536 MULLOWNEY LANE, SUITE 100; BILLINGS, MONTANA 59101, hereinafter referred to as “Subdivider,” and the **CITY OF BILLINGS**, Billings, Montana, hereinafter referred to as “City.”

**WITNESSETH:**

**WHEREAS**, the plat of Annafeld North Subdivision, Second Filing located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning; and

**WHEREAS**, at a regular meeting conducted on the \_\_ day of \_\_\_\_\_, 20\_\_, the Board of Planning recommended conditional approval of a preliminary plat of Annafeld North Subdivision, Second Filing; and

**WHEREAS**, at a regular meeting conducted on the \_\_ day of \_\_\_\_\_, 20\_\_, the City Council conditionally approved a preliminary plat of Annafeld North Subdivision, Second Filing; and

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

**WHEREAS**, a Development Agreement between the Subdivider and the City is of record in the office of the Clerk and Recorder, under Document No. \_\_\_\_\_; and

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

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

**I. VARIANCES**

None requested

**II. PROPERTY CONDITIONS AND INFORMATION FOR LOT PURCHASERS**

- A.** Lot owners will be required to construct that segment of the required sidewalk that fronts their property at the time of lot development.
- B.** 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.
- C.** Lot owners should be aware that this subdivision is built with a “traditional neighborhood” design. The dwellings will have the garage set in the rear of the lots. The access will be provided to the garages by means of a paved alley.
- D.** Lot owners should be aware that this subdivision is adjacent to wildlife habitat. Consequently, owners are advised that wildlife indigenous to the area is found on the property and may impact the developed property and interface with domestic animals, residents, and visitors. Owners may also experience problems with damage to landscaped shrubs, flowers, and gardens. 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. Any impacts associated with wildlife and any damage arising there from is the responsibility of the lot owners.

- E.** No water rights have been transferred to the individual lot owners but may be held by the Subdivider and/or the homeowners association. 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 without the permission of the controlling ditch company.
- F.** Lot owners should be aware they may be required to participate in a park maintenance district administered by the homeowners association for Annafeld North Subdivision, Second Filing.
- G.** Individual lot owners should be aware that Best Management Practices for stormwater control shall be required for any construction on lots. Best Management Practices are defined within Chapter 28-201, BMCC and detailed in the City of Billings *Stormwater Management Manual*.
- H.** Lot owners should be aware that Hogan's Slough adjacent to the subdivision is a major stormwater outfall for Billings west end. There is a possibility that the slough could overtop during a major storm event. Based upon the existing topography near Hogan's Slough and the Elysian Road Bridge, it is anticipated that the channel would overtop northeast of Elysian Road and flow east prior to overtopping Elysian Road. There is the possibility however that Elysian Road could be overtopped during a major storm event. If that occurs, flows not carried within the Hogan's Slough channel would be carried within the subdivision streets. The elevation of residential dwellings and commercial structures must be established in recognition of the City's policy that storm runoff flows are allowed to a depth of 18-inches in the gutter flowline of adjacent streets during the major storm. Higher house finished floor elevations may be required on a lot-by-lot basis.
- I.** The Subdivider and subsequent contractors/builders acknowledge that there is a Stormwater Pollution Prevention Plan (SWPPP) filed with the City and the State Department of Environmental Quality (DEQ). This SWPPP shall be adhered to during all phases of construction and shall be updated as required by DEQ under the General Permit for Stormwater Discharges Associated with Construction Activity, Chapter 28, BMCC and the City of Billings *Stormwater Management Manual*.

### **III. TRANSPORTATION**

#### **A. Streets**

1. All internal access roads and site improvements within the subdivision will be in accordance with the City of Billings Site Development Ordinance, City Zoning Ordinance, International Building Code, the *Stormwater Management Manual*, and other applicable City codes, rules, and regulations.
2. All internal streets (excluding Annafeld Parkway East and Annafeld Parkway West) within the subdivision shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. All public roads will be built to provide a 34-foot back-to-back curb street width. The design cross-sections of said streets shall be submitted to, and approved by, the City of Billings Public Works Department. The street improvements will be completed by private contract or SID.
3. Annafeld Parkway East and Annafeld Parkway West will be designed for one-way traffic with a minimum drive aisle of 20-feet and parallel parking on both sides of the street. The street shall be built to grade with a satisfactory subbase, base course, curb and gutter, and asphalt surface. The design cross-section of said street shall be submitted to, and approved by, the City of Billings Public Works Department. The street improvements will be completed by private contract or SID.
4. Elysian Road is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter will be constructed on the north side of Elysian Road adjacent to the Second Filing. Improvements will also include the construction of necessary pavement widening to construct westbound travel lane, center turn lane/center median and parking lane adjacent the subdivision. A full access will be provided at Elysian Road and Street 4 (temporary name). A restricted right in right out access with a center median will be provided at Street 5 (temporary name) and Elysian Road. A roundabout will be constructed at the intersection of Elysian Road and Annafeld Parkway East and West. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. The design cross-section of said street shall be submitted to, and approved by, the City of Billings Public Works

Department. Elysian Road improvements will be completed by private contract or SID.

5. East Lane is designated as a collector on the Billings/Yellowstone County Functional Classification Map. Curb and gutter will be constructed on the east side of East Lane adjacent to the Second Filing. Improvements will also include the construction of necessary pavement widening to construct northbound travel lane, center turn lane/center median and parking lane adjacent the subdivision. Storm drain shall be installed as necessary, draining directly to Hogan's Slough and/or routed internally through the subdivision. The design cross-section of said street shall be submitted to, and approved by, the City of Billings Public Works Department. East Lane improvements will be completed by private contract or SID.
6. A traffic accessibility study has been completed for the Annafeld North Subdivision, Second Filing. All required intersection improvement contributions identified therein shall be completed by the Subdivider at the Subdivider's expense. Based on the additional lots created with Annafeld North Subdivision, Second Filing, the percent of traffic contribution and associated costs to these intersections is as follows:

|                             |       |             |
|-----------------------------|-------|-------------|
| Muldowney Lane/Elysian Road | 5.58% | \$13,950.00 |
| Elysian Road/East Lane      | 2.25% | \$5,625.00  |

These cash contributions for the intersection improvements will be made prior to final plat approval. The percentage contributions and dollar amounts are as outlined within the Traffic Impacts Study for Annafeld North Subdivision, Second Filing as submitted with the preliminary plat.

## **B. Alleys**

All alleys within the subdivision shall be built to grade with a satisfactory subbase, base course, and asphalt surface or concrete surface. All alley approaches constructed with asphalt shall be replaced with concrete by the Subdivider at the time when home construction is complete. In the event asphalt approaches within the subdivision are not replaced with concrete within three years of the date of recording of the final plat, the City may construct the concrete approaches and assess the Subdivider for the costs associated with the approach construction. Alley pavement widths shall be 12-feet. The design cross-sections of said alleys shall be submitted to, and

approved by, the City of Billings Public Works Department. No trees are allowed to be planted in the alley. In addition, no shrubs taller than two feet are allowed to be planted in alleys.

**C. Sidewalks**

Subdivider shall install handicap access ramps, where necessary, during street construction. Construction of sidewalks along frontage of the lots shall be installed by the lot owner at the time of lot development. Sidewalks along the street frontage shall be minimum 5-foot-wide and separated with a boulevard width not less than five feet. Developer shall construct the 5-foot-wide boulevard sidewalk adjacent to private parks (Lot 31, Block 4 and Lot 1, Block 5) at the time of private park development.

In the event that portions of the required sidewalks within the subdivision are not constructed within three years of the date of recording of the final plat, the City may construct the remaining sidewalks and assess the individual lot owners for the costs associated with the sidewalk construction.

**D. Street Lighting**

Street lighting is not required for this subdivision; however, it is anticipated that street lighting will be installed for Second Filing by private contract or SID. A Street Light Maintenance District will be created for operation and maintenance of the lighting at a future date and is included in the waiver of right to protest.

**E. Traffic Control Devices**

1. Street name signs for streets within the subdivision, or located immediately adjacent thereto, shall be furnished and installed in accordance with the specifications of the City of Billings Public Works and Fire Departments.
2. No traffic signals are required within this subdivision.
3. The Subdivider shall furnish and install all necessary traffic control devices in accordance with the Manual on Uniform Traffic Control Devices and approved by the City of Billings Public Works Department.

**F. Access**

Access to the subdivision will be provided by Annafeld Parkway East and West, Street 4 (temporary name) and Street 5 (temporary name). Alley access is also provided to all residential lots within the subdivision.

**G. Billings Area Bikeway and Trail Master Plan**

A multi-use trail has been constructed along the south boundary of Elysian Road. Said multi-use trail extends from the east boundary of the subdivision to the easterly right-of-way line of East Lane. A new 10-foot-wide multi-use path will be constructed on the east side of East Lane adjacent to Annafeld North Subdivision, Second Filing. The multi-use path improvements will be completed by private contract or SID.

**H. Public Transit**

There are no MET Transit routes that service this subdivision at this time. The nearest established route is at the intersection of Elysian Road and Mallowney Lane. No improvements with regard to MET Transit vehicles are anticipated at this time.

**IV. EMERGENCY SERVICE**

**A. Fire Hydrants**

Emergency service will be provided by the City. Placement of fire hydrants will be as required by the City of Billings Fire Department.

**B. Construction of Buildings**

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

At a minimum, the following is required:

- An unobstructed gravel road or gravel road base must be within 150-feet of the furthest portion of a building under construction as measured along the approved route.
- The access roads are required to support fire apparatus vehicle loading (40 tons) during all weather conditions and shall be a minimum of 20-foot-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.

### **C. Building Location**

All buildings shall be located on each lot so that the furthest portion of each building is within 150-feet from an approved fire department access road over an approved route excluding all carriage lanes and alleyways.

## **V. STORM DRAINAGE**

Storm drainage for the public streets shall be provided by a combination of surface drainage and curbs and gutters, drained to underground storm drains, and with discharge to the detention facility that is located within the Annafeld North Subdivision, First Filing, in a private park on Lot 13, Block 1. This detention facility in Annafeld North Subdivision, First Filing has been sized to accept additional runoff generated from Annafeld North Subdivision, Second Filing. The detention facility on site will be sized to store the stormwater generated by Annafeld North Subdivision, First and Second Filing. Treatment for the water quality runoff will be provided in the stormwater detention facility. The stormwater detention facility will discharge to Hogan's Slough. Stormwater management facilities for the subdivision must be able to pass flows generated outside the subdivision area without inundating existing and proposed home sites. All drainage improvements shall comply with the provisions of the *Stormwater Management Manual* and Section 23-706, BMCC, a stormwater management plan shall be submitted to and approved by the Engineering Division prior to filing of the final plat.

The stormwater detention area is located within a private park lot deeded to the Annafeld North Subdivision HOA and will be an integral part of the public street drainage system. The drainage system improvements will be in accordance with the recommendations of the stormwater analysis and report prepared and submitted with the improvement plans and specifications. Maintenance of the stormwater

detention area and associated drainage facilities shall be by the Annafeld North Subdivision HOA.

## **VI. UTILITIES**

The Subdivision Improvements Agreement does not constitute an approval for extension of or connection to water mains and sanitary sewers. The property owner shall make application for extension/connection of water mains and sanitary sewers to the Public Works Department - Engineering Division. The extension of/connection 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 Subdivider/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 Annafeld North Subdivision water system consists of a series of looped water mains located in each of the local streets. The subdivision water system will consist of new 8-inch water mains in Street 3 (temporary name), Street 4 (temporary name) and Street 5 (temporary name). A new 8-inch water main will also be installed parallel to the existing 16-inch water main Elysian Road to serve Lots 1-6, Block 7 and Lots 1-5, Block 8. A stub for future connection will be provided in Street 4 (temporary name).

### **B. Sanitary Sewer**

Sanitary sewer service to Annafeld North Subdivision, Second Filing will be provided by connecting to the existing 8-inch sanitary sewer main located in the Street 3 (temporary name). A stub for future connection will be provided in Street 4 (temporary name). All sanitary sewer construction improvements shall be installed in conformance with the design standards, specifications, and rules and regulations of the City of Billings and Montana Department of Environmental Quality, and will be approved by the Public

Works Department, Distribution, and Collection Division.

**C. Power, Telephone, Gas, and Cable Television**

Private utility facilities currently exist to serve the subdivision. The private utility facilities will be installed within the alley right-of-way and by easements included on the plat, as requested by the utility companies, to provide routes to the alleys.

**VII. PARKS/OPEN SPACE**

Per Section 76-3-621 of the Montana Code Annotated, 0.624 acres of parkland dedication is required for Annafeld North Subdivision, Second Filing. The parkland provided with the platting of Annafeld North Subdivision, Second Filing is 0.381 acres. The remaining parkland was previously dedicated with Annafeld North Subdivision, First Filing. The Subdivider proposes to dedicate land as private parks. The private parks will be maintained by the Annafeld North Subdivision Homeowners Association (HOA).

**VIII. HOMEOWNER'S ASSOCIATIONS**

A homeowner's association (HOA) will be established for this subdivision. The HOA will have the following responsibilities:

**A. Contact Information**

HOA shall provide contact information of the senior board official to the City Engineering Department upon the establishment of the HOA and/or changing of board members.

**B. Stormwater Drainage Facilities**

The HOA shall be responsible for the maintenance of the mechanical filtration stormwater manholes. The HOA shall share the cost of maintenance of the community stormwater facilities.

**IX. POSTAL DELIVERY**

The Subdivider shall provide centralized delivery boxes with sufficient pullout to accommodate a mail carrier vehicle. The location of the boxes shall be reviewed and approved by the United States Postal Service.

**X. SOILS/GEOTECHNICAL STUDY**

A soils/geotechnical study is being performed for the subdivision. The report dated December 2020, will be available for review at the City of Billings Planning Department. Lot owners and contractors/builders will be encouraged to review the report and its recommendations.

**XI. FINANCIAL GUARANTEES**

Except as otherwise provided, Subdivider shall install and construct said required improvements by 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 private contract, and the improvements shall be installed as approved by the City Engineer and Utility Department Manager.

**XII. LEGAL PROVISIONS APPLYING TO SUBDIVIDER**

- A.** Subdivider agrees to guarantee all public improvements for a period of two year from the date of substantial completion.
- B.** The owners of the properties involved in this proposed subdivision by signature subscribed herein below agree, consent, and shall be bound by the provisions of this agreement.
- C.** The covenants, agreements, and all statements in this agreement run with the land and apply to and shall be binding on the heirs, personal representatives, successors, assigns and transferees of the respective parties.
- D.** In the event it becomes necessary for either party to this agreement to retain an attorney to enforce any of the terms or conditions of this agreement or to give any notice required herein, then the prevailing party or the party giving notice shall be entitled to reasonable attorney fees and costs.
- E.** Any amendments or modifications of this agreement or any provisions herein shall be made in writing and executed in the same manner as this original document and shall after execution become a part of this agreement.
- F.** Subdivider shall comply with all applicable federal, state, and local statutes, ordinances, and administrative regulations during the performance and discharge of its obligations. Subdivider acknowledges and agrees that nothing contained herein shall relieve or exempt it from such compliance.

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

“SUBDIVIDER”

**MCCALL DEVELOPMENT, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA     )  
                                          : ss  
County of Yellowstone     )

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of **MCCALL DEVELOPMENT, INC.** who executed the foregoing instrument and acknowledged to me that he/she executed the same.

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

This agreement is hereby approved and accepted by the City of Billings, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“CITY”

**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

STATE OF MONTANA     )  
                                          : ss  
County of Yellowstone     )

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

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

**WAIVER OF RIGHT TO PROTEST  
FUTURE SPECIAL IMPROVEMENT DISTRICTS**

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

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

The real property hereinabove mentioned is more particularly described as follows:

ANNAFELD NORTH SUBDIVISION, SECOND FILING

SUBDIVIDER/OWNER

**MCCALL DEVELOPMENT, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MONTANA        )  
                                          : ss  
County of Yellowstone    )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, a Notary Public in and for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument as the \_\_\_\_\_ of **MCCALL DEVELOPMENT, INC.** and acknowledged to me that he/she 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: \_\_\_\_\_

Wed 12/6/2023 11:15 AM

Dear Dave:

We are requesting a two-year extension of the original Annafeld North Subdivision, 2<sup>nd</sup> Filing Preliminary Plat Approval, dated March 22, 2021. Under City Subdivision Regulations, the owner has three years from the date of preliminary approval to obtain final plat approval of Annafeld North Subdivision, 2<sup>nd</sup> Filing. The requested two-year extension of the three-year period would allow for a five year between preliminary plat approval and final plat approval, making the expiration of the Annafeld North Subdivision, 2<sup>nd</sup> Filing Preliminary Plat Approval March 22, 2026.

We appreciate your time and consideration of this request. Please feel free to contact me if you have any questions.

Sincerely,

**Greg McCall**

CGB, CGP, Co-Owner

McCall Homes

Empower People. Build  
Community

[406-651-5354](tel:406-651-5354) | [406-591-4747](tel:406-591-4747)

[greg@mccalldevelopment.com](mailto:greg@mccalldevelopment.com)

<https://mccallhomes.com>

1536 Mallowney Lane Suite 100. Billings, Montana  
59101

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# CITY OF BILLINGS

WILLIAM A. COLE, MAYOR

P. O. BOX 1178  
BILLINGS, MONTANA 59103  
(406) 687-8296  
FAX (406) 657-8390

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March 22, 2021

McCall Development  
c/o Sanderson Stewart  
1300 Transtech Way  
Billings, MT 59102

Dear Applicant:

On March 22, 2021, the Billings City Council conditionally approved the preliminary plat of Annafeld North Subdivision, 2<sup>nd</sup> Filing, subject to the following conditions of approval:

1. To minimize impacts on storm water detention facilities and ensure proper maintenance of the proposed system, prior to final plat approval, the applicant will provide an HOA Storm Water Facility Maintenance Agreement for review by City of Billings Engineering Division. This agreement shall outline the maintenance responsibilities of the storm water facilities.
2. Minor changes may be made in the SIA and final documents, as requested by the Planning, Legal or Public Works Departments to clarify the documents and bring them into the standard acceptable format.
3. The final plat shall comply with all requirements of the City of Billings Subdivision Regulations, rules, regulations, policies, and resolutions of the City of Billings, and the laws and Administrative Rules of the State of Montana.

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

Sincerely,

William A. Cole, Mayor

pc: Sanderson Stewart

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Resolution Authorizing the Issuance and Private Negotiated Sale of Expanded North 27th Street Tax Increment Bonds  
**Presented by:** Andy Zoeller, Finance Director  
**Department:** Finance  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council approve the resolution authorizing the issuance and private negotiated sale of Expanded North 27th Street tax increment bonds.

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

This resolution has been submitted to authorize the issuance of tax increment bonds, and to set the limits for the principal amount, the interest rate, underwriter's discount, and the maturity of the bonds. Bond proceeds would finance the conversion of one-way to two-way streets in the downtown area and related costs of debt issuance. The project will also include upgrading traffic and pedestrian signals, improvements to off-street parking, and landscaping. The purpose of the project is to facilitate pedestrian safety, improve traffic flow, improve public parking, and enhance access to local businesses within the district. The annual debt payments for these improvements will be paid from the tax increment funds from the District. This project has not yet been bid, final bond sale amounts will correspond with construction bid amounts, if approved.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve the resolution. If not approved, sufficient funding for the two-way conversion project will not be available and the project will not occur.

**FISCAL EFFECTS**

During the negotiations, the interest rate will be determined, which will drive the total cost of borrowing. The parameters authorized by this resolution limits the maximum aggregate principal amount, exclusive of premium or discount, not to exceed \$5,750,000, with a maximum interest rate of 6.50%. The underwriter's discount shall not exceed 1.30% of the principal amount of the bonds, exclusive of premium or discount. The final maturity will be later than July 1, 2044.

The project is included in the FY24 budget to be funded with \$3.8M from Tax Increment Funds. Staff is requesting authority to issue up to \$5.7M to cover estimated bond issuance costs of \$144,000, a deposit for the debt service reserve requirement of \$415,000, reimbursement for the construction design contract \$674,374 (awarded 11/14/22) and \$4,466,626 available for construction. Because bids for the project will not be opened until early February, staff is recommending a parameter that will allow for the construction capacity beyond the original budget, pending final bids. Final bonds issued will be consistent with construction bids, and will not occur until after Council approves the construction contract.

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**Attachments**

resolution

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_, entitled: "RESOLUTION RELATING TO TAX INCREMENT URBAN RENEWAL REVENUE BONDS (EXPANDED NORTH 27TH STREET URBAN RENEWAL AREA), SERIES 2024; AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED SALE THEREOF" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on January 22, 2024, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_; voted against the same: \_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_ day of January, 2024.

(SEAL)

\_\_\_\_\_  
City Clerk

RESOLUTION NO. \_\_\_\_\_

RESOLUTION RELATING TO TAX INCREMENT URBAN  
RENEWAL REVENUE BONDS (EXPANDED NORTH 27TH  
STREET URBAN RENEWAL AREA), SERIES 2024;  
AUTHORIZING THE ISSUANCE AND PRIVATE NEGOTIATED  
SALE THEREOF

BE IT RESOLVED by the City Council (the “Council”) of the City of Billings, Montana (the “City”), as follows:

Section 1. Recitals; Prior City Actions.

1.01. Under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), the City is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes collected in such areas, issue its bonds to pay the costs of such projects and to refund bonds previously issued under the Act and pledge to the repayment of the bonds the tax increment and other revenues derived from projects undertaken within the urban renewal area.

1.02. Pursuant to the Act and Ordinance No. 05-5333, adopted by the Council on July 11, 2005, as amended and supplemented by Ordinance Nos. 06-5394, 08-5483 and 11-5539 adopted on November 13, 2006, December 8, 2008 and July 11, 2011, respectively (as so amended and supplemented, the “Ordinance”), the Council created the Expanded North 27th Street Urban Renewal Area (the “District”) and approved the Expanded North 27th Street Urban Renewal Plan (the “Plan”). The Plan provides for the segregation and collection of tax increment with respect to the District. The District and the Plan have been duly and validly created and adopted in accordance with the Act and are in full force and effect.<sup>a</sup>

1.03. The City proposes to undertake the design, engineering and construction of one-way to two-way street conversions and a pedestrian walking bridge in the District, together with related improvements (collectively, the “2024 Project”). The purpose of the 2024 Project is to facilitate pedestrian safety, improve traffic flow and enhance access to local businesses within the District. The 2024 Project is authorized under the Plan and constitutes an urban renewal project within the meaning of the Act. Pursuant to the Plan, the Council declared its intention to use tax increment revenue from the District (as defined in the Act, “Tax Increment”) to finance such improvements.

Section 2. Authorizations. Pursuant to the authorizations and findings recited in the Plan and in Section 1 hereof, it is hereby determined that it is in the best interests of the City to offer for sale its Tax Increment Urban Renewal Revenue Bonds (Expanded North 27th Street Urban Renewal Area), Series 2024 (the “Series 2024 Bonds”), for the purpose of financing costs of the 2024 Project, funding a deposit to a debt service reserve account for the Series 2024 Bonds, and paying costs of issuance of the Series 2024 Bonds, as determined by the officers of the City identified pursuant to, and subject to the limitations set forth in, Section 4 hereof.

Section 3. Adequacy of Tax Increment. The City has previously issued its Tax Increment Urban Renewal Revenue Bonds (Expanded North 27<sup>th</sup> Street Urban Renewal Area) (Tax Exempt), Series 2013A (the “Series 2013A Bonds”), which are currently outstanding in the aggregate principal amount of \$7,885,000, its Tax Increment Urban Renewal Revenue Bonds (Expanded North 27<sup>th</sup> Street Urban Renewal Area) (Taxable), Series 2013B (the “Series 2013B Bonds” and together with the Series 2013A Bonds, the “Series 2013 Bonds”), which are currently outstanding in the aggregate principal amount of \$2,075,000, and its Tax Increment Urban Renewal Revenue Bonds (Expanded North 27<sup>th</sup> Street Urban Renewal Area), Series 2020 (the “Series 2020 Bonds”), which are currently outstanding in the aggregate principal amount of \$1,975,000. Upon the issuance of the Series 2024 Bonds, there are no other obligations of the City in respect of the Tax Increment, other than the Series 2013 Bonds, the Series 2020 Bonds and the Subordinate Obligations described below.

The maximum aggregate annual debt service on the Series 2013 Bonds, the Series 2020 Bonds and the Series 2024 Bonds, assuming with respect to the Series 2024 Bonds an average interest rate of 6.500% per annum and a final maturity of July 1, 2044, is \$1,639,475. Based on Tax Increment of \$2,963,563 received by the City in fiscal year 2023, the City estimates that the Tax Increment to be received by the City each fiscal year will be at least \$2,963,563 per year. Accordingly, the estimated Tax Increment to be received by the City in each fiscal year is expected to be sufficient to pay the maximum aggregate annual debt service on the Series 2013 Bonds, the Series 2020 Bonds and the Series 2024 Bonds and amounts due pursuant to the Subordinate Obligations, and the Tax Increment received by the City in fiscal year 2023 (\$2,963,563) was equal to at least 130% of the estimated maximum aggregate annual debt service for any future calendar year (\$2,131,317.50) with respect to the Series 2013 Bonds, the Series 2020 Bonds and the Series 2024 Bonds.

In addition, the Tax Increment received by the City in fiscal year 2023 (\$2,963,563) and the Tax Increment estimated to be received by the City in the next succeeding three fiscal years (\$2,963,563) (adjusted as provided in the Original Resolution) is estimated to be equal to at least 140% of the maximum aggregate annual debt service for any future calendar year (\$2,295,265) with respect to the Series 2013 Bonds, the Series 2020 Bonds and the Series 2024 Bonds.

Pursuant to certain development agreements entered into (or to be entered into) between the City and various developers, the City has agreed to make grant payments to such developers with respect to certain eligible infrastructure expenses, subject to the satisfaction of certain conditions precedent, in the amounts reflected in such agreements. Such grant payments are to be made from Tax Increment and are payable on a subordinate basis to the Series 2013 Bonds, the Series 2020 Bonds and Series 2024 Bonds (the “Subordinate Obligations”). Schedule 1 attached hereto reflects such Subordinate Obligations and the estimated timing for payment thereof.

#### Section 4. Negotiated Sale and Terms.

4.01. This Council hereby determines that it would be in the best interests of the City to sell the Series 2024 Bonds through a private negotiated sale. The City Finance Director is

authorized to select one or more purchasers (the “Purchaser”) for the Series 2024 Bonds and to negotiate the sale thereof, subject to Section 4.02 hereof.

4.02. The Series 2024 Bonds shall be sold to the Purchaser on terms and at a purchase price within the following limitations and conditions: (1) the maximum aggregate principal amount of the Series 2024 Bonds, exclusive of original issue discount or premium, shall not exceed \$5,750,000; (2) the maximum true interest cost on the Series 2024 Bonds shall not exceed 6.500%; (3) the underwriter’s discount shall not exceed 1.30% of the principal amount of the Series 2024 Bonds, exclusive of original issue premium or discount; and (4) the final stated maturity of the Series 2024 Bonds shall not be later than July 1, 2044. The Series 2024 Bonds will be payable from Tax Increment on a parity basis with the Series 2013 Bonds and Series 2020 Bonds and prior to the Subordinate Obligations described Section 3 hereof. All costs of issuing the Series 2024 Bonds (including, without limitation, the fees and expenses of bond counsel, the fees of the paying agent and registrar, the preliminary and final Official Statement costs, and the costs of printing the Series 2024 Bonds) shall be paid by the City.

The form of the Series 2024 Bonds and the final terms and conditions thereof shall be prescribed by a subsequent resolution to be adopted by this Council.

4.03. The City Administrator and the City Finance Director, in consultation with Baker Tilly Municipal Advisors, LLC, the City’s municipal advisor (“Baker Tilly”), are hereby authorized and directed to approve the principal amount, maturity dates, interest rates and redemption provisions of the Series 2024 Bonds and compensation to the Purchaser, subject to the limitations contained in this Section 4. Upon approving such terms, the City Administrator and the City Finance Director are hereby authorized to approve, execute and deliver to the Purchaser a bond purchase agreement (the “Bond Purchase Agreement”), containing the agreement of the City to sell, and the agreement of the Purchaser to purchase, the Series 2024 Bonds on the terms so approved, and containing such other provisions as such officers shall deem necessary and appropriate. In the event of the absence or disability of the City Finance Director and/or City Administrator, the Mayor and/or the Assistant City Administrator shall make such approvals and execute and deliver the Bond Purchase Agreement. The execution and delivery by appropriate officers of the City of the Bond Purchase Agreement shall be conclusive as to the approval of such officers of the terms of the Series 2024 Bonds and the agreement of the City to sell the Series 2024 Bonds on such terms in accordance with the provisions thereof.

Section 5. Official Statement. The City Finance Director, in consultation with Baker Tilly, the Purchaser and Dorsey & Whitney LLP, the City’s bond counsel, is authorized to prepare on behalf of the City an Official Statement, to be distributed by the Purchaser to prospective purchasers of the Series 2024 Bonds. The Official Statement shall contain such information as shall be advisable and necessary to describe accurately the City and the security for, and the terms and conditions of, the Series 2024 Bonds. The City Administrator and the City Finance Director are authorized on behalf of the Council to deem the preliminary Official Statement near “final” as of its date, in accordance with Rule 15c2-12(b)(1) under the Securities Exchange Act of 1934.

Section 6. Continuing Disclosure. To permit the Purchaser and other participating underwriters in the primary offering of the Series 2024 Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Series 2024 Bonds, to provide annual reports of specified information and notice of the occurrence of certain events.

PASSED AND APPROVED by the City Council of the City of Billings, Montana, this  
22nd day of January, 2024.

\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_  
City Clerk

SCHEDULE 1

Subordinate Obligations  
Estimated Payment Dates

| Name                            | FY24       | FY25       | FY26       | FY27      | FY28      |
|---------------------------------|------------|------------|------------|-----------|-----------|
| Arthouse Cinema Phase II        | \$ 350,000 |            |            |           |           |
| Alberta Bair Theater            | 250,000    |            |            |           |           |
| Burger Dive                     |            | \$ 233,186 | \$ 233,186 |           |           |
| Stone Building                  | 221,922    | 221,922    | 221,922    |           |           |
| Kibler & Kirch PO 23-000881     | 79,940     |            |            |           |           |
| MJShanks LLC PO 24-000425       | 110,200    |            |            |           |           |
| Skypoint Project PO 22-000032   | 260,000    |            |            |           |           |
| Montana Rescue Mission          |            | 210,000    | 210,000    |           |           |
| Old Town Flats                  |            | 384,553    | 384,553    | \$384,553 | \$384,553 |
| Lincoln Apartments PO 24-000224 | 50,000     | 50,000     | 50,000     | 50,000    | 50,000    |
| Old Billings Hardware           |            | 149,000    | 149,000    | 149,000   | 149,000   |

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Annual Resolution Authorizing the Filing and Acceptance of Transit Grant Funds and Related Documents  
**Presented by:** Rusty Logan  
**Department:** Transit  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends the City Council approve the Resolution authorizing the MET Transit Division to apply for, accept, and execute Federal and State transit related grants, execute annual required certifications and assurances when available, as well as execute any subsequently awarded grant agreements.

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

Each year, the MET Transit Division applies for various grants with the Federal Transit Administration (FTA) and/or the Transit Division of the State of Montana Department of Transportation (MDT). These grants may be available for planning, capital, training, innovation, or operating assistance. Under the current infrastructure and transportation bill, funding is provided either directly to the City as a recipient or as a pass-through funding mechanism managed by the State; these funds are typically received under Sections 49 USC 5303, 5307, 5310, 5311, and 5339, but may include other sections as funds become available. MET Transit receives annual formula grant funds for planning (5303), operating (5307), and capital (5310,5339), which are apportioned via national funding formulas based upon area population and performance factors of the system. Should competitive grant funds become available, MET Transit staff will also determine if application for available funds would be appropriate to support current and future transit needs. In general, grant funding for operating assistance requires a 50% local, 50% Federal match rate, while most capital projects and planning are funded at a 20% local, 80% Federal match rate. In order to apply for and accept grants with both FTA and MDT, it is necessary to include with the grant application a City Council approved Resolution formally authorizing the City of Billings' MET Transit Division to submit the applications, execute annual Federal Certifications and Assurances, and any other documentation required to secure the funding. This Resolution also authorizes the execution of any subsequent grant offers or agreements. The FFY23 Federal Certifications and Assurances have been attached as reference; once action is taken by Congress at the national level regarding full-year government funding, FFY24 Federal Certifications and Assurances will be available.

**ALTERNATIVES**

City Council may:

- Approve the Resolution for the MET Transit Division to apply for, accept, and execute grant agreements as well as annual Certifications and Assurances to support both operating, capital, and planning programs; or
- Not Approve the Resolution and direct staff on how to proceed without potentially compromising the receipt of Federal funding to support both ongoing transit operations and capital programs.

**FISCAL EFFECTS**

Typically, MET Transit is eligible to apply for and expend the following estimated formula amounts:

\$300,000 of 5303 planning funds, requiring \$60,000 of local matching funds; projects are managed by Billings MET Transit and reimbursed by the MDT. These projects/expenditures are programmed in the Unified Planning and Work Program with the MPO in conjunction with surface transportation planning projects.

\$2,500,000 of 5307 operating funds, requiring \$2,500,000 of local matching funds; projects are programmed and managed by Billings MET Transit and programmed annually into the Transportation Improvement Plan with reimbursement direct from FTA.

\$110,000 of 5310 capital funds for replacement of paratransit vehicles and coordinated transportation projects, requiring \$22,000 of local matching funds; projects are managed by Billings MET Transit and reimbursed via MDT. Funds are eligible for sub-allocation direct to Billings MET Transit.

\$480,000 of 5339A capital funds for replacement of buses and facility projects, requiring \$96,000 of local matching funds; projects are managed by Billings MET Transit and reimbursed direct from FTA.

MET may also apply for competitive capital funds of varying amounts funded at the same capital ratio of 80% Federal, 20% Local through available State and Federal programs, including the Bus and Bus Facilities program (5339B) and the Low/No Emissions Vehicles program (5339C). Without these grant funds, the City of Billings' ability to operate a transit system would be significantly reduced.

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### **Attachments**

Resolution  
FFY23 Certs and Assurances

**RESOLUTION 24-**

**A RESOLUTION AUTHORIZING THE FILING OF ALL  
APPLICATIONS FOR AND ACCEPTANCE OF AWARD OF FUNDS FROM  
THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING  
AGENCY OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION  
FOR FEDERAL TRANSPORTATION PLANNING, CAPITAL, TRAINING,  
INNOVATION AND/OR OPERATING ASSISTANCE**

WHEREAS, the City of Billings has the power to enter into agreements with the Federal Transit Administration and the State of Montana; and

WHEREAS, the Federal Transportation Administration and the State of Montana, Department of Transportation, have been delegated authority to award Federal financial assistance for transportation and transit projects; and

WHEREAS, all contracts for financial assistance will impose certain obligations upon the applicant, including the provision by it of the local share of project costs; and

WHEREAS, the applicant has or will provide all annual Certifications and Assurances to the Federal Transit Administration, as well as other documents required for the project.

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

1. That the City of Billings MET Transit Division is authorized to execute and file all applications on behalf of the City of Billings with the U.S. Department of Transportation, Federal Transit Administration, and the State of Montana, Department of Transportation, to aid in the financing of all planning, capital, training, innovation, and/or operating assistance projects authorized by 49 U.S.C. Chapter 53, Title 23 or other Federal or State statutes authorizing a project administered by the Federal Transit Administration and/or the Montana Department of Transportation.
2. That the City of Billings MET Transit Division is authorized to execute and file with such applications the annual Certifications and Assurances, and any other documents required by the U.S. Department of Transportation, Federal Transit Administration, fulfilling the purpose of the proposed projects, including local share.
3. That the City of Billings MET Transit Division is authorized to execute grant and cooperative agreements with the U.S. Department of Transportation, Federal Transit Administration, and the State of Montana, Department of Transportation.

4. That the MET Transit Division is designated to furnish such additional information as may be required connection with all applications and grant awards.

ADPOTED AND APPROVED by the City Council of the City of Billings, Montana,  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF BILLINGS

By: \_\_\_\_\_  
William A. Cole, Mayor

ATTEST:

By: \_\_\_\_\_  
Denise R. Bohlman, City Clerk

*Not every provision of every certification will apply to every applicant or award. If a provision of a certification does not apply to the applicant or its award, FTA will not enforce that provision.*

*Text in italic is guidance to the public. It does not have the force and effect of law, and is not meant to bind the public in any way. It is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.*

## **CATEGORY 1. CERTIFICATIONS AND ASSURANCES REQUIRED OF EVERY APPLICANT.**

*All applicants must make the certifications in this category.*

### **1.1. Standard Assurances.**

*The certifications in this subcategory appear as part of the applicant's registration or annual registration renewal in the System for Award Management (SAM.gov) and on the Office of Management and Budget's standard form 424B "Assurances—Non-Construction Programs". This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.*

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
- (b) Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- (c) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- (d) Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- (e) Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

- (f) Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:
- (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin, as effectuated by U.S. DOT regulation 49 CFR Part 21;
  - (2) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex, as effectuated by U.S. DOT regulation 49 CFR Part 25;
  - (3) Section 5332 of the Federal Transit Law (49 U.S.C. § 5332), which prohibits any person being excluded from participating in, denied a benefit of, or discriminated against under, a project, program, or activity receiving financial assistance from FTA because of race, color, religion, national origin, sex, disability, or age.
  - (4) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps, as effectuated by U.S. DOT regulation 49 CFR Part 27;
  - (5) The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;
  - (6) The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
  - (7) The comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - (8) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
  - (9) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
  - (10) Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and,
  - (11) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- (g) Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“Uniform Act”) (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. The requirements of the Uniform Act are effectuated by U.S. DOT regulation 49 CFR Part 24.

- (h) Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- (i) Will comply, as applicable, with the provisions of the Davis–Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.
- (j) Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (k) Will comply with environmental standards which may be prescribed pursuant to the following:
  - (1) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
  - (2) Notification of violating facilities pursuant to EO 11738;
  - (3) Protection of wetlands pursuant to EO 11990;
  - (4) Evaluation of flood hazards in floodplains in accordance with EO 11988;
  - (5) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
  - (6) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.);
  - (7) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
  - (8) Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).
- (l) Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- (m) Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a-1 et seq.).
- (n) Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- (o) Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded

animals held for research, teaching, or other activities supported by this award of assistance.

- (p) Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- (q) Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and 2 CFR Part 200, Subpart F, “Audit Requirements”, as adopted and implemented by U.S. DOT at 2 CFR Part 1201.
- (r) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program under which it is applying for assistance.
- (s) Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from:
  - (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect;
  - (2) Procuring a commercial sex act during the period of time that the award is in effect; or
  - (3) Using forced labor in the performance of the award or subawards under the award.

## **1.2. Standard Assurances: Additional Assurances for Construction Projects.**

*This certification appears on the Office of Management and Budget’s standard form 424D “Assurances—Construction Programs” and applies specifically to federally assisted projects for construction. This certification has been modified in places to include analogous certifications required by U.S. DOT statutes or regulations.*

As the duly authorized representative of the applicant, you certify that the applicant:

- (a) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency; will record the Federal awarding agency directives; and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Will comply with the requirements of the assistance awarding agency with regard to the drafting, review, and approval of construction plans and specifications.
- (c) Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work confirms with the approved plans and specifications, and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

**1.3. Procurement.**

*The Uniform Administrative Requirements, 2 CFR § 200.325, allow a recipient to self-certify that its procurement system complies with Federal requirements, in lieu of submitting to certain pre-procurement reviews.*

The applicant certifies that its procurement system complies with:

- (a) U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, particularly 2 CFR §§ 200.317–200.327 “Procurement Standards;
- (b) Federal laws, regulations, and requirements applicable to FTA procurements; and
- (c) The latest edition of FTA Circular 4220.1 and other applicable Federal guidance.

**1.4. Suspension and Debarment.**

*Pursuant to Executive Order 12549, as implemented at 2 CFR Parts 180 and 1200, prior to entering into a covered transaction with an applicant, FTA must determine whether the applicant is excluded from participating in covered non-procurement transactions. For this purpose, FTA is authorized to collect a certification from each applicant regarding the applicant’s exclusion status. 2 CFR § 180.300. Additionally, each applicant must disclose any information required by 2 CFR § 180.335 about the applicant and the applicant’s principals prior to entering into an award agreement with FTA. This certification serves both purposes.*

The applicant certifies, to the best of its knowledge and belief, that the applicant and each of its principals:

- (a) Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily or involuntarily excluded from covered transactions by any Federal department or agency;
- (b) Has not, within the preceding three years, been convicted of or had a civil judgment rendered against him or her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or commission of any other offense indicating a lack of business integrity or business honesty;

- (c) Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any offense described in paragraph (b) of this certification;
- (d) Has not, within the preceding three years, had one or more public transactions (Federal, State, or local) terminated for cause or default.

**1.5. Coronavirus Response and Relief Supplemental Appropriations Act, 2021, and CARES Act Funding.**

The applicant certifies:

- (a) To the maximum extent possible, funds made available under title IV of division M of the Consolidated Appropriations Act, 2021 (Public Law 116–260), and in title XII of division B of the CARES Act (Public Law 116–136; 134 Stat. 599) shall be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation); or
- (b) The applicant certifies that the applicant has not furloughed any employees.

**1.6. American Rescue Plan Act Funding.**

The applicant certifies:

- (a) Funds made available by Section 3401(a)(2)(A) of the American Rescue Plan Act of 2021 (Public Law 117-2) shall be directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation); or
- (b) The applicant certifies that the applicant has not furloughed any employees.

**CATEGORY 2. PUBLIC TRANSPORTATION AGENCY SAFETY PLANS**

*This certification is required of each applicant under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), each rail operator that is subject to FTA’s state safety oversight programs, and each State that is required to draft and certify a Public Transportation Agency Safety Plan on behalf of a Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) pursuant to 49 CFR § 673.11(d).*

*This certification is required by 49 U.S.C. § 5307(c)(1)(L), 49 U.S.C. § 5329(d)(1), and 49 CFR § 673.13. This certification is a condition of receipt of Urbanized Area Formula Grants Program (49 U.S.C. § 5307) funding.*

*This certification does not apply to any applicant that only receives financial assistance from FTA under the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C.*

*§ 5310), the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or combination of these two programs, unless it operates a rail fixed guideway public transportation system.*

If the applicant is an operator, the applicant certifies that it has established a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673; including, specifically, that the board of directors (or equivalent entity) of the applicant has approved, or, in the case of an applicant that will apply for assistance under 49 U.S.C. § 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under 49 U.S.C. § 5329(d)(5), followed by the board of directors (or equivalent entity) of the applicant has approved, the Public Transportation Agency Safety Plan or any updates thereto; and, for each recipient serving an urbanized area with a population of fewer than 200,000, that the Public Transportation Agency Safety Plan has been developed in cooperation with frontline employee representatives.

If the applicant is a State that drafts and certifies a Public Transportation Agency Safety Plan on behalf of a public transportation operator, the applicant certifies that:

- (a) It has drafted and certified a Public Transportation Agency Safety Plan meeting the requirements of 49 U.S.C. § 5329(d)(1) and 49 CFR Part 673 for each Small Public Transportation Provider (as that term is defined at 49 CFR § 673.5) in the State, unless the Small Public Transportation Provider provided notification to the State that it was opting out of the State-drafted plan and drafting its own Public Transportation Agency Safety Plan; and
- (b) Each Small Public Transportation Provider within the State that opts to use a State-drafted Public Transportation Agency Safety Plan has a plan that has been approved by the provider's Accountable Executive (as that term is defined at 49 CFR § 673.5), Board of Directors or Equivalent Authority (as that term is defined at 49 CFR § 673.5), and, if the Small Public Transportation Provider serves an urbanized area with a population of 200,000 or more, the safety committee of the Small Public Transportation Provider established under 49 U.S.C. § 5329(d)(5).

### **CATEGORY 3. TAX LIABILITY AND FELONY CONVICTIONS.**

*If the applicant is a business association (regardless of for-profit, not for-profit, or tax exempt status), it must make this certification. Federal appropriations acts since at least 2014 have prohibited FTA from using funds to enter into an agreement with any corporation that has unpaid Federal tax liabilities or recent felony convictions without first considering the corporation for debarment. E.g., Consolidated Appropriations Act, 2023, Pub. L. 117-328, div. E, tit. VII, §§ 744–745. U.S. DOT Order 4200.6 defines a “corporation” as “any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association”, and applies the restriction to all tiers of subawards. As prescribed by U.S. DOT*

*Order 4200.6, FTA requires each business association applicant to certify as to its tax and felony status.*

If the applicant is a private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association, the applicant certifies that:

- (a) It has no unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
- (b) It has not been convicted of a felony criminal violation under any Federal law within the preceding 24 months.

#### **CATEGORY 4. LOBBYING.**

*If the applicant will apply for a grant or cooperative agreement exceeding \$100,000, or a loan, line of credit, loan guarantee, or loan insurance exceeding \$150,000, it must make the following certification and, if applicable, make a disclosure regarding the applicant's lobbying activities. This certification is required by 49 CFR § 20.110 and app. A to that part.*

*This certification does not apply to an applicant that is an Indian Tribe, Indian organization, or an Indian tribal organization exempt from the requirements of 49 CFR Part 20.*

#### **4.1. Certification for Contracts, Grants, Loans, and Cooperative Agreements.**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and

contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### **4.2. Statement for Loan Guarantees and Loan Insurance.**

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **CATEGORY 5. PRIVATE SECTOR PROTECTIONS.**

*If the applicant will apply for funds that it will use to acquire or operate public transportation facilities or equipment, the applicant must make the following certification regarding protections for the private sector.*

#### **5.1. Charter Service Agreement.**

*To enforce the provisions of 49 U.S.C. § 5323(d), FTA's charter service regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following Charter Service Agreement. 49 CFR § 604.4.*

The applicant agrees that it, and each of its subrecipients, and third party contractors at any level who use FTA-funded vehicles, may provide charter service using equipment or facilities acquired with Federal assistance authorized under the Federal Transit Laws only in compliance with the regulations set out in 49 CFR Part 604, the terms and conditions of which are incorporated herein by reference.

## 5.2. School Bus Agreement.

*To enforce the provisions of 49 U.S.C. § 5323(f), FTA's school bus regulation requires each applicant seeking assistance from FTA for the purpose of acquiring or operating any public transportation equipment or facilities to make the following agreement regarding the provision of school bus services. 49 CFR § 605.15.*

- (a) If the applicant is not authorized by the FTA Administrator under 49 CFR § 605.11 to engage in school bus operations, the applicant agrees and certifies as follows:
  - (1) The applicant and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.
  - (2) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
- (b) If the applicant is authorized or obtains authorization from the FTA Administrator to engage in school bus operations under 49 CFR § 605.11, the applicant agrees as follows:
  - (1) The applicant agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.
  - (2) The applicant, or any operator of project equipment, agrees to promptly notify the FTA Administrator of any changes in its operations which might jeopardize the continuation of an exemption under § 605.11.
  - (3) The applicant agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).
  - (4) The applicant agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public.

### **CATEGORY 6. TRANSIT ASSET MANAGEMENT PLAN.**

*If the applicant owns, operates, or manages capital assets used to provide public transportation, the following certification is required by 49 U.S.C. § 5326(a).*

The applicant certifies that it is in compliance with 49 CFR Part 625.

## **CATEGORY 7. ROLLING STOCK BUY AMERICA REVIEWS AND BUS TESTING.**

### **7.1. Rolling Stock Buy America Reviews.**

*If the applicant will apply for an award to acquire rolling stock for use in revenue service, it must make this certification. This certification is required by 49 CFR § 663.7.*

The applicant certifies that it will conduct or cause to be conducted the pre-award and post-delivery audits prescribed by 49 CFR Part 663 and will maintain on file the certifications required by Subparts B, C, and D of 49 CFR Part 663.

### **7.2. Bus Testing.**

*If the applicant will apply for funds for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components, the applicant must make this certification. This certification is required by 49 CFR § 665.7.*

The applicant certifies that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required by 49 CFR Part 665. The applicant has received or will receive the appropriate full Bus Testing Report and any applicable partial testing reports before final acceptance of the first vehicle.

## **CATEGORY 8. URBANIZED AREA FORMULA GRANTS PROGRAM.**

*If the applicant will apply for an award under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), or any other program or award that is subject to the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310); “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)); projects that will receive an award authorized by the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) (23 U.S.C. §§ 601–609) or State Infrastructure Bank Program (23 U.S.C. § 610) (see 49 U.S.C. § 5323(o)); formula awards or competitive awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(a) and (b)); or low or no emission awards to any area under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339(c)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5307(c)(1).*

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out the program of projects (developed pursuant 49 U.S.C. § 5307(b)), including safety and security aspects of the program;
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities;

- (c) Will maintain equipment and facilities in accordance with the applicant's transit asset management plan;
- (d) Will ensure that, during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section, a fare that is not more than 50 percent of the peak hour fare will be charged for any—
  - (1) Senior;
  - (2) Individual who, because of illness, injury, age, congenital malfunction, or any other incapacity or temporary or permanent disability (including an individual who is a wheelchair user or has semi-ambulatory capability), cannot use a public transportation service or a public transportation facility effectively without special facilities, planning, or design; and
  - (3) Individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. §§ 401 et seq., and 1395 et seq.);
- (e) In carrying out a procurement under 49 U.S.C. § 5307, will comply with 49 U.S.C. §§ 5323 (general provisions) and 5325 (contract requirements);
- (f) Has complied with 49 U.S.C. § 5307(b) (program of projects requirements);
- (g) Has available and will provide the required amounts as provided by 49 U.S.C. § 5307(d) (cost sharing);
- (h) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning);
- (i) Has a locally developed process to solicit and consider public comment before raising a fare or carrying out a major reduction of transportation;
- (j) Either—
  - (1) Will expend for each fiscal year for public transportation security projects, including increased lighting in or adjacent to a public transportation system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, providing an emergency telephone line to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned public transportation system, at least 1 percent of the amount the recipient receives for each fiscal year under 49 U.S.C. § 5336; or
  - (2) Has decided that the expenditure for security projects is not necessary;
- (k) In the case of an applicant for an urbanized area with a population of not fewer than 200,000 individuals, as determined by the Bureau of the Census, will submit an annual report listing projects carried out in the preceding fiscal year under 49 U.S.C. § 5307 for associated transit improvements as defined in 49 U.S.C. § 5302; and
- (l) Will comply with 49 U.S.C. § 5329(d) (public transportation agency safety plan).

**CATEGORY 9. FORMULA GRANTS FOR RURAL AREAS.**

*If the applicant will apply for funds made available to it under the Formula Grants for Rural Areas Program (49 U.S.C. § 5311), it must make this certification. Paragraph (a) of this certification helps FTA make the determinations required by 49 U.S.C. § 5310(b)(2)(C). Paragraph (b) of this certification is required by 49 U.S.C. § 5311(f)(2). Paragraph (c) of this certification, which applies to funds apportioned for the Appalachian Development Public Transportation Assistance Program, is necessary to enforce the conditions of 49 U.S.C. § 5311(c)(2)(D).*

- (a) The applicant certifies that its State program for public transportation service projects, including agreements with private providers for public transportation service—
  - (1) Provides a fair distribution of amounts in the State, including Indian reservations; and
  - (2) Provides the maximum feasible coordination of public transportation service assisted under 49 U.S.C. § 5311 with transportation service assisted by other Federal sources; and
- (b) If the applicant will in any fiscal year expend less than 15% of the total amount made available to it under 49 U.S.C. § 5311 to carry out a program to develop and support intercity bus transportation, the applicant certifies that it has consulted with affected intercity bus service providers, and the intercity bus service needs of the State are being met adequately.
- (c) If the applicant will use for a highway project amounts that cannot be used for operating expenses authorized under 49 U.S.C. § 5311(c)(2) (Appalachian Development Public Transportation Assistance Program), the applicant certifies that—
  - (1) It has approved the use in writing only after providing appropriate notice and an opportunity for comment and appeal to affected public transportation providers; and
  - (2) It has determined that otherwise eligible local transit needs are being addressed.

**CATEGORY 10. FIXED GUIDEWAY CAPITAL INVESTMENT GRANTS AND THE EXPEDITED PROJECT DELIVERY FOR CAPITAL INVESTMENT GRANTS PILOT PROGRAM.**

*If the applicant will apply for an award under any subsection of the Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), including an award made pursuant to the FAST Act's Expedited Project Delivery for Capital Investment Grants Pilot Program (Pub. L. 114-94, div. A, title III, § 3005(b)), the applicant must make the following certification. This certification is required by 49 U.S.C. § 5309(c)(2) and Pub. L. 114-94, div. A, title III, § 3005(b)(3)(B).*

The applicant certifies that it:

- (a) Has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award,
- (b) Has or will have satisfactory continuing control over the use of equipment and facilities acquired or improved under its Award.
- (c) Will maintain equipment and facilities acquired or improved under its Award in accordance with its transit asset management plan; and
- (d) Will comply with 49 U.S.C. §§ 5303 (metropolitan transportation planning) and 5304 (statewide and nonmetropolitan transportation planning).

**CATEGORY 11. GRANTS FOR BUSES AND BUS FACILITIES AND LOW OR NO EMISSION VEHICLE DEPLOYMENT GRANT PROGRAMS.**

*If the applicant is in an urbanized area and will apply for an award under subsection (a) (formula grants), subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.*

*If the applicant is in a rural area and will apply for an award under subsection (a) (formula grants), subsection (b) (bus and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the certification in Category 9 for Formula Grants for Rural Areas (49 U.S.C. § 5311). This certification is required by 49 U.S.C. § 5339(a)(3), (b)(6), and (c)(3), respectively.*

*Making this certification will incorporate by reference the applicable certifications in Category 8 or Category 9.*

*If the applicant will receive a competitive award under subsection (b) (buses and bus facilities competitive grants), or subsection (c) (low or no emissions grants) of the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) related to zero emissions vehicles or related infrastructure, it must make the following certification. This certification is required by 49 U.S.C. § 5339(d).*

The applicant will use 5 percent of grants related to zero emissions vehicles (as defined in subsection (c)(1)) or related infrastructure under subsection (b) or (c) to fund workforce development training as described in section 49 U.S.C. § 5314(b)(2) (including registered apprenticeships and other labor-management training programs) under the recipient's plan to address the impact of the transition to zero emission vehicles on the applicant's current workforce; or the applicant certifies a smaller percentage is necessary to carry out that plan.

**CATEGORY 12. ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES PROGRAMS.**

*If the applicant will apply for an award under the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program (49 U.S.C. § 5310), it must make the certification in Category 8 for Urbanized Area Formula Grants (49 U.S.C. § 5307). This certification is required by 49 U.S.C. § 5310(e)(1). Making this certification will incorporate by reference the certification in Category 8, except that FTA has determined that (d), (f), (i), (j), and (k) of Category 8 do not apply to awards made under 49 U.S.C. § 5310 and will not be enforced.*

*In addition to the certification in Category 8, the applicant must make the following certification that is specific to the Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program. This certification is required by 49 U.S.C. § 5310(e)(2).*

The applicant certifies that:

- (a) The projects selected by the applicant are included in a locally developed, coordinated public transit-human services transportation plan;
- (b) The plan described in clause (a) was developed and approved through a process that included participation by seniors, individuals with disabilities, representatives of public, private, and nonprofit transportation and human services providers, and other members of the public;
- (c) To the maximum extent feasible, the services funded under 49 U.S.C. § 5310 will be coordinated with transportation services assisted by other Federal departments and agencies, including any transportation activities carried out by a recipient of a grant from the Department of Health and Human Services; and
- (d) If the applicant will allocate funds received under 49 U.S.C. § 5310 to subrecipients, it will do so on a fair and equitable basis.

**CATEGORY 13. STATE OF GOOD REPAIR GRANTS.**

*If the applicant will apply for an award under FTA's State of Good Repair Grants Program (49 U.S.C. § 5337), it must make the following certification. Because FTA generally does not review the transit asset management plans of public transportation providers, the asset management certification is necessary to enforce the provisions of 49 U.S.C. § 5337(a)(4). The certification with regard to acquiring restricted rail rolling stock is required by 49 U.S.C. § 5323(u)(4). Note that this certification is not limited to the use of Federal funds.*

The applicant certifies that the projects it will carry out using assistance authorized by the State of Good Repair Grants Program, 49 U.S.C. § 5337, are aligned with the applicant's most recent transit asset management plan and are identified in the investment and prioritization section of such plan, consistent with the requirements of 49 CFR Part 625.

If the applicant operates a rail fixed guideway service, the applicant certifies that, in the fiscal year for which an award is available to the applicant under the State of Good Repair Grants Program, 49 U.S.C. § 5337, the applicant will not award any contract or subcontract for the procurement of rail rolling stock for use in public transportation with a rail rolling stock manufacturer described in 49 U.S.C. § 5323(u)(1).

#### **CATEGORY 14. INFRASTRUCTURE FINANCE PROGRAMS.**

*If the applicant will apply for an award for a project that will include assistance under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”) Program (23 U.S.C. §§ 601–609) or the State Infrastructure Banks (“SIB”) Program (23 U.S.C. § 610), it must make the certifications in Category 8 for the Urbanized Area Formula Grants Program, Category 10 for the Fixed Guideway Capital Investment Grants program, and Category 13 for the State of Good Repair Grants program. These certifications are required by 49 U.S.C. § 5323(o).*

*Making this certification will incorporate the certifications in Categories 8, 10, and 13 by reference.*

#### **CATEGORY 15. ALCOHOL AND CONTROLLED SUBSTANCES TESTING.**

*If the applicant will apply for an award under FTA’s Urbanized Area Formula Grants Program (49 U.S.C. § 5307), Fixed Guideway Capital Investment Program (49 U.S.C. § 5309), Formula Grants for Rural Areas Program (49 U.S.C. § 5311), or Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339) programs, the applicant must make the following certification. The applicant must make this certification on its own behalf and on behalf of its subrecipients and contractors. This certification is required by 49 CFR § 655.83.*

The applicant certifies that it, its subrecipients, and its contractors are compliant with FTA’s regulation for the Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations, 49 CFR Part 655.

#### **CATEGORY 16. RAIL SAFETY TRAINING AND OVERSIGHT.**

*If the applicant is a State with at least one rail fixed guideway system, or is a State Safety Oversight Agency, or operates a rail fixed guideway system, it must make the following certification. The elements of this certification are required by 49 CFR §§ 672.31 and 674.39.*

The applicant certifies that the rail fixed guideway public transportation system and the State Safety Oversight Agency for the State are:

- (a) Compliant with the requirements of 49 CFR Part 672, “Public Transportation Safety Certification Training Program”; and
- (b) Compliant with the requirements of 49 CFR Part 674, “State Safety Oversight”.

**CATEGORY 17. DEMAND RESPONSIVE SERVICE.**

*If the applicant operates demand responsive service and will apply for an award to purchase a non-rail vehicle that is not accessible within the meaning of 49 CFR Part 37, it must make the following certification. This certification is required by 49 CFR § 37.77.*

The applicant certifies that the service it provides to individuals with disabilities is equivalent to that provided to other persons. A demand responsive system, when viewed in its entirety, is deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (a) Response time;
- (b) Fares;
- (c) Geographic area of service;
- (d) Hours and days of service;
- (e) Restrictions or priorities based on trip purpose;
- (f) Availability of information and reservation capability; and
- (g) Any constraints on capacity or service availability.

**CATEGORY 18. INTEREST AND FINANCING COSTS.**

*If the applicant will pay for interest or other financing costs of a project using assistance awarded under the Urbanized Area Formula Grants Program (49 U.S.C. § 5307), the Fixed Guideway Capital Investment Grants Program (49 U.S.C. § 5309), or any program that must comply with the requirements of 49 U.S.C. § 5307, including the Formula Grants for the Enhanced Mobility of Seniors Program (49 U.S.C. § 5310), “flex funds” from infrastructure programs administered by the Federal Highways Administration (see 49 U.S.C. § 5334(i)), or awards to urbanized areas under the Grants for Buses and Bus Facilities Program (49 U.S.C. § 5339), the applicant must make the following certification. This certification is required by 49 U.S.C. §§ 5307(e)(3) and 5309(k)(2)(D).*

The applicant certifies that:

- (a) Its application includes the cost of interest earned and payable on bonds issued by the applicant only to the extent proceeds of the bonds were or will be expended in carrying out the project identified in its application; and
- (b) The applicant has shown or will show reasonable diligence in seeking the most favorable financing terms available to the project at the time of borrowing.

**CATEGORY 19. CYBERSECURITY CERTIFICATION FOR RAIL ROLLING STOCK AND OPERATIONS.**

*If the applicant operates a rail fixed guideway public transportation system, it must make this certification. This certification is required by 49 U.S.C. § 5323(v). For information about standards or practices that may apply to a rail fixed guideway public transportation system, visit <https://www.nist.gov/cyberframework> and <https://www.cisa.gov/>.*

The applicant certifies that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks that complies with the requirements of 49 U.S.C. § 5323(v)(2).

**CATEGORY 20. PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS FORMULA AND DISCRETIONARY PROGRAM (TRIBAL TRANSIT PROGRAMS).**

*Before FTA may provide Federal assistance for an Award financed under either the Public Transportation on Indian Reservations Formula or Discretionary Program authorized under 49 U.S.C. § 5311(c)(1), as amended by the FAST Act, (Tribal Transit Programs), the applicant must select the Certifications in Category 21, except as FTA determines otherwise in writing. Tribal Transit Program applicants may certify to this Category and Category 1 (Certifications and Assurances Required of Every Applicant) and need not make any other certification, to meet Tribal Transit Program certification requirements. If an applicant will apply for any program in addition to the Tribal Transit Program, additional certifications may be required.*

FTA has established terms and conditions for Tribal Transit Program grants financed with Federal assistance appropriated or made available under 49 U.S.C. § 5311(c)(1). The applicant certifies that:

- (a) It has or will have the legal, financial, and technical capacity to carry out its Award, including the safety and security aspects of that Award.
- (b) It has or will have satisfactory continuing control over the use of its equipment and facilities acquired or improved under its Award.
- (c) It will maintain its equipment and facilities acquired or improved under its Award, in accordance with its transit asset management plan and consistent with FTA regulations, “Transit Asset Management,” 49 CFR Part 625. Its Award will achieve maximum feasible coordination with transportation service financed by other federal sources.
- (d) With respect to its procurement system:
  - (1) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 1201, which incorporates by reference U.S. OMB regulatory guidance, “Uniform Administrative Requirements, Cost

- Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, for Awards made on or after December 26, 2014,
- (2) It will have a procurement system that complies with U.S. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18, specifically former 49 CFR § 18.36, for Awards made before December 26, 2014, or
  - (3) It will inform FTA promptly if its procurement system does not comply with either of those U.S. DOT regulations.
- (e) It will comply with the Certifications, Assurances, and Agreements in:
- (1) Category 05.1 and 05.2 (Charter Service Agreement and School Bus Agreement),
  - (2) Category 06 (Transit Asset Management Plan),
  - (3) Category 07.1 and 07.2 (Rolling Stock Buy America Reviews and Bus Testing),
  - (4) Category 09 (Formula Grants for Rural Areas),
  - (5) Category 15 (Alcohol and Controlled Substances Testing), and
  - (6) Category 17 (Demand Responsive Service).

#### **CATEGORY 21. EMERGENCY RELIEF PROGRAM.**

*An applicant to the Public Transportation Emergency Relief Program, 49 U.S.C. § 5324, must make the following certification. The certification is required by 49 U.S.C. § 5324(f) and must be made before the applicant can receive a grant under the Emergency Relief program.*

The applicant certifies that the applicant has insurance required under State law for all structures related to the emergency relief program grant application.

**FEDERAL FISCAL YEAR 2023 CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS**

(Signature pages alternate to providing Certifications and Assurances in TrAMS.)

Name of Applicant: \_\_\_\_\_

The Applicant certifies to the applicable provisions of all categories: (*check here*) \_\_\_\_\_.

*Or,*

The Applicant certifies to the applicable provisions of the categories it has selected:

| <b>Category</b>                                                                                                            | <b>Certification</b> |
|----------------------------------------------------------------------------------------------------------------------------|----------------------|
| 01 Certifications and Assurances Required of Every Applicant                                                               | _____                |
| 02 Public Transportation Agency Safety Plans                                                                               | _____                |
| 03 Tax Liability and Felony Convictions                                                                                    | _____                |
| 04 Lobbying                                                                                                                | _____                |
| 05 Private Sector Protections                                                                                              | _____                |
| 06 Transit Asset Management Plan                                                                                           | _____                |
| 07 Rolling Stock Buy America Reviews and Bus Testing                                                                       | _____                |
| 08 Urbanized Area Formula Grants Program                                                                                   | _____                |
| 09 Formula Grants for Rural Areas                                                                                          | _____                |
| 10 Fixed Guideway Capital Investment Grants and the Expedited Project Delivery for Capital Investment Grants Pilot Program | _____                |
| 11 Grants for Buses and Bus Facilities and Low or No Emission Vehicle Deployment Grant Programs                            | _____                |

12 Enhanced Mobility of Seniors and Individuals with Disabilities Programs

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13 State of Good Repair Grants

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14 Infrastructure Finance Programs

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15 Alcohol and Controlled Substances Testing

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16 Rail Safety Training and Oversight

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17 Demand Responsive Service

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18 Interest and Financing Costs

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19 Cybersecurity Certification for Rail Rolling Stock and Operations

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20 Tribal Transit Programs

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21 Emergency Relief Program

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**CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE**

**AFFIRMATION OF APPLICANT**

Name of the Applicant: \_\_\_\_\_

BY SIGNING BELOW, on behalf of the Applicant, I declare that it has duly authorized me to make these Certifications and Assurances and bind its compliance. Thus, it agrees to comply with all federal laws, regulations, and requirements, follow applicable federal guidance, and comply with the Certifications and Assurances as indicated on the foregoing page applicable to each application its Authorized Representative makes to the Federal Transit Administration (FTA) in the federal fiscal year, irrespective of whether the individual that acted on his or her Applicant’s behalf continues to represent it.

The Certifications and Assurances the Applicant selects apply to each Award for which it now seeks, or may later seek federal assistance to be awarded by FTA during the federal fiscal year.

The Applicant affirms the truthfulness and accuracy of the Certifications and Assurances it has selected in the statements submitted with this document and any other submission made to FTA, and acknowledges that the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*, and implementing U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR part 31, apply to any certification, assurance or submission made to FTA. The criminal provisions of 18 U.S.C. § 1001 apply to any certification, assurance, or submission made in connection with a federal public transportation program authorized by 49 U.S.C. chapter 53 or any other statute

In signing this document, I declare under penalties of perjury that the foregoing Certifications and Assurances, and any other statements made by me on behalf of the Applicant are true and accurate.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_ Authorized Representative of Applicant

**AFFIRMATION OF APPLICANT’S ATTORNEY**

For (Name of Applicant): \_\_\_\_\_

As the undersigned Attorney for the above-named Applicant, I hereby affirm to the Applicant that it has authority under state, local, or tribal government law, as applicable, to make and comply with the Certifications and Assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the Certifications and Assurances have been legally made and constitute legal and binding obligations on it.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these Certifications and Assurances, or of the performance of its FTA assisted Award.

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Name \_\_\_\_\_ Attorney for Applicant

*Each Applicant for federal assistance to be awarded by FTA must provide an Affirmation of Applicant’s Attorney pertaining to the Applicant’s legal capacity. The Applicant may enter its electronic signature in lieu of the Attorney’s signature within TrAMS, provided the Applicant has on file and uploaded to TrAMS this hard-copy Affirmation, signed by the attorney and dated this federal fiscal year.*

**City Council Regular**

**Date:** 01/22/2024  
**Title:** SID 1426 Arvin Lane, Resolution of Intent to Create District and Set a Public Hearing  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Intent to Create SID 1426 Arvin Lane and set a public hearing date for February 12, 2024.

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

The City is pursuing a Special Improvement District (SID) to construct infrastructure improvements along Arvin Lane, a short cul-de-sac. Arvin Lane is an existing gravel street running westerly off Arvin Road, between Rimrock Road to the north and Poly Drive to the south. Based on the annual gravel street construction program presented in the CIP, SID 1426 Arvin Lane (Project) will construct the remainder of curb and gutter, asphalt pavement, and remove and replace some existing curb and gutter and/or drive approaches to improve drainage. The Project will install a new 8-inch water main, replacing the existing 2-inch water main currently serving the neighborhood. The new 8-inch water main will provide fire flow to the end of the cul-de-sac that was not previously available through the 2-inch water line.

Six (6) parcels are adjacent to Arvin Lane within the project limits. Of the six (6) parcels, four (4) are addressed to Arvin Lane and two (2) are residential corner lots addressed to Arvin Road. Two (2) of the four (4) addressed properties are owned by a single owner. The costs associated with the improvements necessary to bring Arvin Lane up to City standards will be assessed to the four addressed properties, per City of Billings Resolution No. 23-11171. Street Maintenance District (SMD) 2 funds will be used to fund non-assessed improvements, and Water funds will be used for the water main replacement.

Four (4) assessments will comprise the District. Proposed street improvements (Assessment #1) will be assessed, per the equal amount option method, to the four (4) addressed properties. Neither of the two (2) non-addressed, residential corner lots requested private property specific improvements and will therefore have no assessments.

On January 24, 2023, City staff sent a letter to the addressed properties on Arvin Lane requesting their participation in a survey seeking SID interest levels. The initial letter and estimate revealed general neighborhood interest. Following City staff design, City staff mailed an updated cost estimate and set up an on-site meeting. Two (2) property owners attended the meeting, representing two (2) of the four (4) properties. The two property owners at the meeting continued to show support for the SID. One property owner representing the remaining two (2) properties, who did not attend the meeting, expressed their continued support of the Project in a phone call with City staff.

**ALTERNATIVES**

City Council may:

- Approve the Resolution of Intent to Create SID 1426 and set a public hearing for the February 12, 2024, Council Meeting; or,
- Not approve the Resolution of Intent to Create SID 1426. If not approved, Arvin Lane will remain a gravel street, and gravel maintenance costs will continue to occur and the water main will remain undersized to provide adequate fire flow.

**FISCAL EFFECTS**

The funding sources, estimated costs of the improvements, and total project cost for SID 1426 is as follows:

| SID 1426 Funding Source | SID 1426 Estimated Cost |
|-------------------------|-------------------------|
| SID Assessments         | \$42,720.00             |
| SMD 2 Funds             | \$88,113.82             |
| Water Funds             | \$154,184.19            |

|       |              |
|-------|--------------|
| Total | \$285,018.00 |
|-------|--------------|

Funding for SID 1426 was budgeted in FY24 using SMD 2 Funds, Water Funds, and assessments through the annual gravel streets program. Adequate funding is available to create the SID and fund the improvements.

---

### Attachments

- SID 1426 Arvin Lane - Intent
- SID 1426 Exhibit A
- SID 1426 Exhibit B
- SID 1426 Exhibit C
- SID 1426 Exhibit D
- SID 1426 Exhibit E

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1426; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the "Resolution") was duly adopted by the City Council of the City at a meeting on January 22, 2024 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: \_\_\_\_\_;  
\_\_\_\_\_  
voted against the same: \_\_\_\_\_;  
\_\_\_\_\_  
or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Denise Bohlman City Clerk

RESOLUTION NO. 24-\_\_\_\_\_

**RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1426; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND**

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

**Section 1. Proposed Improvements: Intention To Create District.** The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of Arvin Lane, as more particularly described in Section 5. The total estimated costs of the Improvements are \$285,018.00. The costs of the Improvements are to be paid from the following sources: (1) \$42,720.00 of Special Improvement District bonds hereinafter described; and (2) \$242,298.00 of cash contribution by the City. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$42,720.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

**Section 2. Number of District.** The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1426 of the City of Billings, Montana.

**Section 3. Boundaries of District.** The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto (which are hereby incorporated herein and made a part hereof).

**Section 4. Benefited Property.** The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and C are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

**Section 5. General Character of the Improvements.** The general character of the Improvements, as shown in Exhibit D, is the construction of Arvin Lane. This includes construction of water, curb and gutter, and street improvements.

**Section 6. Engineer and Estimated Cost.** The Engineer for this project will be City of Billings, Engineering Division. The Engineering Division has estimated that the costs of the Improvements, including all incidental costs, are \$285,018.00.

**Section 7. Assessment Methods.**

**7.1. Property to be Assessed.** All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the equal amount option described in Section 7-12-4162(3), M.C.A., as more particularly applied and set forth in this Section 7.

**7.1.1 Equal Amount Option.** Assessment #1 (STREETS) will include the construction of street improvements to Arvin Lane. The properties to be assessed for these improvements include Weidler Acres Amended Lots 5 and 6, Lots 5-B, 5-C, and Lots 6-B, and 6-C. The total estimated cost of Assessment #1 (STREETS) is \$42,720.00 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving street improvements and not paying a cash contribution, on an equal amount basis based on the bid price received. The equal amount assessment is estimated to be \$10,680.00. If an increase occurs in the number of properties within the boundaries of the District (due to the subdivision of any one or more properties or otherwise) during the term of the Bonds, the assessment per property then in the District will be recalculated as provided in Section 7-12-4162(3)(b), M.C.A.

**7.2. Assessment Methodologies Equitable and Consistent With Benefit.** This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

**Section 8. Payment of Assessments.** The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

**Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations.** The City will issue the Bonds in an aggregate principal amount not to exceed \$42,720.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225, M.C.A., in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$358,500.00 to \$711,100.00, and is set forth in Exhibit E. The average market value is \$488,375.00 with the median being \$441,950.00. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of four (4) parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. Two (2) of these parcels are owned by a common owner. The remaining two (2) parcels are owned by separate owners.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels

of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit E.

(d) **Delinquencies**. An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of four (4) properties, zero (0) properties were delinquent, and is set forth in Exhibit E.

(e) **The Public Benefit of the Improvements**. The total estimated costs of the Improvements are \$285,018.00. The costs of the Improvements are to be paid from the following sources: (1) \$42,720.00 of proceeds of the Bonds; and (2) \$242,298.00 of cash contribution by the City. All of the properties within the District are zoned N3 – Suburban Neighborhood. The public improvements contemplated under the terms of this proposed District are required by the City Subdivision Regulations.

## **Section 10. Reimbursement Expenditures.**

**10.01. Regulations**. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

**10.02. Prior Expenditures**. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

**10.03. Declaration of Intent.** The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$42,720.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

**10.04. Budgetary Matters.** As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

**10.05. Reimbursement Allocations.** The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

**Section 11. Public Hearing Protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (February 10, 2024), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 12<sup>th</sup> day of February, at 5:30 p.m., in person or via a virtual videoconferencing environment, at 220 North 27<sup>th</sup> Street, in Billings, Montana.

**Section 12. Notice of Passage of Resolution of Intention.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Yellowstone County News, a newspaper of general circulation in the County on January 26, February 2, and February 9, 2024, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice

to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22<sup>nd</sup> day of January, 2024.

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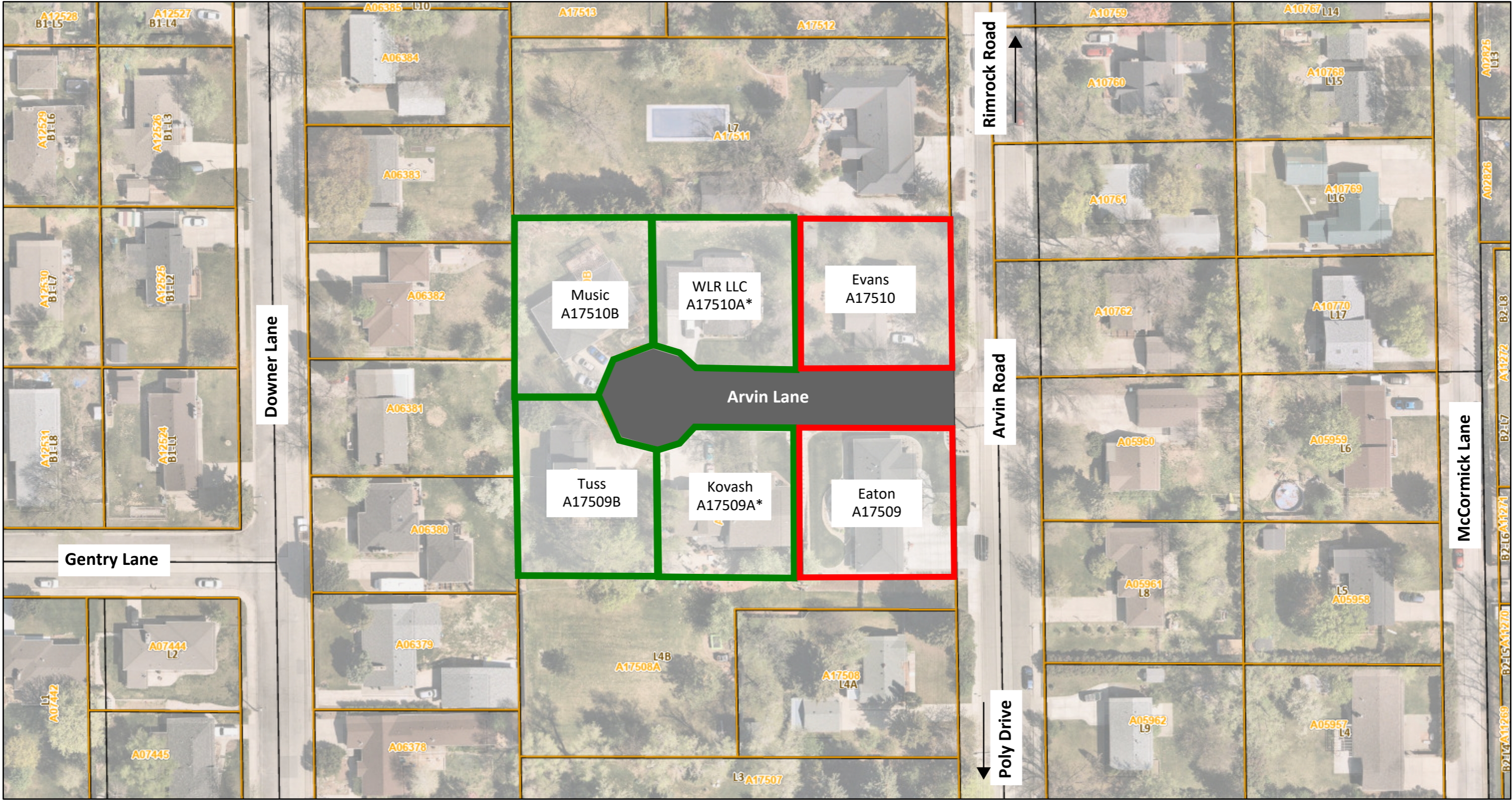
Mayor

Attest:

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City Clerk

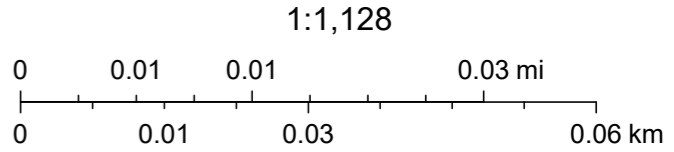
# SID 1426 Arvin Lane - Exhibit A



1/3/2024, 11:24:44 AM

NOTES:  
\* Common Ownership

- LEGEND:
- Addressed Parcel included in SID 1426
  - Non-addressed Parcel, requesting no private property specific improvements and not included in SID 1426



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**S.I.D. 1426 Arvin Lane**  
**Exhibit B - Property Descriptions**  
**Prepared by: City of Billings**

SID 1426 includes Weidler Acres Amended Lots 5 and 6, Lots 5-B, 5-C, and Lots 6-B, and 6-C.

**S.I.D. 1426 Arvin Lane**  
**Exhibit C - Property Owner Description and Estimated Assessment**  
**Prepared By: City of Billings**

| TAX ID  | OWNER                                 | MAILING ADDRESS | CITY     | STATE | ZIP CODE | ASSESSMENT #1             |                               |
|---------|---------------------------------------|-----------------|----------|-------|----------|---------------------------|-------------------------------|
|         |                                       |                 |          |       |          | STREET PER EACH SUB-TOTAL | TOTAL ASSESSMENT COST PER LOT |
| A17509A | KOVASH, BRYAN D & POLLY               | 2410 ARVIN LN   | BILLINGS | MT    | 59102    | \$ 10,680.00              | \$ 10,680.00                  |
| A17509B | TUSS, DUSTIN JEREMY & ALISHA MICHELLE | 2420 ARVIN LN   | BILLINGS | MT    | 59102    | \$ 10,680.00              | \$ 10,680.00                  |
| A17510A | WLR LLC                               | 2410 ARVIN LN   | BILLINGS | MT    | 59102    | \$ 10,680.00              | \$ 10,680.00                  |
| A17510B | MUSIC, APRIL                          | 2417 ARVIN LN   | BILLINGS | MT    | 59102    | \$ 10,680.00              | \$ 10,680.00                  |
|         |                                       |                 |          |       |          | \$ 42,720.00              | \$ 42,720.00                  |

**S.I.D. 1426 Arvin Lane**  
**Exhibit D - Description of Improvements**  
**Prepared by: City of Billings**

Special Improvement District No. 1426 shall construct water, curb and gutter, and street improvements to Arvin Lane within the City of Billings.

**S.I.D. 1426 Arvin Lane**  
**Exhibit E - Property Market Value and Delinquency**  
**Prepared By: City of Billings**

| TAX I.D.<br>NUMBER | PREVIOUS<br>SID # | PREVIOUS<br>SID<br>PAY-OFF | DELINQUENT | SID 1426<br>ASSESSMENT | SID 1426<br>CASH<br>CONTRIBUTION | SID PAY-OFF +<br>DELINQUENT +<br>SID 1426<br>ASSESSMENT | ESTIMATED<br>MARKET<br>VALUE | ESTIMATED<br>MARKET VALUE<br>AFTER<br>IMPROVEMENTS |
|--------------------|-------------------|----------------------------|------------|------------------------|----------------------------------|---------------------------------------------------------|------------------------------|----------------------------------------------------|
| A17509A            |                   |                            |            | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 711,100.00                | \$ 721,780.00                                      |
| A17509B            |                   |                            |            | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 478,500.00                | \$ 489,180.00                                      |
| A17510A            |                   |                            |            | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 405,400.00                | \$ 416,080.00                                      |
| A17510B            |                   |                            |            | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 358,500.00                | \$ 369,180.00                                      |
| <b>AVERAGE</b>     |                   | \$ -                       | \$ -       | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 488,375.00                | \$ 542,346.67                                      |
| <b>MEDIAN</b>      |                   | \$ -                       | \$ -       | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 441,950.00                | \$ 489,180.00                                      |
| <b>LOW</b>         |                   | \$ -                       | \$ -       | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 358,500.00                | \$ 416,080.00                                      |
| <b>HIGH</b>        |                   | \$ -                       | \$ -       | \$ 10,680.00           |                                  | \$ 10,680.00                                            | \$ 711,100.00                | \$ 721,780.00                                      |

**City Council Regular**

**Date:** 01/22/2024  
**Title:** SID 1427 Hancock Drive, Resolution of Intent to Create District and Set a Public Hearing  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council approve the Resolution of Intent to Create SID 1427 Hancock Drive and set a public hearing date for February 12, 2024.

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

At the request of a property owner on Hancock Drive, the City is pursuing a Special Improvement district (SID) to construct City improvements along Hancock Drive. Hancock Drive is an existing gravel street located north of Poly Drive, situated between Orchard Drive to the east and Sunnyview Lane to the west. Based on the annual gravel street construction program presented in the CIP, SID 1427 Hancock Drive (the Project) will construct the remainder of curb and gutter, asphalt pavement, and drive approaches, and assess the costs of the improvements to the adjacent addressed and non-addressed property owners requesting certain private improvements. Street Maintenance District 2 funds will be used to fund non-assessed improvements.

Six (6) parcels are adjacent to Hancock Drive within the project limits. Of the six (6) parcels, four (4) are addressed to Hancock Drive and two (2) are residential corner lots addressed to Poly Drive. Two (2) of the four (4) addressed properties are owned by a single owner. The two (2) residential corner lots are not assessed for the improvement costs along their non-addressed side, per City of Billings Resolution No. 23-11171. However, one (1) of the non-addressed properties has requested private property specific improvements to construct a drive approach and will be assessed for that improvement accordingly. Per City of Billings Resolution No. 23-11171, property owners of non-addressed, residential corner lots are responsible for costs associated with private property specific improvements along the non-addressed frontage.

Proposed street improvements (Assessment #1) will be assessed, per the equal amount option method, to the four (4) addressed properties. Concrete Flatwork (Assessment #2), as elected by one (1) addressed property and one (1) non-addressed property, will be assessed to the two (2) participating property owners per the assessed area option method. Separating the assessments into these two (2) methods ensures the benefits of the improvements are assessed appropriately.

On several different occasions, City staff met with all of the property owners along Hancock Drive who will be directly affected by the improvements. City staff attended an on-site meeting with three (3) of the property owners, representing one (1) non-addressed property, and three (3) addressed properties. City staff met with one addressed property owner on two separate occasions at the Office of the City Engineer. City staff met separately with the second non-addressed property owner and was requested to include the drive approach improvements in the Project. Following these meetings and based on the cost estimates provided at the time, three of the four addressed property owners were in support of the Project. The two owners of the non-addressed properties are also in support of the Project.

**ALTERNATIVES**

City Council may:

- Approve the Resolution of Intent to Create SID 1427 and set a public hearing for the February 12, 2024, Council Meeting; or,
- Not approve the Resolution of Intent to Create SID 1427. If not approved, Hancock Drive will remain a gravel street, and gravel maintenance costs will accrue.

**FISCAL EFFECTS**

The funding sources, estimated costs of the improvements, and total project cost for SID 1427 is as follows:

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| SID 1427 Funding Source | SID 1427 Estimated Cost |
|-------------------------|-------------------------|
| SID Assessments         | \$38,500.00             |
| SMD 2 Funds             | \$91,378.00             |
| Total                   | \$129,878.00            |

Funding for SID 1427 was budgeted in FY24 using SMD 2 Funds and assessments through the annual gravel streets program. Adequate funding is available to create the SID and fund the improvements.

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### Attachments

- SID 1427 Hancock - Intent
- SID 1427 Exhibit A
- SID 1427 Exhibit B
- SID 1427 Exhibit C
- SID 1427 Exhibit D
- SID 1427 Exhibit E

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_, entitled: **RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1427; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the "Resolution") was duly adopted by the City Council of the City at a meeting on January 22, 2024 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: \_\_\_\_\_;  
\_\_\_\_\_  
voted against the same: \_\_\_\_\_;  
\_\_\_\_\_  
or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Denise Bohlman City Clerk

RESOLUTION NO. 24-\_\_\_\_\_

**RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1427; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND**

BE IT RESOLVED by the City Council of the City of Billings (the "City"), Montana, as follows:

**Section 1. Proposed Improvements: Intention To Create District.** The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of Hancock Drive, as more particularly described in Section 5. The total estimated costs of the Improvements are \$129,878.00. The costs of the Improvements are to be paid from the following source: (1) \$38,500.00 of Special Improvement District bonds hereinafter described; and (2) \$91,378.00 of cash contribution by the City. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$38,500.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

**Section 2. Number of District.** The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1427 of the City of Billings, Montana.

**Section 3. Boundaries of District.** The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit C hereto (which are hereby incorporated herein and made a part hereof).

**Section 4. Benefited Property.** The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and C are hereby declared to be the Special Improvement District and the territory which will benefit and be benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

**Section 5. General Character of the Improvements.** The general character of the Improvements, as shown in Exhibit D, is the construction of Hancock Drive. This includes construction of drive approach, curb and gutter, and street improvements.

**Section 6. Engineer and Estimated Cost.** The Engineer for this project will be City of Billings, Engineering Division. The Engineering Division has estimated that the costs of the Improvements, including all incidental costs, are \$129,878.00.

**Section 7. Assessment Methods.**

**7.1. Property to be Assessed.** All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the assessable area option, and equal amount option described in Section 7-12-4162(1), M.C.A., and Section 7-12-4162(3) M.C.A., respectively, as more particularly applied and set forth in this Section 7.

**7.1.1 Equal Amount Option Method.** Assessment #1 (STREETS) will include the construction of street improvements to Hancock Drive. The four (4) properties to be assessed for these improvements include Huntington Tracts Amended Lots 1&2, the north 50 feet of Lot 13, Lot 14, Lot 15, and Lot 16. The total estimated cost of Assessment #1 (STREETS) is \$31,621.24 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving street improvements and not paying a cash contribution, on an equal amount basis based on the bid price received. The equal amount assessment is estimated to be \$7,905.31. If an increase occurs in the number of properties within the boundaries of the District (due to the subdivision of any one or more properties or otherwise) during the term of the Bonds, the assessment per property then in the District will be recalculated as provided in Section 7-12-4162(3)(b), M.C.A.

**7.1.2 Assessable Area Option Method.** Assessment #2 (CONCRETE FLATWORK) will include the construction of concrete drive approach and concrete driveway to certain properties on Hancock Drive. The two (2) properties to be assessed for these improvements include Huntington Tracts Amended Lots 1&2, Lot 12, and Lot 14. The total estimated cost of Assessment #2 (CONCRETE FLATWORK) is \$6,878.76 and shall be assessed against each lot, tract, or parcel of land within the District, as above-mentioned, receiving concrete

drive approach and concrete driveway and not paying a cash contribution, for that part of the costs of the Improvements that the assessable area of such lot, tract, or parcel bears to the total assessable area of the lots, tract, or parcels of land within the District. The total assessable area of lots to be assessed is 309 square feet. The costs of the improvements and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot are estimated to be \$22.26136.

**7.2. Assessment Methodologies Equitable and Consistent With Benefit.**

This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed therefore within the District.

**Section 8. Payment of Assessments.** The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

**Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations.** The City will issue the Bonds in an aggregate principal amount not to exceed \$38,500.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225, M.C.A., in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$35,943.00 to \$352,300.00, and is set forth in Exhibit E. The average market value is \$230,048.60 with the median being \$250,500.00. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel,

or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership**. There are a total of five (5) parcels within the district boundaries. No improvements, public or private, are located on any of the parcels within the District. Two (2) of these parcels are owned by a common owner. The remaining three (3) parcels are owned by separate owners. One of the parcels is “non-addressed” and, in accordance with City policy, is not assessed for Assessment #1 (STREETS) described in Section 7.1.1 above.

(c) **Comparison of Special Assessments and Property Taxes and Market Value**. Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit E.

(d) **Delinquencies**. An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of five (5) properties, zero (0) properties were delinquent, and is set forth in Exhibit E.

(e) **The Public Benefit of the Improvements**. The total estimated costs of the Improvements are \$129,878.00. The costs of the Improvements are to be paid from the following sources: (1) \$38,500.00 of proceeds of the Bonds; and (2) \$91,378.00 of cash contribution by the City. All of the properties within the District are zoned N3 – Suburban Neighborhood. The public improvements contemplated under the terms of this proposed District are required by the City Subdivision Regulations, Site Development and Zoning Ordinances in order for the parcels to develop.

## **Section 10. Reimbursement Expenditures.**

**10.01. Regulations**. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the

reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

**10.02. Prior Expenditures.** Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

**10.03. Declaration of Intent.** The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$38,500.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

**10.04. Budgetary Matters.** As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City’s budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

**10.05. Reimbursement Allocations.** The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

**Section 11. Public Hearing Protests.** At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (February 10, 2024), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 12<sup>th</sup> day of February, at 5:30 p.m., in person or via a virtual videoconferencing environment, at 220 North 27<sup>th</sup> Street, in Billings, Montana.

**Section 12. Notice of Passage of Resolution of Intention.** The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Yellowstone County News, a newspaper of general circulation in the County on January 26, February 2, and February 9, 2024, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana, this 22<sup>nd</sup> day of January 2024.

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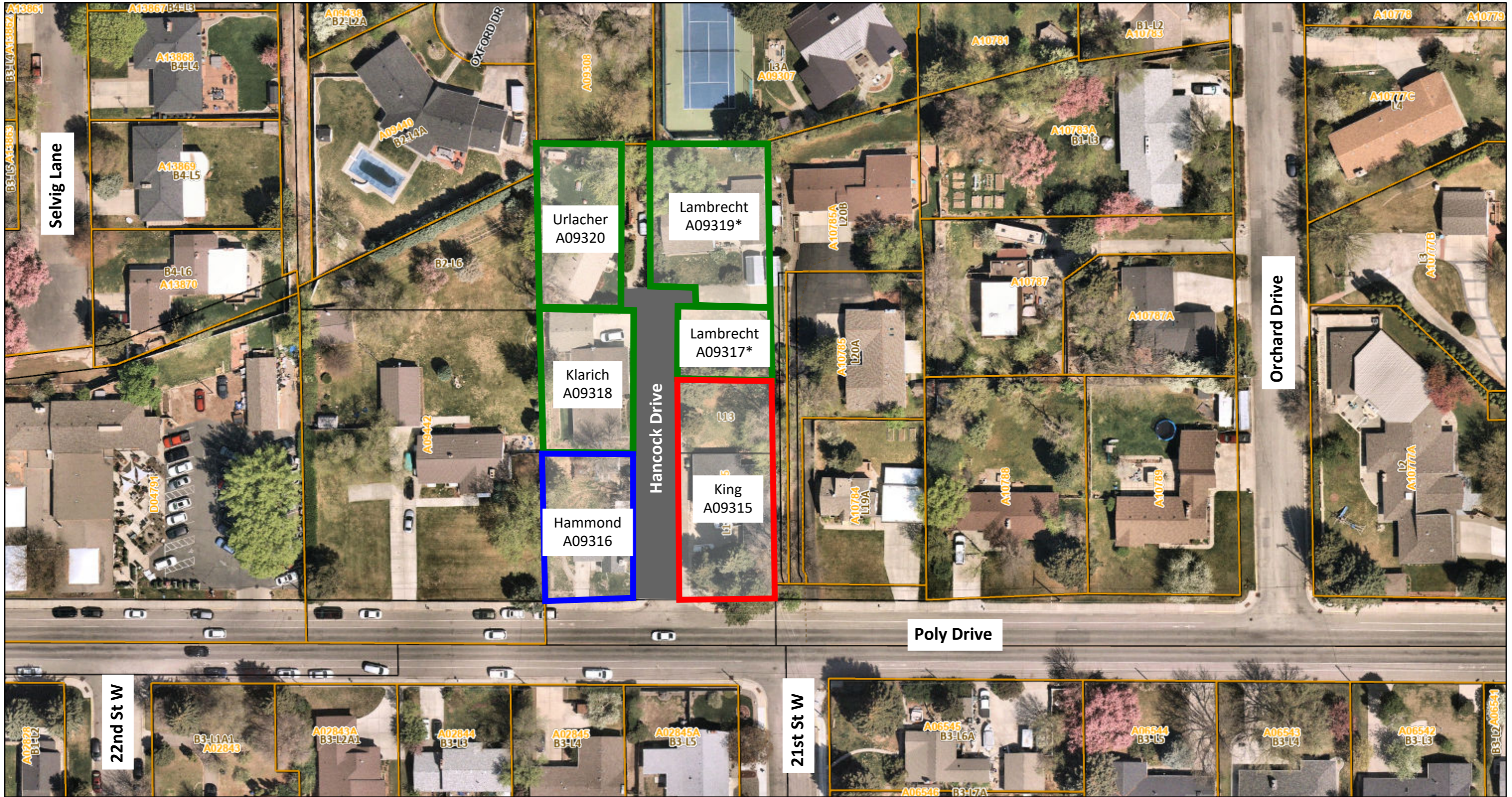
Mayor

Attest:

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City Clerk

# SID 1427 Hancock Drive - Exhibit A



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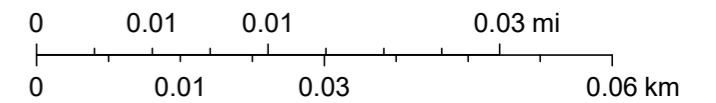
1:1,128

**NOTES:**

\* Common Ownership

**LEGEND:**

- Addressed Parcel included in SID 1427
- Non-addressed Parcel, requesting private property specific improvements (drive approach) and included in SID 1427
- Non-addressed Parcel, requesting no private property specific improvements and not included in SID 1427



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**S.I.D. 1427 Hancock Drive**  
**Exhibit B - Property Descriptions**  
**Prepared by: City of Billings**

SID 1427 includes Huntington Tracts Amended Lots 1&2, Lot 12, the north 50 feet of Lot 13, Lot 14, Lot 15, and Lot 16.

**S.I.D. 1427 Hancock Drive**  
**Exhibit C - Property Owner Description and Assessment**  
 Prepared By: City of Billings

| TAX ID | OWNER                                 | MAILING ADDRESS | CITY     | STATE | ZIP CODE | ASSESSMENT #1      | ASSESSMENT #2     |             |             | TOTAL ASSESSMENT COST PER LOT |
|--------|---------------------------------------|-----------------|----------|-------|----------|--------------------|-------------------|-------------|-------------|-------------------------------|
|        |                                       |                 |          |       |          | STREET             | AREA PER LOT (SF) | COST PER SF | SUB-TOTAL   |                               |
|        |                                       |                 |          |       |          | PER EACH SUB-TOTAL |                   |             |             |                               |
| A09316 | HAMMOND, RACHEL E                     | 2109 POLY DR    | BILLINGS | MT    | 59102    | \$ -               | 146.00            | \$ 22.26136 | \$ 3,250.16 | \$ 3,250.16                   |
| A09318 | KLARICH, DAVID E & ELIZABETH I        | 2512 HANCOCK DR | BILLINGS | MT    | 59102    | \$ 7,905.31        | 163.00            | \$ 22.26136 | \$ 3,628.60 | \$ 11,533.91                  |
| A09320 | URLACHER, JAMES V & DEBBY A           | 2520 HANCOCK DR | BILLINGS | MT    | 59102    | \$ 7,905.31        | 0.00              | \$ 22.26136 | \$ -        | \$ 7,905.31                   |
| A09317 | LAMBRECHT, GAIL A & WILLIAMS, BILLY D | 2519 HANCOCK DR | BILLINGS | MT    | 59102    | \$ 7,905.31        | 0.00              | \$ 22.26136 | \$ -        | \$ 7,905.31                   |
| A09319 | LAMBRECHT, GAIL A & WILLIAMS, BILLY D | 2519 HANCOCK DR | BILLINGS | MT    | 59102    | \$ 7,905.31        | 0.00              | \$ 22.26136 | \$ -        | \$ 7,905.31                   |
|        |                                       |                 |          |       |          | \$ 31,621.24       |                   |             | \$ 6,878.76 | \$ 38,500.00                  |

**S.I.D. 1427 Hancock Drive**  
**Exhibit D - Description of Improvements**  
**Prepared by: City of Billings**

Special Improvement District No. 1427 shall construct street, curb and gutter, and drive approach improvements to Hancock Drive within the City of Billings.

**S.I.D. 1427 Hancock Drive**  
**Exhibit E - Property Market Value and Delinquency**  
**Prepared By: City of Billings**

| TAX I.D.<br>NUMBER | PREVIOUS<br>SID # | PREVIOUS<br>SID<br>PAY-OFF | DELINQUENT | SID 1427<br>ASSESSMENT | SID 1427<br>CASH<br>CONTRIBUTION | SID PAY-OFF +<br>DELINQUENT +<br>SID 1427<br>ASSESSMENT | ESTIMATED<br>MARKET<br>VALUE | ESTIMATED<br>MARKET VALUE<br>AFTER<br>IMPROVEMENTS |
|--------------------|-------------------|----------------------------|------------|------------------------|----------------------------------|---------------------------------------------------------|------------------------------|----------------------------------------------------|
| A09316             |                   |                            |            | \$ 3,250.16            |                                  | \$ 3,250.16                                             | \$ 248,200.00                | \$ 251,450.16                                      |
| A09318             |                   |                            |            | \$ 11,533.91           |                                  | \$ 11,533.91                                            | \$ 352,300.00                | \$ 363,833.91                                      |
| A09320             |                   |                            |            | \$ 7,905.31            |                                  | \$ 7,905.31                                             | \$ 263,300.00                | \$ 271,205.31                                      |
| A09317             |                   |                            |            | \$ 7,905.31            |                                  | \$ 7,905.31                                             | \$ 35,943.00                 | \$ 43,848.31                                       |
| A09319             |                   |                            |            | \$ 7,905.31            |                                  | \$ 7,905.31                                             | \$ 250,500.00                | \$ 258,405.31                                      |
| <b>AVERAGE</b>     |                   | \$ -                       | \$ -       | \$ 7,700.00            |                                  | \$ 7,700.00                                             | \$ 230,048.60                | \$ 237,748.60                                      |
| <b>MEDIAN</b>      |                   | \$ -                       | \$ -       | \$ 7,905.31            |                                  | \$ 7,905.31                                             | \$ 250,500.00                | \$ 258,405.31                                      |
| <b>LOW</b>         |                   | \$ -                       | \$ -       | \$ 3,250.16            |                                  | \$ 3,250.16                                             | \$ 35,943.00                 | \$ 43,848.31                                       |
| <b>HIGH</b>        |                   | \$ -                       | \$ -       | \$ 11,533.91           |                                  | \$ 11,533.91                                            | \$ 352,300.00                | \$ 363,833.91                                      |

**Date:** 01/22/2024  
**Title:** Zone Change 1040 - 1404 and 1406 Avenue B - N2 to NO - 2nd reading  
**Presented by:** Nicole Cromwell  
**Department:** Planning & Community Services  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** PZX-23-00235

#### RECOMMENDATION

The Zoning Commission recommended approval and adoption of the findings of the ten review criteria for Zone Change 1040. The City Council approved the zone change on first reading at its January 8 meeting. A second reading is required to approve the zone change.

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

This is a zone change application for two parcels of land, 1404 and 1406 Avenue B, directly north of the Stockman Bank at 1405 Grand Avenue. The current zoning is Mid-Century Neighborhood (N2) and the proposed zoning is Neighborhood Office (NO). The bank built the existing parking lot at 1404 Avenue B at the same time as the bank in 2013. The bank drive through and existing parking lot were approved through a special review (SR 890 - 2011). The previous zoning code allowed surface parking lots through special review approval in any residential zone district. The 2021 code update eliminated this provision. The current code allows surface parking lots by special review as a primary use in a few commercial zone districts - Neighborhood Office (NO), Mixed Use districts (NMU, CMU1 and 2), Downtown Support (DX), and Central Business District (CBD). The zone change is paired with a concurrent request for special review to establish a few more parking spots on the adjacent parcel at 1406 Avenue B to be zoned Neighborhood Office. The existing parking lot will not be re-configured. The City Council approved the zone change on first reading on January 8, 2024. A second reading is required to approve the zone change.

The location is within the area known as "Midtown" in Billings. Most properties were originally platted as residential subdivision lots but were converted to commercial zoning and uses beginning in the late 1950s and early 1960s. Larger commercial developments such as West Park Plaza were also built during this time frame along the Grand Avenue Corridor from 8th St West to 24th St West. As early as 1954, the corner of 13th St West from Grand Avenue north to Avenue B was zoned commercial. The bank property at 1405 Grand Avenue is zoned Corridor Mixed Use 1 (CMU1) a zone district intended for commercial lots that are adjacent to or across an alley from residential neighborhoods. The types of uses allowed are mostly compatible with residential neighborhoods. Buffering and screening residential properties is essential where lots share property lines. The proposed zoning of NO is typical in neighborhoods that adjoin commercial corridors. The NO zone allows office use and some personal and business services that generally do not operate past 5 pm or over the weekend. There are a limited number of special review uses allowed in the NO zone, including surface parking lots, wireless or radio communications, colleges, civic or religious assembly and shelters. A special review use may or may not be appropriate in the zone depending on site-specific conditions. The NO zone district is intended to be compatible in residential neighborhoods, in particular when located near block ends that intersect non-residential streets (neighborhood entryways).

The Zoning Commission is recommending approval for the zone change request based on the limited uses in the NO zone district, the location near a neighborhood entryway off a non-residential street, and the existing parking lot at 1404 Avenue B. The bank has maintained the parking lot in good condition, and it has not caused concerns or detrimental effects in the neighborhood. The City Council concurred with this recommendation and approved the zone change on first reading.

#### STAKEHOLDERS

The planning staff notified the surrounding owners by mail, posted the property with the zoning request sign and published a legal advertisement as required by local regulations. The applicant conducted a pre-application neighborhood meeting on October 23, 2023 at the Stockman Bank at 1405 Grand Avenue. One surrounding owner attended the meeting. The planning staff did not receive any comments or phone calls regarding the proposed zone change or addition to the parking lot prior to the public hearing.

#### City Zoning Commission hearing December 5, 2023

The Zoning Commission held its public hearing on December 5, 2023, and received the planning staff recommendation and testimony from the applicant's agent, Stephanie Donovan of Cushing Terrell, and Jeremy Morgret from Stockman Bank. Commission members asked questions concerning the intent to expand beyond the

proposed nine parking spaces on 1406 Avenue B, whether the existing residents in the home were agreeable with the proposed amendment. Ms. Donovan explained the existing home is vacant but will be retained on the property and there is no intent to expand beyond the proposed nine parking spots. No other testimony was received.

Chairperson Michael Larson closed the public hearing. Commission member Greg McCall made a motion to recommend approval and adoption of the findings of the 10 criteria. The motion was seconded by David Goss and was approved on a 4-0 vote.

### **City Council Public Hearing and 1st reading January 8, 2024**

The City Council conducted a public hearing on January 8, 2024, and received the Zoning Commission's recommendation of approval. No other testimony was received. Mayor Cole closed the public hearing. Council member Mike Boyett made a motion to approve the zone change and adoption of the findings of the 10 review criteria. The motion was seconded by Council member Bill Kennedy, and was approved on a unanimous voice vote.

### **ALTERNATIVES**

The City Council may:

- Approve the zone change on second reading and adopt the findings of the 10 review criteria as approved by the City Council on January 8, 2024; or,
- Deny the zone change and adopt different findings than the recommended and previously approved findings of the 10 review criteria; or
- Delay action on the zone change request for up to 30 days at the request of the applicant or on its own motion; or
- Refer the application back to the Zoning Commission for an additional public hearing based on 1) new information submitted that the applicant and public have not had an opportunity to examine; or 2) new information has been presented that was never submitted or considered by the Zoning Commission or staff; or
- Allow the applicant to withdraw the zone change request.

Only one delay for action on the zone change not to exceed 60 days is allowed. The applicant has not requested a delay or withdrawal of the request.

### **FISCAL EFFECTS**

Approval or denial should have no impact on the Planning Division budget.

### **SUMMARY**

Prior to making a decision on the requested zone change, the City Council shall consider the following findings as recommended by the Zoning Commission:

1. Is the new zoning designed in accordance with the Growth Policy and neighborhood plans? The proposed zone change is consistent with the following guidelines of the 2016 Growth Policy:

**Prosperity** (promoting equal opportunity and economic advancement)

- Predictable, reasonable city taxes and assessments are important to Billings taxpayers
- 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

The proposed zoning would allow an existing parking lot for Stockman Bank at 1404 Avenue B approved through special review to conform to the 2021 zoning code, and will allow a small addition to that parking lot through a zone change and new special review for 1406 Avenue B. The Stockman Bank development about 12 years ago, provided a significant re-investment in an underdeveloped and vacant commercial property. The Grand Avenue lots were not deep enough to accommodate all the parking needs of the bank, so the corner lot at 14th St West and Avenue B was developed for a few additional off-street spaces. The bank would like to provide more off-street parking for employees and bank customers. This is compatible with the streets and with the adjacent residential neighborhood. The NO zone is intended to allow only uses that are compatible with neighborhoods and excludes general commercial uses that may be intrusive to the neighborhood. For example, a coffee kiosk or any restaurant food service would not be allowed. Consideration of a special review and not just the zone change is required for the parking lot expansion. This will reinforce the compatibility of the new parking spaces.

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 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?

Public health and public safety are promoted by both the existing the proposed zoning. The proposed NO zoning would allow the owner to ensure future development is not intrusive to neighboring property, and still allow compatible uses with the adjacent zoning. Buffer yards will be required along with landscaping. The proposed NO zone will also allow the retention of the existing home at 1406 Avenue and development of the parking lot expansion through special review.

4. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?

**Transportation:** The proposed zoning will not increase traffic on the adjacent streets. The zone change and special review may reduce the demand for on-street parking on 14th St West and Avenue B. This increase will not require a traffic study. Any changes to drive approaches will need approval from the City Engineering Division.

**Water and Sewer:** The city provides water and sewer for the area. Water and sewer is available on both lots. The sewer connection for 1404 Avenue B has been retired. The sewer connection for 1406 Avenue will remain active for the residence. The Utilities Division voiced no concerns.

**Schools and Parks:** Schools and parks will not be affected by the proposed zoning.

**Fire and Police:** The subject property is served by city public safety services. The Police and Fire Departments had no concerns about the zone change.

5. Will the new zoning provide adequate light and air?

The proposed zoning provides for sufficient setbacks to allow for adequate separation between structures and adequate light and air.

6. Will the new zoning effect motorized and non-motorized transportation?

The existing property has a fully developed sidewalk on Avenue B and 14th St West. The sidewalks appear to be in good condition. The new zoning designation itself should not have any measurable effect on the transportation system. Demand for on-street parking may decrease slightly.

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. Property west and north of the subject parcels is zoned N2. Zoning lots at block ends for more dense residential development or for neighborhood service business is a common development pattern in Billings. The zoning does promote compatible urban growth.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of the district and the suitability of the property for the proposed use or uses. The proposed zoning will allow a small expansion of an existing parking lot and allow the existing parking lot to conform to the 2021 zoning code.

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 for new construction including all zoning standards, landscaping, screening, building heights and setbacks. The expansion of the parking lot will require positive findings for the special review criteria and will have conditions of approval. These conditions are expected to conserve and protect the value of buildings.

10. Will the new zoning encourage the most appropriate use of land throughout the City of Billings?

The proposed zoning will allow the property to conform to the 2021 zoning code, and request a small expansion of an existing parking lot. Any future re-development of the lots will allow compatible uses such as small offices and personal services. Supporting local business needs will have a positive impact on the Billings economy.

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## Attachments

ORDINANCE 24-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THE ZONE CLASSIFICATION for Lots 45, 46,  
47 and 48 of Block 2, Evergreen Subdivision, 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.** **Lots 45, 46, 47 and 48 of Block 2, Evergreen Subdivision,** is presently zoned **Mid-century Neighborhood Residential (N2),** and is shown on the official zoning map within this zone.

**Section 3. ZONE DISTRICT AMENDMENT.** The official zoning map is hereby amended and the zoning for **Lots 45, 46, 47 and 48 of Block 2, Evergreen Subdivision,** is hereby changed from **Mid-century Neighborhood Residential (N2),** to **Neighborhood Office (NO),** and from the effective date of this ordinance, shall be subject to all the rules and regulations pertaining to **Neighborhood Office (NO),** as set out in the Billings, Montana City Code.

**Section 4. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 5. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 6. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 8<sup>th</sup> day of January, 2024.

PASSED, ADOPTED and APPROVED on second reading this 22<sup>nd</sup> day of January, 2024.

CITY OF BILLINGS

BY: \_\_\_\_\_

William A. Cole, Mayor

Attest:

BY: \_\_\_\_\_

Denise R. Bohlman, City Clerk

Zone Change 1040 - 1404 and 1406 Avenue B

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Cemetery Code Changes  
**Presented by:** Brandon Schmidt  
**Department:** Parks/Rec/Public Lands  
**Presentation:** No  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that the City Council, after holding a public hearing and considering public comment, make a motion to approve the ordinance, revising city code article 8-300 and repealing ordinance 03-5240.

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

Section 8-304 -- lot conveyances

Reads -- The mayor is authorized and empowered to execute on behalf of the city... to receive applications for, and to issue burial permits

Recommend -- The city administrator or his/her designee is authorized to receive applications for, and to issue burial permits  
Justification - Current process of scheduling/conducting a burial does not include attaining Mayor's approval. Adding this step into the process is unnecessary and would delay providing services to the community . Recommend assigning this task to city administrator or designee.

Section 8-312 -- advertisements

Reads -- No advertisement or marketing of products in any form shall be permitted within the cemetery.

Recommend - Advertisement or marketing of products shall be permitted within the cemetery office and at information kiosks. The cemetery may display marketing material for products and services provided by the cemetery, on cemetery common grounds. During special events the cemetery supervisor may authorize marketing material on cemetery common grounds.

Justification - Change would allow cemetery to sell advertising space to businesses that provide funeral and monument services. During special events would allow event sponsors to display promotional material.

Section 8-320 -- multiple burials

Reads - ... Only one cremated remains may be buried in a grave in the cremation section of the cemetery.

Recommend adding - (c) A maximum total of two (2) cremated remains may be buried in a grave marked for cremation only, outside of the cremation section.

Justification - Several sites have been identified in which a grave was not plotted because it would not fit a casket. These sites are suitable as cremation graves and can accommodate the interment of two (2) cremated remains.

Section 8-325 -- flower receptacles

Reads --

(a) All ground level receptacles shall be standard, furnished and installed by the city at cost.

(c) Only one (1) receptacle per grave shall be allowed.

Recommend --

(a) All ground level receptacles shall be standard, furnished and installed by the city.

(c) Only one (1) receptacle per grave shall be allowed, and shall be placed at the head of the grave.

Justification --

(a) Allows cemetery to charge market value

(c) As currently written, a flower receptacle can be placed anywhere on the grave. This makes maintenance more difficult, in that it requires staff to weave in-between receptacles.

Section 8-326 -- ground level flowers

Reads -- No artificial or manmade flowers shall be allowed in ground-level flower containers or allowed to be set or laid on the ground in the cemetery from October 15<sup>th</sup> through May 15<sup>th</sup> with the exception of holiday decorations. Ground-level, holiday grave decorations shall be allowed three (3) days before and three (3) days after the holiday. Christmas decorations are allowed from December 15<sup>th</sup> through the first week of the New Year.

Recommend --

(a) Ground level flowers/decorations are only allowed in city furnished flower receptacles. Any inappropriately placed ground level flowers/decorations will be removed and discarded by the city.

(b) Ground-level flower receptacles are not to be used from October 15<sup>th</sup> through May 15<sup>th</sup>.

(c) Exception to subsections (a) and (b) is granted for cultural holiday decorations. This includes birthdays, date of death, and anniversaries, provided they are clearly marked on the monument. Ground-level, holiday grave decorations shall be allowed

three (3) days before and three (3) days after the holiday.

(d) Christmas decorations are allowed from the day after Thanksgiving through the first week of the New Year.

(e) Memorial Day decorations are allowed from May 15<sup>th</sup> up until the first Monday following Memorial Day. Memorial Day decorations in the cemetery's Veteran's section are allowed until June 7<sup>th</sup>.

Justification -- Current wording is confusing and doesn't accurately convey its intent.

(a) Ground level flowers are only allowed in cemetery provided flower receptacles. If the community were allowed to place flowers anywhere, staff would not be able to efficiently care for the cemetery, and we would not be able to maintain the standards that the community expects.

(b) Use of ground level flower receptacles are not allowed in the winter months. They are likely to get concealed by snow and create a tripping hazard or cause damage/be damaged by equipment used in the preparation of burials.

(c) Further clarifies "holiday"

(d) Expands window for Christmas decorations due to the tradition of decorating on Thanksgiving weekend.

(e) Memorial Day is not address in the current code

Section 8-331 -- monument regulations

Reads -- (b) All upright monuments and flat grave markers shall be of natural granite except those specified by the federal government in the veteran sections. No bronze plaques or metal plates shall be attached to the natural granite.

Recommend -- Remove "No bronze plaques or metal plates shall be attached to the natural granite." from (b), and add

(c) Bronze plaques may be attached to granite markers, provided they are affixed to the marker with metal studs. Placement of any bronze plaque shall be completed by a bonded monument company after receiving a monument permit from the cemetery supervisor. The city is not responsible for any damage to a marker while attaching a plaque or any lost or stolen plaques.

Justification - The specific request to the city, was to allow VA furnished medallions to be attached to grave markers, as many other cemetery's allow. If we are to allow VA medallions, I believe the proper thing to do is allow anyone to place a medallion or plaque on a marker, provided it is installed in accordance with recommended method.

Section 8-334(a) -- miscellaneous provisions

Reads -- (a) All caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.

Recommend -- (a) Vault-less burials are allowed for an additional charge, provided the deceased is wrapped in a shroud, or placed in a cardboard or wicker casket. All other caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.

Justification -- Allows community to have a "Green Burial" if they desire.

Section 8-334(h) -- miscellaneous provisions

Reads -- (h) The normal cemetery business hours for burial are from 9:00 a.m. to 4:00 p.m., Monday through Friday and from 9:00 a.m. to 2:00 p.m. on Saturday. For burial services that start after 4:00 p.m. on Monday through Friday or after 2:00 p.m. on Saturday, a late overtime fee will be charged.

Recommend -- (h) The normal cemetery business hours for burial are from 9:00 a.m. to 3:00 p.m., Monday through Friday and from 9:00 a.m. to 2:00 p.m. on Saturday. For burial services that start after 3:00 p.m. on Monday through Friday or after 2:00 p.m. on Saturday, a late overtime fee will be charged.

Justification - If a service starts at 4:00 PM, staff will likely not be done closing the grave until 5:30 PM or later. A casket burial requires two (2) staff members to be present, therefore during staff's summer schedule this would require a minimum of two (2) hours of overtime, or during their winter schedule, four (4) hours of overtime.

## ALTERNATIVES

City Council may:

- Approve; or,
- Not Approve

## FISCAL EFFECTS

None

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## Attachments

Code Change w/ track changes

Current Cemetery Code

Cemetery Code Ordinance

**ORDINANCE 22-\_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THAT THE BILLINGS, MONTANA CITY  
CODE (BMCC) BE AMENDED BY REVISING ARTICLE 8-  
300 AND REPEALING ORDINANCE 03-5240**

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

**Section 1.** That Article 8-300 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such article shall read as follows:

**ARTICLE 8-300. - CEMETERY RULES AND REGULATIONS**

**Sec. 8-301. - Cemetery defined.**

The word "cemetery," as used in this article, shall mean the Mountview and Billings Cemeteries.

**Sec. 8-302. - Perpetual care fund.**

(a) The city shall set aside thirty-five (35) percent of all money received from all graves or niches sold in the cemetery, which sum shall constitute the "perpetual care fund." The perpetual care fund shall remain forever intact and shall be invested in savings or time deposits in a state or nationally chartered bank insured by the FDIC or in municipal, state or federal government bonds. Only the income from such investments shall be used for the maintenance of the cemetery and the uniform care of all lots therein, and the city shall expend that income, or so much thereof as is necessary, for the uniform, perpetual care and maintenance of the cemetery. It shall be the duty of the city council to make such investments in accordance herewith as they may deem proper. No part of the principal of the fund may be expended in any manner and it shall be kept invested as required by this section.

(b) The city is authorized to accept funds to be held in trust for any purpose designated by the trust. If the donor of any such fund does not provide otherwise, such funds will become a part of the perpetual care fund. Should funds be donated for a special purpose or special care of any particular lot in the cemetery, then the funds will be kept as separate funds and the income therefrom expended in accordance with the terms on which funds were donated and received.

(c) The city may, in its discretion, apply towards the care of the cemetery any proceeds from cemetery lot sales that accrue and remain after the perpetual care fund has received thirty-five (35) percent as provided in subsection (a).

**Sec. 8-303. - Perpetual trust for family lots.**

To prevent relatives from disposing of their family lots, and disinterring the bodies therein, lot owners may re-convey their lots to the city to be held in perpetual trust for their permanent interment and for the interment of such other persons as the lot owners may designate.

**Sec. 8-304. - Lot conveyances.**

The mayor is authorized and empowered to execute on behalf of the city, contracts for the sale of lots, or portions of lots, in the cemetery, and to issue deeds of the city to lots, or portions of lots, located in such cemetery upon payment of the purchase price therefore; to accept on behalf of the city notes of purchasers of lots located in such cemetery in payment of the purchase price thereof; ~~and, The city administrator or his/her designee is authorized~~ to receive applications for, and to issue burial permits for, the interment of the dead in the cemetery; provided, that any conveyance made by such officers shall be subject to the provisions of this article.

**Sec. 8-305. - Covenants to run with burial lots.**

The covenants, rights, limitations and obligations set forth in the conveyance of lots in the cemetery, together with the provisions of this article, are declared to be covenants running with the land, and shall be binding upon all present and future owners of burial lots in the cemetery.

**Sec. 8-306. - Rules and regulations.**

The city administrator or his/her designee shall promulgate and publish rules and regulations for administration, operation, maintenance and control of activities relating to and within the city-owned cemetery.

**Sec. 8-307. - Right of passage.**

The owners of lots shall have the right of passage therein under such rules and regulations as the city may from time to time establish for persons, animals and vehicles, over driveways and walkways for ingress and egress to their respective lots.

**Sec. 8-308. - Visitors.**

Visitors shall be admitted to the cemetery during open hours, but must keep to the walks and drives and shall not cross over, occupy or otherwise trespass upon any lot not their own.

**Sec. 8-309. - Use of lots.**

Lots are sold for no other purpose than for the burial of human dead, and such incidental uses that are suitable and proper for a cemetery lot.

**Sec. 8-310. - Who may be interred.**

All interments in lots shall be restricted to members of the immediate family or relatives of the owner unless permission otherwise is obtained from the city.

**Sec. 8-311. - Transfer of lots.**

No assignment or transfer of lots shall be valid without the prior consent of the city endorsed upon such transfer or assignment and entered on record by the city. Additionally, all cemetery lot owners who wish to sell their lots or portions of their lots must sell them to the city for the same price for which it was originally purchased.

**Sec. 8-312. - Advertisements.**

~~No~~ Advertisement or marketing of products in any form shall be permitted within the cemetery office and at information kiosks. The cemetery may display marketing material for products and services provided by the cemetery on cemetery common grounds. During special events the cemetery supervisor may authorize marketing material on cemetery common grounds.

**Sec. 8-313. - Joint ownership.**

The city shall not give joint deeds to lots sold. Persons owning lots in partnership may agree among themselves as to the parts of lots to be used by each, but the city will not be delegated to enforce such agreements.

**Sec. 8-314. – Dividing lines.**

When more than one (1) person claims an interest in a lot no visible dividing line shall be allowed.

**Sec. 8-315. - Hire of space prohibited.**

No lot owner shall have a body interred in the owner's lot for a remuneration, sale or hire of space.

**Sec. 8-316. - Removal for nonpayment.**

Should there be an interment on a lot on which the payments have not been made as per the terms of contract, the city reserves the right to disinter the remains and remove them, together with any monument or other structure thereon, to some other portion of the cemetery equal in price to the amount paid on such lot after the actual cost of removal has been deducted.

**Sec. 8-317. - Devolution of lots.**

When a lot owner dies intestate, the lot shall pass to the heirs recognized by the laws of the state.

**Sec. 8-318. - Proof of ownership required.**

It shall be the duty of the heirs or devisees to file with the city full proof of the ownership upon death of the owner of any lot. The city may not allow interment to take place until such proof is given.

**Sec. 8-319. - Orders for interment and disinterment.**

(a) Orders for interment and disinterment must be made in writing by the lot owner upon proper forms furnished by the city before a grave will be opened.

(b) If the original owner is dead and there are two (2) or more legal heirs, the order must be signed by all legal heirs.

(c) If the lot is owned by a lodge, society or any organization, the order must be signed by an officer having proper authority to act.

**Sec. 8-320. - Multiple burials.**

(a) Burials of two (2) human remains in the same casket shall not be allowed except when the remains of the bodies can be placed in one (1) outer burial container approved by the city.

(b) A maximum total of three (3) persons may be buried in a single, traditional grave if at least two (2) of the remains are cremated.

(c) A maximum total of two (2) cremated remains may be buried in a grave marked for cremation only, outside of the cremation section.

(d) Only one (1) cremated remains may be buried in a grave in the cremation section of the cemetery.

**Sec. 8-321. - Cement, walks, trinkets.**

Gravel, stone, brick or cement of any kind, or artificial walks, shall not be allowed upon the lots, nor will any boxes, shells, trinkets, toys and the like be permitted on such lots.

**Sec. 8-322. - Fencing and enclosures prohibited.**

(a) Fencing, coping or enclosures of any nature whatsoever shall not be allowed upon the lots or graves, except those copings and fences which were erected in the Billings Cemetery before the Mountview Cemetery was established.

(b) Fencing, coping and curbing that exists in the oldest part of the cemetery which has deteriorated through neglect or wear to the point of being a hazard or which detracts from the overall condition or appearance of the cemetery, may be condemned and removed by the city, after attempting to contact the property owner. These items may be removed if they are a hindrance to the care and maintenance of the cemetery.

**Sec. 8-323. - City to mark lots.**

All lots shall be marked and put in order by the city.

**Sec. 8-324. - Mounds prohibited.**

Elevated lots or grave mounds shall not be allowed.

**Sec. 8-325. - Flower receptacles.**

(a) All ground level receptacles shall be standard, furnished and installed by the city ~~at cost.~~

(b) A flower receptacle will be placed in a marker or monument foundation as per city specifications.

(c) Only one (1) receptacle per grave shall be allowed, and shall be placed at the head of the grave.

(d) All flower receptacles and containers creating a safety hazard may be condemned and removed by city.

**Sec. 8-326. - Ground level flowers.**

(a) Ground level flowers/decorations are only allowed in city furnished flower receptacles. Any inappropriately placed ground level flowers/decorations will be removed and discarded by the city. No artificial or manmade flowers shall be allowed in  
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(b) Ground-level flower containers receptacles are or not allowed to be used set or laid on the ground in the cemetery from October 15<sup>th</sup> through May 15<sup>th</sup>.

(c) with the Exception to subsections (a) and (b) is granted for cultural of holiday decorations. This includes birthdays, date of death, and anniversaries, provided they are clearly marked on the monument. Ground-level, holiday grave decorations shall be allowed three (3) days before and three (3) days after the holiday.

(d) Christmas decorations are allowed from the day after Thanksgiving December 15<sup>th</sup> through the first week of the New Year.

(e) Memorial Day decorations are allowed from May 15<sup>th</sup> up until the first Monday following Memorial Day. Memorial Day decorations in the cemetery's Veteran's section are allowed until June 7<sup>th</sup>.

**Sec. 8-327. - Injuring plants prohibited.**

Picking the flowers, breaking or injuring trees or plants or any other property within the cemetery is prohibited.

### **8-328. - Cemetery traffic.**

Posted speed limit in the cemetery is fifteen (15) miles per hour. Faster driving will not be allowed. Vehicles must remain on designated roads within the cemetery. Parking is allowed on any of the roads within the cemetery.

### **Sec. 8-329. - Picnics and unattended children prohibited.**

Children, unless accompanied by an adult, shall not be admitted to the grounds. Picnic parties are prohibited.

### **Sec. 8-330. - Dogs prohibited.**

Dogs shall not be admitted to the grounds of the cemetery, except upon a leash and shall be kept on the roadways only

### **Sec. 8-331. - Monument regulations.**

(a) Only one (1) upright monument shall be erected at the head end of the graves so that the monument is centered on two (2) or more graves. The upright monument shall be not less than twenty-eight (28) inches in height or exceed forty-two (42) inches in height. All other grave markers shall be placed flush with the ground surface.

(b) All upright monuments and flat grave markers shall be of natural granite except those specified by the federal government in the veteran sections. ~~No bronze plaques or metal plates shall be attached to the natural granite.~~

(c) Bronze plaques may be attached to granite markers, provided they are affixed to the marker with metal studs. Placement of any bronze plaque shall be completed by a bonded monument company after receiving a monument permit from the cemetery supervisor. The city is not responsible for any damage to a marker while attaching a plaque or any lost or stolen plaques.

~~(d)~~ All upright monuments shall have a foundation of concrete that is thirty (30) inches deep and eight (8) inches wider on each side than the dimensions of the base of the monument. All flat grave markers shall have a foundation of concrete that is twenty-four (24) inches deep, and eight (8) inches wider than the dimensions of the stone. Where there is to be a flower container set in the foundation, the side of the stone that the flower container is to be set, the foundation collar shall extend thirteen (13) inches from the stone, and seven (7) inches deep. The base of the upright monument or the flat grave marker shall be wet set into the concrete foundation.

~~(e)~~ In the cremation section only flat markers shall be used. In a single cremation grave the stone itself can only measure eight (8) inches by sixteen (16) inches. Double cremation graves may have a twelve-inch (12) by twenty-four inch (24) stone centered on the graves. The foundations for the markers shall be twelve (12) inches deep and

surround the stone so that the stone has an eight-inch (8) border on three sides and a thirteen-inch (13) border on the side where the flower container is placed.

(ef) In the baby sections only flat markers shall be used. Because all of the graves are single gravesites and the graves smaller than the traditional grave, the largest flat stone that can be used in the baby section is ten (10) inches by twenty (20) inches or smaller. At no time can the foundation of the stone run over the grave boundary to its neighboring gravesite.

(fg) Mausoleums and vaults above ground may be erected only with the consent of the city after all plans and materials have been approved by the city.

(gh) All work must be under the inspection of the city and completed as rapidly as possible. Materials not used must be removed as the work is completed.

(hi) No materials of any kind shall be received after noon on Saturdays.

(ij) Any person desiring to set a monument or marker or build a foundation for that purpose or modify an existing stone, must, before commencing such work, obtain from the cemetery office a permit authorizing such construction. The cemetery office shall not issue a permit required by this division until the applicant has obtained a business license and furnish to the city a surety bond in the amount of \$10,000.00 dollars, which shall be held by the city as a guarantee that the work will be done in a satisfactory manner. The bond shall provide that the applicant will in good faith perform all that the city requires. Continuation certificates to renew the surety bond will not be accepted. Such bond shall be filed with the city clerk. The city shall determine whether or not a monument or foundation has been satisfactorily constructed and set.

(jk) Any person desiring to set a monument or marker or build a foundation for that purpose, shall have all the necessary tools and equipment that are recognized by the monument setting industry.

(kl) In setting a monument or marker or building a foundation, the contractor shall be liable for any damage to other people's property or to general appearance of the cemetery. The contractor shall be responsible for leaving the cemetery in the same general condition as it was before setting the stone.

(lm) Nothing herein shall be construed in any manner to limit the liability of any person engaged in the business of setting monuments or markers, or building foundations for them, for damages in excess of the amount required by the surety bond, nor shall the surety bond be construed to limit the right of any individual who has been damaged by any setting of a monument or marker or building a foundation from bringing an action without regard to the conditions of this provision.

(~~mn~~) Monuments and markers are personal property and therefore the responsibility of the grave owner. It is the responsibility of the grave owner to notify the cemetery of any change in mailing address or ownership of the grave so that the cemetery can contact them. Notice sent to an owner at the last address on file in the cemetery office shall be considered sufficient and proper legal notification. The monument permit must have the name and address of the person ordering the stone.

(~~no~~) In the event that the owners of a monument cannot be contacted, the city or their agents may modify monuments within the cemetery that present a public safety hazard or detract from the overall appearance of the cemetery.

(~~op~~) The city or their agents shall not be held liable if a monument in danger of falling is damaged in the process of modifying the stone to correct the safety hazard.

### **Sec. 8-332. - Grave regulations.**

(a) Single infant graves shall be sold only for immediate use.

(b) No markers or flowers shall be allowed in the walks between the graves.

(c) All graves shall be sold for cash before burial can occur.

(d) The space between the graves shall remain the property of the city.

(e) If a body is disinterred from a grave in the single section, the ownership of that grave reverts back to the city.

(f) All markers for single graves shall be flush with the ground and not more than two (2) feet long and one (1) foot wide.

(g) No monument or other grave marker shall be placed or erected on a grave until that grave is paid for in full.

(h) No slab, coping, curbing, hedging or enclosure of any nature shall be permitted on any grave.

### **Sec. 8-333. - Dedication and special rules for veteran memorial plot.**

(a) The grave spaces in the memorial lot of the cemetery are reserved and dedicated to the sole use and purpose of burying the bodies or cremains of veterans and ex-veterans of past and future wars of the United States, subject to the conditions hereinafter specified. Persons to be buried in the veteran memorial plot must be an honorable discharged wartime veteran residing in the city at the time of death.

(b) No charge shall be made for the privilege of using the grave spaces named in subsection (a), nor for any care or maintenance thereon, except that the usual charges

for opening and closing graves, curbing and flower containers shall be paid therefore in the manner prescribed.

(c) All rules and regulations prescribed by the city governing the use and care of the cemetery shall be observed by all parties interested in the use of the veterans' memorial plot for burial with the following exceptions:

(1) No grave marker shall be installed in this plot, except upright marble type supplied by the United States government.

(2) All burials shall be made in the spaces in consecutive order as designated by the city.

(3) The circular park adjoining the veterans' memorial plot may be used by such parties or organizations as are interested in the care and development of the veterans' memorial plot for the installations of a suitable flag staff, instruments of warfare, implements, memorial monuments or other decorations upon the approval of the city.

(4) The cremains of up to two of the immediate family members of a veteran who is already buried in the veterans' memorial plot may be buried on that veteran's grave.

(5) If there is room for additional memorialization on the upright marble VA stone, the spouse of the buried veteran may be memorialized on said stone at the family's expense.

- **Sec. 8-334. - Miscellaneous provisions.**

(a) Vault-less burials are allowed for an additional charge, provided the deceased is wrapped in a shroud, or placed in a cardboard or wicker casket. All other caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.

(b) Installation of sectional liners shall be not allowed.

(c) Infants may be buried in the casket-vault combination.

(d) U. S. Government specified concrete domes are allowed.

(e) Outer burial containers sold by other cemeteries are not allowed in the city cemetery.

(f) All graves and niches sale price shall include a thirty-five (35) per cent perpetual care cost. Prices for all crypts and niches in the Landmarks Mausoleum shall be maintained

and obtained at the cemetery office. All cemetery fees and prices for graves and niches in the cemetery proper shall be established by city council resolution.

(g) Opening, closing and setup for any burial shall include a lowering device for a full size casket or stand for a baby casket or urn, artificial turf, chairs and tent. A discount shall be issued, except in the mausoleum, when a tent is impractical to set up.

(h) The normal cemetery business hours for burial are from 9:00 a.m. to 4:30 p.m., Monday through Friday and from 9:00 a.m. to 2:00 p.m. on Saturday. For burial services that start after 4:30 p.m. on Monday through Friday or after 2:00 p.m. on Saturday, a late overtime fee will be charged.

**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

## Chapter 8 CEMETERIES<sup>1</sup>

### **ARTICLE 8-300. CEMETERY RULES AND REGULATIONS<sup>2</sup>**

#### **Sec. 8-301. Cemetery defined.**

The word "cemetery," as used in this article, shall mean the Mountview and Billings Cemeteries.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

#### **Sec. 8-302. Perpetual care fund.**

- (a) The city shall set aside thirty-five (35) percent of all money received from all graves or niches sold in the cemetery, which sum shall constitute the "perpetual care fund." The perpetual care fund shall remain forever intact and shall be invested in savings or time deposits in a state or nationally chartered bank insured by the FDIC or in municipal, state or federal government bonds. Only the income from such investments shall be used for the maintenance of the cemetery and the uniform care of all lots therein, and the city shall expend that income, or so much thereof as is necessary, for the uniform, perpetual care and maintenance of the cemetery. It shall be the duty of the city council to make such investments in accordance herewith as they may deem proper. No part of the principal of the fund may be expended in any manner and it shall be kept invested as required by this section.
- (b) The city is authorized to accept funds to be held in trust for any purpose designated by the trust. If the donor of any such fund does not provide otherwise, such funds will become a part of the perpetual care fund. Should funds be donated for a special purpose or special care of any particular lot in the cemetery, then the funds will be kept as separate funds and the income therefrom expended in accordance with the terms on which funds were donated and received.
- (c) The city may, in its discretion, apply towards the care of the cemetery any proceeds from cemetery lot sales that accrue and remain after the perpetual care fund has received thirty-five (35) percent as provided in subsection (a).

(Ord. No. 03-5240, §§ 1, 2, 3-10-03; Ord. No. 12-5551, § 1, 3-26-12)

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<sup>1</sup>Cross reference(s)—Parks, recreation and cemetery board, § 2-511 et seq.; health and sanitation, Ch. 15; streets, sidewalks and other public places, Ch. 22.

State law reference(s)—Cemetery associations, MCA 35-20-101 et seq.; mausoleum-columbarium authorities, MCA 35-21-101 et seq.

<sup>2</sup>Editor's note(s)—Ord. No. 03-5240, §§ 1, 2, adopted March 10, 2003, repealed and reenacted article 8-300 to read as herein set out. Formerly, article 8-300 pertained to similar subject matter and derived from Ord. No. 01-5169, §§ 1, 2, adopted August 27, 2001.

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### **Sec. 8-303. Perpetual trust for family lots.**

To prevent relatives from disposing of their family lots, and disinterring the bodies therein, lot owners may re-convey their lots to the city to be held in perpetual trust for their permanent interment and for the interment of such other persons as the lot owners may designate.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-304. Lot conveyances.**

The mayor is authorized and empowered to execute on behalf of the city, contracts for the sale of lots, or portions of lots, in the cemetery, and to issue deeds of the city to lots, or portions of lots, located in such cemetery upon payment of the purchase price therefore; to accept on behalf of the city notes of purchasers of lots located in such cemetery in payment of the purchase price thereof; and, to receive applications for, and to issue burial permits for, the interment of the dead in the cemetery; provided, that any conveyance made by such officers shall be subject to the provisions of this article.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-305. Covenants to run with burial lots.**

The covenants, rights, limitations and obligations set forth in the conveyance of lots in the cemetery, together with the provisions of this article, are declared to be covenants running with the land, and shall be binding upon all present and future owners of burial lots in the cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-306. Rules and regulations.**

The city administrator or his/her designee shall promulgate and publish rules and regulations for administration, operation, maintenance and control of activities relating to and within the city-owned cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-307. Right of passage.**

The owners of lots shall have the right of passage therein under such rules and regulations as the city may from time to time establish for persons, animals and vehicles, over driveways and walkways for ingress and egress to their respective lots.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-308. Visitors.**

Visitors shall be admitted to the cemetery during open hours, but must keep to the walks and drives and shall not cross over, occupy or otherwise trespass upon any lot not their own.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

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**Sec. 8-309. Use of lots.**

Lots are sold for no other purpose than for the burial of human dead, and such incidental uses that are suitable and proper for a cemetery lot.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-310. Who may be interred.**

All interments in lots shall be restricted to members of the immediate family or relatives of the owner unless permission otherwise is obtained from the city.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-311. Transfer of lots.**

No assignment or transfer of lots shall be valid without the prior consent of the city endorsed upon such transfer or assignment and entered on record by the city. Additionally, all cemetery lot owners who wish to sell their lots or portions of their lots must sell them to the city for the same price for which it was originally purchased.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-312. Advertisements.**

No advertisement or marketing of products in any form shall be permitted within the cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-313. Joint ownership.**

The city shall not give joint deeds to lots sold. Persons owning lots in partnership may agree among themselves as to the parts of lots to be used by each, but the city will not be delegated to enforce such agreements.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-314. Dividing lines.**

When more than one (1) person claims an interest in a lot no visible dividing line shall be allowed.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-315. Hire of space prohibited.**

No lot owner shall have a body interred in the owner's lot for a remuneration, sale or hire of space.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

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**Sec. 8-316. Removal for nonpayment.**

Should there be an interment on a lot on which the payments have not been made as per the terms of contract, the city reserves the right to disinter the remains and remove them, together with any monument or other structure thereon, to some other portion of the cemetery equal in price to the amount paid on such lot after the actual cost of removal has been deducted.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-317. Devolution of lots.**

When a lot owner dies intestate, the lot shall pass to the heirs recognized by the laws of the state.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-318. Proof of ownership required.**

It shall be the duty of the heirs or devisees to file with the city full proof of the ownership upon death of the owner of any lot. The city may not allow interment to take place until such proof is given.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-319. Orders for interment and disinterment.**

- (a) Orders for interment and disinterment must be made in writing by the lot owner upon proper forms furnished by the city before a grave will be opened.
- (b) If the original owner is dead and there are two (2) or more legal heirs, the order must be signed by all legal heirs.
- (c) If the lot is owned by a lodge, society or any organization, the order must be signed by an officer having proper authority to act.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-320. Multiple burials.**

Burials of two (2) human remains in the same casket shall not be allowed except when the remains of the bodies can be placed in one (1) outer burial container approved by the city. A maximum total of three (3) persons may be buried in a single, traditional grave if at least two (2) of the remains are cremated. Only one cremated remains may be buried in a grave in the cremation section of the cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-321. Cement, walks, trinkets.**

Gravel, stone, brick or cement of any kind, or artificial walks, shall not be allowed upon the lots, nor will any boxes, shells, trinkets, toys and the like be permitted on such lots.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

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**Sec. 8-322. Fencing and enclosures prohibited.**

- (a) Fencing, coping or enclosures of any nature whatsoever shall not be allowed upon the lots or graves, except those copings and fences which were erected in the Billings Cemetery before the Mountview Cemetery was established.
- (b) Fencing, coping and curbing that exists in the oldest part of the cemetery which has deteriorated through neglect or wear to the point of being a hazard or which detracts from the overall condition or appearance of the cemetery, may be condemned and removed by the city, after attempting to contact the property owner. These items may be removed if they are a hindrance to the care and maintenance of the cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-323. City to mark lots.**

All lots shall be marked and put in order by the city.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-324. Mounds prohibited.**

Elevated lots or grave mounds shall not be allowed.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-325. Flower receptacles.**

- (a) All ground level receptacles shall be standard, furnished and installed by the city at cost.
- (b) A flower receptacle will be placed in a marker or monument foundation as per city specifications.
- (c) Only one (1) receptacle per grave shall be allowed.
- (d) All flower receptacles and containers creating a safety hazard may be condemned and removed by city.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-326. Ground level flowers.**

No artificial or manmade flowers shall be allowed in ground-level flower containers or allowed to be set or laid on the ground in the cemetery from October 15<sup>th</sup> through May 15<sup>th</sup> with the exception of holiday decorations. Ground-level, holiday grave decorations shall be allowed three (3) days before and three (3) days after the holiday. Christmas decorations are allowed from December 15<sup>th</sup> through the first week of the New Year.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

**Sec. 8-327. Injuring plants prohibited.**

Picking the flowers, breaking or injuring trees or plants or any other property within the cemetery is prohibited.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

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### **Sec. 8-328. Cemetery traffic**

Posted speed limit in the cemetery is fifteen (15) miles per hour. Faster driving will not be allowed. Vehicles must remain on designated roads within the cemetery. Parking is allowed on any of the roads within the cemetery.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-329. Picnics and unattended children prohibited.**

Children, unless accompanied by an adult, shall not be admitted to the grounds. Picnic parties are prohibited.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-330. Dogs prohibited.**

Dogs shall not be admitted to the grounds of the cemetery, except upon a leash and shall be kept on the roadways only.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03)

### **Sec. 8-331. Monument regulations.**

- (a) Only one (1) upright monument shall be erected at the head end of the graves so that the monument is centered on two (2) or more graves. The upright monument shall be not less than twenty-eight (28) inches in height or exceed forty-two (42) inches in height. All other grave markers shall be placed flush with the ground surface.
- (b) All upright monuments and flat grave markers shall be of natural granite except those specified by the federal government in the veteran sections. No bronze plaques or metal plates shall be attached to the natural granite.
- (c) All upright monuments shall have a foundation of concrete that is thirty (30) inches deep and eight (8) inches wider on each side than the dimensions of the base of the monument. All flat grave markers shall have a foundation of concrete that is twenty-four (24) inches deep, and eight (8) inches wider than the dimensions of the stone. Where there is to be a flower container set in the foundation, the side of the stone that the flower container is to be set, the foundation collar shall extend thirteen (13) inches from the stone, and seven (7) inches deep. The base of the upright monument or the flat grave marker shall be wet set into the concrete foundation.
- (d) In the cremation section only flat markers shall be used. In a single cremation grave the stone itself can only measure eight (8) inches by sixteen (16) inches. Double cremation graves may have a twelve-inch (12) by twenty-four inch (24) stone centered on the graves. The foundations for the markers shall be twelve (12) inches deep and surround the stone so that the stone has an eight-inch (8) border on three sides and a thirteen-inch (13) border on the side where the flower container is placed.
- (e) In the baby sections only flat markers shall be used. Because all of the graves are single gravesites and the graves smaller than the traditional grave, the largest flat stone that can be used in the baby section is ten (10) inches by twenty (20) inches or smaller. At no time can the foundation of the stone run over the grave boundary to its neighboring gravesite.
- (f) Mausoleums and vaults above ground may be erected only with the consent of the city after all plans and materials have been approved by the city.

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- (g) All work must be under the inspection of the city and completed as rapidly as possible. Materials not used must be removed as the work is completed.
  - (h) No materials of any kind shall be received after noon on Saturdays.
  - (i) Any person desiring to set a monument or marker or build a foundation for that purpose or modify an existing stone, must, before commencing such work, obtain from the cemetery office a permit authorizing such construction. The cemetery office shall not issue a permit required by this division until the applicant has obtained a business license and furnish to the city a surety bond in the amount of \$10,000.00 dollars, which shall be held by the city as a guarantee that the work will be done in a satisfactory manner. The bond shall provide that the applicant will in good faith perform all that the city requires. Continuation certificates to renew the surety bond will not be accepted. Such bond shall be filed with the city clerk. The city shall determine whether or not a monument or foundation has been satisfactorily constructed and set.
  - (j) Any person desiring to set a monument or marker or build a foundation for that purpose, shall have all the necessary tools and equipment that are recognized by the monument setting industry.
  - (k) In setting a monument or marker or building a foundation, the contractor shall be liable for any damage to other people's property or to general appearance of the cemetery. The contractor shall be responsible for leaving the cemetery in the same general condition as it was before setting the stone.
  - (l) Nothing herein shall be construed in any manner to limit the liability of any person engaged in the business of setting monuments or markers, or building foundations for them, for damages in excess of the amount required by the surety bond, nor shall the surety bond be construed to limit the right of any individual who has been damaged by any setting of a monument or marker of building a foundation from bringing an action without regard to the conditions of this provision.
  - (m) Monuments and markers are personal property and therefore the responsibility of the grave owner. It is the responsibility of the grave owner to notify the cemetery of any change in mailing address or ownership of the grave so that the cemetery can contact them. Notice sent to an owner at the last address on file in the cemetery office shall be considered sufficient and proper legal notification. The monument permit must have the name and address of the person ordering the stone.
  - (n) In the event that the owners of a monument cannot be contacted, the city or their agents may modify monuments within the cemetery that present a public safety hazard or detract from the overall appearance of the cemetery.
  - (o) The city or their agents shall not be held liable if a monument in danger of falling is damaged in the process of modifying the stone to correct the safety hazard.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03; Ord. No. 12-5551, § 2, 3-26-12)

### **Sec. 8-332. Grave regulations.**

- (a) Single infant graves shall be sold only for immediate use.
- (b) No markers or flowers shall be allowed in the walks between the graves.
- (c) All graves shall be sold for cash before burial can occur.
- (d) The space between the graves shall remain the property of the city.
- (e) If a body is disinterred from a grave in the single section, the ownership of that grave reverts back to the city.
- (f) All markers for single graves shall be flush with the ground and not more than two (2) feet long and one (1) foot wide.
- (g) No monument or other grave marker shall be placed or erected on a grave until that grave is paid for in full.

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(h) No slab, coping, curbing, hedging or enclosure of any nature shall be permitted on any grave.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03; Ord. No. 12-5551, § 3, 3-26-12)

**Sec. 8-333. Dedication and special rules for veteran memorial plot.**

- (a) The grave spaces in the memorial lot of the cemetery are reserved and dedicated to the sole use and purpose of burying the bodies or cremains of veterans and ex-veterans of past and future wars of the United States, subject to the conditions hereinafter specified. Persons to be buried in the veteran memorial plot must be an honorable discharged wartime veteran residing in the city at the time of death.
- (b) No charge shall be made for the privilege of using the grave spaces named in subsection (a), nor for any care or maintenance thereon, except that the usual charges for opening and closing graves, curbing and flower containers shall be paid therefore in the manner prescribed.
- (c) All rules and regulations prescribed by the city governing the use and care of the cemetery shall be observed by all parties interested in the use of the veterans' memorial plot for burial with the following exceptions:
  - (1) No grave marker shall be installed in this plot, except upright marble type supplied by the United States government.
  - (2) All burials shall be made in the spaces in consecutive order as designated by the city.
  - (3) The circular park adjoining the veterans' memorial plot may be used by such parties or organizations as are interested in the care and development of the veterans' memorial plot for the installations of a suitable flag staff, instruments of warfare, implements, memorial monuments or other decorations upon the approval of the city.
  - (4) The cremains of up to two of the immediate family members of a veteran who is already buried in the veterans' memorial plot may be buried on that veteran's grave.
  - (5) If there is room for additional memorialization on the upright marble VA stone, the spouse of the buried veteran may be memorialized on said stone at the family's expense.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03; Ord. No. 04-5266, § 1, 2-23-04; Ord. No. 14-5620, § 1, 4-28-14)

**Sec. 8-334. Miscellaneous provisions.**

- (a) All caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.
- (b) Installation of sectional liners shall be not allowed.
- (c) Infants may be buried in the casket-vault combination.
- (d) U. S. Government specified concrete domes are allowed.
- (e) Outer burial containers sold by other cemeteries are not allowed in the city cemetery.
- (f) All graves and niches sale price shall include a thirty-five (35) per cent perpetual care cost. Prices for all crypts and niches in the Landmarks Mausoleum shall be maintained and obtained at the cemetery office. All cemetery fees and prices for graves and niches in the cemetery proper shall be established by city council resolution.
- (g) Opening, closing and setup for any burial shall include a lowering device for a full size casket or stand for a baby casket or urn, artificial turf, chairs and tent. A discount shall be issued, except in the mausoleum, when a tent is impractical to set up.

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(h) The normal cemetery business hours for burial are from 9:00 a.m. to 4:00 p.m., Monday through Friday and from 9:00 a.m. to 2:00 p.m. on Saturday. For burial services that start after 4:00 p.m. on Monday through Friday or after 2:00 p.m. on Saturday, a late overtime fee will be charged.

(Ord. No. 03-5240, §§ 1, 2, 3-10-03; Ord. No. 12-5551, § 4, 3-26-12)

ORDINANCE 24-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS,  
PROVIDING THAT THE BILLINGS, MONTANA CITY  
CODE (BMCC) BE AMENDED BY REVISING ARTICLE 8-  
300 AND REPEALING ORDINANCE 03-5240

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

**Section 1.** That Article 8-300 of the Billings, Montana City Code (BMCC) is amended and renumbered so that such article shall read as follows:

**ARTICLE 8-300. - CEMETERY RULES AND REGULATIONS**

**Sec. 8-301. - Cemetery defined.**

The word "cemetery," as used in this article, shall mean the Mountview and Billings Cemeteries.

**Sec. 8-302. - Perpetual care fund.**

(a) The city shall set aside thirty-five (35) percent of all money received from all graves or niches sold in the cemetery, which sum shall constitute the "perpetual care fund." The perpetual care fund shall remain forever intact and shall be invested in savings or time deposits in a state or nationally chartered bank insured by the FDIC or in municipal, state or federal government bonds. Only the income from such investments shall be used for the maintenance of the cemetery and the uniform care of all lots therein, and the city shall expend that income, or so much thereof as is necessary, for the uniform, perpetual care and maintenance of the cemetery. It shall be the duty of the city council to make such investments in accordance herewith as they may deem proper. No part of the principal of the fund may be expended in any manner and it shall be kept invested as required by this section.

(b) The city is authorized to accept funds to be held in trust for any purpose designated by the trust. If the donor of any such fund does not provide otherwise, such funds will become a part of the perpetual care fund. Should funds be donated for a special purpose or special care of any particular lot in the cemetery, then the funds will be kept as separate funds and the income therefrom expended in accordance with the terms on which funds were donated and received.

(c) The city may, in its discretion, apply towards the care of the cemetery any proceeds from cemetery lot sales that accrue and remain after the perpetual care fund has received thirty-five (35) percent as provided in subsection (a).

**Sec. 8-303. - Perpetual trust for family lots.**

To prevent relatives from disposing of their family lots, and disinterring the bodies therein, lot owners may re-convey their lots to the city to be held in perpetual trust for their permanent interment and for the interment of such other persons as the lot owners may designate.

**Sec. 8-304. - Lot conveyances.**

The mayor is authorized and empowered to execute on behalf of the city, contracts for the sale of lots, or portions of lots, in the cemetery, and to issue deeds of the city to lots, or portions of lots, located in such cemetery upon payment of the purchase price therefore; to accept on behalf of the city notes of purchasers of lots located in such cemetery in payment of the purchase price thereof. The city administrator or his/her designee is authorized to receive applications for, and to issue burial permits for, the interment of the dead in the cemetery; provided, that any conveyance made by such officers shall be subject to the provisions of this article.

**Sec. 8-305. - Covenants to run with burial lots.**

The covenants, rights, limitations and obligations set forth in the conveyance of lots in the cemetery, together with the provisions of this article, are declared to be covenants running with the land, and shall be binding upon all present and future owners of burial lots in the cemetery.

**Sec. 8-306. - Rules and regulations.**

The city administrator or his/her designee shall promulgate and publish rules and regulations for administration, operation, maintenance and control of activities relating to and within the city-owned cemetery.

**Sec. 8-307. - Right of passage.**

The owners of lots shall have the right of passage therein under such rules and regulations as the city may from time to time establish for persons, animals and vehicles, over driveways and walkways for ingress and egress to their respective lots.

**Sec. 8-308. - Visitors.**

Visitors shall be admitted to the cemetery during open hours, but must keep to the walks and drives and shall not cross over, occupy or otherwise trespass upon any lot not their own.

**Sec. 8-309. - Use of lots.**

Lots are sold for no other purpose than for the burial of human dead, and such incidental uses that are suitable and proper for a cemetery lot.

**Sec. 8-310. - Who may be interred.**

All interments in lots shall be restricted to members of the immediate family or relatives of the owner unless permission otherwise is obtained from the city.

**Sec. 8-311. - Transfer of lots.**

No assignment or transfer of lots shall be valid without the prior consent of the city endorsed upon such transfer or assignment and entered on record by the city. Additionally, all cemetery lot owners who wish to sell their lots or portions of their lots must sell them to the city for the same price for which it was originally purchased.

**Sec. 8-312. - Advertisements.**

Advertisement or marketing of products shall be permitted within the cemetery office and at information kiosks. The cemetery may display marketing material for products and services provided by the cemetery on cemetery common grounds. During special events the cemetery supervisor may authorize marketing material on cemetery common grounds.

**Sec. 8-313. - Joint ownership.**

The city shall not give joint deeds to lots sold. Persons owning lots in partnership may agree among themselves as to the parts of lots to be used by each, but the city will not be delegated to enforce such agreements.

**Sec. 8-314. – Dividing lines.**

When more than one (1) person claims an interest in a lot no visible dividing line shall be allowed.

**Sec. 8-315. - Hire of space prohibited.**

No lot owner shall have a body interred in the owner's lot for a remuneration, sale or hire of space.

**Sec. 8-316. - Removal for nonpayment.**

Should there be an interment on a lot on which the payments have not been made as per the terms of contract, the city reserves the right to disinter the remains and remove them, together with any monument or other structure thereon, to some other portion of the cemetery equal in price to the amount paid on such lot after the actual cost of removal has been deducted.

**Sec. 8-317. - Devolution of lots.**

When a lot owner dies intestate, the lot shall pass to the heirs recognized by the laws of the state.

**Sec. 8-318. - Proof of ownership required.**

It shall be the duty of the heirs or devisees to file with the city full proof of the ownership upon death of the owner of any lot. The city may not allow interment to take place until such proof is given.

**Sec. 8-319. - Orders for interment and disinterment.**

(a) Orders for interment and disinterment must be made in writing by the lot owner upon proper forms furnished by the city before a grave will be opened.

(b) If the original owner is dead and there are two (2) or more legal heirs, the order must be signed by all legal heirs.

(c) If the lot is owned by a lodge, society or any organization, the order must be signed by an officer having proper authority to act.

**Sec. 8-320. - Multiple burials.**

(a) Burials of two (2) human remains in the same casket shall not be allowed except when the remains of the bodies can be placed in one (1) outer burial container approved by the city.

(b) A maximum total of three (3) persons may be buried in a single, traditional grave if at least two (2) of the remains are cremated.

(c) A maximum total of two (2) cremated remains may be buried in a grave marked for cremation only, outside of the cremation section.

(d) Only one (1) cremated remains may be buried in a grave in the cremation section of the cemetery.

**Sec. 8-321. - Cement, walks, trinkets.**

Gravel, stone, brick or cement of any kind, or artificial walks, shall not be allowed upon the lots, nor will any boxes, shells, trinkets, toys and the like be permitted on such lots.

**Sec. 8-322. - Fencing and enclosures prohibited.**

(a) Fencing, coping or enclosures of any nature whatsoever shall not be allowed upon the lots or graves, except those copings and fences which were erected in the Billings Cemetery before the Mountview Cemetery was established.

(b) Fencing, coping and curbing that exists in the oldest part of the cemetery which has deteriorated through neglect or wear to the point of being a hazard or which detracts from the overall condition or appearance of the cemetery, may be condemned and removed by the city, after attempting to contact the property owner. These items may be removed if they are a hindrance to the care and maintenance of the cemetery.

**Sec. 8-323. - City to mark lots.**

All lots shall be marked and put in order by the city.

**Sec. 8-324. - Mounds prohibited.**

Elevated lots or grave mounds shall not be allowed.

**Sec. 8-325. - Flower receptacles.**

(a) All ground level receptacles shall be standard, furnished and installed by the city.

(b) A flower receptacle will be placed in a marker or monument foundation as per city specifications.

(c) Only one (1) receptacle per grave shall be allowed, and shall be placed at the head of the grave.

(d) All flower receptacles and containers creating a safety hazard may be condemned and removed by city.

**Sec. 8-326. - Ground level flowers.**

(a) Ground level flowers/decorations are only allowed in city furnished flower receptacles. Any inappropriately placed ground level flowers/decorations will be removed and discarded by the city.

(b) Ground-level flower receptacles are not to be used from October 15<sup>th</sup> through May 15<sup>th</sup>.

(c) Exception to subsections (a) and (b) is granted for cultural holiday decorations. This includes birthdays, date of death, and anniversaries, provided they are clearly marked on the monument. Ground-level, holiday grave decorations shall be allowed three (3) days before and three (3) days after the holiday.

(d) Christmas decorations are allowed from the day after Thanksgiving through the first week of the New Year.

(e) Memorial Day decorations are allowed from May 15<sup>th</sup> up until the first Monday following Memorial Day. Memorial Day decorations in the cemetery's Veteran's section are allowed until June 7<sup>th</sup>.

**Sec. 8-327. - Injuring plants prohibited.**

Picking the flowers, breaking or injuring trees or plants or any other property within the cemetery is prohibited.

**8-328. - Cemetery traffic.**

Posted speed limit in the cemetery is fifteen (15) miles per hour. Faster driving will not be allowed. Vehicles must remain on designated roads within the cemetery. Parking is allowed on any of the roads within the cemetery.

**Sec. 8-329. - Picnics and unattended children prohibited.**

Children, unless accompanied by an adult, shall not be admitted to the grounds. Picnic parties are prohibited.

**Sec. 8-330. - Dogs prohibited.**

Dogs shall not be admitted to the grounds of the cemetery, except upon a leash and shall be kept on the roadways only

**Sec. 8-331. - Monument regulations.**

(a) Only one (1) upright monument shall be erected at the head end of the graves so that the monument is centered on two (2) or more graves. The upright monument shall be not less than twenty-eight (28) inches in height or exceed forty-two (42) inches in height. All other grave markers shall be placed flush with the ground surface.

(b) All upright monuments and flat grave markers shall be of natural granite except those specified by the federal government in the veteran sections.

(c) Bronze plaques may be attached to granite markers, provided they are affixed to the marker with metal studs. Placement of any bronze plaque shall be completed by a bonded monument company after receiving a monument permit from the cemetery supervisor. The city is not responsible for any damage to a marker while attaching a plaque or any lost or stolen plaques.

(d) All upright monuments shall have a foundation of concrete that is thirty (30) inches deep and eight (8) inches wider on each side than the dimensions of the base of the monument. All flat grave markers shall have a foundation of concrete that is twenty-four (24) inches deep, and eight (8) inches wider than the dimensions of the stone. Where there is to be a flower container set in the foundation, the side of the stone that the flower container is to be set, the foundation collar shall extend thirteen (13) inches from the stone, and seven (7) inches deep. The base of the upright monument or the flat grave marker shall be wet set into the concrete foundation.

(e) In the cremation section only flat markers shall be used. In a single cremation grave the stone itself can only measure eight (8) inches by sixteen (16) inches. Double cremation graves may have a twelve-inch (12) by twenty-four inch (24) stone centered on the graves. The foundations for the markers shall be twelve (12) inches deep and surround the stone so that the stone has an eight-inch (8) border on three sides and a thirteen-inch (13) border on the side where the flower container is placed.

(f) In the baby sections only flat markers shall be used. Because all of the graves are single gravesites and the graves smaller than the traditional grave, the largest flat stone that can be used in the baby section is ten (10) inches by twenty (20) inches or smaller. At no time can the foundation of the stone run over the grave boundary to its neighboring gravesite.

(g) Mausoleums and vaults above ground may be erected only with the consent of the city after all plans and materials have been approved by the city.

(h) All work must be under the inspection of the city and completed as rapidly as possible. Materials not used must be removed as the work is completed.

(i) No materials of any kind shall be received after noon on Saturdays.

(j) Any person desiring to set a monument or marker or build a foundation for that purpose or modify an existing stone, must, before commencing such work, obtain from the cemetery office a permit authorizing such construction. The cemetery office shall not issue a permit required by this division until the applicant has obtained a business license and furnish to the city a surety bond in the amount of \$10,000.00 dollars, which shall be held by the city as a guarantee that the work will be done in a satisfactory manner. The bond shall provide that the applicant will in good faith perform all that the city requires. Continuation certificates to renew the surety bond will not be accepted. Such bond shall be filed with the city clerk. The city shall determine whether or not a monument or foundation has been satisfactorily constructed and set.

(k) Any person desiring to set a monument or marker or build a foundation for that purpose, shall have all the necessary tools and equipment that are recognized by the monument setting industry.

(l) In setting a monument or marker or building a foundation, the contractor shall be liable for any damage to other people's property or to general appearance of the cemetery. The contractor shall be responsible for leaving the cemetery in the same general condition as it was before setting the stone.

(m) Nothing herein shall be construed in any manner to limit the liability of any person engaged in the business of setting monuments or markers, or building foundations for them, for damages in excess of the amount required by the surety bond, nor shall the surety bond be construed to limit the right of any individual who has been damaged by any setting of a monument or marker or building a foundation from bringing an action without regard to the conditions of this provision.

(n) Monuments and markers are personal property and therefore the responsibility of the grave owner. It is the responsibility of the grave owner to notify the cemetery of any change in mailing address or ownership of the grave so that the cemetery can contact

them. Notice sent to an owner at the last address on file in the cemetery office shall be considered sufficient and proper legal notification. The monument permit must have the name and address of the person ordering the stone.

(o) In the event that the owners of a monument cannot be contacted, the city or their agents may modify monuments within the cemetery that present a public safety hazard or detract from the overall appearance of the cemetery.

(p) The city or their agents shall not be held liable if a monument in danger of falling is damaged in the process of modifying the stone to correct the safety hazard.

**Sec. 8-332. - Grave regulations.**

(a) Single infant graves shall be sold only for immediate use.

(b) No markers or flowers shall be allowed in the walks between the graves.

(c) All graves shall be sold for cash before burial can occur.

(d) The space between the graves shall remain the property of the city.

(e) If a body is disinterred from a grave in the single section, the ownership of that grave reverts back to the city.

(f) All markers for single graves shall be flush with the ground and not more than two (2) feet long and one (1) foot wide.

(g) No monument or other grave marker shall be placed or erected on a grave until that grave is paid for in full.

(h) No slab, coping, curbing, hedging or enclosure of any nature shall be permitted on any grave.

**Sec. 8-333. - Dedication and special rules for veteran memorial plot.**

(a) The grave spaces in the memorial lot of the cemetery are reserved and dedicated to the sole use and purpose of burying the bodies or cremains of veterans and ex-veterans of past and future wars of the United States, subject to the conditions hereinafter specified. Persons to be buried in the veteran memorial plot must be an honorable discharged wartime veteran residing in the city at the time of death.

(b) No charge shall be made for the privilege of using the grave spaces named in subsection (a), nor for any care or maintenance thereon, except that the usual charges for opening and closing graves, curbing and flower containers shall be paid therefore in the manner prescribed.

(c) All rules and regulations prescribed by the city governing the use and care of the cemetery shall be observed by all parties interested in the use of the veterans' memorial plot for burial with the following exceptions:

(1) No grave marker shall be installed in this plot, except upright marble type supplied by the United States government.

(2) All burials shall be made in the spaces in consecutive order as designated by the city.

(3) The circular park adjoining the veterans' memorial plot may be used by such parties or organizations as are interested in the care and development of the veterans' memorial plot for the installations of a suitable flag staff, instruments of warfare, implements, memorial monuments or other decorations upon the approval of the city.

(4) The cremains of up to two of the immediate family members of a veteran who is already buried in the veterans' memorial plot may be buried on that veteran's grave.

(5) If there is room for additional memorialization on the upright marble VA stone, the spouse of the buried veteran may be memorialized on said stone at the family's expense.

- **Sec. 8-334. - Miscellaneous provisions.**

(a) Vault-less burials are allowed for an additional charge, provided the deceased is wrapped in a shroud, or placed in a cardboard or wicker casket. All other caskets or other burial containers shall be placed in domes or vaults constructed of materials specified by the city.

(b) Installation of sectional liners shall be not allowed.

(c) Infants may be buried in the casket-vault combination.

(d) U. S. Government specified concrete domes are allowed.

(e) Outer burial containers sold by other cemeteries are not allowed in the city cemetery.

(f) All graves and niches sale price shall include a thirty-five (35) per cent perpetual care cost. Prices for all crypts and niches in the Landmarks Mausoleum shall be maintained and obtained at the cemetery office. All cemetery fees and prices for graves and niches in the cemetery proper shall be established by city council resolution.

(g) Opening, closing and setup for any burial shall include a lowering device for a full size casket or stand for a baby casket or urn, artificial turf, chairs and tent. A discount shall be issued, except in the mausoleum, when a tent is impractical to set up.

(h) The normal cemetery business hours for burial are from 9:00 a.m. to 3:00 p.m., Monday through Friday and from 9:00 a.m. to 2:00 p.m. on Saturday. For burial services that start after 3:00 p.m. on Monday through Friday or after 2:00 p.m. on Saturday, a late overtime fee will be charged.

**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:** 01/22/2024  
**Title:** Payment of Claims for week of December 18th, 2023  
**Presented by:** Erin Watterud  
**Department:** Finance  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of \$9,568,992.24 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department. Payment Approval Process Every invoice for payment is entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.). Each invoice goes through a multi-step approval process depending upon the amount of the payment. First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment. Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached. If the payment is greater than \$1,000, then it must be approved by the Finance Director or designee. If that payment is greater than \$10,000, then it must be approved by the City Administrator or Assistant City Administrator. Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of \$2,500 is generated and placed on the next City Council meeting for review.

**ALTERNATIVES**

No other alternatives were analyzed

**FISCAL EFFECTS**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

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**Attachments**

CouncilMemo wk of 12182023

| Check Date | Check # | Name                   | Fund Name     | Amount       | Item Desc                                          |
|------------|---------|------------------------|---------------|--------------|----------------------------------------------------|
| 12/18/2023 | 867135  | Advanced Employment    | Public Safety | \$ 560.00    | office cleaning                                    |
| 12/18/2023 | 867135  | Advanced Employment    | Solid Waste   | \$ 2,966.60  | Contract labor at Landfill week ending 11/19/2023. |
| 12/18/2023 | 867135  | Advanced Employment    | Solid Waste   | \$ 1,892.80  | Contract labor at Landfill week ending 11/26/2023. |
| 12/18/2023 | 867135  | Advanced Employment    | Solid Waste   | \$ 2,184.00  | Contract labor at Landfill week ending 12/3/2023.  |
| 12/18/2023 | 867137  | Alfa Laval             | Wastewater    | \$ 2,317.07  | elbows for actuator                                |
| 12/18/2023 | 867137  | Alfa Laval             | Wastewater    | \$ 73,567.98 | Refurbish DS401 Centrifuge Rotating Assembly       |
| 12/18/2023 | 867139  | Alta Planning & Design | Planning      | \$ 6,527.50  | Professional Services Through November 24, 2023    |
| 12/18/2023 | 867140  | Altitude Signal        | SID Const     | \$ 3,720.00  | SILMD 331 Luminaire Heads for Montana Av           |
| 12/18/2023 | 867143  | Askin Construction     | Tax Incrmnt S | \$ 38,264.84 | WO 23-26 Sbura Gravel Streets                      |
| 12/18/2023 | 867144  | AssetWorks             | Fleet         | \$ 13,499.81 | SIN005745 Software maintenance                     |
| 12/18/2023 | 867145  | AT & T Corp            | Airport       | \$ 824.06    | Airport                                            |
| 12/18/2023 | 867145  | AT & T Corp            | Building      | \$ 45.22     | Building Manager                                   |
| 12/18/2023 | 867145  | AT & T Corp            | Building      | \$ 510.23    | PW-Building Cell Phones                            |
| 12/18/2023 | 867145  | AT & T Corp            | Building      | \$ 406.28    | PW-Building Surfaces                               |
| 12/18/2023 | 867145  | AT & T Corp            | CDBG          | \$ 145.76    | Comm Dev                                           |
| 12/18/2023 | 867145  | AT & T Corp            | Court Grants  | \$ 135.66    | Muni Court DC                                      |
| 12/18/2023 | 867145  | AT & T Corp            | Engineering   | \$ 174.20    | Engineering Tablets                                |
| 12/18/2023 | 867145  | AT & T Corp            | Engineering   | \$ 147.43    | PW-Engineering Cell Phones and MiFi                |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 31.58     | Facilities BOC                                     |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 45.12     | Facilities BOC                                     |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 13.54     | Facilities BOC                                     |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 45.12     | Facilities BOC                                     |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 86.42     | Facilities BOC/CH                                  |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 28.86     | Facilities BOC/CH                                  |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 12.91     | Facilities City Hall                               |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 45.12     | Facilities City Hall                               |
| 12/18/2023 | 867145  | AT & T Corp            | Facilities    | \$ 90.44     | Facilities Managers                                |
| 12/18/2023 | 867145  | AT & T Corp            | Fleet         | \$ 45.57     | Motor Pool                                         |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 435.89    | Code Enforcement                                   |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 45.22     | Finance- Purchasing                                |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 45.22     | Human Resources                                    |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 180.88    | Legal Dept -Domestic Violence                      |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 50.27     | Legal                                              |
| 12/18/2023 | 867145  | AT & T Corp            | General       | \$ 243.65    | PRPL - Recreation Division                         |

| Check Date | Check # | Name        | Fund Name     | Amount      | Item Desc                          |
|------------|---------|-------------|---------------|-------------|------------------------------------|
| 12/18/2023 | 867145  | AT & T Corp | General       | \$ -        | REC Seasonal                       |
| 12/18/2023 | 867145  | AT & T Corp | General       | \$ 104.52   | Rec Tablets                        |
| 12/18/2023 | 867145  | AT & T Corp | IT Resources  | \$ 50.27    | IT Department -On call Phone       |
| 12/18/2023 | 867145  | AT & T Corp | Library       | \$ 23.41    | Library                            |
| 12/18/2023 | 867145  | AT & T Corp | Library       | \$ 107.37   | Library Out Reach                  |
| 12/18/2023 | 867145  | AT & T Corp | P.W. Admin    | \$ 32.61    | PWBLKNP OFFICE                     |
| 12/18/2023 | 867145  | AT & T Corp | P.W. Admin    | \$ 32.61    | PWBLKNP OFFICE                     |
| 12/18/2023 | 867145  | AT & T Corp | Park Dist 1   | \$ 471.49   | Parks Dept.                        |
| 12/18/2023 | 867145  | AT & T Corp | Park Dist 1   | \$ -        | Parks Seasonal                     |
| 12/18/2023 | 867145  | AT & T Corp | Park Dist 1   | \$ 558.46   | PRPL Parks Tablets                 |
| 12/18/2023 | 867145  | AT & T Corp | Parking       | \$ -        | Parking Division Meter Maintenance |
| 12/18/2023 | 867145  | AT & T Corp | Parking       | \$ 226.10   | Parking Phones and scanner         |
| 12/18/2023 | 867145  | AT & T Corp | Parking       | \$ 316.54   | Parking Phones and scanner         |
| 12/18/2023 | 867145  | AT & T Corp | PD Program    | \$ 160.56   | CCSIU Toughbook                    |
| 12/18/2023 | 867145  | AT & T Corp | PD Program    | \$ 45.54    | Domestic Violence                  |
| 12/18/2023 | 867145  | AT & T Corp | Phone System  | \$ 45.22    | IT Department -On call Phone       |
| 12/18/2023 | 867145  | AT & T Corp | Phone System  | \$ 65.86    | IT iPads                           |
| 12/18/2023 | 867145  | AT & T Corp | Phone System  | \$ 67.82    | TeleComm Manager                   |
| 12/18/2023 | 867145  | AT & T Corp | Planning      | \$ 67.82    | Planning                           |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 272.92   | Animal Control Cell Phones         |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 321.12   | Animal Control                     |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ -        | Assistant chiefs new iPads         |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 288.87   | Comm. Center 9-1-1                 |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 40.14    | Toughbook                          |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 444.13   | FIRE CRADLEPOINT                   |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 1,342.93 | Fire Department Cell Phones        |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 374.90   | FIRE EMS                           |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 135.66   | Fire EMS Cell Phone                |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 198.72   | FIRE INSPECTIONS                   |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 40.14    | Fire iPads                         |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 269.46   | Fire iPads                         |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 126.82   | Fire iPads                         |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 799.46   | Fire Station iPads                 |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety | \$ 85.68    | ICAC                               |

| Check Date | Check # | Name        | Fund Name      | Amount      | Item Desc                              |
|------------|---------|-------------|----------------|-------------|----------------------------------------|
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 770.85   | MDT Fire                               |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 83.39    | POLICE CRADLEPOINT                     |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 125.84   | POLICE CSO                             |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 3,944.31 | Police Department Cell Phone           |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 50.27    | Police -Drone                          |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 5,218.20 | Police MDT Toughbooks and Loaner MDT's |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 240.84   | Police MDT Toughbooks and Loaner MDT's |
| 12/18/2023 | 867145  | AT & T Corp | Public Safety  | \$ 287.20   | Yellowstone County Cellular Charges    |
| 12/18/2023 | 867145  | AT & T Corp | Solid Waste    | \$ 139.36   | SOLID WASTE Cell and iPads             |
| 12/18/2023 | 867145  | AT & T Corp | Solid Waste    | \$ 432.00   | SOLID WASTE Cell and iPads             |
| 12/18/2023 | 867145  | AT & T Corp | Street/Traffic | \$ 372.55   | School Flashers                        |
| 12/18/2023 | 867145  | AT & T Corp | Street/Traffic | \$ 43.34    | Street Traffic iPads                   |
| 12/18/2023 | 867145  | AT & T Corp | Street/Traffic | \$ 681.32   | Street Traffic iPads                   |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 50.27    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 50.27    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 3.50     | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 8.00     | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 8.07     | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 50.27    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 42.27    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 50.27    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 45.22    | MET Supervisor Cell Phones             |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 389.74   | MET Transit Tablets                    |
| 12/18/2023 | 867145  | AT & T Corp | Transit        | \$ 645.35   | MET Transit Tablets                    |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 180.88   | PW Environmental                       |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 387.33   | PWBELKNAP-DIST COLL CELL PHONES        |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 475.40   | PWBLKNP Electricians -Phones           |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 27.97    | PWBLKNP STORES                         |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 931.38   | Wastewater Treatment Plant and iPads   |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 104.52   | Wastewater Treatment Plant and iPads   |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 516.00   | PW-Distribution Collection Tablets     |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 13.72    | PW-Environmental                       |
| 12/18/2023 | 867145  | AT & T Corp | Wastewater     | \$ 2,049.98 | PW-Environmental                       |
| 12/18/2023 | 867145  | AT & T Corp | Water          | \$ 387.34   | PWBELKNAP-DIST COLL CELL PHONES        |

| Check Date | Check # | Name                          | Fund Name        | Amount          | Item Desc                                                 |
|------------|---------|-------------------------------|------------------|-----------------|-----------------------------------------------------------|
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 1,048.93     | PWBELKNAP-WT Water Treatment                              |
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 472.64       | PWBLKNP COMM-METER CityWorks/Neptune                      |
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 373.65       | PWBLKNP MTRSHOP CELL PHONE AND IPADS                      |
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 149.04       | PWBLKNP MTRSHOP CELL PHONE AND IPADS                      |
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 84.35        | PWBLKNP STORES                                            |
| 12/18/2023 | 867145  | AT & T Corp                   | Water            | \$ 516.00       | PW-Distribution Collection Tablets                        |
| 12/18/2023 | 867150  | Billings Bench Water          | Water            | \$ 84,727.50    | BBWA water Carriage Agreement                             |
| 12/18/2023 | 867155  | Bridgestone/Firestone         | Transit          | \$ 1,571.14     | September Tire Mileage                                    |
| 12/18/2023 | 867155  | Bridgestone/Firestone         | Transit          | \$ 2,341.28     | October Tire Mileage                                      |
| 12/18/2023 | ACH     | Burns & McDonnell             | Water            | \$ 80,074.22    | WO 19-42 West End Water Treatment Plant Project           |
| 12/18/2023 | 867169  | Cop Construction              | Wastewater       | \$ 605,859.49   | WO 23-07 Monad Sewer Extension                            |
| 12/18/2023 | 867178  | Dakota Supply Group           | Water            | \$ 1,378.84     | 6" X 30" CI-FC REPAIR CLAMP - F1-724 X 30 -SH             |
| 12/18/2023 | 867178  | Dakota Supply Group           | Water            | \$ 34.83        | adapter for 3299 Tahoe                                    |
| 12/18/2023 | 867178  | Dakota Supply Group           | Water            | \$ 1,144.49     | valve repair at Christiansen pump                         |
| 12/18/2023 | 867179  | Data Imaging System           | General          | \$ 4,589.51     | Scanning project for SID Boxes 36-49                      |
| 12/18/2023 | 867180  | Dell Computer                 | General          | \$ 3,331.80     | Rose Park Pool and Batting Cages                          |
| 12/18/2023 | 867180  | Dell Computer                 | Planning         | \$ 1,591.22     | Planning                                                  |
| 12/18/2023 | 867180  | Dell Computer                 | Planning         | \$ 4,708.02     | Planning                                                  |
| 12/18/2023 | 867183  | Desert Mountain               | Street/Traffic   | \$ 5,499.27     | ice slicer                                                |
| 12/18/2023 | 867184  | Dick Anderson Const           | Stillwater Const | \$ 2,263,977.97 | City of Billings Law and Justice Center/City Hall Remodel |
| 12/18/2023 | 867185  | Digital Video Systems         | Solid Waste      | \$ 4,200.00     | DVS Ultra HD Exterior Vandal Dome- Landfill               |
| 12/18/2023 | 867187  | Dixie Petro-Chem              | Water            | \$ 18,787.20    | chlorine for plant process                                |
| 12/18/2023 | 867188  | Dorsey & Whitney              | General          | \$ 14,847.50    | Parks & Rec- Proposed Issuance of Gen. Obligation Bonds   |
| 12/18/2023 | 867189  | DOWL                          | Tax Incrmnt N27  | \$ 76,212.57    | WO 23-11 Downtown 2-Way Street Conversion                 |
| 12/18/2023 | 867190  | Downtown Billings Partnership | Tax Incrmnt N27  | \$ 25,615.42    | Annual DBP Operating Agreement FY 2024                    |
| 12/18/2023 | 867190  | Downtown Billings Partnership | Tax Incrmnt N27  | \$ 25,615.42    | Annual DBP Operating Agreement FY 2025                    |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 213.37       | 90832075_Reservoir                                        |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 1,235.72     | 90832077_Seat Belts                                       |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 244.73       | 90832992_Unit #1840_SCR Coolant Valve                     |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 13.01        | 90832992_Unit #1840_Shipping                              |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 1,587.98     | 90833363_DEF Head W/Tank                                  |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 1,500.00     | 90833364_DEF Head w/Tank                                  |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ 87.98        | 90833364_Unit#1840_Shipping                               |
| 12/18/2023 | ACH     | Eldorado National California  | Transit          | \$ (13.01)      | 90833528_Dimmer Switch and Shipping                       |

| Check Date | Check # | Name                         | Fund Name        | Amount      | Item Desc                                                 |
|------------|---------|------------------------------|------------------|-------------|-----------------------------------------------------------|
| 12/18/2023 | ACH     | Eldorado National California | Transit          | \$ (141.56) | 90833528_Dimmer Switch and Shipping                       |
| 12/18/2023 | 867195  | Energy Laboratories          | Water            | \$ 3,030.00 | Sample Analysis                                           |
| 12/18/2023 | 867200  | First Light Technologies     | Street/Traffic   | \$ 7,660.00 | street lights for sca per attached new quote              |
| 12/18/2023 | 867202  | Fisher's Tech                | Airport          | \$ 86.15    | Copy Machine Maintenance                                  |
| 12/18/2023 | 867202  | Fisher's Tech                | CDBG             | \$ 219.09   | Nov-23                                                    |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 1,268.35 | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 35.35    | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 22.91    | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 5.95     | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 103.89   | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 50.00    | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 140.44   | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Central Services | \$ 122.90   | Copy Fund                                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | Engineering      | \$ 7.77     | contract base rate charge                                 |
| 12/18/2023 | 867202  | Fisher's Tech                | General          | \$ 130.94   | COPIER CONTRACT FOR PRPL                                  |
| 12/18/2023 | 867202  | Fisher's Tech                | General          | \$ 130.92   | COPIER CONTRACT FOR PRPL                                  |
| 12/18/2023 | 867202  | Fisher's Tech                | General          | \$ 125.56   | COPIER CONTRACT FOR SENIOR CENTER                         |
| 12/18/2023 | 867202  | Fisher's Tech                | Library          | \$ 47.47    | Library copier charges                                    |
| 12/18/2023 | 867202  | Fisher's Tech                | Park Dist 1      | \$ 130.92   | COPIER CONTRACT FOR PRPL                                  |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 35.35    | contract invoice                                          |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 60.62    | contract invoice                                          |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 405.00   | service invoice for CCSIU/street crimes                   |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 204.95   | toner invoice                                             |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 163.33   | contract invoice                                          |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 28.85    | contract invoice                                          |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 190.00   | toner invoice                                             |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 29.25    | contract invoice                                          |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 24.64    | BLACK & WHITE COPIES                                      |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 147.23   | COLOR COPIES                                              |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 329.66   | Police                                                    |
| 12/18/2023 | 867202  | Fisher's Tech                | Public Safety    | \$ 2.51     | Police                                                    |
| 12/18/2023 | 867202  | Fisher's Tech                | Solid Waste      | \$ 216.15   | Contract overage charge Oct 2023. Collections             |
| 12/18/2023 | 867202  | Fisher's Tech                | Solid Waste      | \$ 62.55    | Contract overage charge 10/18/2023 - 11/17/2023. Landfill |
| 12/18/2023 | 867202  | Fisher's Tech                | Street/Traffic   | \$ 31.50    | copier maintenance                                        |

| Check Date | Check # | Name                            | Fund Name        | Amount          | Item Desc                                          |
|------------|---------|---------------------------------|------------------|-----------------|----------------------------------------------------|
| 12/18/2023 | 867202  | Fisher's Tech                   | Transit          | \$ 121.57       | Copy Machine Maintenance                           |
| 12/18/2023 | 867202  | Fisher's Tech                   | Water            | \$ 122.41       | 10/31-11/29/2023. Contract Base & Overag           |
| 12/18/2023 | 867205  | GCR                             | Airport          | \$ 21,511.00    | Software Contract & License Agreement - Setup      |
| 12/18/2023 | ACH     | HDR                             | Water            | \$ 19,499.74    | Retainage Release FINAL                            |
| 12/20/2023 | ACH     | Houser Et Al V City of Billings | General          | \$ 1,428,235.20 | Houser Settlement Payment 1 to Class Administrator |
| 12/18/2023 | 867212  | Iaff                            | Payroll Clearing | \$ 5,605.24     | Payroll Summary                                    |
| 12/18/2023 | 867220  | Interstate Power Systems        | Fleet            | \$ 520.32       | C007065001:01                                      |
| 12/18/2023 | 867220  | Interstate Power Systems        | Solid Waste      | \$ 2,701.57     | R007059719.01 - CONTROL MODULE                     |
| 12/18/2023 | 867220  | Interstate Power Systems        | Wastewater       | \$ 859.30       | Generator Maint                                    |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 304.11       | C251366083.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 454.35       | C251366489.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 130.68       | C251366501.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 132.09       | C251366541.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 64.49        | C251366826.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 114.36       | C251366879.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 537.04       | C251366883.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 125.00       | C251366883.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Fleet            | \$ 650.85       | R251083958.01                                      |
| 12/18/2023 | 867211  | I-State Truck                   | Solid Waste      | \$ 97.88        | C251365656.01 - FILTER                             |
| 12/18/2023 | 867211  | I-State Truck                   | Solid Waste      | \$ (97.88)      | C251365712.01 - FILTER                             |
| 12/18/2023 | ACH     | Joe Johnson Equipment           | Fleet            | \$ 998.00       | P01332                                             |
| 12/18/2023 | ACH     | Joe Johnson Equipment           | Fleet            | \$ 15.87        | P01332                                             |
| 12/18/2023 | ACH     | Joe Johnson Equipment           | Fleet            | \$ 775.00       | P01336                                             |
| 12/18/2023 | ACH     | Joe Johnson Equipment           | Fleet            | \$ 20.97        | P01338                                             |
| 12/18/2023 | ACH     | Joe Johnson Equipment           | Street/Traffic   | \$ 3,685.29     | inv#P01360brooms for sweepers                      |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 985.35       | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 31.08        | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 335.90       | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 333.50       | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 1,604.50     | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 351.00       | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 352.80       | 14765                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 525.52       | 14894                                              |
| 12/18/2023 | 867225  | Kent D. Bruce                   | Fleet            | \$ 14.09        | 14894                                              |

| Check Date | Check # | Name                 | Fund Name        | Amount      | Item Desc                                          |
|------------|---------|----------------------|------------------|-------------|----------------------------------------------------|
| 12/18/2023 | 867227  | Knife River          | Water            | \$ (0.01)   | Adjustment to match invoice total cost.            |
| 12/18/2023 | 867227  | Knife River          | Water            | \$ 2,511.92 | CRUSHED GRAVEL 3/4"---1-1 - /2TON = 1 YARD         |
| 12/18/2023 | 867227  | Knife River          | Water            | \$ 1,909.18 | CRUSHED GRAVEL 3/4"---1-1 - /2TON = 1 YARD         |
| 12/18/2023 | 867227  | Knife River          | Water            | \$ 240.70   | CRUSHED GRAVEL 3/4"---1-1 - /2TON = 1 YARD         |
| 12/18/2023 | 867228  | L N Curtis           | Fleet            | \$ 122.62   | 767592                                             |
| 12/18/2023 | 867228  | L N Curtis           | Fleet            | \$ 213.12   | 767592                                             |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 212.24   | 1 JACKET & PANT - ADVANCED CLEANING & REPAIR       |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 3,150.00 | DURA BUILT DJ HOSE                                 |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 1,970.00 | DURA BUILT DJ HOSE                                 |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 6,360.00 | DURA-BUILT DJ HOSE                                 |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 169.29   | INLINE PRESSURE GAUGE                              |
| 12/18/2023 | 867228  | L N Curtis           | Public Safety    | \$ 257.00   | TRANSPORTATION                                     |
| 12/18/2023 | 867231  | Madison Agency       | Airport          | \$ 1,701.00 | Amendment #3 Advertising & Marketing Program- FY24 |
| 12/18/2023 | 867231  | Madison Agency       | Airport          | \$ 7,174.00 | Amendment #3 Advertising & Marketing Program- FY24 |
| 12/18/2023 | 867233  | Mental Health Center | Court Grants     | \$ 2,413.53 | 23 Nov. MHC                                        |
| 12/18/2023 | 867233  | Mental Health Center | Court Grants     | \$ 200.00   | 23 Nov. MHC MRT Service                            |
| 12/18/2023 | 867236  | Montana CSED         | Payroll Clearing | \$ 5,606.36 | MT CSED                                            |
| 12/18/2023 | 867239  | MFPE                 | Payroll Clearing | \$ 2,832.84 | Payroll Summary                                    |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 637.27   | 83573BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 1,051.40 | 83900BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 202.63   | 83900BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 345.25   | 84000BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 284.56   | 84010BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 409.67   | 84032BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 58.95    | 84283BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 58.95    | 84284BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 41.44    | 84314BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 318.21   | 84317BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 37.21    | 84317BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 116.84   | 84389BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 88.00    | 84389BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 55.05    | 84467BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 58.95    | 84528BL                                            |
| 12/18/2023 | 867240  | MT Peterbilt         | Fleet            | \$ 178.26   | 85308BL                                            |

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|------------|---------|--------------------------|------------------|---------------|-----------------------------------------------------------|
| 12/18/2023 | 867240  | MT Peterbilt             | Fleet            | \$ 88.32      | 85337BL                                                   |
| 12/18/2023 | 867240  | MT Peterbilt             | Fleet            | \$ 92.76      | 85337BL                                                   |
| 12/18/2023 | 867240  | MT Peterbilt             | Fleet            | \$ 148.84     | 85337BL                                                   |
| 12/18/2023 | 867240  | MT Peterbilt             | Fleet            | \$ 80.70      | 85337BL                                                   |
| 12/18/2023 | 867240  | MT Peterbilt             | Fleet            | \$ 60.12      | 85337BL                                                   |
| 12/18/2023 | 867240  | MT Peterbilt             | Solid Waste      | \$ 187.96     | 82407BL - SWITCH; SWITCH                                  |
| 12/18/2023 | 867242  | Mt State Fireman's Assoc | Payroll Clearing | \$ 5,486.83   | Payroll Summary                                           |
| 12/18/2023 | 867244  | Motorola Solutions       | EOC 911          | \$ 997,025.00 | PUBLIC SAFETY RADIO SYSTEM, 911 FUNDS                     |
| 12/18/2023 | 867245  | Mountain West Holding    | Airport          | \$ 6,850.00   | Invoice #9060. Guardrail Damage Repair on Rimtop Drive    |
| 12/18/2023 | 867246  | MPPA                     | Payroll Clearing | \$ 3,908.80   | Payroll Summary                                           |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Arterial Streets | \$ 14,207.02  | WO 09-12 Inner Belt Loop Northwest Billings Connector     |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Solid Waste      | \$ 7,682.43   | WO 22-27 Landfill Gas Compliance Flare Installation       |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Solid Waste      | \$ 578.57     | WO 23-16 Landfill Scale Addition                          |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Stillwater Const | \$ 22,868.46  | City of Billings Law and Justice Center/City Hall Remodel |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Tax Incrmnt S    | \$ 386.52     | WO 23-26 Sbura Gravel Streets                             |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ 273.48     | WO 22-14 WRF Admin AHU Modifications                      |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ -          | WO 22-14 WRF Admin AHU Modifications                      |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ -          | WO 23-01 2023 Sewer Main Replacement; Princeton Ave       |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ -          | WO 23-01 2023 Sewer Main Replacement; Ponderosa Dr        |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ 1,376.51   | WO 23-01 2023 Sewer Main Replacement; Burlington Ave      |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ 3,302.74   | WO 23-01 2023 Sewer Main Replacement; Montana Ave         |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ 3,803.47   | WO 23-01 2023 Sewer Main Replacement; 1st Ave South       |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Wastewater       | \$ 6,119.80   | WO 23-07 Monad Sewer Extension                            |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Water            | \$ -          | WO 23-01 Zone 6 Water Main Replacement                    |
| 12/18/2023 | 867248  | MT Dept of Rev-CGR2      | Water            | \$ 77.50      | WO 23-43 Water Service Repairs                            |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 41.20      | 3977-532181                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 115.92     | 3977-532181                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 13.59      | 3977-532370                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 122.64     | 3977-532426                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 37.90      | 3977-532633                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 37.89      | 3977-532633                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 34.98      | 3977-532633                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 34.98      | 3977-532633                                               |
| 12/18/2023 | 867249  | Napa                     | Fleet            | \$ 29.70      | 3977-532646                                               |

| Check Date | Check # | Name | Fund Name | Amount      | Item Desc   |
|------------|---------|------|-----------|-------------|-------------|
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 29.12    | 3977-532657 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 26.88    | 3977-532657 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 29.12    | 3977-532657 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 26.88    | 3977-532657 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 17.08    | 3977-532698 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 422.41   | 3977-532743 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 18.84    | 3977-532752 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 6.70     | 3977-532828 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 9.77     | 3977-532962 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 52.00    | 3977-532976 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 358.64   | 3977-532978 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 12.71    | 3977-532980 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 152.17   | 3977-533040 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 2.00     | 3977-533093 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 7.42     | 3977-533093 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 21.40    | 3977-533191 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 98.48    | 3977-533191 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 138.00   | 3977-533191 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 72.47    | 3977-533191 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 92.56    | 3977-533192 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 11.55    | 3977-533192 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 35.12    | 3977-533192 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 32.21    | 3977-533212 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 84.40    | 3977-533212 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 60.64    | 3977-533213 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 12.76    | 3977-533217 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 22.86    | 3977-533225 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 18.14    | 3977-533256 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 15.90    | 3977-533256 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ (422.41) | 3977-533548 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ (79.00)  | 3977-533548 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 31.50    | 3977-534674 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 11.75    | 3977-535049 |
| 12/18/2023 | 867249  | Napa | Fleet     | \$ 28.50    | 3977-535543 |

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|------------|---------|----------|----------------|------------|--------------------------------------------------------|
| 12/18/2023 | 867249  | Napa     | Fleet          | \$ 439.32  | 3977-535726                                            |
| 12/18/2023 | 867249  | Napa     | Parking        | \$ 36.45   | 3977-533256                                            |
| 12/18/2023 | 867249  | Napa     | Street/Traffic | \$ 51.49   | 3977-533069 - GREASE GUN                               |
| 12/18/2023 | 867249  | Napa     | Street/Traffic | \$ 51.49   | inv#3977-534696grease gun                              |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ (26.63) | 32993_Lamp Thread Rod                                  |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 41.48   | 3977-531436. Wiper Blades                              |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 181.68  | 3977-531973. Oil Fitlers                               |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 4.72    | 3977-532348. Adapter                                   |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 12.73   | 3977-532348. Bluestick 9GM                             |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 15.20   | 3977-532348. Coupluss                                  |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 85.09   | 3977-532348. Disc Brake Pad                            |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 11.22   | 3977-532348. Electrical Connector                      |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 85.80   | 3977-532348. Fleet Pads                                |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 61.32   | 3977-532348. Fleetranner Belt                          |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 51.57   | 3977-532348. Fleetranner Belt                          |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 10.33   | 3977-532348. LED Chrome License                        |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 22.34   | 3977-532348. LMP Boxed Capsules                        |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 22.00   | 3977-532348. Oil Filters                               |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 51.39   | 3977-532348. Oil Seals                                 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 30.45   | 3977-532348. Spin-On Fluid Filter                      |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 16.88   | 3977-532348. V-Belt                                    |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 18.64   | 3977-532807. Caliper Pin Kits                          |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 70.59   | 3977-532852. Bracketed Caliper Unit 1878. W/O 2024-429 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 70.59   | 3977-532852. Bracketed Caliper Unit 1878. W/O 2024-429 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 67.90   | 3977-532852. Core Deposit Unit 1878. W/O 2024-429      |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 67.90   | 3977-532852.Core Deposit Unit 1878. W/O 2024-429       |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 11.55   | 3977-532908. Hose Protector                            |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ (77.00) | 3977-532993_Core Deposit                               |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ (12.73) | 3977-532993_Thread Locker & Brake Pads                 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ (85.09) | 3977-532993_Thread Locker & Brake Pads                 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 150.72  | 3977-533160_A/C Belt                                   |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 121.83  | 3977-533165_Stepwell Lamp                              |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 72.70   | 3977-533291_Brake Pads                                 |
| 12/18/2023 | 867250  | Napa-MET | Transit        | \$ 33.00   | 3977-533479_Power Steering Filters                     |

| Check Date | Check # | Name                | Fund Name | Amount      | Item Desc                                       |
|------------|---------|---------------------|-----------|-------------|-------------------------------------------------|
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 34.74    | 3977-533571_Battery Box                         |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 18.00    | 3977-533571_Core Deposit                        |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 135.16   | 3977-533571_Unit #1891_Battery                  |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 3.29     | 3977-533571_Unit #1891_Thread Rod               |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 18.00    | 3977-533608_Battery & Core Deposit              |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 134.03   | 3977-533608_Battery & Core Deposit              |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 33.54    | 3977-533608_Unit #1891_Battery Box              |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ (18.00)  | 3977-533610_Core Deposit                        |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ (34.74)  | 3977-533841_Battery Box                         |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 18.00    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 72.70    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 30.25    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 137.32   | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 27.00    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 85.80    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 19.90    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 11.50    | 3977-534044_Battery and Core Deposits           |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 135.16   | 3977-534044_Unit #189_battery                   |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 40.61    | 3977-534310_Lamp                                |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 43.69    | 3977-535001_Unit#1831_Fiberglass Resin          |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 54.00    | 3977-535130_Core Deposit                        |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 617.26   | 3977-535130_Unit #1821 Batteries                |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 12.30    | 3977-535496_Unit #1831 Spreaders and Sand Paper |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 12.30    | 3977-535496_Unit #1831_Spreader & Sand Paper    |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 86.25    | 3977-535496_Unite#1831_Spreader & Sand Paper    |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 11.17    | 3977-535597_Boxed Capsules                      |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ 22.56    | 3977-535597_Toggle Boot Seal                    |
| 12/18/2023 | 867250  | Napa-MET            | Transit   | \$ (121.83) | 533610_Lamps                                    |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 14.68    | 0712534-7. Gate 16 Light. November 2023         |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 160.19   | 0712535-4. Employee Parking. November 2023      |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 59.50    | 0712791-3. Gate 16. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 28.66    | 0712795-4. Gate 17. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 34.40    | 0712797-0. Gate 9. November 2023                |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport   | \$ 17.18    | 0712805-1. IP-10. November 2023                 |

| Check Date | Check # | Name                | Fund Name   | Amount    | Item Desc                                       |
|------------|---------|---------------------|-------------|-----------|-------------------------------------------------|
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 37.30  | 0712813-5. Burn Pit. November 2023              |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 37.16  | 0719759-3. Gate 12. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 82.03  | 0719760-1. Gate 14. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 38.79  | 0719761-9. Gate 15. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 30.62  | 0719762-7. Gate 13. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 28.98  | 0720296-3. Gate 29. November 2023               |
| 12/18/2023 | 867255  | NorthWestern Energy | Airport     | \$ 31.64  | 2114868-9. Runway Weather System. November 2023 |
| 12/18/2023 | 867255  | NorthWestern Energy | Building    | \$ 33.28  | 1569631-3                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | CDBG        | \$ 16.81  | Steffanich Dr FORECLOSURE ACQUISITION           |
| 12/18/2023 | 867255  | NorthWestern Energy | Facilities  | \$ 6.15   | 3866815-8                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Facilities  | \$ 283.90 | 3922089-2                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | General     | \$ 43.55  | 0712387-0                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | General     | \$ 197.67 | 0712536-2                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | General     | \$ 727.85 | 0712538-8                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | General     | \$ 58.19  | 0720818-4                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | General     | \$ 270.10 | 0720821-8                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15   | 0722253-2                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.00   | 0722258-1                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 13.66  | 0722259-9                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 10.00  | 0722272-2                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 109.11 | 0722273-0                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 10.17  | 0722274-8                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 98.36  | 0722275-5                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 34.04  | 0722278-9                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 14.68  | 0722279-7                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15   | 0722280-5                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15   | 0722281-3                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15   | 0722283-9                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15   | 0722284-7                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 23.74  | 0722287-0                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 14.68  | 0722808-3                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 7.80   | 0722852-1                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 0.08   | 0722862-0                                       |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 217.43 | 0722901-6                                       |

| Check Date | Check # | Name                | Fund Name   | Amount      | Item Desc |
|------------|---------|---------------------|-------------|-------------|-----------|
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.45     | 0722976-8 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 1,392.47 | 0722995-8 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 90.33    | 0723005-5 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.15     | 0723025-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ -        | 0723039-4 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.00     | 0723046-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 7.05     | 0723049-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 20.79    | 0723064-2 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 20.79    | 0723065-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 4.15     | 0723391-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 123.12   | 0723884-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 20.79    | 0723887-6 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 36.56    | 0813489-2 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 34.29    | 0978917-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.00     | 1588262-4 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 12.66    | 1836666-6 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 10.65    | 1849408-8 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 32.62    | 1904944-4 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 42.57    | 1941243-6 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 6.00     | 3178260-0 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 101.17   | 3241436-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ 25.03    | 3771457-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Park Dist 1 | \$ -        | 4086220-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parking     | \$ 127.10   | 3835890-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.68     | 0722272-2 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.15     | 0723384-4 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.00     | 0723385-1 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.00     | 0723386-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.00     | 0723388-5 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 2.77     | 0723391-9 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 7.20     | 0723393-5 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.15     | 0723394-3 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.15     | 0723395-0 |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint | \$ 6.15     | 0723396-8 |

| Check Date | Check # | Name                | Fund Name      | Amount      | Item Desc                            |
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| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.15     | 0723397-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.15     | 0723398-4                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.15     | 0723835-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 17.48    | 0723836-3                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.31     | 0723840-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 28.01    | 0723879-3                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.76     | 0723883-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 6.77     | 0881455-0                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 0.69     | 1029192-0                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 0.69     | 1045813-1                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 0.68     | 1265177-4                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 7.37     | 1514388-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 0.68     | 1948667-9                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 4.94     | 2055817-7                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ -        | 3707234-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ -        | 3707235-2                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ -        | 3707236-0                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Parks Maint    | \$ 4.20     | 4103439-8                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Public Safety  | \$ 18.09    | 0712532-1                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Public Safety  | \$ 402.85   | 0720817-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Public Safety  | \$ 699.20   | 0871546-8                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Public Safety  | \$ 1,824.53 | 1183483-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 8.27     | 0855404-0                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 6.30     | 1045820-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 0.41     | 1740357-7                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 0.54     | 1748896-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 8.28     | 2047007-6                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 8.42     | 2047010-0                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 7.06     | 2047013-4                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 7.96     | 2047017-5                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 7.96     | 2047019-1                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 1.08     | 3590004-2                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Street/Traffic | \$ 71.37    | 3648861-7                            |
| 12/18/2023 | 867255  | NorthWestern Energy | Transit        | \$ 2,808.20 | 0100473-8. Monad Road- December 2023 |

| Check Date | Check # | Name                | Fund Name  | Amount       | Item Desc                                     |
|------------|---------|---------------------|------------|--------------|-----------------------------------------------|
| 12/18/2023 | 867255  | NorthWestern Energy | Transit    | \$ 492.07    | 0719225-5                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Wastewater | \$ 75,721.35 | 0100591-7                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Wastewater | \$ 219.70    | 389 62ND St Lift Entrance- Nov 2023           |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 766.00    | 0100485-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 2,687.25  | 0722264-9                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 2,931.10  | 0723040-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 29.45     | 0723059-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 369.16    | 1116452-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 158.41    | 1142253-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 6.00      | 1160807-2                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 4.34      | 1346673-5                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 6.00      | 1867265-9                                     |
| 12/18/2023 | 867255  | NorthWestern Energy | Water      | \$ 2,098.93  | Canyonwoods Dr- Nov 2023                      |
| 12/18/2023 | 867259  | Polydyne            | Wastewater | \$ 5,096.00  | chemical supplies, for centrifuge             |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 8,773.31  | 136516                                        |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 83.65     | 250828-Alpine Air-Maintenance                 |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 116.81    | 250831-Zone Dispatch-IP6 & IP7                |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 58.00     | 250832-Corp Air/Alpine                        |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 208.32    | 250834-QTA                                    |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 104.16    | 250836-West End T-Hangars                     |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 141.65    | 250840-Edwards Jet Center West                |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 109.02    | 250842-Executive Hangars                      |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 7.79      | 250842-Executive Hangars USDA APHIS           |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 176.15    | 250843-Airfield Maintenance Compactor         |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 140.92    | 250845-Airfield Maintenance                   |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 366.14    | 250847-UPS Gate 21                            |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 116.00    | 250848-Edwards Jet Center 1871 Aviation Place |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 116.81    | 250849-Rocky Mountain College-EJC             |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 141.65    | 250850-US Postal Service Gate 15              |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 166.22    | 250851-Edwards Jet Center 1691 Aviation Place |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 83.11     | 250853-Aerotrionics                           |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 141.65    | 250854-Marchi Hangar                          |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 70.88     | 250855-Marchi Office                          |
| 12/18/2023 | 867262  | Public Utilities    | Airport    | \$ 116.81    | 250857-MT State Lands DEQ/DNRC                |

| Check Date | Check # | Name                       | Fund Name        | Amount          | Item Desc                                                 |
|------------|---------|----------------------------|------------------|-----------------|-----------------------------------------------------------|
| 12/18/2023 | 867262  | Public Utilities           | Airport          | \$ 116.81       | 250858-Billings Fire Center-BLM                           |
| 12/18/2023 | 867262  | Public Utilities           | Airport          | \$ 58.00        | 250859-TSA                                                |
| 12/18/2023 | 867262  | Public Utilities           | Facilities       | \$ 915.80       | 158260                                                    |
| 12/18/2023 | ACH     | RDO                        | Solid Waste      | \$ 235.20       | Air Filter. Filter Elements. Units 0263 & 0269. Landfill. |
| 12/18/2023 | ACH     | RDO                        | Solid Waste      | \$ 93.72        | Drain Plug. Units 0263 and 0269. Landfill.                |
| 12/18/2023 | ACH     | RDO                        | Solid Waste      | \$ 2,803.92     | Filter Element Qty. 12. Landfill Units 0263 & 0269.       |
| 12/18/2023 | ACH     | Rexel USA                  | Wastewater       | \$ 1,853.95     | electrical materials for conduit run for                  |
| 12/18/2023 | ACH     | Rexel USA                  | Wastewater       | \$ 152.13       | restock supplies, supplies for lighting                   |
| 12/18/2023 | ACH     | Rexel USA                  | Wastewater       | \$ 157.98       | wire for digester generator Bldg for rew                  |
| 12/18/2023 | ACH     | Rexel USA                  | Water            | \$ 173.08       | electrical materials for Call Box Instal                  |
| 12/18/2023 | ACH     | Rexel USA                  | Water            | \$ 264.58       | electrical materials for CP-601 rebuild                   |
| 12/18/2023 | 867266  | Rimrock Foundation         | Court Grants     | \$ 1,294.07     | 23 Nov. Treatment Services                                |
| 12/18/2023 | 867266  | Rimrock Foundation         | Court Grants     | \$ 4,175.63     | 23 Nov. Treatment Services                                |
| 12/18/2023 | 867268  | Rinker Materials           | Storm Sewer      | \$ 150,207.80   | WO 23-50 Gabel Road Culvert Replacement                   |
| 12/18/2023 | 867269  | Riverside Contracting      | Arterial Streets | \$ 1,406,494.68 | Inner Belt Loop Northwest Billings Connector              |
| 12/18/2023 | 867273  | Routeware                  | Solid Waste      | \$ 24,788.10    | Q1 2024 Support. Routeware Control Center Support         |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 607.43       | 0163339-IN                                                |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 1,459.74     | 0163339-IN                                                |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 2,684.00     | 0163345-IN                                                |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 2,642.44     | 0163375-IN                                                |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 5,013.54     | 0163375-IN                                                |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 13.48        | 162728                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 171.22       | 162728                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 21.53        | 162969                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 489.60       | 162969                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 23.14        | 162970                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 589.37       | 162970                                                    |
| 12/18/2023 | 867282  | Solid Waste Systems        | Fleet            | \$ 539.72       | 163222                                                    |
| 12/18/2023 | 867285  | St V's Occupational Health | Airport          | \$ 285.00       | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |
| 12/18/2023 | 867285  | St V's Occupational Health | City Ins Fund    | \$ 585.00       | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |
| 12/18/2023 | 867285  | St V's Occupational Health | Fleet            | \$ 249.00       | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |
| 12/18/2023 | 867285  | St V's Occupational Health | General          | \$ 2,065.00     | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |
| 12/18/2023 | 867285  | St V's Occupational Health | Park Dist 1      | \$ 190.00       | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |
| 12/18/2023 | 867285  | St V's Occupational Health | Public Safety    | \$ 280.00       | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac   |

| Check Date | Check # | Name                       | Fund Name     | Amount        | Item Desc                                               |
|------------|---------|----------------------------|---------------|---------------|---------------------------------------------------------|
| 12/18/2023 | 867285  | St V's Occupational Health | Solid Waste   | \$ 295.00     | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac |
| 12/18/2023 | 867285  | St V's Occupational Health | Transit       | \$ 400.00     | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac |
| 12/18/2023 | 867285  | St V's Occupational Health | Water         | \$ 145.00     | On-Site Nursing, Drug Testing, DOT Physicals, Hep B Vac |
| 12/18/2023 | 867287  | Star Service               | Wastewater    | \$ -          | WO 22-14 WRF Admin AHU Modifications                    |
| 12/18/2023 | 867287  | Star Service               | Wastewater    | \$ 27,074.52  | WO 22-14 WRF Admin AHU Modifications                    |
| 12/18/2023 | 867290  | Steves Install             | CDBG          | \$ 10,000.00  | CDBG Adult Exercise Equipment & Site Work               |
| 12/18/2023 | 867290  | Steves Install             | CDBG          | \$ -          | CDBG-CV Adult Exercise Equipment & Site Work            |
| 12/18/2023 | 867290  | Steves Install             | CDBG          | \$ -          | CDBG-CV Shelter Site Work & Installation                |
| 12/18/2023 | 867291  | Sunset Excavation          | Water         | \$ 7,672.50   | WO 23-43 Water Service Repairs                          |
| 12/18/2023 | 867292  | Swank Enterprises          | Solid Waste   | \$ 57,277.98  | WO 23-16 Landfill Scale Addition                        |
| 12/18/2023 | ACH     | Town & Co Supply           | Fleet         | \$ 3,880.39   | 441130                                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Fleet         | \$ 12,541.47  | 441130                                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Fleet         | \$ 4,848.09   | 441130                                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Fleet         | \$ 2.87       | 441130                                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Fleet         | \$ 5,953.47   | 441130                                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 478.22     | 441316 FIRE 7 - BLENDED DIESEL                          |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 597.78     | 441317 FIRE 5 - DIESEL                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 644.32     | 441317 FIRE 5 - UNLEADED                                |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 1,288.64   | 441318 FIRE 1 - UNLEADED                                |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 747.23     | 441318 FIRE1 - DIESEL                                   |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 567.89     | 441319 FIRE 6 - DIESEL                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Public Safety | \$ 671.05     | 441320 FIRE 3 - FUEL                                    |
| 12/18/2023 | ACH     | Town & Co Supply           | Transit       | \$ 6,423.27   | 439989. Dyed #1 Diesel                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Transit       | \$ 12,623.52  | 439989Dyed #2 Diesel                                    |
| 12/18/2023 | ACH     | Town & Co Supply           | Transit       | \$ 5,060.53   | 441327_Unleaded Fuel                                    |
| 12/18/2023 | ACH     | Town & Co Supply           | Transit       | \$ 5,825.88   | 441602. Dyed #1 Diesel                                  |
| 12/18/2023 | ACH     | Town & Co Supply           | Transit       | \$ 11,295.23  | 441602. Dyed #2 Diesel                                  |
| 12/18/2023 | 867300  | Tyler Technologies         | General       | \$ 5,099.65   | Tax-Wise                                                |
| 12/18/2023 | 867300  | Tyler Technologies         | Public Safety | \$ 13,476.84  | Annual Mobile Eyes Maintenance-Fire                     |
| 12/18/2023 | 867305  | Vision West                | General       | \$ 2,932.20   | Leadership Team Fall of 2023                            |
| 12/18/2023 | ACH     | Wastequip                  | Park Dist 1   | \$ 9,659.50   | garbage cans for parks                                  |
| 12/18/2023 | 867308  | Western Municipal Const    | Solid Waste   | \$ 760,560.74 | WO 22-27 Landfill Gas Compliance Flare Installation     |
| 12/18/2023 | 867308  | Western Municipal Const    | Wastewater    | \$ -          | WO 23-01 2023 Sewer Main Replacement; Princeton Ave     |
| 12/18/2023 | 867308  | Western Municipal Const    | Wastewater    | \$ -          | WO 23-01 2023 Sewer Main Replacement; Ponderosa Dr      |

| Check Date | Check # | Name                    | Fund Name  | Amount        | Item Desc                                            |
|------------|---------|-------------------------|------------|---------------|------------------------------------------------------|
| 12/18/2023 | 867308  | Western Municipal Const | Wastewater | \$ 326,971.76 | WO 23-01 2023 Sewer Main Replacement; Montana Ave    |
| 12/18/2023 | 867308  | Western Municipal Const | Wastewater | \$ 376,543.53 | WO 23-01 2023 Sewer Main Replacement; 1st Ave South  |
| 12/18/2023 | 867308  | Western Municipal Const | Wastewater | \$ 136,273.99 | WO 23-01 2023 Sewer Main Replacement; Burlington Ave |
| 12/18/2023 | 867308  | Western Municipal Const | Water      | \$ -          | WO 23-01 2023 Sewer Main Replacement; Water Main     |

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Payment of Claims for week of December 26th, 2023  
**Presented by:** Erin Watterud  
**Department:** Finance  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends Council approve the Payment of Claims

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

Claims in the amount of \$4,450,859.67 have been reviewed and are presented for City Council payment approval. A complete listing of the claims for the week are available in the Finance Department. Payment Approval Process Every invoice for payment is entered into the City's accounting system and the backup documentation is scanned in and attached (physical invoices, additional e-mails explaining payments, bids, contracts, etc.).

Each invoice goes through a multi-step approval process depending upon the amount of the payment. First, invoices are entered by the department requesting the payment and the department director or designee must perform an initial review and approval of the purchase. The number of approvals within the department can vary based upon the size of the department, but no less than one approver within each department must verify the payment. Second, all payments, regardless of size, must be approved by the Purchasing Agent or designee. The Purchasing Agent will review the payment to ensure purchasing procedures are followed and appropriate documentation is attached. If the payment is greater than \$1,000, then it must be approved by the Finance Director or designee. If that payment is greater than \$10,000, then it must be approved by the City Administrator or Assistant City Administrator. Once all approvals are completed, the payment is able to be made and the Accounts Payable Clerk can print the check. After all checks are printed, a list of all checks in excess of \$2,500 is generated and placed on the next City Council meeting for review.

**ALTERNATIVES**

No other alternatives were analyzed

**FISCAL EFFECTS**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

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**Attachments**

CouncilMemo wk of 12262023

| Check Date | Check # | Name                                  | Fund Name       | Amount        | Item Desc                                |
|------------|---------|---------------------------------------|-----------------|---------------|------------------------------------------|
| 12/26/2023 | 867316  | 3 Bull Contracting                    | CDBG            | \$ 79,640.00  | Comanche Park CPTED Improvements         |
| 12/26/2023 | 867317  | A & E Architects                      | Facilities      | \$ 4,600.00   | BOC Campus Area Calculations             |
| 12/26/2023 | 867319  | Adv Employment Services               | Solid Waste     | \$ 2,802.80   | Contract labor at Landfill -12/10/2023.  |
| 12/26/2023 | 867319  | Adv Employment Services               | Solid Waste     | \$ 436.80     | Contract labor at Landfill -12/3/2023.   |
| 12/26/2023 | 867330  | Baker Tilly                           | General         | \$ 20,500.00  | Comprehensive Cost of Services Study     |
| 12/26/2023 | 867332  | Beartooth Enviro                      | Solid Waste     | \$ 11,781.12  | Waste removal from Landfill              |
| 12/26/2023 | 867337  | Blngs Area Family Violence Task Force | Public Safety   | \$ 5,883.00   | Reimb.- Printing of BAFVTF Handbooks     |
| 12/26/2023 | 867338  | Blngs Clinic                          | Public Safety   | \$ 3,600.00   | DR. WHITNEY GUM MEDICAL DIRECTOR         |
| 12/26/2023 | 867342  | Blngs Tourism                         | Tourism BID #2  | \$ 674,647.67 | TBID Paid- November                      |
| 12/26/2023 | 867348  | Carahsoft Tech                        | Public Safety   | \$ 15,473.68  | AR2472-FDPS 100                          |
| 12/26/2023 | 867348  | Carahsoft Tech                        | Public Safety   | \$ 2,716.35   | IMPLEMENTATION SERVICES                  |
| 12/26/2023 | 867356  | Croell                                | Street/Traffic  | \$ 2,746.80   | decorative limestone gravel for storm    |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 3,104.67   | 38-89360_ECM & Reprogram                 |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 30.00      | 38-89525_Shipping                        |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 17.18      | 38-89525_Thermostat Gasket               |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 245.70     | 38-89525_Thermostat Housing              |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ (245.70)   | 38-89574_Thermostat Housing              |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 17.65      | 38-89574_Water Outlet                    |
| 12/26/2023 | 867357  | Cummins Inc - Rocky Mtn               | Transit         | \$ 2,033.58   | DEF Head & Coolant Valve Unit 18410      |
| 12/26/2023 | 867360  | Dell Computer                         | General         | \$ 1,753.71   | Dell Latitude 5540, Code Enf             |
| 12/26/2023 | 867360  | Dell Computer                         | General         | \$ 7,260.45   | (4) Mobile Precison 3480- Parks & Rec    |
| 12/26/2023 | 867360  | Dell Computer                         | Public Safety   | \$ 74.92      | Dell Laptop Power Adapte -Fire EMS       |
| 12/26/2023 | 867364  | Downtown Billings BID                 | Downtown BID    | \$ 220,713.00 | BID Assessments; November                |
| 12/26/2023 | 867365  | Downtown Billings Partnership         | Tax Incrmnt N27 | \$ 152,500.00 | TIF Grant- Yesteryear's Antique Mall     |
| 12/26/2023 | 867369  | Earth Movers Excavation               | Gas Tax         | \$ -          | WO 23-50 Gabel Road Hogan Slough Culvert |
| 12/26/2023 | 867369  | Earth Movers Excavation               | Storm Sewer     | \$ 309,220.20 | WO 23-50 Gabel Road Hogan Slough Culvert |
| 12/26/2023 | 867370  | Ecoverse Industries                   | Solid Waste     | \$ 2,795.53   | Door handle; Air pre-filter- Unit 0252   |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Solid Waste     | \$ 3,861.61   | Gravel for Landfill roads                |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Solid Waste     | \$ 3,490.33   | Gravel for roads at Landfill             |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Street/Traffic  | \$ 634.68     | inv#13385asphalt                         |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Street/Traffic  | \$ 1,800.84   | inv#13386asphalt                         |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Street/Traffic  | \$ 1,115.21   | inv#13387asphalt                         |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Street/Traffic  | \$ 332.82     | inv#13388asphalt                         |
| 12/26/2023 | 867373  | Fisher Sand & Gravel                  | Street/Traffic  | \$ 3,252.74   | inv#13389asphalt                         |

| Check Date | Check # | Name                                   | Fund Name     | Amount        | Item Desc                                   |
|------------|---------|----------------------------------------|---------------|---------------|---------------------------------------------|
| 12/26/2023 | 867376  | Good Earth Works                       | Park Dist 1   | \$ 140,448.83 | WO 23-32 Gorham Park Irrigation System      |
| 12/26/2023 | 867383  | High Point Networks                    | IT Resources  | \$ 4,940.00   | Block of Hours                              |
| 12/26/2023 | 867383  | High Point Networks                    | IT Resources  | \$ 5,271.08   | Co -Term Juniper support thru 12/31/2024    |
| 12/26/2023 | 867383  | High Point Networks                    | IT Resources  | \$ 1,520.00   | Cleanup on GP and Fire station planning     |
| 12/26/2023 | 867383  | High Point Networks                    | IT Resources  | \$ 8,439.68   | switches and maint. for Stillwater Building |
| 12/26/2023 | 867387  | InfoSend                               | P.W. Admin    | \$ 14,754.66  | Infosend Service for 11/01/2023 to 11/30    |
| 12/26/2023 | 867387  | InfoSend                               | P.W. Admin    | \$ 3,654.61   | Infosend Service for 11/01/2023 to 11/30    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Building      | \$ 74.40      | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | City Ins Fund | \$ 42.57      | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Engineering   | \$ 15.96      | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Parking       | \$ 603.05     | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Solid Waste   | \$ 9,172.27   | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Wastewater    | \$ 11,382.10  | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867391  | Invoice Cloud                          | Water         | \$ 15,877.21  | Invoice Cloud service for 11/01/23 to 11    |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 265.98     | C251366935.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 1,858.74   | C251367221.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 287.50     | C251367221.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 97.88      | C251367235.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 409.75     | C251367243.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 785.35     | C251367294.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ (287.50)   | C251367391.01                               |
| 12/26/2023 | 867385  | I-State Truck                          | Fleet         | \$ 276.90     | C251368044:01                               |
| 12/26/2023 | 867395  | Junkermier, Clark, Campanella, Stevens | General       | \$ 75,000.00  | FY23 Audit Services                         |
| 12/26/2023 | 867396  | K2 Civil                               | Solid Waste   | \$ 37,462.83  | WO 20-46 Landfill Compost Facility          |
| 12/26/2023 | 867396  | K2 Civil                               | Solid Waste   | \$ 218,196.00 | WO 22-47 Landfill Slope Stability           |
| 12/26/2023 | 867401  | Kittelsohn & Associates                | St Maint Dist | \$ 5,410.65   | WO 23-51 24th St W Signal Timing Update     |
| 12/26/2023 | 867403  | Klimate Heating, Cooling & Sheet Metal | Wastewater    | \$ 3,276.43   | Replaced gas fired furnace in Electrical    |
| 12/26/2023 | 867403  | Klimate Heating, Cooling & Sheet Metal | Water         | \$ 953.00     | Building Air Filter Replacements            |
| 12/26/2023 | 867408  | Lancer Systems                         | Public Safety | \$ 6,556.16   | 4 Lancer L15 Defense Rifles                 |
| 12/26/2023 | 867414  | Mead & Hunt                            | Airport       | \$ 8,818.72   | Amendment 2- Air Service Consulting         |
| 12/26/2023 | 867415  | Midco Diving & Marine                  | Water         | \$ 10,155.00  | WO 23-96 WTP Intake #2 Catwalk              |
| 12/26/2023 | 867420  | Montana Dakota Utilities CNG           | Fleet         | \$ 6.27       | 1102024                                     |
| 12/26/2023 | 867420  | Montana Dakota Utilities CNG           | Fleet         | \$ 4,003.39   | 1102024                                     |
| 12/26/2023 | 867421  | Montana Dakota Utilities               | Airport       | \$ 385.15     | Mud Wash. Dec 2023                          |

| Check Date | Check # | Name                                  | Fund Name        | Amount          | Item Desc                                  |
|------------|---------|---------------------------------------|------------------|-----------------|--------------------------------------------|
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 131.69       | USDA. Dec 2023                             |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 1,679.81     | New A Concourse. Dec 2023                  |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 266.12       | TSA. Jan 2023                              |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 75.42        | Detail Bay 1 Hertz. Dec 2023               |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 242.36       | IP-12 Alpine. Dec 2023                     |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 106.05       | Aero Interiors. Dec 2023                   |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 24.15        | Detail Bay 3 Enterprise. Dec 2023          |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 79.79        | Detail Bay 4 Avis/Budget. December 2023    |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 23.52        | Detail Bay 5 Thrifty/Dollar. December 2023 |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 191.72       | Detail Bay 2 National/Alamo. December 2023 |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 501.90       | Concourse Kitchen. December 2023           |
| 12/26/2023 | 867421  | Montana Dakota Utilities              | Airport          | \$ 1,161.83     | Car Wash. December 2023                    |
| 12/26/2023 | 867423  | Montana Lines                         | Arterial Streets | \$ 19,167.48    | Retainage Release FINAL                    |
| 12/26/2023 | 867425  | Morgan Contractors                    | Public Safety    | \$ 126,269.75   | Fire Station 8 Remodel                     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Arterial Streets | \$ 193.61       | Retainage Release FINAL                    |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Gas Tax          | \$ -            | WO 23-50 Gavel Road Hogan Slough Culvert   |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Park Dist 1      | \$ 1,418.67     | WO 23-32 Gorham Park Irrigation System     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Public Safety    | \$ 1,275.45     | Fire Station #8 Remodel                    |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | SID Const        | \$ 1,201.08     | SID 1419 Charles Street Council Action     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Solid Waste      | \$ 470.96       | Retainage Release FINAL                    |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Solid Waste      | \$ 378.42       | WO 20-46 Landfill Compost Facility         |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Solid Waste      | \$ 2,204.00     | WO 22-47 Landfill Slope Stability          |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | St Maint Dist    | \$ 754.52       | SID 1419 Charles Street Council Action     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Storm Sewer      | \$ 3,123.44     | WO 23-50 Gavel Road Hogan Slough Culvert   |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Trl Donate       | \$ 5,588.48     | WO 21-38 Warren Trans/Weave Const          |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Wastewater       | \$ -            | SID 1419 Charles Street Council Action     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | Water            | \$ -            | SID 1419 Charles Street Council Action     |
| 12/26/2023 | 867427  | MT Dept of Rev-CGR2                   | #N/A             | \$ 4,155.95     | SID 14-21..Cypess Point                    |
| 12/26/2023 | 867448  | Praetorian Digital, PoliceOne Academy | Public Safety    | \$ 10,094.55    | 2023-2024 PoliceOne Academy subscription   |
| 12/26/2023 | 867499  | Public Utilities                      | General          | \$ 2,074,347.63 | Houser Settlement - UTL Customer Rebates   |
| 12/26/2023 | 867451  | Rapid Assault Tools                   | Public Safety    | \$ 4,833.00     | Explosive Frame Door(Freestanding Version) |
| 12/26/2023 | 867451  | Rapid Assault Tools                   | Public Safety    | \$ 3,989.00     | Explosive Frame Door (Built-in Version)    |
| 12/26/2023 | 867451  | Rapid Assault Tools                   | Public Safety    | \$ 1,100.00     | Freight                                    |
| 12/26/2023 | 867455  | Sanderson Stewart                     | Arterial Streets | \$ 113.50       | WO 23-10 48th St W/Grand Ave Intersection  |

| Check Date | Check # | Name                           | Fund Name       | Amount       | Item Desc                                 |
|------------|---------|--------------------------------|-----------------|--------------|-------------------------------------------|
| 12/26/2023 | 867455  | Sanderson Stewart              | Tax Incrmnt N27 | \$ 3,649.00  | WO 23-09 5th Ace Corridor                 |
| 12/26/2023 | 867455  | Sanderson Stewart              | Tax Incrmnt S   | \$ 3,535.50  | WO 21-42 SBURA Streets improvements       |
| 12/26/2023 | 867456  | Schnitzer Steel Industries     | Solid Waste     | \$ 20,323.64 | A36 Steel plate 1". Qty. 3. Replace floor |
| 12/26/2023 | 867478  | Tetra Tech                     | Solid Waste     | \$ 2,837.10  | Professional Services for 3 years         |
| 12/26/2023 | 867480  | TNT Springs                    | Fleet           | \$ 502.81    | 224797                                    |
| 12/26/2023 | 867480  | TNT Springs                    | Fleet           | \$ 2,597.40  | 224797                                    |
| 12/26/2023 | 867481  | Tri-Tech Forensics             | Public Safety   | \$ 629.00    | Crime Scene Investigations training       |
| 12/26/2023 | 867481  | Tri-Tech Forensics             | Public Safety   | \$ 3,145.00  | Crime Scene Investigations training       |
| 12/26/2023 | 867481  | Tri-Tech Forensics             | Public Safety   | \$ 1,258.00  | Crime Scene Investigations training       |
| 12/26/2023 | 867485  | Utilities Underground Location | Airport         | \$ 17.27     | Oct/Nov 2023 Underground locates          |
| 12/26/2023 | 867485  | Utilities Underground Location | Airport         | \$ 45.53     | Oct/Nov 2023 Underground locates          |
| 12/26/2023 | 867485  | Utilities Underground Location | Storm Sewer     | \$ 646.44    | 1647 Excavation notifications for July    |
| 12/26/2023 | 867485  | Utilities Underground Location | Storm Sewer     | \$ 656.65    | excavation Notifications for August 2023  |
| 12/26/2023 | 867485  | Utilities Underground Location | Storm Sewer     | \$ 552.25    | Excavation Notifications for June 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Storm Sewer     | \$ 713.56    | Excavation Notifications for Sept 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Storm Sewer     | \$ 504.75    | Excavation Notifications October 2023     |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 646.45    | 1647 Excavation notifications for July    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 646.44    | 1647 Excavation notifications for July    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 656.65    | excavation Notifications for August 2023  |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 656.65    | excavation Notifications for August 2023  |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 552.24    | Excavation Notifications for June 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 552.25    | Excavation Notifications for June 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 713.56    | Excavation Notifications for Sept 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 713.57    | Excavation Notifications for Sept 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 504.76    | Excavation Notifications October 2023     |
| 12/26/2023 | 867485  | Utilities Underground Location | Street/Traffic  | \$ 504.75    | Excavation Notifications October 2023     |
| 12/26/2023 | 867485  | Utilities Underground Location | Wastewater      | \$ 323.23    | 1647 Excavation notifications for July    |
| 12/26/2023 | 867485  | Utilities Underground Location | Wastewater      | \$ 328.33    | excavation Notifications for August 2023  |
| 12/26/2023 | 867485  | Utilities Underground Location | Wastewater      | \$ 276.12    | Excavation Notifications for June 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Wastewater      | \$ 356.78    | Excavation Notifications for Sept 2023    |
| 12/26/2023 | 867485  | Utilities Underground Location | Wastewater      | \$ 252.38    | Excavation Notifications October 2023     |
| 12/26/2023 | 867485  | Utilities Underground Location | Water           | \$ 323.23    | 1647 Excavation notifications for July    |
| 12/26/2023 | 867485  | Utilities Underground Location | Water           | \$ 328.33    | excavation Notifications for August 2023  |
| 12/26/2023 | 867485  | Utilities Underground Location | Water           | \$ 276.13    | Excavation Notifications for June 2023    |

| Check Date | Check # | Name                           | Fund Name      | Amount      | Item Desc                              |
|------------|---------|--------------------------------|----------------|-------------|----------------------------------------|
| 12/26/2023 | 867485  | Utilities Underground Location | Water          | \$ 356.79   | Excavation Notifications for Sept 2023 |
| 12/26/2023 | 867485  | Utilities Underground Location | Water          | \$ 252.38   | Excavation Notifications October 2023  |
| 12/26/2023 | 867487  | Verizon Wireless               | Engineering    | \$ 27.32    | PW-Engineering                         |
| 12/26/2023 | 867487  | Verizon Wireless               | Fleet          | \$ 107.60   | Motor Pool                             |
| 12/26/2023 | 867487  | Verizon Wireless               | General        | \$ 174.10   | City Administrator 0100-13130-403450   |
| 12/26/2023 | 867487  | Verizon Wireless               | General        | \$ 40.01    | Code Enforcement Laptop                |
| 12/26/2023 | 867487  | Verizon Wireless               | General        | \$ 40.01    | Code Enforcement Manager Laptop        |
| 12/26/2023 | 867487  | Verizon Wireless               | General        | \$ 27.32    | Public Safety -Laptop                  |
| 12/26/2023 | 867487  | Verizon Wireless               | PD Program     | \$ 546.39   | CCSIU Cell/PTT                         |
| 12/26/2023 | 867487  | Verizon Wireless               | PD Program     | \$ 80.02    | CCSIU RAVEN                            |
| 12/26/2023 | 867487  | Verizon Wireless               | Phone System   | \$ 80.10    | WRF Cradle Point Belknap Cradle Point  |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 40.01    | Bait Car                               |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 80.02    | Fire MDT                               |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 10.15    | Fire MDT                               |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 440.11   | MDT Toughbooks                         |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 61.90    | Police Bait Car                        |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 50.03    | Police iPads                           |
| 12/26/2023 | 867487  | Verizon Wireless               | Public Safety  | \$ 10.02    | Police MiFi                            |
| 12/26/2023 | 867487  | Verizon Wireless               | Solid Waste    | \$ 109.28   | PW-Solid Waste                         |
| 12/26/2023 | 867487  | Verizon Wireless               | Solid Waste    | \$ 93.98    | PW-SW-ON CALL Solid Waste On Call      |
| 12/26/2023 | 867487  | Verizon Wireless               | Solid Waste    | \$ 24.12    | PW-SW-ON CALL Solid Waste On Call      |
| 12/26/2023 | 867487  | Verizon Wireless               | Solid Waste    | \$ 524.52   | Solid Waste Tablets -Routware          |
| 12/26/2023 | 867487  | Verizon Wireless               | Street/Traffic | \$ 174.67   | PW-Streets iPads -Street Cameras       |
| 12/26/2023 | 867487  | Verizon Wireless               | Street/Traffic | \$ -        | PW-Streets City Works                  |
| 12/26/2023 | 867487  | Verizon Wireless               | Street/Traffic | \$ 232.77   | PW-STRT TRFC Streets                   |
| 12/26/2023 | 867487  | Verizon Wireless               | Transit        | \$ 309.02   | MET AVL                                |
| 12/26/2023 | 867487  | Verizon Wireless               | Transit        | \$ 1,120.28 | MET Max Transit                        |
| 12/26/2023 | 867487  | Verizon Wireless               | Transit        | \$ 970.41   | MET Max Transit                        |
| 12/26/2023 | 867487  | Verizon Wireless               | Wastewater     | \$ 400.10   | MET Tablets                            |
| 12/26/2023 | 867487  | Verizon Wireless               | Water          | \$ -        | PW Belknap Meter Shop                  |
| 12/26/2023 | 867487  | Verizon Wireless               | Water          | \$ 27.32    | PWBLKNP Water Treatment                |
| 12/26/2023 | 867487  | Verizon Wireless               | Water          | \$ 67.35    | PWBLNP Comm-Meter CityWorks/Neptune    |
| 12/26/2023 | 867487  | Verizon Wireless               | Water          | \$ 40.01    | PWBLNP Comm-Meter CityWorks/Neptune    |

**City Council Regular**

**Date:** 01/22/2024  
**Title:** MT Dept. of Commerce Infrastructure Grant Application  
**Presented by:** Ted Wilson, Grants Coordinator  
**Department:** Finance  
**Presentation:** Yes  
**Legal Review:** No  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends the City Council hold a public hearing and approve the prioritized project list on first reading, allowing the City to submit a single grant application to the Montana Department of Commerce.

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

The Montana Legislature passed HB 355 "The State-Local Infrastructure Partnership Act of 2023", appropriating \$20 million from the state general fund to distribute as grants to incorporated cities and towns for eligible local government infrastructure projects that fully comply with HB 355. The published guidelines listed 10 areas for which cities could use funds for "maintenance or repair" of existing infrastructure. However, the guidelines also noted that of highest priority were drinking water systems, wastewater treatment systems, and fire suppression systems "if independent of drinking water systems". Cities are asked to provide clear reasoning for not funding one of those three areas if they submit a project from one of the other seven categories. The city must also be able to demonstrate that they will be able to make a 25% local match of the total project cost in its application. The law required cities to solicit projects from their departments, prioritize the resulting lists, and present those lists at a public hearing. Once the public hearing is completed, the city may finalize its priority list and make its application(s) to the DEC for the funds. A city must submit a separate application for each project they wish to have funded under the bill - and each project must have a 25% non-federal local cash match identified and committed. Finally, each submitted project must be included in the current CIP as adopted by the City Council.

The City of Billings will receive slightly more than \$1.4 million in funding under a formula set forth in the bill. The project(s) total cost must be \$1.87 million, which includes the local match of \$468,000. In examining projects submitted by City departments, the administration recommends that the City of Billings submit one application for the entire \$1.4 million to help pay for our Public Works annual water main replacement program for FY25. Public Works has listed the project on page 171 of the FY25-29 CIP. The water main replacement program will cost \$4.8 million in FY25, more than enough to cover the 25% local match requirement. Local funds not spent on the water main project will be diverted to the West End Water Treatment Plant and Reservoir fund or other Public Works projects as determined at a later date.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

The City of Billings will receive slightly more than \$1.4 million in funding under a formula set forth in the bill. The project(s) total cost must be \$1.87 million, which includes the local match of \$468,000. The water main replacement program will cost \$4.8 million in FY25, more than enough to cover the 25% local match requirement. Local funds not spent on the water main project will be diverted to the West End Water Treatment Plant and Reservoir fund or other Public Works projects as identified at a later date.

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**Attachments**

DEC Infrastructure Public Hearing

# CoB Project Priorities for DEC Grant Public Hearing

The City of Billings is allocated \$1,408,525 in funding by the Montana Department of Commerce (DEC) for maintenance and repair projects, with a required 25% full project budget local cash match. This funding was authorized by Montana House Bill 355, which was adopted during the last legislative session. HB 355 commits \$20 million from the state general fund for payment to municipalities.

- The city can submit as many projects as it wants that exhaust the \$1.4 million. Each project needs to be able to provide a local cash match (does not include in-kind, state, federal, or other non-city cash funds).
- The projects must be for maintenance and repair of existing city infrastructure. The project needs to be in the current CIP.
- The City needs to demonstrate that it solicited from its departments possible projects that meet the requirements of HB 355, and that we held a public hearing to gain public comment regarding our prioritization of those projects. Based on all this feedback, the administration will finalize the priority list and submit it, with our application, to Commerce for funding approval.

**Eligible projects include the maintenance or repair of:**

- **Drinking water systems**
- **Wastewater treatment systems**
- **Fire suppression systems (if independent of a drinking water system)**
- Streets
- Roads
- Bridges
- Landfills
- Streetlights (this would include LED replacements)
- Airports
- Public grounds and buildings (includes parks and trails IF we are maintaining or repairing existing public facilities)

**Priority must be given to projects that maintain or repair publicly owned drinking water systems, publicly owned wastewater treatment systems and municipal fire suppression systems that are independent of a water system.**

Despite that last sentence, DEC said that if we can show that we already have those projects under control or are not in need of funds at this time, we can apply for the other project types on the list.

The funds do not cover new construction.

**Deadlines:**

- Dec. 8, 2023: Departments submitted their project priorities to Finance. Finance compiled them into a list and forwarded them to administration to determine a priority ranking of projects for a public hearing.
- Dec. 31, 2023: CoB submits the priority list to DEC as a preapplication.
- Before Mar. 30, 2024: The list is taken to the city council for a public hearing.

- Before Mar. 30, 2024: City administration finalizes project list for which applications for funding will be submitted.
- Mar. 30, 2024: Applications for each project on the final list are submitted (one application for each project).
- Projects may begin after submission of the applications – reimbursement of costs will happen when the conditions of the grant have been met.
- The bill states that projects must be completed by Dec. 31, 2024, but DEC said that extensions will likely be granted. The hard deadline is Dec. 31, 2027.

**Projects submitted by departments (with references to the proposed FY25-29 CIP) in prioritized order:**

- Public Works: Annual water main replacement program - \$4.8 million in FY25 – page 171.
- MET Transit: Replacement of bus wash equipment inside the bus wash building in FY26 - \$200,000 – page 50.
- Parks and Rec: Irrigation system replacement/upgrades at Harvest and Olympic Parks - \$100,000 in FY25 – page 74.
- Parks and Rec: Replacement pump stations at Ironwood Park - \$100,000 in FY25 – page 76.
- Parks and Rec: Irrigation system replacements at Spring Creek and Evergreen Parks - \$315,097 in FY26 – page 78.
- Parks and Rec: Replacement of walking bridge at Pioneer Park - \$100,000 in FY25 – page 82.

**Projects in proposed FY25-29 CIP in prioritized order:**

- Public Works: Annual water main replacement program - \$4.8 million in FY25 – page 171.

**Rationale:**

Given the state priorities of water and wastewater infrastructure maintenance and repair in HB 355, it would make sense for us to prioritize our water main replacement program, which will cost the city \$4.8 million in FY25. Public works has identified many water main lines that need to be replaced – these would closely match the type of project DEC envisions for program funding. The City can easily meet the 25% match requirement as Public Works has already allocated non-federal funds to the project. The \$1.4 million paid by the DEC funds will allow Public Works to reallocate non-federal funding (\$1.4 million) to other needed projects such as the West End Water Treatment Plant and Reservoir.

Further, the Parks irrigation projects may qualify for Bureau of Land Management grant funding – staff is currently planning a grant application. The bus wash likely would not qualify for DEC funding – or at least would be highly questioned. Staff will continue to look for appropriate resources to complete that project.

**City Council Regular**

**Date:** 01/22/2024  
**Title:** BMCC Chapter 26 Water and Wastewater First Reading and Public Hearing  
**Presented by:** Debi Meling  
**Department:** Public Works  
**Presentation:** Yes  
**Legal Review:** Yes  
**Project Number:** N/A

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**RECOMMENDATION**

Staff recommends that City Council approve the modifications to BMCC Chapter 26 after holding a public hearing.

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

Chapter 26 of the Billings, Montana City Code (BMCC) defines the policies related to water and wastewater service. City staff has determined a need to modify portions of Chapter 26 to address several issues.

There are several "clean up" items that need to be addressed and are as follows:

- Stormwater. In 2011, reimbursement conditions for stormwater were added to this section. In 2015, many of them were removed but not all. The modifications will delete all remaining references to stormwater. The stormwater section of the BMCC is being modified later in 2024 to include reimbursement.
- Annexation terminology: The annexation terminology used by the city has changed, so references within BMCC Chapter 26 were changed to reflect the new terminology.
- Definitions: There is an inconsistency between the definitions in the BMCC and the Water/Sewer Rules and Regulations that need to be corrected.
- Billing: The billing section of the chapter needs to be updated to reflect changes to billing procedures.

There are a few content related items that need to be updated as well:

- Backflow prevention needs to be added to the BMCC.
- Reimbursement conditions need to be updated to reflect direction from the City Council.
- The requirement to discontinue open ditches is not always in the best interest of the City and should be removed from this section of the BMCC.

The modifications were presented to the Budget and Finance committee on December 13, 2023, and to City Council during a work session on January 2, 2024. The Budget and Finance Committee and City Council both indicated concurrence with the presented changes with a modification to the time for reimbursement payments. Also, City Council asked that staff incorporate changes to the reimbursement language to ensure the responsibility for meeting the conditions for repayment to the developer who constructed the improvements falls on the developer. Additionally, some minor language revisions were requested by City Council. Changes were incorporated and will be discussed during the presentation.

**STAKEHOLDERS**

City staff is meeting with developers before the January 22, 2024, City Council meeting to discuss these modifications. Staff will present any feedback during the presentation.

**ALTERNATIVES**

City Council may:

- Approve the modifications to the BMCC Chapter 26 on First Reading; or,
- Not Approve the modifications. If not approved, the changes will not be made and policies related to Water and Wastewater service will continue as they currently are.

**FISCAL EFFECTS**

The significant fiscal impact is associated with the reimbursement conditions. Currently, reimbursement is often

required at annexation but the City Code does not define the conditions. Also, for properties that are already annexed, reimbursement would not be required without these modifications.

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**Attachments**

- Ordinance Redlined
- Ordinance Clean
- Presentation

## Chapter 26 WATER AND WASTEWATER UTILITIES<sup>1</sup>

### ARTICLE 26-100. IN GENERAL

#### Sec. 26-101. Regulations.

The city administrator shall promulgate and publish rules and regulations for administration and operation of the municipal water and wastewater utilities. Those rules and regulations shall, as a minimum, include the rules and regulations required under Montana Code Annotated, Section 69-7-201.

(Ord. No. 85-4618, § 1(18.04.010), 1-14-85)

#### Sec. 26-102. Failure to comply with rules and regulations.

Any person who shall fail to comply with the rules and regulations after notice of nature of violation/delinquency and reasonable time to comply shall be subject to termination of service. Provided, that the service may not be terminated for failure to pay until forty (40) days after billing date and a notice has been mailed to the customer of delinquency. Provided, further, that in emergency situations, as determined in the sole discretion of the city, service may be terminated without notice. Said service shall not be restored until the violation/delinquency is corrected and full compliance is assured. In addition, persons failing to obey promulgated rules and regulations shall be subject to punishment and penalties as provided for violations of other provisions of this code. Violators of Chapter 24 of the rules and regulations shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.020), 1-14-85; Ord. No. 92-4906, § 1, 7-27-92)

#### Sec. 26-103. Review of administration's action.

Any person aggrieved by an administrative decision, any rule or regulation adopted or the application of any rule or regulation governing the operation of the municipal water and wastewater utilities may petition the city council for review. Said aggrieved person shall file a written notice of appeal with the city administrator within ten (10) days after the date on which the grievance occurred. The notice of appeal shall state the specific action being

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<sup>1</sup>Editor's note(s)—Ord. No. 85-4618, adopted Jan. 14, 1985, did not specifically amend the Code hence codification of said ordinance herein as Ch. 26, Arts. 26-100—26-400, was at the discretion of the editor. Prior to the enactment of Ord. No. 85-4618, former § 26-101 saved from repeal Title 18, §§ 10.60.030, 10.60.040, 10.80.010—10.80.090, of the "Billings Municipal Code, 1967" pertaining to water and wastewater utilities.

Cross reference(s)—Administration, Ch. 2; public works board, § 2-536 et seq.; building and building regulations, Ch. 6; plumbing code, § 6-501 et seq.; health and sanitation, Ch. 15; planning, Ch. 20; solid waste, Ch. 21; streets, sidewalks and other public places, Ch. 22; subdivision regulations, Ch. 23.

State law reference(s)—Utility services, MCA 7-13-101 et seq.; municipal utilities, MCA 69-7-101 et seq.

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appealed, the reasons for appealing such action, the particular relief sought, the aggrieved person's correct mailing address, and shall be signed by the aggrieved person. The petitioner shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. The petitioner and all other interested persons may appear at the time and place and be heard. The city council shall act on the question within thirty (30) days of the hearing on the question.

(Ord. No. 85-4618, § 1(18.04.030), 1-14-85; Ord. No. 85-4664, 9-9-85)

## **Sec. 26-104. Definitions.**

Unless the context specifically indicates otherwise, the meanings of terms used in this article on municipal water and wastewater utilities and in the rules and regulations authorized herein shall be as follows:

*Backflow Preventer* means a device or means to prevent backflow into the potable water system. *Building sewer* means the privately-owned extension of the building drain to the public sanitary sewer or other place of disposal.

*Combined sewer* means a sewer receiving both surface runoff and wastewater.

*County or Yellowstone County* means the County of Yellowstone in the State of Montana.

*Extension* means the act or process of extending, adding to or enlarging the municipal water supply system, ~~and/or~~ wastewater system on the city's side of the point of delivery/point of connection to provide municipal water/wastewater service to a prospective customer/user or group of prospective customers/users.

*Fireline* means all service pipes, curb stops and/or valves, curb boxes and/or valve boxes, backflow prevention devices, check valves, inside piping, fittings, fixtures, and any other apparatus on customer's side of the point of delivery used for, and limited to, the providing of water to customers for fire suppression activities.

*Garbage* means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

*Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body or surface or ground water.

*Point of connection* means the point at which the ~~city's~~ municipal wastewater system connects physically to a ~~user's customer's~~ building sewer, ~~which, unless otherwise designated in the user's service agreement, the point of connection shall be located at and include the user's service tee or wye fitting which is normally attached to the public sanitary sewer located in a public right-of-way and/or easement that abuts and fronts the property to be served.~~

*Point of delivery* means the point at which the ~~city's~~ municipal water supply system connects physically to a customer's ~~facilities~~ water service line, ~~which, unless otherwise designated in the customer's service agreement, the point of delivery shall be located at and shall include the customer's the corporation stop which is normally attached to the public water main located in the public right-of-way and/or easement that abuts and fronts the property to be served.~~

*Public sanitary sewer* means the sewer directly controlled by the city and laid in the street or other right-of-way for the collection of wastewater from user's building sewers.

*Public water main* means the pipe directly controlled by the city and laid in the street or other right-of-way for the distribution of water to ~~a customer of customers through~~ customers' water service lines.

*Rules and regulations* mean all rules and regulations promulgated by the city administrator for administration and operation of the utility as provided for in Section 26-101, BMCC.

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*Sanitary sewer* means a sewer that carries wastewater or sewage liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

*Sanitary sewer service line* or *wastewater service line* means that portion of the privately-owned building sewer extending from the property line of the property served to the public sanitary sewer.

*Sewer* means a pipe or conduit for carrying wastewater or drainage.

*Shall* is mandatory; *may* is permissive.

*Storm sewer* or *storm drain* means a sewer ~~which that~~ carries storm and surface waters and drainage but excludes wastewater and polluted industrial wastes. *Suspended solids* means solids that either float on the surface or are in suspension in water, wastewater or other liquids, and which are removable by laboratory filtering.

*User* or *Customer* means any person ~~who discharges, causes or permits the discharge of wastewater into the publicly owned wastewater system.~~ receiving municipal water/wastewater service directly or indirectly from the municipal water supply system/municipal wastewater system.

*Wastewater* or *Sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and storm water that may be present, whether treated or untreated, which is discharged into or permitted to enter the municipal wastewater system.

*Wastewater service* or *Municipal wastewater service* means the act of directly discharging ~~either directly or indirectly of~~ wastewater into the municipal wastewater system from users' building sewers ~~into the wastewater system~~ for the purpose of collecting, transporting, treating and disposing of said users' wastewater.

*Wastewater service area* means the particular territory which has been officially adopted by the city council as the area it intends to provide with wastewater service.

*Wastewater system* or *Municipal wastewater system* means any ~~sanitary~~ wastewater facilities, including intercepting sewers, outfall sewers, wastewater collection systems and wastewater treatment facilities controlled by the city.

*Watercourse* means a channel in which a flow of water occurs, either continuously or intermittently.

*Water service* or *Municipal water service* means the supplying of water ~~either directly or indirectly~~ from the municipal water supply system, or the availability of water supplied ~~either directly or indirectly~~ from the municipal water supply system, at the point of delivery and also the water so delivered or used.

*Water service area* means the particular territory which has been officially adopted by the city council as the area it intends to serve with municipal water service.

*Water service line* means all privately-owned facilities, including service pipe, corporation stop, approved curb stop, curb box, municipal water meter box or vault, backflow prevention device, pressure reducing valve, expansion tank, inside piping, appliances, and other apparatus on customer's side of the point of delivery, except the ~~city's~~ municipal water meter and any other equipment owned by the city.

*Water supply system* or *Municipal water supply system* means any devices, facilities, structures, equipment, land or works controlled by the city for the purpose of the processing, treatment, transmission, storage, distribution, pumping and measurement of water supplied to customers.

(Ord. No. 85-4618, § 1(18.04.040), 1-14-85; Ord. No. 06-5356, § 2, 1-9-06)

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### **Sec. 26-105. Jurisdiction.**

The jurisdictional area of this Code and regulations and rules shall govern any territory, whether within or without the corporate city limits, which is presently or in the future to be served with water or wastewater service or both.

(Ord. No. 85-4618, § 1(18.04.050), 1-14-85)

### **Sec. 26-106. Special agreements for unusual wastewater treatment.**

The city and any industrial concern may by written agreement not inconsistent with this article provide that an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern.

(Ord. No. 85-4618, § 1(18.04.060), 1-14-85)

### **Sec. 26-107. Rates and charges.**

All water and wastewater rates, charges and classifications shall be established and changed under the procedure prescribed and outlined in Montana Code Annotated Title 69, Chapter 7, Part 1. The council's decision pursuant to Montana Code Annotated Section 69-7-112 shall be in writing and in the form of a city resolution. ~~Provided, that said resolution shall not have an effective date until ten (10) days after the date of adoption.~~ All other fees and charges imposed by the city within the utilities service areas shall be set by the city council by resolution.

#### **~~(Sec. 26-107.1. Property safety water supply service charge; amount.~~**

~~There is hereby imposed a service charge for property safety water supply as follows: Each owner of real and/or personal property within the city shall pay to the city that portion of the total property safety water supply service charge imposed annually as hereafter provided, as the total taxable value of such real and/or personal property bears to the total taxable value of all real and personal property within the city; provided, however:~~

~~(1) — Owners of parcels of real property which have no taxable value shall pay an annual charge of twenty dollars (\$20.00) for each of such parcels;~~

~~(2) — All parcels having taxable value shall pay at least a minimum annual charge of one dollar (\$1.00) per parcel.~~

~~(Ord. No. 84-4604, § 1, 8-20-84)~~

~~Editor's note(s) — Ord. No. 84-4604, § 1, adopted Aug. 20, 1984, did not specifically amend this Code and said provisions have been included herein at the discretion of the editor as § 26-107.1~~

~~Ord. No. 85-4618, § 1(18.04.070), 1-14-85)~~

### **Sec. 26-108. Combined charges and water and wastewater service.**

All bills issued for municipal water service, wastewater service, solid waste service, or any other City services shall state the amounts for each service separately. A bill may contain any combination of

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services, depending on the availability of services for the property being billed. Partial payments are allowed, but the payment is prorated against all outstanding charges.

All statements issued for water, wastewater, solid waste, or other City services and charges to parties or properties which are also customers of the city water system, whether within or without the city limits, shall be included as a part of the statements for water service and charges, but separately stated as a surcharge. No payment of water charges or of wastewater charges so billed shall be accepted without payment of both such items. Partial payment shall be prorated against all outstanding charges.

(Ord. No. 85-4618, § 1(18.04.080), 1-14-85)

### **Sec. 26-109. Meters for nonusers of city water system.**

Meters or other means of gauging or metering water used on premises not using the city water service but connected to the city wastewater system for wastewater service shall be installed at the expense of the owners of such premises in accordance with city rules and regulations. Said meters shall be accessible to the city and its employees to facilitate the determination of the wastewater charges to be paid by the owners or occupants of such premises.

(Ord. No. 85-4618, § 1(18.04.090), 1-14-85; Ord. No. 06-5356, § 3, 1-9-06)

### **Sec. 26-110. Statement for wastewater service only.**

Statements issued for city wastewater service to parties and properties connected to the wastewater system for wastewater service but which do not receive city water service shall be made on the same forms and at the same times as nearly as may be and with the same billing charges as the combined water and wastewater statements.

(Ord. No. 85-4618, § 1(18.04.100), 1-14-85)

### **Sec. 26-111. Adjustment of wastewater charges.**

- (a) The wastewater rates, charges and rental may be adjusted, as applied to particular premises, by the procedure set forth below, where it appears that:
  - (1) The character of the wastewater from any manufacturing, industrial or other plant, building or premises is such that the wastewater rates provided are unfair, inequitable, unreasonable or inadequate to pay the cost of wastewater service to such premises;
  - (2) The entire amount of water delivered through the metered line to any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that such water does not enter the wastewater system; or
  - (3) The entire amount of water delivered through a secondary meter on any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that water so delivered does not enter the wastewater systems. Secondary meters shall be of a type, size and make and set at such place as shall be designated by the city rules and regulations.
- (b) Any person who considers the wastewater rates, charges and rental applicable to his premises unfair, inequitable or unreasonable may present his complaints to the public works board, stating the facts and grounds of complaint. The board shall advise the city administrator or his designee of any need for investigation and a report of the investigation shall be made to the board. The public works board shall consider each and all of such complaints and reports and communicate its recommendations to the city

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administrator. Where the entire amount of water or any metered portion thereof delivered to any premises does not enter the wastewater systems, this fact shall be part of the report. When the board finds that the wastewater rates, charges and rentals applicable to any premises are for other reasons unfair, inequitable, unreasonable or inadequate, it shall communicate its findings to the city administrator. The city administrator shall report the same to the city council and the council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the wastewater rates, charges and rentals for such premises is necessary to provide equality with those charged to others, it shall so provide, either by amendatory ordinance, or by resolutions fixing special wastewater rates and charges for individual premises during the period of continuance of special circumstances which make the standard rates and changes unfair, inequitable, unreasonable or inadequate.

(Ord. No. 85-4618, § 1(18.04.110), 1-14-85; Ord. No. 10-5504, § 5, 2-22-10)

**Sec. 26-112. Owner's duty to use utility services.**

The owner of any house, building or other property used for human occupancy, employment or recreation, which is situated within the city and abuts on any street, alley or right-of-way in which there is situated water or wastewater utilities within one hundred (100) feet of the property line, shall at his own expense properly connect and use said services.

(Ord. No. 85-4618, § 1(18.04.120), 1-14-85)

**Sec. 26-113. When private systems may be used.**

When municipal water or wastewater utilities are not available as provided in this Code, private systems may be used so long as water or wastewater utilities are not available, provided, that all private systems shall be constructed, installed and maintained under and pursuant to the rules and regulations of the city-county health department.

(Ord. No. 85-4618, § 1(18.04.130), 1-14-85)

**Sec. 26-114. Inspection of water and wastewater systems and facilities.**

The city administrator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing, in accordance with the provisions of the code on municipal water and wastewater utilities [this chapter.]

(Ord. No. 85-4618, § 1(18.04.140), 1-14-85)

**Sec. 26-115. Permit required for connection, extension or use.**

No person shall uncover, make any connections with or opening into, extend, use, alter or disturb the water supply system and/or wastewater system without first obtaining a written permit from the city and providing the insurance and bond required by section 6-512.

(Ord. No. 85-4618, § 1(18.04.150), 1-14-85; Ord. No. 03-5251, § 1, 8-11-03)

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## Sec. 26-116. Unpolluted drainage; storm sewers.

- (a) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the city. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the city to a storm sewer, combined sewer or natural outlet.
- (b) No storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters shall be discharged into any public sanitary sewer.

(Ord. No. 85-4618, § 1(18.04.160), 1-14-85)

## Sec. 26-117. Prohibited acts.

It is prohibited for any person to do any of the following:

- (1) Place, deposit, put, cause or permit to be put the carcass of any dead animal, or any offal or excrement from any human being, garbage or any foul or polluting matter upon public or private property within the city or area under the jurisdiction of the city or into any stream, pond spring or reservoir within the corporate limits of the city, or within five (5) miles thereof, from which stream, pond, spring or reservoir the city derives or obtains any portion of its water supply.
- (2) Discharge into any natural outlet or open ditch within the city or in any area under the jurisdiction of the city, any wastewater, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this article.
- (3) Construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater, except that a septic tank may be used when it qualified as a private system.
- (4) Bathe, swim or wade in any finished water reservoir ~~or intake to the city water supply~~ within the corporate limits of the city, or within five (5) miles thereof, from which reservoir the city derives or obtains any portion of its water supply. The city intake being that place on the Yellowstone River where water is diverted from the stream of such river into the water supply system, and within a distance of five hundred (500) feet upstream from such intake, on the same side of the river from which water enters the intake.
- (5) Extend, permit, or cause to be extended, beyond the service area boundaries of the city any public or private water and/or wastewater systems which are either directly or indirectly connected with the water supply system or wastewater system of the city.
- (6) Maliciously, willfully or negligently break, damage, destroy or deface any structure, equipment or other appurtenance of the water supply system and/or wastewater system.
- (7) Without authorization uncover, tamper with or attempt to repair any such equipment.
- (8) Connect roof spouts, foundation drains, areaway drains, cooling water drains or other sources of surface run off, ground water or unpolluted water to a building sewer or building drain which is connected directly or indirectly to the wastewater systems.
- (9) Install sanitary sewer service lines and appurtenances, make connections to the wastewater systems, make repairs, alterations or extensions thereto.
- (10) Allow any ground water, surface water, mud, gravel, sand, rock, septage or any similar material or any foreign material to enter the wastewater system.

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- (11) Make or maintain connection with any pipes or private services connected with the city water supply system so as to obtain water from any source other than the water supply of the city.

(Ord. No. 85-4618, § 1(18.04.170), 1-14-85)

### **Sec. 26-118. Damage to public water supply system and wastewater system.**

Any person constructing extensions or installing water service lines, firelines or sanitary sewer service lines shall cause to be immediately repaired at his or its expense any damage to the water supply system, and/or wastewater system.

(Ord. No. 85-4618, § 1(18.04.180), 1-14-85)

### **Sec. 26-119. Violator liability for damages.**

Any person violating any of the provisions of this chapter is liable to the city for any expense, loss or damage occasioned to the city by reason of such violation. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.190), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

### **Sec. 26-120. Notice to violators.**

Any person found to be violating the provisions of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for its satisfactory correction. The offender shall, within the period of time stated in such notice, permanently cease all violations. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.200), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

## ***ARTICLE 26-200. WATER AND WASTEWATER SERVICE AREA***

### **Sec. 26-201. Intent and purpose.**

The intent and purpose of this article is to:

- (1) Adopt an official water service area which specifically designates that particular territory which is to be served with water service from the water supply system;
- (2) Adopt an official wastewater service area which specifically designates that particular territory which is to be served with wastewater service from the wastewater system.
- (3) Provide for an orderly, planned, and cost effective method of enlarging the service area so adopted;
- (4) Promote annexation to the corporate city limits of all properties to be served from the water supply system and by the wastewater system.
- (5) Ensure public participation and comment in the decision making process with respect to all enlargements of the service areas.

(Ord. No. 85-4618, § 1(18.05.010), 1-14-85)

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### **Sec. 26-202. Adoption of service area.**

The official water or wastewater service area for the city is that area of the city within the boundaries of the city, any areas presently served outside the city and any subsequently approved amendments thereto. A map depicting the water service area adopted herein, and any enlargements that may be from time to time approved by the city council, shall be made available at all times for public inspection during regular working hours at the Utility Service Center, 2251 Belknap Avenue, Billings, Montana. A map depicting the wastewater service area shall be developed and maintained in the same manner.

(Ord. No. 85-4618, § 1(18.05.020), 1-14-85; Ord. No. 06-5356, § 4, 1-9-06)

### **Sec. 26-203. Prerequisite to application.**

Unless this section is waived by the mayor and city council as provided in section 26-207, the following conditions shall be met prior to making application for enlargement of the service area:

- (1) The property at the time the application is filed shall be:
  - a. Contiguous to the boundary of the service area as same exists;
  - b. ~~Entirely within the city's Red Area on the Limits of Annexation Map~~ Entirely within areas allowed for annexation as described in the city annexation policy;
  - c. Entirely within the city's facilities planning area.
- (2) Applicant shall complete annexation requirements.
- (3) Provided, that should a state or federal governmental entity, as a condition of providing funds or grants, require that service be extended to other areas outside the scope of this section (section 26-203), the city council may, upon receipt of application for waiver and upon a proper showing, waive the requirements of this section.

(Ord. No. 85-4618, § 1(18.05.030), 1-14-85; Ord. No. 11-5535, § 2, 6-13-11; Ord. No. 16-5673, § 1, 6-27-16)

### **Sec. 26-204. Annexation requirements.**

- (a) Unless this section is waived by the mayor and city council as provided in section 26-207, all properties to be included within the service area shall be annexed or an attempt at annexation shall be made first and before any service area enlargement applications may be considered. Further, that whenever possible the property being considered for inclusion in the service areas shall be annexed to the city rather than accepting waivers of the property owner's right to protest annexation of said property to the city. Waivers may be accepted by the city in its sole discretion only in those particular cases where good and sufficient cause is shown and a hardship would result if waivers were not accepted.
- (b) A prospective applicant shall first petition the city to annex the property involved prior to submission of a service area enlargement application. The city council shall then consider such petition. Any waivers must be in legal form as approved by the city attorney; be recorded with the County Clerk and Recorder, Yellowstone County, Montana; run with the land; and shall be signed by owners of the majority of the land area and by a majority of the land owners of the area to be considered for inclusion in the water service area.
- (c) The city administrator shall notify in writing the prospective applicant of denial of annexation or right to file waivers or both, and approval or denial of enlargement of the service area. If approved the applicant shall be notified as to when the requirements set forth in this section have been satisfactorily completed and authorize said applicant to proceed with the service area enlargement application.

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(Ord. No. 85-4618, § 1(18.05.040), 1-14-85; Ord. No. 16-5763, § 2, 6-27-16)

**Sec. 26-205. Enlargement application.**

Applications and required documentation for water and/or wastewater service area enlargements shall be submitted in writing using forms provided by the city.

(Ord. No. 85-4618, § 1(18.05.050), 1-14-85; Ord. No. 16-5763, § 3, 6-27-16)

**Sec. 26-206. Public hearing.**

At the time of completion of annexation, the annexed territory shall automatically be included in the service area; however, before officially acting upon any application for enlargement of the service area into an unannexed area the city council shall hold a public hearing thereon and shall give public notice of hearing upon each such application.

(Ord. No. 85-4618, § 1(18.05.060), 1-14-85; Ord. No. 16-5763, § 4, 6-27-16)

**Sec. 26-207. City council action.**

After the conclusion of a public hearing as provided in section 26-206, by a simple majority vote of those members present and voting, the mayor and city council may waive the requirements of sections 26-203 and 26-204 if in their discretion there exists unique or exceptional factual circumstances that convince them that such requirements within these two (2) sections are unnecessary or impractical.

If the requirements of 26-203 and 26-204 are not waived, the city council shall approve, conditionally approve or deny an application for enlargement of a service area that has met the requirements of section 26-203 and 26-204 within thirty (30) days after the date of the public hearing. The approval or conditional approval shall be in force for the period of time set forth in the approval. A denial of an application shall be in force for one (1) year after date of such denial.

In all circumstances where an enlargement of a service area has been approved or conditionally approved but annexation has been denied, prior to the provision of services by the city the applicant shall enter into a service agreement with the city and shall submit a written waiver of right to protest annexation.

(Ord. No. 85-4618, § 1(18.06.070), 1-14-85; Ord. No. 16-5763, § 5, 6-27-16)

***ARTICLE 26-300. WATER SERVICE LINES, SANITARY SEWER SERVICE LINES AND  
FIRELINES***

**Sec. 26-301. Installation of lines.**

Separate and independent water and sanitary sewer service lines shall be provided for each separate building. Water service lines, firelines or combinations thereof shall be connected to the public water main and sanitary sewer service lines shall be connected to the public sanitary sewer situated within the public right-of-way abutting and fronting the property to be served and within the limits of the property's frontage on the right-of-way involved. In addition, whenever possible, the service lines shall be installed perpendicularly to the public right-of-way containing the public water main and public sanitary sewers to which connection is to be made. In each case, the site, arrangement, types of materials used, and method of construction of service lines shall all be approved by

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the city administrator prior to construction of such facilities. If a parcel of land does not front on a public water main or a public sanitary sewer, then prior to obtaining an installation permit the property owner shall, at his expense, extend the water supply system or wastewater system the required distance in accordance with the regulations governing such extensions.

(Ord. No. 85-4618, § 1(18.06.010), 1-14-85)

### **Sec. 26-302. Multiple building service agreements.**

In the event it is determined that it is impractical to construct independent separate service lines to serve each building of a group of buildings, such as mobile home courts, planned unit developments and large commercial or industrial establishments, which are situated on a single parcel of land under ownership of a single entity, then in that event the city administrator may allow more than one separate building to be served by a single service line. However, approval shall not be given in such circumstances until the property owner:

- (1) Provides a copy of appropriate title memorandum and properly executes the city's standard multiple building service covenant, records the same with the county clerk and recorder, and subsequently provides the city with a copy of the recorded document; and
- (2) Pays the appropriate special agreement fee.

(Ord. No. 85-4618, § 1(18.06.020), 1-14-85)

### **Sec. 26-303. Protective Devices.**

Protective devices are required in order to protect the municipal water supply system from the potential of a customer to contaminate the city's drinking water due to back pressure and back siphonage. A property owner may be required to install, as a condition of continued water service and at the property owner's expense, an approved expansion tank, pressure reducing valve, backflow prevention device, pressure relief valve, or any other similar type of device on the property owner's water service line at a location designated by the city and in accordance with applicable uniform codes. Property owners are responsible for keeping these devices in good repair and effective operating condition at all times. Failure to keep these devices in good working condition may be cause to discontinue water service to the property involved.

Backflow prevention devices as required under applicable fire, building, plumbing codes, and/or the City's Cross Connection Control Manual must be installed, maintained, repaired, and replaced in accordance with the applicable uniform codes. Testing of backflow prevention devices must be performed at the time of installation and at least annually thereafter by a certified backflow prevention assembly tester.

## **ARTICLE 26-400. . SEPTAGE TRUCKED AND HAULED WASTE DISPOSAL**

### **Sec. 26-401. Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

*Manifest* means a written document issued by the city that specifies, among other things, the source and nature of wastes and, when properly executed by the city and all parties, authorizes the discharge of septage and trucked wastes into the city's approved waste disposal station.

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*Permit* means a written receiving ticket issued by the city permitting the discharge of septage or trucked waste into the city's approved waste disposal station in accordance with the provisions of this article.

*Person* means any institution, public or private corporation, company, partnership, association, society or other entity as well as a natural person.

*Septage* means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

*Septage hauler* means a person having a valid city business license, when appropriate, and in addition, licensed by state and local governmental agencies in accordance with the provisions of Montana Code Annotated, Sections 37-41-101 through 37-41-212 wherein it is required that persons be licensed to operate a business for the purpose of cleaning septic tanks and transporting septage to an approved septage disposal facility.

*Trucked waste* means wastes, other than septage, transported to the approved waste disposal station by a septage hauler and approved by the city for disposal.

*Waste disposal station* means the city's approved waste disposal station which is available for the purpose of disposing of septage.

(Ord. No. 85-4618, § 1(18.30.010), 1-14-85; Ord. No. 5022, § 1, 5-27-97)

### **Sec. 26-402. Prohibited discharge.**

It is prohibited to discharge septage or trucked waste either directly or indirectly into any wastewater system/storm sewer or appurtenance thereof.

(Ord. No. 85-4618, § 1(18.30.020), 1-14-85; Ord. No. 97-5022, § 2, 5-27-97)

### **Sec. 26-403. Permit and manifest required.**

- (a) It is unlawful for any person to discharge septage or trucked waste into the waste disposal station without first obtaining and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.
- (b) It is unlawful for any person to contract with a septage hauler for the purpose of hauling septage from a non-domestic source or any trucked waste without obtaining a manifest from the city and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.

### **Sec. 26-404. Application and permit fee.**

- (a) Licensed septage haulers shall make application for septage or trucked waste disposal permits and manifests on a special form furnished by the city. Permits or manifests will be issued upon compliance with the provisions of this article and any regulations adopted hereunder. The septage disposal permit fee shall be the fee set by city resolution.
- (b) The city may refuse to grant or may revoke a permit for the disposal of septage or trucked waste into the waste disposal station to any applicant who has willfully and repeatedly violated the provisions of this article. Only septage pumped from septic tanks situated within Yellowstone County and which receive primarily segregated domestic wastes or wastes from sanitary conveniences shall be allowed to be discharged into the waste disposal station. Only approved trucked waste shall be allowed to be discharged into the waste disposal station.

(Ord. No. 85-4618, § 1(18.30.040), 1-14-85; Ord. No. 97-5022, § 4, 5-27-97; Ord. No. 06-5356, § 5, 1-9-06)

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**Sec. 26-405. Rules and regulations.**

The city administrator shall promulgate and publish rules and regulations governing and controlling septage or trucked waste disposal within the city. Said rules and regulations at a minimum shall include:

- (1) Form and procedure for execution and processing receiving tickets;
- (2) Supervision of discharge; and
- (3) Sampling and testing of septage or trucked waste.

(Ord. No. 85-4618, § 1(18.30.050), 1-14-85; Ord. No. 97-5022, § 5, 5-27-97)

**Sec. 26-406. Inadmissible wastes.**

Unless prior written authorization is provided by the city, it is unlawful to discharge or cause to be discharged into the waste disposal station any industrial wastes, radioactive wastes, corrosive wastes, explosive mixtures, unpolluted waters, petroleum oils, mineral oils, nonbiodegradable cutting oils, chemical wastes, toxic or poisonous substances, floatable fats, wax and grease, solid or viscous wastes such as but not limited to mud, sand or gravel, or any other wastes or substances prohibited from being discharged into the wastewater system by existing city ordinances, or as same may be lawfully amended from time to time by the city council.

(Ord. No. 85-4618, § 1(18.30.060), 1-14-85; Ord. No. 97-5022, § 36, 5-27-97)

**ARTICLE 26-500. REIMBURSEMENT AND COMPENSATION OF WATER  
AND WASTEWATER EXTENSION AND REPLACEMENT COSTS<sup>2</sup>**

**Sec. 26-501. Purpose.**

The intent and purpose of this article is to provide equitable procedures for ~~1) the reimbursement and compensation of a portion or all of the costs of constructing certain water and wastewater facilities, and 2) the reimbursement of a portion of the costs of constructing certain stormwater facilities~~ to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 7, 1-9-06; Ord. No. 11-527, § 1, 1-10-11)

**Sec. 26-502. Definitions.**

For the purposes of this article, the following words and phrases used herein are defined as follows:

*Compensation agreement* means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for general benefit water and wastewater facilities constructed by and initially paid for by the developer.

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<sup>2</sup>Editor's note(s)—Ord. No. 06-5356, § 6, adopted January 9, 2006, changed the title of article 23-500 from "Reimbursement of water and wastewater extension costs" to "Reimbursement and compensation of water and wastewater extension and replacement costs."

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User or Customer means any person receiving municipal water, wastewater, and/or stormwater service either directly or indirectly from the city municipal water supply system/municipal wastewater and/or stormwater system.

Developer means a person who requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities.

Extension/construction means the act or process of extending or constructing water/wastewater special or general benefit facilities, ~~and/or stormwater~~ for the purpose of providing service to properties situated within the city's approved service areas.

General benefit facilities means water and wastewater system facilities that benefit all or a large number of customers, and/or that provide service to large areas. Typical general benefit facilities include, but are not limited to water lines larger than twelve (12) inches in diameter ~~for commercial and/or industrial service areas and water lines larger than eight (8) inches in diameter for residential service areas~~ or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving areas larger than the customer's property, wastewater lines larger than twelve (12) inches in diameter ~~for commercial and/or industrial service areas and water lines larger than eight (8) inches in diameter for residential service areas~~ or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving areas larger than the customer's property.

Limits of annexation map means the exhibit included with the annexation policy as adopted by the city and as may, from time to time, be revised.

Off-site special/general benefit facilities means facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

Perimeter special benefit facilities means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

Reimbursement agreement means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water and wastewater, and stormwater facilities constructed by and initially paid for by the developer.

Special benefit facilities means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to water lines twelve (12) inches in diameter ~~for commercial and/or industrial service areas and water lines larger than eight (8) inches in diameter for residential service areas~~ or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving small areas, wastewater lines twelve (12) inches in diameter ~~for commercial and/or industrial service areas and water lines larger than eight (8) inches in diameter for residential service areas~~ or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving the specific customer's property. (Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 8, 1-9-06; Ord. No. 11-5527, § 2, 1-10-11; Ord. No. 15-5650, § 1, 3-9-15)

## **Sec. 26-503. Requirement for payment of reimbursement fee.**

Any prospective customer owning property located outside a developer's subdivision and desiring to connect to any facility to which they did not financially contribute and which has been extended at the city or the developer's expense, shall pay a reimbursement fee to the city if said facility was constructed within the last 30 years. This fee shall be determined by the city and shall be based upon ~~either the prospective customer's fair share portion of the costs of the facility involved or upon some other cost formula established by agreement between~~

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~~the developer and the city at the time of approval of the developer's extension.~~ This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee applies only to properties located immediately adjacent to any such facilities and from which the properties receive direct service and/or for which a benefit can be directly determined ~~shall not include any interest charges.~~ Benefit for reimbursement may include multiple adjacencies (multiple lot frontages) as determined by the city.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 9, 1-9-06; Ord. No. 11-5527, § 3, 1-10-11)

### **Sec. 26-504. Compensation by city.**

Developers are responsible for the cost of the special benefit facilities that front the development and are necessary to bring service to the development. The city reserves the right to direct a developer requesting an extension to the municipal water supply system and/or to the municipal wastewater system to install oversized general benefit water system and/or wastewater facilities larger than that required to serve the area included in the customer's subdivision or property. Any compensation by the city to the customer requires an approved compensation agreement. The developer shall also meet the requirements contained herein and shall also meet the requirements set forth in the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service. It is the customer's responsibility to inquire about, obtain and comply with the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service.

(Ord. No. 06-5356, § 12, 1-9-06; Ord. No. 11-5527, § 4, 1-10-11; Ord. No. 15-5650, § 2, 3-9-15)

Editor's note(s)—See note at § 26-505.

### **Sec. 26-505. Reimbursement to developers agreements.**

- (a) Developers who meet the following conditions shall be entitled to reimbursement from revenues derived from the reimbursement fees established by this article:
- (1) ~~Water/wastewater special benefit facilities and stormwater facilities, off-site or perimeter, which front and abut property not owned by the developer, Must be extended by the developer at his expense.~~  
~~Water/wastewater general benefit facilities, off-site or perimeter, and serving developer's property, located outside the "red area" as depicted in the latest version of the limits of annexation map and which front and abut property not owned by the developer, must be constructed by the developer at his expense.~~
  - (2) Costs of any such facilities which are financed through special improvement districts shall not be reimbursed.  
  
~~The extension of special benefit facilities must be for the purpose of serving property located within the corporate limits of the city. Costs of extensions of facilities to serve property outside the city limits shall not be reimbursed..~~
  - (3) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00) and may include engineering costs in addition to construction costs.
  - (4) ~~Developer shall provide to the city sufficient verifiable cost data to determine the appropriate reimbursement fee to be charged to prospective customers under section 26-503.~~
  - (5) ~~Developer shall enter into a standard reimbursement agreement with the city at the time the city approves the developer's application for extension of special/general benefit facilities or at the time of submittal of preliminary plans and specifications for water and/or wastewater facilities.~~

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- (4 6) Upon completion of the extension of the ~~special benefit~~ facilities, the developer must convey all right, title and interest in the facilities of the city.
- (5 7) Developer shall, at all times, provide to the city a current address for purposes of mailing reimbursement payments to developer. If the City does not have a current address on file at the time of reimbursement, the developer will not receive nor be due a reimbursement. If the developer has a right to reimbursement or reason to believe it is entitled to reimbursement that has not been received, the developer must make a request to the City for such reimbursement within five (5) years from date of connection to the main or its claim shall be waived. At no time does the city have an obligation to make reimbursement payments to developer's heirs, representatives, successors or assigns.
- (6 8) Extension of 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.
- (7 9) Violation of any of the conditions listed in this section or in the rules, regulations, resolutions and ordinances of the city may be grounds for denial of any reimbursement to developer.
- (b) All reimbursement payments to developers shall be subject to the following terms and conditions:
- (1) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in this article. Reimbursement payments are limited to reimbursement fees actually collected, less all administrative costs incurred by the city. ~~In no event will reimbursement payments exceed the actual cost to the developer of extending the facilities~~
  - (2) Reimbursement fees paid to the city shall be accumulated and paid to developer annually on each November first following acceptance of the facilities by the city.
  - (3) Reimbursement payments shall not include any interest charges.
  - (4) ~~Reimbursement payments to developer shall be limited to reimbursement fees paid to the city on or before the tenth (10th) anniversary of the date of acceptance of the facilities by the city.~~
  - (45) Any reimbursement fees paid to the city for facilities that were constructed by a developer whereby the developer does not meet all criteria of section 26-505 after said anniversary date shall be retained by the city and used for construction of additional water and wastewater, and stormwater system facilities.
  - (5 6) All reimbursements made to the City that are part of an existing reimbursement agreement shall be paid to the developer in accordance with the terms of said agreement. Any reimbursements collected by the city that are not paid to a developer due to terms of the agreement shall be retained by the city and used for construction of additional water and wastewater system facilities.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 10, 1-9-06; Ord. No. 11-5527, § 5, 1-10-11; Ord. No. 15-5650, § 3, 3-9-15)

Editor's note(s)—Ord. No. 06-5356, § 10, adopted January 9, 2006, renumbered the former § 26-504 as current section 26-505, and changed the title from "Reimbursement" to "Reimbursement agreements." Said ordinance subsequently renumbered the former § 26-505, which pertained to applicability, as current § 26-507. The historical notation of former §§ 26-504 and 26-505 has been preserved for reference purposes.

## **Sec. 26-506. Compensation agreements.**

- (a) Developers who meet the following conditions shall be entitled to compensation by the city:
- (1) Water/wastewater general benefit facilities must be constructed by the developer at his expense.

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- (2) a. Property to be served by the extension shall be located, at the time of request for service, within ~~the "red area"~~ Zones 1 or 3 as defined and shown on the limits of annexation map.
- b. Property located inside Zone 2 ~~outside the "red area"~~ shall not be eligible for compensation but will be eligible for reimbursement under section 26-505. The developer's property and any other property in this category subject to payment of a reimbursement fee and immediately served by the extension shall receive a reduction in the water and/or wastewater system development fee. The reduction shall be the amount commensurate with the general benefit facilities portion of the system development fee.
- (3) 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 and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.
- (4) Developer shall enter into a compensation agreement with the city at the time the city approves the developer's application for extension of water and/or wastewater facilities or, in the case of a replacement project, at the time of submittal of preliminary plans and specifications by the developer.
- (5) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.
- (6) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, selection of consulting engineer standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.
- (b) All compensation payments to developers shall be subject to the following terms and conditions:
- (1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's approved budget, the city's water/wastewater extension policy and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at the customer's expense.
- (2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.
- (3) Compensation is limited to construction and engineering costs attributable to water and/or wastewater facilities described in the compensation agreement, 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 and/or wastewater facilities.
- (4) Compensation shall not include any interest charges.

(Ord. No. 06-5356, § 13, 1-9-06; Ord. No. 11-5527, § 6, 1-10-11; Ord. No. 15-5650, § 4, 3-9-15)

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**Sec. 26-507. Applicability.**

The provisions of this article shall apply only to special benefit facilities constructed after the effective date of this article (Ordinance No. 85-4641 adopted May 6, 1985, effective June 5, 1985) except in those cases where the city has entered into a written agreement with the developer which provides that any reimbursement procedure adopted by the city prior to this article will be applicable retroactively to the development which is the subject of that agreement.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 11, 1-9-06; Ord. No. 11-5527, § 7, 1-10-11)

Editor's note(s)—See note at § 26-505.

**ARTICLE 26-600. INDUSTRIAL WASTE DISCHARGE<sup>3</sup>**

**Sec. 26-601. Purpose, policy, applicability and authority of the city.**

(a) *Purpose.* This article sets forth uniform requirements for industrial users of the city's publicly owned treatment works (POTW) and enables the city to comply with applicable state and federal laws, including the Clean Water Act (33 U.S.C. Section 1251 et seq.), the General Pretreatment Regulations (40 CFR Part 403) and the city's Montana Pollutant Discharge Elimination System (MTPDES) permit. The objectives of this article are to:

- (1) Prevent the introduction of pollutants into the POTW which will interfere with or upset the operation of the POTW or interfere with sludge use or disposal.
- (2) Prevent the introduction of pollutants into the POTW which may pass through the system without adequate treatment and into receiving waters or the atmosphere or otherwise be incompatible with the system.
- (3) Prevent water quality violations resulting from direct discharges into waters of the state, or violations of the MTPDES permit for the wastewater system treatment plant.
- (4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.
- (5) Provide for equitable distribution of the costs of the program.
- (6) To provide for and promote the general health, safety and welfare of the citizens residing within the city and connecting jurisdictions.
- (7) Enhance the efficiency and cost-effective operation of the POTW.
- (8) Protect the health and safety of city wastewater system workers and the general public.
- (9) Protect the municipal wastewater system and wastewater treatment plant from physical damage.

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<sup>3</sup>Editor's note(s)—Ord. No. 13-5600, § 1(Att. A), adopted May 28, 2013, amended article 26-600 in its entirety to read as herein set out. Formerly, article 26-600, sections 26-601—26-612, pertained to similar subject matter, and derived from Ord. No. 85-4663, §§ 1—12, adopted September 9, 1985; Ord. No. 91-4886, §§ 1, 3—7, adopted September 9, 1991; Ord. No. 92-4906, §§ 2, 4, 5, adopted July 27, 1992; Ord. No. 97-5022, §§ 7, 8, adopted May 27, 1997, and Ord. No. 06-5356, §§ 14, 15, adopted January 9, 2006.

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- (b) *Policy.* This article provides for the regulation of industrial users of the city's wastewater system through implementation and enforcement of the industrial pretreatment program. The city is authorized to issue industrial discharge permits to industrial users enforce pretreatment standards and requirements, monitor discharges to the POTW, require industrial user monitoring and reporting and take other actions to meet the objectives of this article. The industrial pretreatment program protects the wastewater system treatment and hydraulic capacity, improves the ability to serve existing and new customers within the service area of the wastewater system, outlines fees and charges for the equitable distribution of costs resulting from the program established herein and establishes penalties and remedies for violations of pretreatment standards and requirements.
- (c) *Applicability.* Any industrial user, the discharge from which directly or indirectly enters the city's POTW from areas within or without the boundaries of the city, shall be bound by this article as amended. This article may be enforced against any industrial user. It shall be unlawful for any industrial user to discharge any domestic or non-domestic wastewater into any natural waterway, any surface drainage, or storm drain in any area under the jurisdiction of the city. No industrial wastewater shall be discharged to the POTW unless done so in compliance with the provisions of this article. Where an owner of property leases premises to a person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this article. Except as otherwise provided herein, the administrator shall implement, administer and enforce the provisions of this article.
- (d) *Authority of the city.*
- (1) Except as otherwise specified, the city administrator shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the city administrator may be delegated by the city administrator to other city personnel.
  - (2) The city shall attempt to notify in writing any industrial user whom they have cause to believe is subject to a categorical pretreatment standard or requirement, or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) or 405 of the Act, or under the provisions of Sections 3001, 3004, or 4004 of the Solid Waste Disposal Act. Failure of the city to notify industrial users shall not relieve said industrial users from the responsibility of complying with applicable requirements. It is the responsibility of significant industrial users to apply for and receive a permit prior to discharge, whether or not the industrial user has been identified and formally requested to do so.
  - (3) If wastewaters containing any pollutant, including excess flow, or as otherwise defined in this article, are discharged or proposed to be discharged to the POTW, the city may take any action necessary to:
    - (i) Prohibit the discharge of such wastewater;
    - (ii) Require an industrial user to demonstrate that in-plant facility modifications will reduce or eliminate the discharge of such substances in conformity with this article;
    - (iii) Require treatment, including but not limited to storage facilities or flow equalization necessary to reduce or eliminate the potential for a discharge to violate this article;
    - (iv) Require the industrial user making, causing or allowing the discharge to pay any additional cost or expense incurred by the city for handling, treating, disposing or remediation costs as a result of wastes discharged to the wastewater treatment system;
    - (v) Require the industrial user to apply for and obtain a permit;
    - (vi) Require timely and factual reports from the industrial user responsible for such discharge; or
    - (vii) Take such other action as may be necessary to meet the objectives of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

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## Sec. 26-602. Definitions.

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this article as follows:

*Act* means the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

*Administrator* means the City of Billings Administrator or designee.

*Approval authority* is the Regional Administrator for Region 8, Environmental Protection Agency.

*Authorized representative of the industrial user* is:

- (a) If the industrial user is a corporation:
  - (1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - (2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including any person having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (b) If the user is a partnership or sole proprietorship: A general partner or proprietor, respectively.
- (c) If the user is a federal, state, or local government facility: A city or district or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.
- (d) The individuals described in subsections (a) through (c), above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

*Best management practices (BMPs)* are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the general and specific prohibitions listed in section 26-604 of this article. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered local limits and pretreatment standards for the purposes of this article and Section 307(d) of the Act (40 CFR Section 403.5(c)(4)).

*Biochemical oxygen demand (BOD<sub>5</sub>)* is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure over a period of five (5) days at twenty degrees (20°) Celsius and expressed in terms of milligrams per liter (mg/L).

*Categorical industrial user* is an industrial user subject to a categorical pretreatment standard.

*Categorical pretreatment standard* or *categorical standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. Section

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1317) that apply to a specific category of industrial users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

*City* means the City of Billings, Montana.

*Code* means the City of Billings, Montana City Code.

*Composite sample* is a representative flow-proportioned sample generally collected within a 24-hour period and combined according to flow. Time-proportional sampling may be approved or used by the district where time-proportional samples are believed representative of the discharge.

*Control authority* means the City of Billings.

*Cooling water* means:

- (a) *Contact*. Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product.
- (b) *Noncontact*. Water used for cooling purposes which does not come in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

*Council* means the city council of the City of Billings, Montana.

*Daily maximum discharge limit* is the maximum allowable concentration of a pollutant(s) that may be discharged during a 24-hour period or as specified in an industrial user discharge permit. Where daily maximum limitations are expressed in units of mass, the discharge is the total mass discharged over the sampling period.

*Department* means the public works department of the City of Billings.

*Director* is the City of Billings director of public works or designee that supervises the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities under this article, or their duly authorized representative.

*Domestic sewage* is domestic (sanitary) wastewater from residential sources including, but not limited to wastewater from kitchen, bath, and laundry facilities; or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, noncommercial sinks and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

*Environmental Protection Agency or EPA* means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

*Existing source* is a source of discharge by an industrial user, the construction of which commenced prior to the publication of the proposed categorical pretreatment standard which is subsequently promulgated in accordance with Section 307 of the Clean Water Act, or as otherwise specified in the applicable categorical pretreatment standard.

*Grab sample* means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

*Gravity grease interceptor* is a plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept FOG (fats, oil and grease) from a wastewater discharge and is designed for gravity separation considering calculated retention times and volumes for each facility. This is an in-ground interceptor that is located outside the facility.

*Grease trap* is a device designed to retain grease from one (1) to a maximum of four (4) fixtures per International Plumbing Code. A grease trap is not appropriate for use on heated water (e.g. dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and garbage grinders). A grease trap is a small, indoor device.

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Grease traps are not approved for installation in food service establishments that prepare food on site, or serve catered food and have a dishwasher or a garbage disposal.

*Holding tank waste* means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, recreational vehicles, septic tanks or septage haulers.

*Indirect discharge* or *discharge* is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

*Industrial* means of or pertaining to industry, manufacturing, agriculture, commerce, trade, or business, as distinguished from domestic or residential.

*Industrial discharge permit* is a permit issued to an industrial user that limits and/or prohibits the discharge of pollutants or flow to the POTW and establishes other pretreatment standards and requirements as set forth in section 26-606 of this article.

*Industrial user* is a source of indirect discharge.

*Industrial (non-domestic) waste* is the liquid or solid wastes from industrial manufacturing processes, trade or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.

*Instantaneous limit* is the maximum or minimum concentration or measurement of a pollutant property allowed to be discharged at any time for any length of time. For pollutants, compliance is typically determined by use of a grab sample.

*Interference* is a discharge, which alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW treatment processes, or operations or its sludge processes, use or disposal, and
- (b) Therefore, is a cause of violation of any requirement of the city's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued hereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resources Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solids Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

*Local limits* mean any regulation containing pollution discharge limits promulgated by the city in accordance with 40 CFR Section 403.5(c) and (d), which are deemed to be pretreatment standards and contained in subsection 26-604(c) of this article.

*Montana Pollutant Discharge Elimination System (MPDES) permit* is a permit issued pursuant to Section 402 of the Act (33 U.S.C. Section 1342), allowing discharge of pollutants from point sources into navigable waters of the United States or waters of the state.

*New source* means:

- (a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - (1) The building, structure, facility or installation is constructed at a site at which no other source is located;

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- (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsections (a)(2) or (a)(3) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.
  - (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
    - (1) Begun, or caused to begin as part of a continuous onsite construction program:
      - (i) Any placement, assembly, or installation of facilities or equipment;
      - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
    - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

*Pass through* means a discharge which exits the WWTP into water of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's MPDES permit, including an increase in the magnitude or duration of a violation.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, group, association, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents, or assigns.

*pH* is the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution and reported as standard units (SU).

*Pollutant* means any dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD<sub>5</sub>, COD, toxicity, or odor) discharged into or with water.

*Pollution* means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.

*Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or

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biological processes, process changes or by other means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e).

*Pretreatment requirement* means any substantive or procedural requirement related to pretreatment, other than a categorical pretreatment standard, imposed on an industrial user.

*Pretreatment standard, national pretreatment standard, or standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. The term includes prohibitive discharge limits, local limits, and best management practices that are or may be established by the city. In cases of differing standards or regulations, the most stringent standard shall apply.

*Publicly owned treatment works (POTW)* means a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the indirect discharges to and the discharges from the treatment works.

*Rules and regulations* means all rules and regulations promulgated by the administrator for administration and operation of the municipal water and wastewater utilities as provided for in section 26-101 of this Code.

*Septage* means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

*Significant industrial user (SIU)*: Except as provided in subsections (c) and (d) of this definition, a significant industrial user is:

- (a) An industrial user subject to categorical pretreatment standards; or
- (b) An industrial user that:
  - (1) Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
  - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - (3) Is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (c) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user upon a finding that the industrial user never discharges more than one hundred gallons per day (100 gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
  - (1) The industrial user, prior to the city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
  - (2) The industrial user annually submits the certification statement as found in 40 CFR 403.12(g) together with any additional information necessary to support the certification statement; and

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- (3) The industrial user never discharges any untreated concentrated wastewater.
- (d) Upon finding by the city that an industrial user meeting the criteria in subsection (b) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(2), determine that such industrial user is not a significant industrial user.

*Slug discharge* means any discharge at a flow rate or concentration, which could cause a violation of the specific prohibitions in subsection 26-604(b). A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an industrial users treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause interference or pass through or in any other way violate an applicable pretreatment standard or requirement or an industrial discharge permit issued by the city.

*Standard Industrial Classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

*State* means the State of Montana.

*Total suspended solids* are is the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

*Toxic pollutant* includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of Section 307(a) of the Act or as otherwise listed in 40 CFR Part 122, Appendix D.

*Wastewater or sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions whether treated or untreated, which are discharged into or permitted to enter the POTW.

*Wastewater treatment plant (WWTP)* is that portion of the wastewater system designed to provide treatment to wastewater.

*Waters of the state* means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-603. Abbreviations.**

The following abbreviations shall have the designated meanings for the purposes of this article and the supplemental rules and regulations:

*BMCC*: Billings, Montana City Code.

*BMP*: Best management practice.

*BOD<sub>5</sub>*: Biochemical oxygen demand.

*CFR*: Code of Federal Regulations.

*EPA*: Environmental Protection Agency.

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*LEL*: Lower explosive limit.

*Mg/L*: milligrams per liter.

*MPDES* : Montana Pollutant Discharge Elimination System.

*POTW*: Publicly owned treatment works.

*SIC*: Standard Industrial Classification.

*SIU*: Significant industrial user.

*SNC*: Significant noncompliance.

*TSS*: Total suspended solids.

*WWTP*: Wastewater treatment plant.

*U.S.C.*: United States Code.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-604. Prohibited discharges and limitations.**

- (a) General prohibitions. An industrial user may not introduce into a POTW any pollutant(s) which cause pass through or interference. These general prohibitions and the specific prohibitions in subsection (b) of this section apply to each industrial user introducing pollutants into a POTW whether or not the industrial user is subject to other pretreatment standards or requirements.
- (b) The following specific prohibitions apply to the discharge of wastewater to the POTW from all industrial users:
  - (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Celsius using the test methods specified in 40 CFR Section 261.21. The administrator may require industrial users with the potential to discharge flammable, combustible or explosive substances to install and maintain an approved combustible gas detection meter or explosion hazard meter. No two (2) successive readings on an explosion hazard meter at the point of discharge shall be more than five (5) percent, nor any one (1) reading more than ten (10) percent, of the lower explosive limit (LEL) of the meter.
  - (2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or greater than 12.5.
  - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in the interference.
  - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
  - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Celsius (104°F) unless the EPA, upon request of the POTW, approves alternate temperature limits.
  - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

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- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the POTW.

- (8) Any trucked or hauled pollutants, except as approved by the city in writing and discharged at the WWTP septage receiving station.
- (9) Any water or waste containing free or floating oil and grease, or any discharge containing animal fat or grease by-product in excess of one hundred milligrams per liter (100 mg/L) except:
- (i) A food service establishment that has installed and is properly operating and maintaining a grease interceptor and implementing required BMPs; or
  - (ii) An industrial user that is permitted as for trucked and hauled waste and discharges its waste at a discharge point specified by the city and in full compliance with its permit.
- (10) Removing wastes collected in a grease trap, grease/sand interceptor, waste collection tank or other treatment device and reintroducing any portion of the wastes back into the wastewater collection system either directly or indirectly.
- (11) Stormwater drainage from ground resulting in infiltration and inflow (I&I) through the industrial user's service line(s) or surface, roof drains, catch basins, unroofed area drains (e.g. commercial car washing facilities) or any other source unless otherwise approved by the administrator. Specifically prohibited is the connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to the city's wastewater collection system. No person shall connect or discharge water from underground drains, sump pump discharges, natural springs and seeps, water accumulated in excavation or grading or any other water associated with construction activities unless specifically authorized by the administrator.
- (12) Any substance which may cause the POTW's effluent, sludge, or residue to be unsuitable for, or interfere with, the reclamation or reuse process.
- (13) A slug discharge as defined in section 26-602.
- (14) Any substance which will cause the POTW to violate the MPDES permit or the receiving water quality standards.
- (15) Any pollutant discharged directly into a manhole or other opening in the POTW unless specifically authorized by the city or as otherwise permitted under this article. Prohibited is the opening of a manhole or discharging into any opening in violation of this article.
- (16) Liquid wastes from chemical toilets, and trailers, campers or other recreational vehicles which have been collected and/or held in tanks or other containers shall not be discharged into the POTW except at locations authorized by the city to collect such wastes.
- (17) No chemicals, materials, or substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other sewer openings. Containers shall be clearly labeled and stored in a place where the chemicals, materials, substances or wastes, in case of leakage or rupture of the container, cannot enter the wastewater collection system. The storage of any chemicals, materials, substances or wastes that leak or have potential to leak or discharge into the wastewater collection system which may create an explosion hazard or in any way have a deleterious effect to the POTW or constitute a nuisance or a

hazard to POTW personnel, the general public, the environment, or the receiving stream shall be prohibited.

- (18) Any water contaminated as a result of discharge from aboveground and/or underground gasoline, diesel fuels, fuel oil, kerosene, and jet fuel tanks, tank accessories, and/or pipelines without applying for and obtaining a permit prior to discharge.
- (19) Any wastes containing detergents, surface-active agents, or other substances in concentrations which cause excessive foaming in the POTW or cause or contribute to interference or pass through.
- (20) Wastes that have been collected and/or held in a tank or other container and where such wastes fail to comply with any pretreatment standard.
- (21) Any radioactive substance, the discharge of which, does not comply with limits established by the district or other regulations set forth by the Montana Department of Environmental Quality or that violates any applicable federal standards.
- (22) Any water or waste which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius).
- (23) Any garbage that has not been properly shredded.
- (24) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW.
- (25) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP.
- (26) Any noxious or malodorous gas or substance capable of creating a public nuisance.

© Reserved.

- (d) The following pollutant limits are established to protect against pass through and interference and will be applied to discharges from significant industrial users through industrial wastewater permits or control mechanisms, based on the reasonable potential to exceed the following maximum allowable discharge limits:

| Pollutant   | Daily Maximum Discharge Limit <sup>(1)</sup> | Units <sup>(2)</sup> |
|-------------|----------------------------------------------|----------------------|
| Arsenic     | 1.52                                         | #/day                |
| Cadmium     | 0.04                                         | mg/l                 |
| Chromium    | 12.96                                        | mg/l                 |
| Chromium VI | 1.33                                         | mg/l                 |
| Copper      | 2.91                                         | mg/l                 |
| Cyanide     | 0.39                                         | mg/l                 |
| Lead        | 1.04                                         | mg/l                 |
| Mercury     | 0.0017                                       | mg/l                 |
| Nickel      | 3.44                                         | mg/l                 |
| Selenium    | 5.17                                         | #/day                |
| Silver      | 0.375                                        | mg/l                 |
| Zinc        | 12.76                                        | mg/l                 |

<sup>(1)</sup> All pollutants shown in the table are total.

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<sup>(2)</sup> All mass limits (#/day) proportionately allocated to permitted users.

- © Dilution is prohibited as a substitute for treatment and shall be a violation of this article. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The city may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations is appropriate.
- (f) All industrial users subject to a categorical pretreatment standard shall comply with all requirements of such standard, and shall also comply with any limitations contained in this article. Where the same pollutant is limited by more than one pretreatment standard, the limitations which are more stringent shall prevail. Compliance with categorical pretreatment standards shall be the timeframe specified in the applicable categorical pretreatment standard.
- (g) The city may establish more stringent pollutant limits, additional site-specific pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the city, such limitations are necessary to implement the provisions of this article.
- (h) Promulgation of standards.
  - (1) Upon the promulgation of the federal categorical pretreatment standard for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed by this article for sources in that subcategory, shall immediately supersede the limitations imposed by this article as required by the applicable categorical pretreatment standard.
  - (2) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal pretreatment standards and requirements or those in this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13; Ord. No. 26-604, § 1, 9-11-17)

### **Sec. 26-605. Pretreatment and monitoring facilities.**

- (a) Treatment required. An industrial user shall provide necessary wastewater treatment at the industrial user's expense as required to comply with this article and shall achieve compliance with all pretreatment standards and requirements within the time limitations specified by the EPA, the state, or the city, whichever is more stringent. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the administrator for review and shall be acceptable before discharge from the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article.
- (b) Wastewater discharge control. The city may require an industrial user to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specified sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and demonstrate the industrial user's compliance with the requirements of this article.
- © Flow equalization. The city may require any industrial user discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An industrial discharge permit may be issued solely for flow equalization.
- (d) Monitoring facilities. The city may require an industrial user to install at the industrial user's expense, suitable monitoring facilities, instrumentation or equipment that allows for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the

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monitoring facilities shall be constructed in accordance with the city's requirements and all applicable construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order and kept safe and accessible at all times to city personnel. The monitoring equipment shall be located and maintained on the industrial user's premises outside of the building unless otherwise approved by the city. When such a location would be impractical, the city may allow such facility to be constructed in the public street or easement area, with the approval of the agency having jurisdiction over such street or easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles.

- © Multitenant buildings. When more than one industrial user is able to discharge into a common service line, the city may require installation of separate monitoring equipment for each industrial user.
- (f) Flow, pH, LEL and other appropriate meters and instrumentation. If the city determines that an industrial user needs to measure and report wastewater flow, discharge process wastewaters necessitating continuous pH measurement or discharge wastewater that may contain flammable substances may be required to install and maintain, at the industrial user's expense, approved meters, structures and equipment.
- (g) Unless approved by the administrator in writing, no industrial user shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-606. Industrial discharge permits.**

- (a) *Permits required.* All significant industrial users proposing to connect to, or discharge into, any part of the wastewater system shall apply for and obtain an industrial discharge permit prior and remit payment for all fees required by Rule 24.7 of the rules and regulations to commencing discharge to the POTW. A separate permit may be required for each industrial user, building or complex of buildings. Such significant industrial users shall immediately contact the city and obtain an industrial discharge permit.
- (b) *New industrial users: Applying for an industrial discharge permit.* Any industrial user required to obtain an industrial discharge permit who proposes to begin or recommence discharging into the POTW must apply for and obtain such permit prior to the beginning or recommencing of such discharge. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. The completed application for the industrial discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.
- © *Existing industrial users: Applying for an industrial discharge permit re-issuance.* An industrial user with an expiring industrial discharge permit shall apply for a new permit by submitting a complete permit application at least ninety (90) days prior to the expiration of the industrial user's existing permit. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. An Industrial User with an existing permit that has filed a complete and timely application may continue to discharge as approved in writing by the city through an administrative extension of the existing permit if the delay in permit issuance is not due to any act or failure to act on the industrial user's part.
- (d) *Other industrial users.* The city may require other non-significant industrial users to apply for and obtain wastewater discharge permits or similar control mechanisms necessary to carry out the purposes of this article. The city may issue a zero discharge permit to prohibit the discharge of some or all non-domestic process wastewater from an industrial user.
- © *Enforceability.* Any violation of the terms and conditions of an industrial discharge permit, failure to apply for a permit as required, or discharging without a required permit shall be deemed a violation of this article and

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subjects the industrial user to enforcement by the city. Obtaining an industrial discharge permit does not relieve a permittee of its obligation to comply with all state and federal pretreatment standards or requirements.

- (f) *Permit application contents.* In support of the application, the industrial user shall submit, in units and terms appropriate for evaluation, the following information:
- (1) Name of business, address of the facility, location of the discharge if different from facility address, and contact information of the authorized representative of the industrial user.
  - (2) Environmental permits. A list of any environmental control permits held by or for the facility.
  - (3) Description of operations.
    - (i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production);
    - (ii) The Standard Industrial Classification(s) of the operation(s) carried out by such industrial user;
    - (iii) A schematic process diagram, which indicates all process tanks, process lines, treatment systems, drains, and points of discharge to the POTW from the regulated process;
    - (iv) Types of wastes generated;
    - (v) A list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
    - (vi) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes;
    - (vii) Number of employees; and
    - (viii) Hours of operation, and proposed or actual hours of operation.
  - (4) Time and duration of discharges including the date the industrial user first began discharge or plans to discharge to the POTW.
  - (5) The location for sampling the wastewater discharges from the industrial user.
  - (6) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR Section 403.6©. For new sources and new permittees not currently discharging, an estimate of flows may be used for meeting the requirements of the baseline monitoring report required in subsection 26-611(a).
  - (7) Measurement of pollutants.
    - (i) The pretreatment standards applicable to each regulated process;
    - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process where required by the standard or by the city;
    - (iii) Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported;
    - (iv) The sample shall be representative of daily operations and shall be collected in accordance with procedures set out in section 26-610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the city or the applicable standards to determine compliance with the standard; and

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- (v) Analyses must be performed in accordance with procedures set out in subsection 26-610©.
  - (8) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes.
  - (9) Slug discharge control plan for significant industrial users and other industrial users as described in section 26-602 shall be submitted as required by the city.
  - (10) Compliance schedule. If additional pretreatment and/or operation and maintenance (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

The following conditions shall apply to this schedule:

- (9) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No such increment shall exceed nine (9) months.
  - (ii) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the administrator including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the administrator.
  - (11) Certification. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.
  - (12) Signatory certification. All industrial discharge permit applications and certification statements must be signed by an authorized representative of the industrial user and contain the applicable certification statement(s) in subsection 26-611(h).
  - (13) Any other information as may be deemed by the administrator to be necessary to evaluate the permit application.
- (g) *Industrial discharge permit issuance.*
- (1) Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than five (5) years at the city's discretion or may be stated to expire on a specific date.
  - (2) Where the city is establishing enforceable permit specific pretreatment standards or requirements, the permit shall be noticed for public comment for thirty (30) days in a newspaper of general circulation that provides meaningful public notice. The city shall consider all comments that are received prior to issuing the permit.
  - (3) The city shall issue an industrial discharge permit to the applicant if the city finds that all of the following conditions are met:
    - (i) The applicant has provided a timely and complete permit application to the city;

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- (ii) The proposed discharge by the applicant is in compliance with the limitations established in this article;
  - (iii) The proposed operation and discharge of the applicant would permit the normal and efficient operation of the POTW; and
  - (iv) The proposed discharge by the applicant would not result in a violation by the city of the terms and conditions of its MPDES permit or cause pass through or interference.
- (4) If the city finds that the condition set out in subsection (3)(ii) of this section is not met, the city may, at their discretion, issue an industrial discharge permit to the applicant if the conditions set out in subsections (3)(i), (3)(iii) and (3)(iv) of this section have been met and if the applicant submits, and the city approves, a compliance schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to assure compliance with applicable pretreatment standards. At no time shall a discharge be allowed to cause a violation of any general or specific prohibition established in section 26-604 nor shall the final compliance date for a categorical pretreatment standard be extended.
- (5) Any person, including the industrial user, may petition the city to reconsider the terms of an industrial discharge permit within thirty (30) days of the permit issuance. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. The effectiveness of the industrial discharge permit shall not be stayed pending the appeal. If the city does not act on such appeal within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue an industrial discharge permit, or not to modify a permit, shall be considered final administrative action for purposes of judicial review.
- (h) *Transferability.* Industrial discharge permits are issued to a specific industrial user for a specific operation. An industrial discharge permit shall not be reassigned or transferred or sold to a new owner, new industrial user, different premises, or a new or changed operation without the prior written approval of the city. Any succeeding owner shall comply with the terms and conditions of the existing permit until a new permit is issued. The permittee shall notify the city at least fourteen (14) days prior to any change of ownership.
- (i) *Industrial discharge permit conditions.* Industrial discharge permits shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:
- (1) A statement that indicates the permit's issuance date, expiration date and effective date;
  - (2) A statement on permit transferability;
  - (3) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a public sewer;
  - (4) Limits on the average and/or maximum wastewater constituents and characteristics including, but not limited to, effluent limits, including best management practices, based upon applicable pretreatment standards;
  - (5) Limits on average and maximum rate and time of discharge or requirements for flow;
  - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
  - (7) Self-monitoring, sampling, reporting, notification and record-keeping requirements including, but not limited to, identification of the pollutants to be monitored, sampling location, sampling frequency and sample type, based on federal, state and local law;

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- (8) Best management practices (BMPs) to control specific pollutants as necessary to meet the objectives of this article;
  - (9) Compliance schedules;
  - (10) Requirements for notification of the city of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;
  - (11) Requirements to control and report any slug discharges and notify the city immediately of any changes at its facility affecting potential for a spill or slug discharge and to notify the POTW immediately in the event of a slug, spill or accidental discharge to the POTW;
  - (12) Statements of applicable administrative, civil and criminal penalties for the violation of pretreatment standards and requirements, the permit, this article, and any applicable compliance schedule;
  - (13) Requirements to reapply for a new permit prior to expiration of the existing permit;
  - (14) Additional monitoring to be reported;
  - (15) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
  - (16) Closure requirements for permitted facilities undergoing partial or complete closure activities to ensure closure activities are completed and wastes have been properly disposed and remaining access to sanitary and storm sewers are protected;
  - (17) Other conditions as deemed appropriate by the city to ensure compliance with all applicable pretreatment standards and requirements.
- (j) *Industrial discharge permit modification.* The city may modify an industrial discharge permit for good cause, including, but not limited to, the following reasons:
- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
  - (2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of the industrial discharge permit issuance;
  - (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - (4) Information indicating that the permitted discharge poses a threat to the POTW, city personnel or the receiving waters;
  - (5) Violation of any terms or conditions of the industrial discharge permit;
  - (6) Misrepresentations or failure to fully disclose all relevant facts in the industrial discharge permit application or in any required reporting;
  - (7) To reflect a transfer of the facility ownership and/or operation to a new owner/operator;
  - (8) To correct typographical or other errors in the industrial discharge permit; or
  - (9) Upon request of the permittee, provided such request does not result in a violation of any applicable pretreatment standards or requirements or this article. The filing of a request by the permittee for a permit modification does not stay any permit condition.
- (k) *Industrial discharge permit revocation.* A violation of the conditions of a permit, this article or of applicable state and federal regulations may be reason for revocation of such permit by the city. Upon revocation of the

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permit, any wastewater discharge from the affected industrial user shall be considered prohibited and in violation of this article. Grounds for revocation of a permit include, but are not limited to, the following:

- (1) Failure of an industrial user to accurately disclose or report the wastewater constituents and characteristics of any discharge;
- (2) Failure of the industrial user to report significant changes in operations or wastewater constituents and characteristics as required;
- (3) Denial of access to the industrial user's premises for the purpose of inspection or monitoring;
- (4) Falsification of records, reports or monitoring results;
- (5) Tampering with monitoring equipment;
- (6) Misrepresentation or failure to fully disclose all relevant facts in the industrial discharge permit application;
- (7) Failure to pay fines or penalties;
- (8) Failure to pay sewer charges, surcharges, or pretreatment programs fees;
- (9) Failure to meet compliance schedules;
- (10) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
- (11) Failure to provide required reports, including but not limited to, a wastewater survey, baseline monitoring report, 90-day compliance report, permit application, self-monitoring report or other permit required reports or notifications within the timeframe required by the city.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-607. Recordkeeping.**

- (a) All industrial users shall retain, and make available for inspection and copying, all records, reports, monitoring or other data, applications, permits and all other information and documentation required by this article including documentation associated with best management practices.
  - (b) Industrial users shall retain such records and shall keep such records available for inspection for at least three (3) years. This recordkeeping period shall be extended automatically for the duration of any litigation concerning the industrial user's compliance with any provision of this article, or when the industrial user has been specifically and expressly notified of a longer records retention period by the administrator.
- © Written reports will be deemed to have been submitted on the date postmarked. For reports which are hand delivered, the date of receipt of the report shall govern.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-608. Confidential information.**

- (a) All records, reports, data or other information supplied by any person or industrial user as a result of any disclosure required by this article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 and the laws of the state.
- (b) These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to, processes, operations, style of work or apparatus or confidential commercial or statistical data. Any

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information and data submitted by the industrial user which is desired to be considered a trade secret shall have the words “confidential business information,” stamped on each page containing such information. The industrial user must demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the industrial user.

Information designated as a trade secret pursuant to this section shall remain confidential and shall not be subject to public inspection except as ordered by a district court judge or supreme court of the state. Such information shall be available only to officers, employees or authorized representatives of the city charged with implementing and enforcing the provisions of this article and properly identified representatives of the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality.

Effluent data from any industrial user whether obtained by self-monitoring, monitoring by the city or monitoring by any state or federal agency, shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-609. Reserved.**

## **Sec. 26-610. Sample collection and analytical methods.**

- (a) *Sample collection.* Compliance determinations with respect to prohibitions and limitations in this article may be made on the basis of either grab or composite samples of wastewater as specified by the city. Such samples shall be taken at a point or points which the city determines to be suitable for obtaining a representative sample of the discharge. Composite samples may be taken over a 24-hour period, or over a longer or shorter time span, as determined by the city to meet specific circumstances.
- (b) *Sample type.* Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, and based on data that is representative of conditions occurring during the reporting period.
  - (1) Except as indicated in subsections (2) and (3) below, the industrial user must collect representative wastewater samples using 24-hour flow proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is required by the city. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the permitted discharge.
  - (2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composited samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous local limits, including pH.
  - (3) For sampling required in support of baseline monitoring and 90-day compliance reports required in section 26-611, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical representative sampling data do not exist. Where historical data are available, the city may authorize a lower minimum. For the reports required by subsection 26-611(a), the industrial user is required to collect

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the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.

- © *Analytical requirements.* All pollutant analysis, including sampling techniques, to be submitted as part of an industrial discharge permit application, report, permit or other analyses required under this article shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the city or other parties approved by the EPA.
- (d) *[Records.]* Records shall include for all samples:
- (1) The date, exact place, method, and time of sampling and the name of the person(s) taking the samples;
  - (2) The date(s) analyses were performed;
  - (3) Who performed each analysis;
  - (4) The analytical techniques/methods used, including method detection limits and QA/QC sample results;
  - (5) Calibration and maintenance records;
  - (6) All chain-of-custody records; and
  - (7) The results of each analysis.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-611. Reporting and notification requirements.**

- (a) *Periodic compliance reports—All significant industrial users.*
- (1) Any significant industrial user or other industrial user required by the city, subject to a federal, state, or city pretreatment standard or requirement must submit reports, at a frequency determined by the city but no less than once per six (6) months, indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management practices (BMPs) or pollution prevention alternatives, the industrial user must submit documentation required by the city or the pretreatment standard necessary to determine compliance status of the industrial user. All periodic compliance reports must be signed and certified in accordance with subsection (h).
  - (2) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that the sample results are unrepresentative of its discharge.
  - (3) If an industrial user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the city, using the methods and procedures prescribed in section 26-610, the results of this monitoring shall be included in the report.

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- (4) The sampling and analyses required for the reporting outlined above may be performed by the city in lieu of the permittee. Where the city itself makes arrangements with the industrial user to collect all the information required for the report, the industrial user will not be required to submit the report.
- (b) *Baseline monitoring reports (BMR)—Categorical industrial users.*
- (1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR Section 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the city a report which contains the information listed in subsection (2) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable categorical pretreatment standard, shall submit to the city a report which contains the information listed in subsection (2) below. A new source shall report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.
- (2) Industrial users described above shall submit the information set forth below.
- (i) All information required in subsection 26-606(f).
- (ii) Measurement of pollutants.
- (A) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph.
- (B) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 Section CFR 403.6© in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6© this adjusted limit along with supporting data shall be submitted to the city.
- © Sampling and analysis shall be performed in accordance with section 26-610.
- (D) The city may allow the submission of a BMR which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.
- © The BMR shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (F) Signature and report certification. All baseline monitoring reports must be signed in accordance with subsection (h) and signed by an authorized representative as defined in section 26-602.
- © *Ninety-day compliance reports—Categorical industrial users.*
- (1) New sources. All new sources subject to existing categorical pretreatment standards shall submit a report to the city within ninety (90) days from the date of first discharge to the POTW demonstrating actual and continuing compliance with those standards.
- (2) Existing sources. All existing sources required to comply with newly promulgated categorical pretreatment standards shall submit a report to the city within ninety (90) days of the date on which

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compliance is required with those standards demonstrating that actual and continuing compliance with such standards has been achieved.

- (3) Such 90-day compliance report shall contain at a minimum the information required in subsections 26-606(f)(6), (7), (10), (11), (12), and (13).
- (d) *Twenty-four-hour notice and 30-day re-sampling.* If sampling performed by an industrial user indicates a violation of this article, the industrial user shall notify the city within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample if the following occurs:
  - (1) The city performs sampling at the industrial user's facility at a frequency of at least once per month.
  - (2) The city performs sampling at the industrial user's facility between the time when the industrial user performs its initial sampling and the time when the industrial user receives the results of this sampling. It is the sole responsibility of the industrial user to verify if the city has performed this sampling.
- © *Slug discharge control plan.*
  - (1) Each industrial user shall provide protection from accidental and slug discharges of pollutants regulated under this article. Facilities to prevent the discharge of spills or slug loads shall be provided and maintained at the industrial user's expense.
  - (2) The city shall evaluate whether each significant industrial user needs a slug discharge control plan or other action to control spills and slug discharges. The city may require an industrial user to develop, submit for approval, and implement a slug discharge control plan or take such other action that may be necessary to control spills and slug discharges.
  - (3) A slug discharge control plan shall address, at a minimum, the following:
    - (i) Detailed plans (schematics) showing facility layout and plumbing representative of operating procedures;
    - (ii) Description of contents and volumes of any process tanks;
    - (iii) Description of discharge practices, including non-routine batch discharges;
    - (iv) Listing of stored chemicals, including location and volumes;
    - (v) Procedures for immediately notifying the city of any spill or slug discharge. It is the responsibility of the industrial user to comply with the reporting requirements in subsection (f);
    - (vi) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response; and
    - (vii) Any other information as required by the city.
  - (4) Notice to employees. A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees who to call in the event of an accidental or slug discharge. Employers shall ensure that all employees who work in any area where an accidental or slug discharge may occur or originate are advised of the emergency notification procedures.
- (f) *Reports of potential problems—Slug and spills.*
  - (1) In the case of any changes at its facility affecting potential for a slug discharge as defined in section 26-602 or any actual discharge, including, but not limited to, spills, accidental discharges, discharges of a

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nonroutine, episodic nature, a non-customary batch discharge, or a discharge that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the city of the incident. This notification shall include:

- (i) Name of the facility.
  - (ii) Location of the facility.
  - (iii) Name of the caller.
  - (iv) Date and time of discharge.
  - (v) Date and time discharge was halted.
  - (vi) Location of the discharge.
  - (vii) Estimated volume of discharge.
  - (viii) Estimated concentration of pollutants in discharge.
  - (ix) Corrective actions taken to halt the discharge.
  - (x) Method of disposal if applicable.
- (2) Within five (5) working days following such discharge, the industrial user shall, unless waived by the city, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability which may be imposed pursuant to this article.
- (g) *Reports for non-significant industrial users.* If the city deems it necessary to assure compliance with provisions of this article, any industrial user of the POTW may be required to submit an industrial discharge permit application, questionnaire or other reports and notifications in a format and timeframe as specified by the city.
- (h) *Signatory certification.* All reports and other submittals required to be submitted to the city shall include the following statement and signatory requirements.
- (1) The authorized representative of the industrial user signing any application, questionnaire, any report or other information required to be submitted to the city must sign and attach the following certification statement with each such report or information submitted to the city.
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.”
- (2) If the authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section and meeting the definition in section 26-602 must be submitted to the city prior to or together with any reports to be signed by an authorized representative.

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- (i) *Compliance schedules.* Should any schedule of compliance be established in accordance with the requirements of this article, the following conditions shall apply to such schedule:
- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);
  - (2) No increment referred to above shall exceed nine (9) months;
  - (3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the city including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the city.
- (j) *Change in discharge or operations.*
- (1) Every permitted industrial user shall file a notification with the city a minimum of fourteen (14) days prior to any planned significant change in operations or wastewater characteristics. A significant change shall be a change equal to or greater than twenty (20) percent in the mass of a pollutant or volume of flow discharged to the POTW. In addition, this notification shall include changes to:
    - (i) Adding or removing processing, manufacturing or other production operations.
    - (ii) New pollutants used which may be discharged.
    - (iii) Changes in the listed or characteristic hazardous waste for which the industrial user has submitted or is required to submit information to the city under this article and subsection (k).
  - (2) Known or anticipated facility closure. The industrial user is required to notify the city at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.
- (k) *Notification of the discharge of hazardous waste.*
- (1) Any industrial user shall notify the city, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the city shall be made within the appropriate time frames specified in subsections (d), (f) and (j) of this section within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter.  
Such notification must include:
    - a. The name of the hazardous waste as set forth at 40 CFR Part 261;
    - b. The EPA hazardous waste number;
    - c. The type of discharge (continuous, batch, or other);
    - d. An identification of the hazardous constituents contained in the wastes;
    - e. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
    - f. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;

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- g. Certification that the industrial user has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and
  - h. Signatory certification as required by subsection (h).
- (2) Any industrial user shall notify the EPA Regional Waste Management Division Manager, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the state and EPA is the responsibility of the industrial user and shall be made as required under 40 CFR Section 403.12(p). The industrial user shall copy the city on all notifications made to the state and EPA.
  - (3) In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Waste Division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.
  - (4) This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this chapter, a permit issued hereunder, or any applicable federal or state law.
- (l) *Requests for information.*
    - (1) A permittee shall furnish to the city, within the timeframe set by the administrator, any information which the city may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating an industrial discharge permit, or to determine compliance with the industrial discharge permit or this article. A permittee shall also, upon request, provide to the city, within the timeframe required by the administrator, copies of any records that are required by the industrial discharge permit or this article.
    - (2) When requested by the city, any industrial user shall submit information to the administrator regarding industrial processes, nature and characteristics of wastes and wastewaters generated at the industrial facility, method of disposal of wastes, or other information required by the administrator to meet the responsibilities under this article, state law, and 40 CFR Part 403. Failure to provide information within the timeframe specified shall be a violation of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-612. Right of entry.**

- (a) Whenever it shall be necessary for the purposes of this article, the city may enter upon any industrial user's facility, property, or premises subject to this article for the purposes of:
  - (1) Performing all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by an industrial user. Compliance monitoring and inspection shall be conducted at a frequency as determined by the city and may be announced or unannounced;
  - (2) Examining and copying any records required to be kept under the provisions of this article or of any other local, state or federal regulation;
  - (3) The city may use a camera to photograph any areas of the facility as deemed necessary for carrying out the duties of the industrial pretreatment program including, but not limited to, documentation of the industrial user's compliance status and for reinforcement of required written reports. The industrial user shall be allowed to review copies of photographs for confidentiality claims;

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- (4) Inspecting any monitoring equipment or method, pretreatment system equipment and/or operation;
  - (5) Sampling any discharge of wastewater into POTW; and/or
  - (6) Inspecting any production, manufacturing, fabricating or storage area where pollutants, regulated under this article, could originate, be stored, or be discharged to the POTW.
- (b) The occupant of such property or premises shall render all proper assistance in such activities. Where an industrial user has security measures in place which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that authorized representatives of the city will be permitted to enter without delay to perform their specified functions.
- © The administrator is entitled to enter all private properties through which the city or any connecting jurisdiction holds an easement.
- (d) Failure to allow entry or unreasonable delays. In the event the administrator is refused admission or unreasonably delayed is a violation and may result in enforcement action as allowed for under this article including revocation of the industrial discharge permit.
- © Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the user.
- (f) If the administrator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the administrator may seek issuance of a search warrant from a court of competent jurisdiction.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-613. Fees.**

- (a) *Purpose.* The purpose of this section is to provide for the payment to the city by industrial users of the POTW of all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule adopted by the city council.
- (b) *Charges and fees.* The administrator may adopt additional charges and fees relating to the matters covered by this article, including fees for:
- (1) Processing industrial discharge permit applications.
  - (2) Reimbursement of costs of operating the industrial pretreatment program.
  - (3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing industrial user wastewater.
  - (4) Reviewing and approving accidental discharge procedures and facilities.
  - (5) Fees as the city may deem necessary to carry out the requirements contained herein.
  - (6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

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## Sec. 26-614. Compliance and enforcement.

- (a) *Enforcement response plan.* The city may adopt policies and procedures as set forth in the city's enforcement response plan for carrying out the provisions of this article, provided that such policies and procedures are not in conflict with this article or any applicable state or federal law or regulation.
- (b) *Publication of industrial users in significant noncompliance.* The city shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the significant industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. In addition, any industrial user found to be in significant noncompliance with subsections (3), (4) or (8) shall also be published in the newspaper. The following criteria shall be used to define significant noncompliance:
  - (1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric pretreatment standard or requirement, including instantaneous limits;
  - (2) Technical review criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);
  - (3) Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the administrator determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;
  - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
  - (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;
  - (6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
  - (7) Failure to accurately report noncompliance; or
  - (8) Any other violation or group of violations which may include a violation of best management practices, which the administrator determines may adversely affect the operation or implementation of the local pretreatment program.
- © *Administrative enforcement actions.*
  - (1) *Notice of violation (NOV).* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may serve upon the industrial user a written notice of violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction or prevention thereof, to include specific required actions, shall be submitted by the industrial user to the city. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the notice of

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violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(2) *Suspension of service.*

Endangerment to health or welfare of the community: The city, through other than a formal notice to the affected industrial user, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW of the city or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

Endangerment to environment or treatment works: The city, after written notice to the industrial user may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW, wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The city may reinstate the industrial discharge permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measure taken to prevent any future occurrence shall be provided to the city within five (5) days of the date of occurrence. Suspension of service shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

(3) *Administrative compliance order.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

(4) *Consent order.* The city may enter into a consent order, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the city and the industrial user.

(5) *Show cause hearing.*

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- (i) The city may order any industrial user who causes or allows an unauthorized discharge to enter the POTW to show cause before the administrator why the proposed enforcement action should not be taken. A notice shall be served on the industrial user specifying the time and place of a hearing to be held by the administrator regarding the violation, the reasons why the proposed action is to be taken, and directing the industrial user to show cause before the administrator why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or be sent by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.
  - (ii) The administrator may conduct the hearing and take the evidence, or may designate one or more persons to conduct the hearing and to take the following actions:
    - (A) Issue subpoenas requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings, The administrator or the industrial user may petition the municipal court to enforce any subpoena issued pursuant to this section through the court's contempt powers.
    - (B) Receive evidence from both the industrial user and the administrator on any relevant issue involved in such hearings, provided however, that the Montana Rules of Evidence shall not apply strictly to such evidence.
    - © Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the administrator for final action thereon.
  - (iii) At any hearing held pursuant to this article, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of reasonable charges for the preparation thereof. The hearing may be suspended or continued from time to time in the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.
  - (iv) After the administrator has reviewed the evidence, they may issue an order of findings and take an action or no action as necessary and appropriate.
- (6) *Cease and desist order.*
- (i) When the administrator finds that an industrial user is violating this article, an industrial discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past compliance history indicates that violations are likely to recur, the administrator may issue an order to the user directing it to cease and desist all such violations and directing the industrial user to:
    - (A) Immediately comply with all requirements;
    - (B) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
  - (ii) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.
- (7) *Administrative fines.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may fine such industrial user in an amount not to exceed one thousand dollars (\$1,000.00) per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.

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(d) *Judicial enforcement remedies.*

- (1) *Injunctive relief.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may petition the Billings Municipal Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the industrial discharge permit, order, or other requirement imposed by this article on activities of an industrial user. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
- (2) *Civil penalties.*
  - (i) An industrial user who has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty not to exceed one thousand dollars (\$1,000.00) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of violation.
  - (ii) The city may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.
  - (iii) In determining the amount of civil liability, the city shall take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.
  - (iv) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
- (3) *Civil/administrative fine pass through.* In the event that an industrial user discharges such pollutants which cause the city to violate any condition of its MPDES permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine assessed against the city by the EPA and/or the state.
- (4) *Criminal prosecution.*
  - (i) Any industrial user who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall, upon conviction, be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both.
  - (ii) Any industrial user who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.
  - (iii) The city may refer violations that warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General or USEPA Criminal Investigation Division or other appropriate

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agency. Such referral shall not preclude the city from taking a parallel administrative or civil enforcement action.

- © *Cost recovery.* In any judicial action, the city may recover reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or the rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the POTW occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.
- (f) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive of any other remedies that the city may have under the provisions of state law.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-615. Pretreatment authority outside of city.**

In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment requirements, state regulations, sewage grant conditions and MPDES discharge permit requirements, the city, as manager/operator shall have the authority to implement and enforce the pretreatment program against any industrial user within and outside of the city's territorial jurisdiction who discharges directly or indirectly to the POTW or any collection system connected to the city POTW.

To that end, all governmental sewage connectors, municipalities and sanitation districts, shall be required to adopt a regulatory pretreatment program either:

- (1) Is consistent with and as stringent with this article and the rules and regulations; or
- (2) Incorporates by reference the provisions of this article and the rules and regulations and specifically delegates authority to implement and enforce the pretreatment program to the city.

Connectors, municipalities, sanitation districts, shall also be required to approve necessary revisions to existing sewer service agreements or joint agreements granting the city the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-616. Affirmative defenses to discharge violations.**

- (a) *Upset.*
  - (1) For the purposes of this article, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
  - (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3) below are met.
  - (3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

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- (i) An upset occurred and the industrial user can identify the cause(s) of the upset;
  - (ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (iii) The industrial user has submitted the following information to the city within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - (A) A description of the indirect discharge and cause of noncompliance;
    - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - © Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
  - (4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have burden of proof.
  - (5) Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
  - (6) Industrial users shall control (decrease) production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
  - (b) *Prohibited discharge standards.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the specific prohibitions in any action brought against it alleging a violation of the specific prohibitions in subsections 26-604(b)(3), (4), (5), (6) or (7) where the user demonstrates that:
    - (1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and
    - (2) The industrial user had accurately disclosed the concentration of the pollutant(s) causing the pass through or interference in applications, reports, or other required documents as required; and either:
      - (i) A local limit designed to prevent pass through and/or interference, as the case may be was developed for each pollutant in the industrial user's discharge that caused pass through or interference, and the industrial user was in compliance with each such local limit directly prior to and during the pass through or interference; or
      - (ii) If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass through or interference, the industrial user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.
  - © *Bypass.*
    - (1) For purposes of this subsection:
      - (i) Bypass means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

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- (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (3) and (4) of this section but are reportable under subsections 26-611(a), (d), (f), (j) and (k), as appropriate.
  - (3) Notice.
    - (i) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director, if possible, at least ten (10) days before the date of the bypass.
    - (ii) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the administrator within twenty four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.
  - (4) Prohibition of bypass.
    - (i) Bypass is prohibited, and the administrator may take enforcement action against an industrial user for a bypass, unless:
      - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
      - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
      - © The industrial user submitted notices as required under subsection (3) of this section.
    - (ii) The administrator may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three (3) conditions listed in subsection (4)(i) of this section.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-617. Severability; repealer; effective date.**

- (a) *Severability.* If any part or parts of this article are held by any court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of said article.
- (b) *Repealer.* That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

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© *Effective date.* That this article [Ordinance Number 13-5600] shall be effective from and after final passage and as provided by law.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **ARTICLE 26-700. IRRIGATION DITCHES<sup>4</sup>**

### **Sec. 26-701. Definitions.**

For the purpose of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- (1) *Shall* is mandatory and not merely directory.
- (2) *City* is the City of Billings, Montana.
- (3) *Irrigation ditch* is the total area occupied by the ditch, its banks concomitant structures, rights-of-way and easements, and includes all ditches, flumes, culverts or pipe used to transport water for irrigation purposes.
- (4) *Person* is any person, firm, partnership, association, organization, corporation, company, or entity of any nature.
- (5) *Public places* shall include all lands owned by the city.
- (6) *Public nuisance* means any dangerous or potentially dangerous condition, litter or debris condition arising or occurring by reason of an irrigation ditch passing through or existing within the city.
- (7) *City administrator* means the duly employed and acting chief executive of the city.
- (8) *Council* means the duly elected and qualified legislative body of the city.
- (9) *Costs and expenses* shall include the actual costs and expenses incurred and an allocable portion of administration costs incurred in processing the corrective action and collecting the amount due.

(Ord. No. 81-4343, § 1, 4-27-81)

### **Sec. 26-702. ~~Open irrigation ditches~~ Not used.**

~~The city council deems it for the public interest and benefit of the city and the inhabitants thereof, and ordains that the use of all open irrigating ditches terminating within the corporate boundaries of the city shall be discontinued, except this chapter shall not prohibit the use of such ditch or ditches that are used by ten (10) percent or more of the abutting landowners on such ditch.~~

~~(Ord. No. 81-4343, § 1, 4-27-81)~~

### **Sec. 26-703. Care and maintenance of irrigation ditches.**

Every person owning or operating any irrigation ditch or system or portion thereof within the city shall care for, maintain and control said irrigation ditch, system, water being transported and concomitant structures. Said

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<sup>4</sup>Editor's note(s)—Art. 26-700 derives from Ch. 10.80 of the 1967 Code of Billings, Montana. Said chapter has been included herein as a new article at the discretion of the editor.

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care control and maintenance shall also apply with respect to interactions and reactions to structures and impediments not controlled or maintained by persons owning or operating the irrigation systems. The duty imposed hereby shall extend to control and removal of all obstructions, litter, debris, plant material, loose earth, rocks, stones, concrete and wood material without limitation in, on, or around said irrigation ditches.

(Ord. No. 81-4343, § 1, 4-27-81)

#### **Sec. 26-704. Nuisance.**

Failure to care for and maintain said ditches as provided in section 26-703 shall constitute a public nuisance and may be punished as a violation of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

#### **Sec. 26-705. City action, dangerous condition.**

In the event the public works director or his designee determines that a danger to the public or public or private property exists and is imminent the city shall attempt to notify the responsible persons. If they cannot be immediately located or if located and refuse or are unwilling to take the necessary action and the danger is such that immediate action must be taken, the city may take action to cure the problem and charge the cost and expense thereof to the owner or operator of the irrigation ditch or system. The determination to be made herein shall be at the sole discretion of the city.

(Ord. No. 81-4343, § 1, 4-27-81)

#### **Sec. 26-706. City action, problem condition.**

In the event a problem condition exists but is not dangerous as defined in section 26-705, notice of the condition shall be given to the owner or operator of the irrigation ditch or system and the owner or operator shall be allowed ten (10) days in which to cure the condition. In the event an extension of time is necessary to accomplish the cure, application may be made to the city administrator and the administrator may extend the time period to cure not to exceed an additional thirty (30) days. Upon failure of the owner or operator to cure the problem condition within the time allowed or to apply for an extension the city may cure the problem and charge the cost and expenses therefore against the owners or operators of the irrigation ditch or system.

(Ord. No. 81-4343, § 1, 4-27-81)

#### **Sec. 26-707. Notice.**

The notice provided in section 26-706 shall be by certified mail return receipt requested or by personal service on the owner, operator, employee or agent.

(Ord. No. 81-4343, § 1, 4-27-81)

#### **Sec. 26-708. Lien.**

The costs and expenses incurred by the city shall be documented and provided to the city clerk together with a legal description of the property upon which the city performed the service. The clerk shall cause a lien in a form similar to a mechanics lien to be filed with the clerk and recorder of Yellowstone County. The city may take action to collect the expenses and costs incurred either by foreclosure of the lien or by direct action against the persons

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owning or operating the irrigation ditches or systems. The provisions of this paragraph are in addition to and cumulative to all other penalties that may be imposed for violations of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

### **Sec. 26-709. Penalty for violation.**

Unless another penalty is expressly provided by law, every person convicted of a violation of this chapter shall be punished as provided by section 1-110.

(Ord. No. 81-4343, § 1, 4-27-81)

## **ARTICLE 26-800. DENTAL AMALGAM**

### **Sec. 26-801. Definitions.**

- (a) *Dental amalgam.* Dental amalgam is a liquid mercury and metal alloy mixture used in dentistry to fill cavities caused by tooth decay. Low-copper dental amalgam commonly consists of mercury, silver, tin, zinc, and other trace metals.
- (b) *Existing dental amalgam source.* All dental facilities or offices that were discharging dental amalgam prior to July 14, 2017 to the city. Existing sources must have been in compliance with the standards by July 14, 2020 and must have submitted a one-time certified compliance report by October 12, 2020 to the city. In the event that ownership is transferred, a new one-time certified compliance report must be submitted by the new owner within ninety (90) days of the transfer to the city.
- (c) *New dental amalgam source.* All dental facilities or offices that discharged dental amalgam after July 14, 2017 to the city. New sources also include any ownership transfer of an existing dental facility or office after July 15, 2020. All new sources must be in compliance with the waste management practices and record retention requirements set forth in this article and must submit a one-time certified compliance report to the city within ninety (90) days after the first discharge to the city or within ninety (90) days of any ownership transfer by the new owner.

( Ord. No. 21-5749 , § 1, 2-22-21)

### **Sec. 26-802. Dental amalgam mercury reduction.**

- (a) This article applies to all owners or operators of dental facilities or offices that remove, repair or place dental amalgam fillings. Owners and operators of dental facilities or offices that do not place or remove dental amalgam except in limited emergency, unplanned or unanticipated circumstances need only to submit the one-time compliance form by the dates set forth in section 26-801 subsections (b) and (c). If work in a dental office is limited to work that does not involve placing or removing dental amalgam, such as oral pathology, orthodontics, periodontics, oral and maxillofacial surgery/radiology, endodontics, or prosthodontics, then this article does not apply.
- (b) All owners and operators of dental facilities or offices shall implement the basic requirements for dental amalgam management established by the United States Environmental Protection Agency Dental Office Point Source Category 40 CFR Part 441, and set forth in section 26-803, BMCC.

( Ord. No. 21-5749 , § 1, 2-22-21)

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### **Sec. 26-803. Waste management practices.**

All owners and operators of dental facilities or offices that remove, repair or place dental amalgam fillings shall comply with the following waste management practices:

- (a) Operate and maintain an amalgam separator that meets the criteria of 40 CFR 441.30, 441.40, and ISO 11143 according to the manufacturer's instructions. The amalgam separator shall have a design and capacity appropriate for the size and type of vacuum system.
- (b) Do not discharge any dental amalgam to a publicly owned treatment works (as defined in section 26-602). Waste must be collected in the separator and a separate amalgam waste bucket which will be hauled offsite as dental amalgam waste.
- (c) Lines must not be cleaned with oxidizing or acidic cleaners including but not limited to bleach, chlorine, iodine, and peroxide. Cleaners must have a pH between six (6) and eight (8).
- (d) Adhere to all compliance reporting requirements listed in section 26-804.
- (e) Complete and submit the city-provided compliance report forms for reporting the required information in section 26-804.
- (f) If a malfunction with the amalgam separator is discovered, this malfunction must be documented and repaired or replaced within ten (10) business days.

( Ord. No. 21-5749 , § 1, 2-22-21)

### **Sec. 26-804. Record retention.**

- (a) The manufacturer's user manual must be retained for the life of the amalgam separator, be posted near the amalgam separator, and be made available for review during all city inspections.
- (b) Amalgam separator logs including logged inspections, routine maintenance, and repairs must be posted near the amalgam separator and retained for a period of at least three (3) years from the present date and be made available for review during all city inspections. The amalgam separator must be inspected according to the user manual to ensure proper operation and maintenance; this inspection must be documented on the amalgam separator log.
- (c) Certificates verifying the proper disposal and recycling of dental amalgam waste buckets and containers from the amalgam separators must be retained for a minimum period of three (3) years from the present date and be made available for review during all city inspections.

( Ord. No. 21-5749 , § 1, 2-22-21)

### **Sec. 26-805. Compliance.**

- (a) The owners or operators of dental facilities or offices shall allow the city to inspect the amalgam separator, amalgam waste storage areas and all above listed compliance reports, logs, and records. Inspection shall occur during the normal operations schedule of the dental facility or office. The city shall inspect dental facilities or offices according to appointments made in advance if this advanced notice does not impede enforcement of this article.
- (b) Any violation of this article may be considered a failure to comply with applicable federal standards and requirements and may constitute a violation of the Clean Water Act, and may also subject the owner or

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operator of a dental facility or office to the compliance and enforcement provisions set forth in section 26-614.

( Ord. No. 21-5749 , § 1, 2-22-21)

## Chapter 26 WATER AND WASTEWATER UTILITIES<sup>1</sup>

### **ARTICLE 26-100. IN GENERAL**

#### **Sec. 26-101. Regulations.**

The city administrator shall promulgate and publish rules and regulations for administration and operation of the municipal water and wastewater utilities. Those rules and regulations shall, as a minimum, include the rules and regulations required under Montana Code Annotated, Section 69-7-201.

(Ord. No. 85-4618, § 1(18.04.010), 1-14-85)

#### **Sec. 26-102. Failure to comply with rules and regulations.**

Any person who shall fail to comply with the rules and regulations after notice of nature of violation/delinquency and reasonable time to comply shall be subject to termination of service. Provided, that the service may not be terminated for failure to pay until forty (40) days after billing date and a notice has been mailed to the customer. Provided, further, that in emergency situations, as determined in the sole discretion of the city, service may be terminated without notice. Said service shall not be restored until the violation/delinquency is corrected and full compliance is assured. In addition, persons failing to obey promulgated rules and regulations shall be subject to punishment and penalties as provided for violations of other provisions of this code. Violators of Chapter 24 of the rules and regulations shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.020), 1-14-85; Ord. No. 92-4906, § 1, 7-27-92)

#### **Sec. 26-103. Review of administration's action.**

Any person aggrieved by an administrative decision, any rule or regulation adopted or the application of any rule or regulation governing the operation of the municipal water and wastewater utilities may petition the city council for review. Said aggrieved person shall file a written notice of appeal with the city administrator within ten (10) days after the date on which the grievance occurred. The notice of appeal shall state the specific action being appealed, the reasons for appealing such action, the particular relief sought, the aggrieved person's correct mailing address, and shall be signed by the aggrieved person. The petitioner shall be notified in writing by certified mail, return receipt requested, of the date and time the matter will be considered on the agenda. The petitioner and all

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<sup>1</sup>Editor's note(s)—Ord. No. 85-4618, adopted Jan. 14, 1985, did not specifically amend the Code hence codification of said ordinance herein as Ch. 26, Arts. 26-100—26-400, was at the discretion of the editor. Prior to the enactment of Ord. No. 85-4618, former § 26-101 saved from repeal Title 18, §§ 10.60.030, 10.60.040, 10.80.010—10.80.090, of the "Billings Municipal Code, 1967" pertaining to water and wastewater utilities.

Cross reference(s)—Administration, Ch. 2; public works board, § 2-536 et seq.; building and building regulations, Ch. 6; plumbing code, § 6-501 et seq.; health and sanitation, Ch. 15; planning, Ch. 20; solid waste, Ch. 21; streets, sidewalks and other public places, Ch. 22; subdivision regulations, Ch. 23.

State law reference(s)—Utility services, MCA 7-13-101 et seq.; municipal utilities, MCA 69-7-101 et seq.

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other interested persons may appear at the time and place and be heard. The city council shall act on the question within thirty (30) days of the hearing on the question.

(Ord. No. 85-4618, § 1(18.04.030), 1-14-85; Ord. No. 85-4664, 9-9-85)

## **Sec. 26-104. Definitions.**

Unless the context specifically indicates otherwise, the meanings of terms used in this article on municipal water and wastewater utilities and in the rules and regulations authorized herein shall be as follows:

*Backflow Preventer* means a device or means to prevent backflow into the potable water system. *Building sewer* means the privately-owned extension of the building drain to the public sanitary sewer or other place of disposal.

*Combined sewer* means a sewer receiving both surface runoff and wastewater.

*County or Yellowstone County* means the County of Yellowstone in the State of Montana.

*Extension* means the act or process of extending, adding to or enlarging the municipal water supply system ~~and/or~~ wastewater system on the city's side of the point of delivery/point of connection to provide municipal water/wastewater service to a prospective customer/user or group of prospective customers/users.

*Fireline* means all service pipes, curb stops and/or valves, curb boxes and/or valve boxes, backflow prevention devices, check valves, inside piping, fittings, fixtures, and any other apparatus on customer's side of the point of delivery used for, and limited to, the providing of water to customers for fire suppression activities.

*Garbage* means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

*Natural outlet* means any outlet into a watercourse, pond, ditch, lake or other body or surface or ground water.

*Point of connection* means the point at which the city's municipal wastewater system connects physically to a user's building sewer. Unless otherwise designated in the user's service agreement, the point of connection shall be located at and include the user's service tee or wye fitting which is normally attached to the public sanitary sewer located in a public right-of-way and/or easement that abuts and fronts the property to be served.

*Point of delivery* means the point at which the municipal water supply system connects physically to a customer's water service line. Unless otherwise designated in the customer's service agreement, the point of delivery shall be located at and shall include the customer's corporation stop which is normally attached to the public water main located in the public right-of-way and/or easement that abuts and fronts the property to be served.

*Public sanitary sewer* means the sewer directly controlled by the city and laid in the street or other right-of-way for the collection of wastewater from user's building sewers.

*Public water main* means the pipe directly controlled by the city and laid in the street or other right-of-way for the distribution of water to customers' water service lines.

*Rules and regulations* mean all rules and regulations promulgated by the city administrator for administration and operation of the utility as provided for in Section 26-101, BMCC *Sanitary sewer* means a sewer that carries wastewater or sewage.

*Sanitary sewer service line or wastewater service line* means that portion of the privately-owned building sewer extending from the property line of the property served to the public sanitary sewer.

*Sewer* means a pipe or conduit for carrying wastewater or drainage.

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*Shall* is mandatory; *may* is permissive.

*Storm sewer or storm drain* means a sewer that carries storm and surface waters and drainage but excludes wastewater and polluted industrial wastes. *Suspended solids* means solids that either float on the surface or are in suspension in water, wastewater or other liquids, and which are removable by laboratory filtering.

*User or Customer* means any person receiving municipal water/wastewater service directly or indirectly from the municipal water supply system/municipal wastewater system.

*Wastewater or Sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions, together with any groundwater, surface water and storm water that may be present, whether treated or untreated, which is discharged into or permitted to enter the municipal wastewater system.

*Wastewater service or Municipal wastewater service* means the act of directly discharging wastewater into the municipal wastewater system from users' building sewers for the purpose of collecting, transporting, treating and disposing of said users' wastewater.

*Wastewater service area* means the particular territory which has been officially adopted by the city council as the area it intends to provide with wastewater service.

*Wastewater system or Municipal wastewater system* means any wastewater facilities, including intercepting sewers, outfall sewers, wastewater collection systems and wastewater treatment facilities controlled by the city.

*Watercourse* means a channel in which a flow of water occurs, either continuously or intermittently.

*Water service or Municipal water service* means the supplying of water directly from the municipal water supply system, or the availability of water supplied directly from the municipal water supply system, at the point of delivery and also the water so delivered or used.

*Water service area* means the particular territory which has been officially adopted by the city council as the area it intends to serve with municipal water service.

*Water service line* means all privately-owned facilities, including service pipe, corporation stop, approved curb stop, curb box, municipal water meter box or vault, backflow prevention device, pressure reducing valve, expansion tank, inside piping, appliances, and other apparatus on customer's side of the point of delivery, except the municipal water meter and any other equipment owned by the city.

*Water supply system or Municipal water supply system* means any devices, facilities, structures, equipment, land or works controlled by the city for the purpose of the processing, treatment, transmission, storage, distribution, pumping and measurement of water supplied to customers.

(Ord. No. 85-4618, § 1(18.04.040), 1-14-85; Ord. No. 06-5356, § 2, 1-9-06)

## **Sec. 26-105. Jurisdiction.**

The jurisdictional area of this Code and regulations and rules shall govern any territory, whether within or without the corporate city limits, which is presently or in the future to be served with water or wastewater service or both.

(Ord. No. 85-4618, § 1(18.04.050), 1-14-85)

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**Sec. 26-106. Special agreements for unusual wastewater treatment.**

The city and any industrial concern may by written agreement not inconsistent with this article provide that an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor by the industrial concern.

(Ord. No. 85-4618, § 1(18.04.060), 1-14-85)

**Sec. 26-107. Rates and charges.**

All water and wastewater rates, charges and classifications shall be established and changed under the procedure prescribed and outlined in Montana Code Annotated Title 69, Chapter 7, Part 1. The council's decision pursuant to Montana Code Annotated Section 69-7-112 shall be in writing and in the form of a city resolution.. All other fees and charges imposed by the city within the utilities service areas shall be set by the city council by resolution.

(Ord. No. 85-4618, § 1(18.04.070), 1-14-85)

**Sec. 26-108. Combined charges and water and wastewater service.**

All bills issued for municipal water service, wastewater service, solid waste service, or any other City services shall state the amounts for each service separately. A bill may contain any combination of services, depending on the availability of services for the property being billed. Partial payments are allowed, but the payment is prorated against all outstanding charges.

(Ord. No. 85-4618, § 1(18.04.080), 1-14-85)

**Sec. 26-109. Meters for nonusers of city water system.**

Meters or other means of gauging or metering water used on premises not using the city water service but connected to the city wastewater system for wastewater service shall be installed at the expense of the owners of such premises in accordance with city rules and regulations. Said meters shall be accessible to the city and its employees to facilitate the determination of the wastewater charges to be paid by the owners or occupants of such premises.

(Ord. No. 85-4618, § 1(18.04.090), 1-14-85; Ord. No. 06-5356, § 3, 1-9-06)

**Sec. 26-110. Statement for wastewater service only.**

Statements issued for city wastewater service to parties and properties connected to the wastewater system for wastewater service but which do not receive city water service shall be made on the same forms and at the same times as nearly as may be and with the same billing charges as the combined water and wastewater statements.

(Ord. No. 85-4618, § 1(18.04.100), 1-14-85)

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### **Sec. 26-111. Adjustment of wastewater charges.**

- (a) The wastewater rates, charges and rental may be adjusted, as applied to particular premises, by the procedure set forth below, where it appears that:
  - (1) The character of the wastewater from any manufacturing, industrial or other plant, building or premises is such that the wastewater rates provided are unfair, inequitable, unreasonable or inadequate to pay the cost of wastewater service to such premises;
  - (2) The entire amount of water delivered through the metered line to any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that such water does not enter the wastewater system; or
  - (3) The entire amount of water delivered through a secondary meter on any premises is used for such a purpose and in such a manner as to establish beyond reasonable doubt that water so delivered does not enter the wastewater systems. Secondary meters shall be of a type, size and make and set at such place as shall be designated by the city rules and regulations.
- (b) Any person who considers the wastewater rates, charges and rental applicable to his premises unfair, inequitable or unreasonable may present his complaints to the public works board, stating the facts and grounds of complaint. The board shall advise the city administrator or his designee of any need for investigation and a report of the investigation shall be made to the board. The public works board shall consider each and all of such complaints and reports and communicate its recommendations to the city administrator. Where the entire amount of water or any metered portion thereof delivered to any premises does not enter the wastewater systems, this fact shall be part of the report. When the board finds that the wastewater rates, charges and rentals applicable to any premises are for other reasons unfair, inequitable, unreasonable or inadequate, it shall communicate its findings to the city administrator. The city administrator shall report the same to the city council and the council shall have the right to order a public hearing as to any such matter and, if convinced that an adjustment of the wastewater rates, charges and rentals for such premises is necessary to provide equality with those charged to others, it shall so provide, either by amendatory ordinance, or by resolutions fixing special wastewater rates and charges for individual premises during the period of continuance of special circumstances which make the standard rates and changes unfair, inequitable, unreasonable or inadequate.

(Ord. No. 85-4618, § 1(18.04.110), 1-14-85; Ord. No. 10-5504, § 5, 2-22-10)

### **Sec. 26-112. Owner's duty to use utility services.**

The owner of any house, building or other property used for human occupancy, employment or recreation, which is situated within the city and abuts on any street, alley or right-of-way in which there is situated water or wastewater utilities within one hundred (100) feet of the property line, shall at his own expense properly connect and use said services.

(Ord. No. 85-4618, § 1(18.04.120), 1-14-85)

### **Sec. 26-113. When private systems may be used.**

When municipal water or wastewater utilities are not available as provided in this Code, private systems may be used so long as water or wastewater utilities are not available, provided, that all private systems shall be constructed, installed and maintained under and pursuant to the rules and regulations of the city-county health department.

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(Ord. No. 85-4618, § 1(18.04.130), 1-14-85)

**Sec. 26-114. Inspection of water and wastewater systems and facilities.**

The city administrator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, sampling and testing, in accordance with the provisions of the code on municipal water and wastewater utilities [this chapter.]

(Ord. No. 85-4618, § 1(18.04.140), 1-14-85)

**Sec. 26-115. Permit required for connection, extension or use.**

No person shall uncover, make any connections with or opening into, extend, use, alter or disturb the water supply system and/or wastewater system without first obtaining a written permit from the city and providing the insurance and bond required by section 6-512.

(Ord. No. 85-4618, § 1(18.04.150), 1-14-85; Ord. No. 03-5251, § 1, 8-11-03)

**Sec. 26-116. Unpolluted drainage; storm sewers.**

- (a) Storm water and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the city. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the city to a storm sewer, combined sewer or natural outlet.
- (b) No storm water, surface water, ground water, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters shall be discharged into any public sanitary sewer.

(Ord. No. 85-4618, § 1(18.04.160), 1-14-85)

**Sec. 26-117. Prohibited acts.**

It is prohibited for any person to do any of the following:

- (1) Place, deposit, put, cause or permit to be put the carcass of any dead animal, or any offal or excrement from any human being, garbage or any foul or polluting matter upon public or private property within the city or area under the jurisdiction of the city or into any stream, pond spring or reservoir within the corporate limits of the city, or within five (5) miles thereof, from which stream, pond, spring or reservoir the city derives or obtains any portion of its water supply.
- (2) Discharge into any natural outlet or open ditch within the city or in any area under the jurisdiction of the city, any wastewater, industrial wastes, or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this article.
- (3) Construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater, except that a septic tank may be used when it qualified as a private system.
- (4) Bathe, swim or wade in any finished water reservoir within the corporate limits of the city, or within five (5) miles thereof, from which reservoir the city derives or obtains any portion of its water supply. The city intake being that place on the Yellowstone River where water is diverted from the stream of

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such river into the water supply system, and within a distance of five hundred (500) feet upstream from such intake, on the same side of the river from which water enters the intake.

- (5) Extend, permit, or cause to be extended, beyond the service area boundaries of the city any public or private water and/or wastewater systems which are either directly or indirectly connected with the water supply system or wastewater system of the city.
- (6) Maliciously, willfully or negligently break, damage, destroy or deface any structure, equipment or other appurtenance of the water supply system and/or wastewater system.
- (7) Without authorization uncover, tamper with or attempt to repair any such equipment.
- (8) Connect roof spouts, foundation drains, areaway drains, cooling water drains or other sources of surface run off, ground water or unpolluted water to a building sewer or building drain which is connected directly or indirectly to the wastewater systems.
- (9) Install sanitary sewer service lines and appurtenances, make connections to the wastewater systems, make repairs, alterations or extensions thereto.
- (10) Allow any ground water, surface water, mud, gravel, sand, rock, septage or any similar material or any foreign material to enter the wastewater system.
- (11) Make or maintain connection with any pipes or private services connected with the city water supply system so as to obtain water from any source other than the water supply of the city.

(Ord. No. 85-4618, § 1(18.04.170), 1-14-85)

#### **Sec. 26-118. Damage to public water supply system and wastewater system.**

Any person constructing extensions or installing water service lines, firelines or sanitary sewer service lines shall cause to be immediately repaired at his or its expense any damage to the water supply system, and/or wastewater system.

(Ord. No. 85-4618, § 1(18.04.180), 1-14-85)

#### **Sec. 26-119. Violator liability for damages.**

Any person violating any of the provisions of this chapter is liable to the city for any expense, loss or damage occasioned to the city by reason of such violation. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.190), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

#### **Sec. 26-120. Notice to violators.**

Any person found to be violating the provisions of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for its satisfactory correction. The offender shall, within the period of time stated in such notice, permanently cease all violations. Violators of Article 26-600 shall be subject to penalties and notices as specified therein.

(Ord. No. 85-4618, § 1(18.04.200), 1-14-85; Ord. No. 92-4906, § 2, 7-27-92)

### ***ARTICLE 26-200. WATER AND WASTEWATER SERVICE AREA***

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### **Sec. 26-201. Intent and purpose.**

The intent and purpose of this article is to:

- (1) Adopt an official water service area which specifically designates that particular territory which is to be served with water service from the water supply system;
- (2) Adopt an official wastewater service area which specifically designates that particular territory which is to be served with wastewater service from the wastewater system.
- (3) Provide for an orderly, planned, and cost effective method of enlarging the service area so adopted;
- (4) Promote annexation to the corporate city limits of all properties to be served from the water supply system and by the wastewater system.
- (5) Ensure public participation and comment in the decision making process with respect to all enlargements of the service areas.

(Ord. No. 85-4618, § 1(18.05.010), 1-14-85)

### **Sec. 26-202. Adoption of service area.**

The official water or wastewater service area for the city is that area of the city within the boundaries of the city, any areas presently served outside the city and any subsequently approved amendments thereto. A map depicting the water service area adopted herein, and any enlargements that may be from time to time approved by the city council, shall be made available at all times for public inspection during regular working hours at the Utility Service Center, 2251 Belknap Avenue, Billings, Montana. A map depicting the wastewater service area shall be developed and maintained in the same manner.

(Ord. No. 85-4618, § 1(18.05.020), 1-14-85; Ord. No. 06-5356, § 4, 1-9-06)

### **Sec. 26-203. Prerequisite to application.**

Unless this section is waived by the mayor and city council as provided in section 26-207, the following conditions shall be met prior to making application for enlargement of the service area:

- (1) The property at the time the application is filed shall be:
  - a. Contiguous to the boundary of the service area as same exists;
  - b. Entirely within areas allowed for annexation as described in the city annexation policy;
  - c. Entirely within the city's facilities planning area.
- (2) Applicant shall complete annexation requirements.
- (3) Provided, that should a state or federal governmental entity, as a condition of providing funds or grants, require that service be extended to other areas outside the scope of this section (section 26-203), the city council may, upon receipt of application for waiver and upon a proper showing, waive the requirements of this section.

(Ord. No. 85-4618, § 1(18.05.030), 1-14-85; Ord. No. 11-5535, § 2, 6-13-11; Ord. No. 16-5673, § 1, 6-27-16)

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### **Sec. 26-204. Annexation requirements.**

- (a) Unless this section is waived by the mayor and city council as provided in section 26-207, all properties to be included within the service area shall be annexed or an attempt at annexation shall be made first and before any service area enlargement applications may be considered. Further, that whenever possible the property being considered for inclusion in the service areas shall be annexed to the city rather than accepting waivers of the property owner's right to protest annexation of said property to the city. Waivers may be accepted by the city in its sole discretion only in those particular cases where good and sufficient cause is shown and a hardship would result if waivers were not accepted.
- (b) A prospective applicant shall first petition the city to annex the property involved prior to submission of a service area enlargement application. The city council shall then consider such petition. Any waivers must be in legal form as approved by the city attorney; be recorded with the County Clerk and Recorder, Yellowstone County, Montana; run with the land; and shall be signed by owners of the majority of the land area and by a majority of the land owners of the area to be considered for inclusion in the water service area.
- (c) The city administrator shall notify in writing the prospective applicant of denial of annexation or right to file waivers or both, and approval or denial of enlargement of the service area. If approved the applicant shall be notified as to when the requirements set forth in this section have been satisfactorily completed and authorize said applicant to proceed with the service area enlargement application.

(Ord. No. 85-4618, § 1(18.05.040), 1-14-85; Ord. No. 16-5763, § 2, 6-27-16)

### **Sec. 26-205. Enlargement application.**

Applications and required documentation for water and/or wastewater service area enlargements shall be submitted in writing using forms provided by the city.

(Ord. No. 85-4618, § 1(18.05.050), 1-14-85; Ord. No. 16-5763, § 3, 6-27-16)

### **Sec. 26-206. Public hearing.**

At the time of completion of annexation, the annexed territory shall automatically be included in the service area; however, before officially acting upon any application for enlargement of the service area into an unannexed area the city council shall hold a public hearing thereon and shall give public notice of hearing upon each such application.

(Ord. No. 85-4618, § 1(18.05.060), 1-14-85; Ord. No. 16-5763, § 4, 6-27-16)

### **Sec. 26-207. City council action.**

After the conclusion of a public hearing as provided in section 26-206, by a simple majority vote of those members present and voting, the mayor and city council may waive the requirements of sections 26-203 and 26-204 if in their discretion there exists unique or exceptional factual circumstances that convince them that such requirements within these two (2) sections are unnecessary or impractical.

If the requirements of 26-203 and 26-204 are not waived, the city council shall approve, conditionally approve or deny an application for enlargement of a service area that has met the requirements of section 26-203 and 26-204 within thirty (30) days after the date of the public hearing. The approval or conditional approval shall be in force for the period of time set forth in the approval. A denial of an application shall be in force for one (1) year after date of such denial.

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In all circumstances where an enlargement of a service area has been approved or conditionally approved but annexation has been denied, prior to the provision of services by the city the applicant shall enter into a service agreement with the city and shall submit a written waiver of right to protest annexation.

(Ord. No. 85-4618, § 1(18.06.070), 1-14-85; Ord. No. 16-5763, § 5, 6-27-16)

## **ARTICLE 26-300. WATER SERVICE LINES, SANITARY SEWER SERVICE LINES AND FIRELINES**

### **Sec. 26-301. Installation of lines.**

Separate and independent water and sanitary sewer service lines shall be provided for each separate building. Water service lines, firelines or combinations thereof shall be connected to the public water main and sanitary sewer service lines shall be connected to the public sanitary sewer situated within the public right-of-way abutting and fronting the property to be served and within the limits of the property's frontage on the right-of-way involved. In addition, whenever possible, the service lines shall be installed perpendicularly to the public right-of-way containing the public water main and public sanitary sewers to which connection is to be made. In each case, the site, arrangement, types of materials used, and method of construction of service lines shall all be approved by the city administrator prior to construction of such facilities. If a parcel of land does not front on a public water main or a public sanitary sewer, then prior to obtaining an installation permit the property owner shall, at his expense, extend the water supply system or wastewater system the required distance in accordance with the regulations governing such extensions.

(Ord. No. 85-4618, § 1(18.06.010), 1-14-85)

### **Sec. 26-302. Multiple building service agreements.**

In the event it is determined that it is impractical to construct independent separate service lines to serve each building of a group of buildings, such as mobile home courts, planned unit developments and large commercial or industrial establishments, which are situated on a single parcel of land under ownership of a single entity, then in that event the city administrator may allow more than one separate building to be served by a single service line. However, approval shall not be given in such circumstances until the property owner:

- (1) Provides a copy of appropriate title memorandum and properly executes the city's standard multiple building service covenant, records the same with the county clerk and recorder, and subsequently provides the city with a copy of the recorded document; and
- (2) Pays the appropriate special agreement fee.

(Ord. No. 85-4618, § 1(18.06.020), 1-14-85)

### **Sec. 26-303. Protective Devices.**

Protective devices are required in order to protect the municipal water supply system from the potential of a customer to contaminate the city's drinking water due to back pressure and back siphonage. A property owner may be required to install, as a condition of continued water service and at the property owner's expense, an approved expansion tank, pressure reducing valve, backflow prevention device, pressure relief valve, or any other similar type of device on the property owner's water service line at a location designated by the city and in

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accordance with applicable uniform codes. Property owners are responsible for keeping these devices in good repair and effective operating condition at all times. Failure to keep these devices in good working condition may be cause to discontinue water service to the property involved.

Backflow prevention devices as required under applicable fire, building, plumbing codes, and/or the City's Cross Connection Control Manual must be installed, maintained, repaired, and replaced in accordance with the applicable uniform codes. Testing of backflow prevention devices must be performed at the time of installation and at least annually thereafter by a certified backflow prevention assembly tester.

## **ARTICLE 26-400. TRUCKED AND HAULED WASTE DISPOSAL**

### **Sec. 26-401. Definitions.**

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

*Manifest* means a written document issued by the city that specifies, among other things, the source and nature of wastes and, when properly executed by the city and all parties, authorizes the discharge of septage and trucked wastes into the city's approved waste disposal station.

*Permit* means a written receiving ticket issued by the city permitting the discharge of septage or trucked waste into the city's approved waste disposal station in accordance with the provisions of this article.

*Person* means any institution, public or private corporation, company, partnership, association, society or other entity as well as a natural person.

*Septage* means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

*Septage hauler* means a person having a valid city business license, when appropriate, and in addition, licensed by state and local governmental agencies in accordance with the provisions of Montana Code Annotated, Sections 37-41-101 through 37-41-212 wherein it is required that persons be licensed to operate a business for the purpose of cleaning septic tanks and transporting septage to an approved septage disposal facility.

*Trucked waste* means wastes, other than septage, transported to the approved waste disposal station by a septage hauler and approved by the city for disposal.

*Waste disposal station* means the city's approved waste disposal station which is available for the purpose of disposing of septage.

(Ord. No. 85-4618, § 1(18.30.010), 1-14-85; Ord. No. 5022, § 1, 5-27-97)

### **Sec. 26-402. Prohibited discharge.**

It is prohibited to discharge septage or trucked waste either directly or indirectly into any wastewater system/storm sewer or appurtenance thereof.

(Ord. No. 85-4618, § 1(18.30.020), 1-14-85; Ord. No. 97-5022, § 2, 5-27-97)

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**Sec. 26-403. Permit and manifest required.**

- (a) It is unlawful for any person to discharge septage or trucked waste into the waste disposal station without first obtaining and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.
- (b) It is unlawful for any person to contract with a septage hauler for the purpose of hauling septage from a non-domestic source or any trucked waste without obtaining a manifest from the city and properly executing and delivering the manifest to the septage hauler at the time of waste pickup.

**Sec. 26-404. Application and permit fee.**

- (a) Licensed septage haulers shall make application for septage or trucked waste disposal permits and manifests on a special form furnished by the city. Permits or manifests will be issued upon compliance with the provisions of this article and any regulations adopted hereunder. The septage disposal permit fee shall be the fee set by city resolution.
- (b) The city may refuse to grant or may revoke a permit for the disposal of septage or trucked waste into the waste disposal station to any applicant who has willfully and repeatedly violated the provisions of this article. Only septage pumped from septic tanks situated within Yellowstone County and which receive primarily segregated domestic wastes or wastes from sanitary conveniences shall be allowed to be discharged into the waste disposal station. Only approved trucked waste shall be allowed to be discharged into the waste disposal station.

(Ord. No. 85-4618, § 1(18.30.040), 1-14-85; Ord. No. 97-5022, § 4, 5-27-97; Ord. No. 06-5356, § 5, 1-9-06)

**Sec. 26-405. Rules and regulations.**

The city administrator shall promulgate and publish rules and regulations governing and controlling septage or trucked waste disposal within the city. Said rules and regulations at a minimum shall include:

- (1) Form and procedure for execution and processing receiving tickets;
- (2) Supervision of discharge; and
- (3) Sampling and testing of septage or trucked waste.

(Ord. No. 85-4618, § 1(18.30.050), 1-14-85; Ord. No. 97-5022, § 5, 5-27-97)

**Sec. 26-406. Inadmissible wastes.**

Unless prior written authorization is provided by the city, it is unlawful to discharge or cause to be discharged into the waste disposal station any industrial wastes, radioactive wastes, corrosive wastes, explosive mixtures, unpolluted waters, petroleum oils, mineral oils, nonbiodegradable cutting oils, chemical wastes, toxic or poisonous substances, floatable fats, wax and grease, solid or viscous wastes such as but not limited to mud, sand or gravel, or any other wastes or substances prohibited from being discharged into the wastewater system by existing city ordinances, or as same may be lawfully amended from time to time by the city council.

(Ord. No. 85-4618, § 1(18.30.060), 1-14-85; Ord. No. 97-5022, § 36, 5-27-97)

**ARTICLE 26-500. REIMBURSEMENT AND COMPENSATION OF WATER  
AND WASTEWATER EXTENSION AND REPLACEMENT COSTS<sup>2</sup>**

**Sec. 26-501. Purpose.**

The intent and purpose of this article is to provide equitable procedures for the reimbursement and compensation of a portion or all of the costs of constructing certain water and wastewater facilities to private parties who paid for the initial installation of those facilities. No person shall acquire any vested rights under the terms and provisions of this article.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 7, 1-9-06; Ord. No. 11-527, § 1, 1-10-11)

**Sec. 26-502. Definitions.**

For the purposes of this article, the following words and phrases used herein are defined as follows:

*Compensation agreement* means a written document between the city and a developer outlining the conditions under which the developer may receive compensation from the city for general benefit water and wastewater facilities constructed by and initially paid for by the developer.

*Developer* means a person who requests use of the city water and/or wastewater general benefit facilities to provide water and/or wastewater service to special benefit facilities.

*Extension/construction* means the act or process of extending or constructing water/wastewater special or general benefit facilities for the purpose of providing service to properties situated within the city's approved service areas.

*General benefit facilities* means water and wastewater system facilities that benefit all or a large number of customers, and/or that provide service to large areas. Typical general benefit facilities include, but are not limited to water lines larger than twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving areas larger than the customer's property, wastewater lines larger than twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving areas larger than the customer's property.

*Limits of annexation map* means the exhibit included with the annexation policy as adopted by the city and as may, from time to time, be revised.

*Off-site special/general benefit facilities* means facilities which are located between the existing water or wastewater system and the nearest boundary of the property for which service is to be provided.

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<sup>2</sup>Editor's note(s)—Ord. No. 06-5356, § 6, adopted January 9, 2006, changed the title of article 23-500 from "Reimbursement of water and wastewater extension costs" to "Reimbursement and compensation of water and wastewater extension and replacement costs."

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*Perimeter special benefit facilities* means special benefit facilities which are located immediately adjacent to the exterior boundaries of the property for which service is to be provided.

*Reimbursement agreement* means a written document between the city and a developer outlining the conditions under which a developer may receive reimbursement from other property owners for a portion of water and wastewater facilities constructed by and initially paid for by the developer.

*Special benefit facilities* means water or wastewater facilities which are owned and controlled by the city and which provide service solely to specific properties located within the city's water or wastewater service areas. Typical special benefit facilities include, but are not limited to water lines twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, water booster pumping stations serving small areas, wastewater lines twelve (12) inches in diameter or as determined by the city engineer as determined to serve that area using standard engineering practices for commercial and/or industrial and residential service areas, and wastewater pumping stations serving the specific customer's property.

*User or Customer* means any person receiving municipal water/wastewater service directly or indirectly from the municipal water supply system/municipal wastewater system.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 8, 1-9-06; Ord. No. 11-5527, § 2, 1-10-11; Ord. No. 15-5650, § 1, 3-9-15)

### **Sec. 26-503. Requirement for payment of reimbursement fee.**

Any prospective customer owning property located outside a developer's subdivision and desiring to connect to any facility to which they did not financially contribute and which has been extended at the city or the developer's expense, shall pay a reimbursement fee to the city if said facility was constructed within the last 30 years. This fee shall be determined by the city and shall be based upon the prospective customer's fair share portion of the costs of the facility involved. This fee shall be in addition to and not in lieu of any fees which may be imposed by the city for refunding of general benefit facilities. This fee applies only to properties located immediately adjacent to any such facilities and from which the properties receive direct service and/or for which a benefit can be directly determined. Benefit for reimbursement may include multiple adjacencies (multiple lot frontages) as determined by the city.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 9, 1-9-06; Ord. No. 11-5527, § 3, 1-10-11)

### **Sec. 26-504. Compensation by city.**

Developers are responsible for the cost of the special benefit facilities that front the development and are necessary to bring service to the development. The city reserves the right to direct a developer requesting an extension to the municipal water supply system and/or to the municipal wastewater system to install oversized general benefit water system and/or wastewater facilities larger than that required to serve the area included in the customer's subdivision or property. Any compensation by the city to the customer requires an approved compensation agreement. The developer shall also meet the requirements contained herein and shall also meet the requirements set forth in the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service. It is the customer's responsibility to inquire about, obtain and comply with the most recent copy of the City's Rules and Regulations Governing Water and Wastewater Service.

(Ord. No. 06-5356, § 12, 1-9-06; Ord. No. 11-5527, § 4, 1-10-11; Ord. No. 15-5650, § 2, 3-9-15)

Editor's note(s)—See note at § 26-505.

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**Sec. 26-505. Reimbursement to developers.**

- (a) Developers who meet the following conditions shall be entitled to reimbursement from revenues derived from the reimbursement fees established by this article:
- (1) Must be extended by the developer at his expense.
  - (2) Costs of any such facilities which are financed through special improvement districts shall not be reimbursed.
  - (3) Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00) and may include engineering costs in addition to construction costs.
  - (4) Upon completion of the extension of the facilities, the developer must convey all right, title and interest in the facilities of the city.
  - (5) Developer shall, at all times, provide to the city a current address for purposes of mailing reimbursement payments to developer. If the City does not have a current address on file at the time of reimbursement, the developer will not receive nor be due a reimbursement. If the developer has a right to reimbursement or reason to believe it is entitled to reimbursement that has not been received, the developer must make a request to the City for such reimbursement within five (5) years from date of connection to the main or its claim shall be waived. At no time does the city have an obligation to make reimbursement payments to developer's heirs, representatives, successors or assigns.
  - (6) Extension of 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.
  - (7) Violation of any of the conditions listed in this section or in the rules, regulations, resolutions and ordinances of the city may be grounds for denial of any reimbursement to developer.
- (b) All reimbursement payments to developers shall be subject to the following terms and conditions:
- (1) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in this article. Reimbursement payments are limited to reimbursement fees actually collected, less all administrative costs incurred by the city.
  - (2) Reimbursement fees paid to the city shall be accumulated and paid to developer annually on each November first following acceptance of the facilities by the city.
  - (3) Reimbursement payments shall not include any interest charges.
  - (4) Any reimbursement fees paid to the city for facilities that were constructed by a developer whereby the developer does not meet all criteria of section 26-505 shall be retained by the city and used for construction of additional water and wastewater system facilities.
  - (5) All reimbursements made to the City that are part of an existing reimbursement agreement shall be paid to the developer in accordance with the terms of said agreement. Any reimbursements collected by the city that are not paid to a developer due to terms of the agreement shall be retained by the city and used for construction of additional water and wastewater system facilities.

(Ord. No. 85-4641, § 1, 5-6-85; Ord. No. 06-5356, § 10, 1-9-06; Ord. No. 11-5527, § 5, 1-10-11; Ord. No. 15-5650, § 3, 3-9-15)

Editor's note(s)—Ord. No. 06-5356, § 10, adopted January 9, 2006, renumbered the former § 26-504 as current section 26-505, and changed the title from "Reimbursement" to "Reimbursement agreements." Said

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ordinance subsequently renumbered the former § 26-505, which pertained to applicability, as current § 26-507. The historical notation of former §§ 26-504 and 26-505 has been preserved for reference purposes.

**Sec. 26-506. Compensation agreements.**

- (a) Developers who meet the following conditions shall be entitled to compensation by the city:
- (1) Water/wastewater general benefit facilities must be constructed by the developer at his expense.
  - (2) a. Property to be served by the extension shall be located, at the time of request for service, within Zones 1 or 3 as defined and shown on the limits of annexation map.
    - b. Property located inside Zone 2 shall not be eligible for compensation but will be eligible for reimbursement under section 26-505. The developer's property and any other property in this category subject to payment of a reimbursement fee and immediately served by the extension shall receive a reduction in the water and/or wastewater system development fee. The reduction shall be the amount commensurate with the general benefit facilities portion of the system development fee.
  - (3) 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 and/or wastewater facilities and approval and acceptance by the city that all construction was completed according to the approved plans and specifications.
  - (4) Developer shall enter into a compensation agreement with the city at the time the city approves the developer's application for extension of water and/or wastewater facilities or, in the case of a replacement project, at the time of submittal of preliminary plans and specifications by the developer.
  - (5) Upon completion of the extension or replacement of the water and/or wastewater facilities, the developer must convey all right, title and interest in the facilities to the city.
  - (6) Extension or replacement of water and/or wastewater facilities must be done in compliance with all city, state and federal laws, rules, and regulations including, but not limited to, selection of consulting engineer standards for design and construction of the facilities, competitive bidding and contract requirements for cities, prevailing wage rates, non-discrimination requirements, etc.
- (b) All compensation payments to developers shall be subject to the following terms and conditions:
- (1) The extent, timing, and manner of the city's participation in a water and/or wastewater facilities extension or replacement is determined in conformance with the city's approved budget, the city's water/wastewater extension policy and the developer's compliance with city, state and federal laws, rules, and regulations. Extensions or replacements not eligible for compensation according to these city policies and practices must be constructed by the developer at the customer's expense.
  - (2) Developer shall, at all times, provide to the city a current address for purposes of mailing compensation to developer.
  - (3) Compensation is limited to construction and engineering costs attributable to water and/or wastewater facilities described in the compensation agreement, 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 and/or wastewater facilities.
  - (4) Compensation shall not include any interest charges.

(Ord. No. 06-5356, § 13, 1-9-06; Ord. No. 11-5527, § 6, 1-10-11; Ord. No. 15-5650, § 4, 3-9-15)

## **ARTICLE 26-600. INDUSTRIAL WASTE DISCHARGE<sup>3</sup>**

### **Sec. 26-601. Purpose, policy, applicability and authority of the city.**

- (a) *Purpose.* This article sets forth uniform requirements for industrial users of the city's publicly owned treatment works (POTW) and enables the city to comply with applicable state and federal laws, including the Clean Water Act (33 U.S.C. Section 1251 et seq.), the General Pretreatment Regulations (40 CFR Part 403) and the city's Montana Pollutant Discharge Elimination System (MTPDES) permit. The objectives of this article are to:
- (1) Prevent the introduction of pollutants into the POTW which will interfere with or upset the operation of the POTW or interfere with sludge use or disposal.
  - (2) Prevent the introduction of pollutants into the POTW which may pass through the system without adequate treatment and into receiving waters or the atmosphere or otherwise be incompatible with the system.
  - (3) Prevent water quality violations resulting from direct discharges into waters of the state, or violations of the MTPDES permit for the wastewater system treatment plant.
  - (4) Improve the opportunity to recycle and reclaim wastewaters and sludges from the system.
  - (5) Provide for equitable distribution of the costs of the program.
  - (6) To provide for and promote the general health, safety and welfare of the citizens residing within the city and connecting jurisdictions.
  - (7) Enhance the efficiency and cost-effective operation of the POTW.
  - (8) Protect the health and safety of city wastewater system workers and the general public.
  - (9) Protect the municipal wastewater system and wastewater treatment plant from physical damage.
- (b) *Policy.* This article provides for the regulation of industrial users of the city's wastewater system through implementation and enforcement of the industrial pretreatment program. The city is authorized to issue industrial discharge permits to industrial users enforce pretreatment standards and requirements, monitor discharges to the POTW, require industrial user monitoring and reporting and take other actions to meet the objectives of this article. The industrial pretreatment program protects the wastewater system treatment and hydraulic capacity, improves the ability to serve existing and new customers within the service area of the wastewater system, outlines fees and charges for the equitable distribution of costs resulting from the program established herein and establishes penalties and remedies for violations of pretreatment standards and requirements.

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<sup>3</sup>Editor's note(s)—Ord. No. 13-5600, § 1(Att. A), adopted May 28, 2013, amended article 26-600 in its entirety to read as herein set out. Formerly, article 26-600, sections 26-601—26-612, pertained to similar subject matter, and derived from Ord. No. 85-4663, §§ 1—12, adopted September 9, 1985; Ord. No. 91-4886, §§ 1, 3—7, adopted September 9, 1991; Ord. No. 92-4906, §§ 2, 4, 5, adopted July 27, 1992; Ord. No. 97-5022, §§ 7, 8, adopted May 27, 1997, and Ord. No. 06-5356, §§ 14, 15, adopted January 9, 2006.

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- (c) *Applicability.* Any industrial user, the discharge from which directly or indirectly enters the city's POTW from areas within or without the boundaries of the city, shall be bound by this article as amended. This article may be enforced against any industrial user. It shall be unlawful for any industrial user to discharge any domestic or non-domestic wastewater into any natural waterway, any surface drainage, or storm drain in any area under the jurisdiction of the city. No industrial wastewater shall be discharged to the POTW unless done so in compliance with the provisions of this article. Where an owner of property leases premises to a person as a tenant under any rental or lease agreement, if either the owner or the tenant is an industrial user, either or both may be held responsible for compliance with the provisions of this article. Except as otherwise provided herein, the administrator shall implement, administer and enforce the provisions of this article.
- (d) *Authority of the city.*
- (1) Except as otherwise specified, the city administrator shall administer, implement, and enforce the provisions of this article. Any powers granted to or duties imposed upon the city administrator may be delegated by the city administrator to other city personnel.
  - (2) The city shall attempt to notify in writing any industrial user whom they have cause to believe is subject to a categorical pretreatment standard or requirement, or other applicable requirements promulgated by the EPA under the provisions of Section 204(b) or 405 of the Act, or under the provisions of Sections 3001, 3004, or 4004 of the Solid Waste Disposal Act. Failure of the city to notify industrial users shall not relieve said industrial users from the responsibility of complying with applicable requirements. It is the responsibility of significant industrial users to apply for and receive a permit prior to discharge, whether or not the industrial user has been identified and formally requested to do so.
  - (3) If wastewaters containing any pollutant, including excess flow, or as otherwise defined in this article, are discharged or proposed to be discharged to the POTW, the city may take any action necessary to:
    - (i) Prohibit the discharge of such wastewater;
    - (ii) Require an industrial user to demonstrate that in-plant facility modifications will reduce or eliminate the discharge of such substances in conformity with this article;
    - (iii) Require treatment, including but not limited to storage facilities or flow equalization necessary to reduce or eliminate the potential for a discharge to violate this article;
    - (iv) Require the industrial user making, causing or allowing the discharge to pay any additional cost or expense incurred by the city for handling, treating, disposing or remediation costs as a result of wastes discharged to the wastewater treatment system;
    - (v) Require the industrial user to apply for and obtain a permit;
    - (vi) Require timely and factual reports from the industrial user responsible for such discharge; or
    - (vii) Take such other action as may be necessary to meet the objectives of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-602. Definitions.**

Unless the context specifically indicates otherwise, the words and terms used herein are defined and shall be interpreted for purposes of this article as follows:

*Act* means the Federal Water Pollution Control Act, Public Law 92-500, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

*Administrator* means the City of Billings Administrator or designee.

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*Approval authority* is the Regional Administrator for Region 8, Environmental Protection Agency.

*Authorized representative of the industrial user* is:

- (a) If the industrial user is a corporation:
  - (1) The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
  - (2) The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including any person having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for industrial discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
- (b) If the user is a partnership or sole proprietorship: A general partner or proprietor, respectively.
- (c) If the user is a federal, state, or local government facility: A city or district or highest official appointed or designated to oversee the operation and performance of the activities of the governmental facility, or their designee.
- (d) The individuals described in subsections (a) through (c), above, may designate another authorized representative if the authorization is made in writing, the authorization specifies the individual or a position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the city.

*Best management practices (BMPs)* are schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the general and specific prohibitions listed in section 26-604 of this article. BMPs may also include, but are not limited to, treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. BMPs shall be considered local limits and pretreatment standards for the purposes of this article and Section 307(d) of the Act (40 CFR Section 403.5(c)(4)).

*Biochemical oxygen demand (BOD<sub>5</sub>)* is the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure over a period of five (5) days at twenty degrees (20°) Celsius and expressed in terms of milligrams per liter (mg/L).

*Categorical industrial user* is an industrial user subject to a categorical pretreatment standard.

*Categorical pretreatment standard* or *categorical standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. Section 1317) that apply to a specific category of industrial users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

*City* means the City of Billings, Montana.

*Code* means the City of Billings, Montana City Code.

*Composite sample* is a representative flow-proportioned sample generally collected within a 24-hour period and combined according to flow. Time-proportional sampling may be approved or used by the district where time-proportional samples are believed representative of the discharge.

*Control authority* means the City of Billings.

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*Cooling water* means:

- (a) *Contact*. Water used for cooling purposes which comes in contact with any raw material, intermediate product, waste product or finished product.
- (b) *Noncontact*. Water used for cooling purposes which does not come in contact with any raw material, intermediate product, waste product or finished product and the only pollutant added is heat.

*Council* means the city council of the City of Billings, Montana.

*Daily maximum discharge limit* is the maximum allowable concentration of a pollutant(s) that may be discharged during a 24-hour period or as specified in an industrial user discharge permit. Where daily maximum limitations are expressed in units of mass, the discharge is the total mass discharged over the sampling period.

*Department* means the public works department of the City of Billings.

*Director* is the City of Billings director of public works or designee that supervises the operation of the publicly owned treatment works and who is charged with certain duties and responsibilities under this article, or their duly authorized representative.

*Domestic sewage* is domestic (sanitary) wastewater from residential sources including, but not limited to wastewater from kitchen, bath, and laundry facilities; or wastewater from the personal sanitary conveniences (toilets, showers, bathtubs, fountains, noncommercial sinks and similar structures) of commercial, industrial or institutional buildings, provided that the wastewater exhibits characteristics that are similar to those of wastewater from normal residential activities.

*Environmental Protection Agency or EPA* means the United States Environmental Protection Agency, or where appropriate, the term may also be used as a designation for the administrator or other duly authorized official of said agency.

*Existing source* is a source of discharge by an industrial user, the construction of which commenced prior to the publication of the proposed categorical pretreatment standard which is subsequently promulgated in accordance with Section 307 of the Clean Water Act, or as otherwise specified in the applicable categorical pretreatment standard.

*Grab sample* means a sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.

*Gravity grease interceptor* is a plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept FOG (fats, oil and grease) from a wastewater discharge and is designed for gravity separation considering calculated retention times and volumes for each facility. This is an in-ground interceptor that is located outside the facility.

*Grease trap* is a device designed to retain grease from one (1) to a maximum of four (4) fixtures per International Plumbing Code. A grease trap is not appropriate for use on heated water (e.g. dishwasher) or in-line to a waste disposal unit (e.g., garbage disposal and garbage grinders). A grease trap is a small, indoor device. Grease traps are not approved for installation in food service establishments that prepare food on site, or serve catered food and have a dishwasher or garbage disposal.

*Holding tank waste* means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, recreational vehicles, septic tanks or septage haulers.

*Indirect discharge or discharge* is the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act (including holding tank waste discharged into the system).

*Industrial* means of or pertaining to industry, manufacturing, agriculture, commerce, trade, or business, as distinguished from domestic or residential.

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*Industrial discharge permit* is a permit issued to an industrial user that limits and/or prohibits the discharge of pollutants or flow to the POTW and establishes other pretreatment standards and requirements as set forth in section 26-606 of this article.

*Industrial user* is a source of indirect discharge.

*Industrial (non-domestic) waste* is the liquid or solid wastes from industrial manufacturing processes, trade or business activities producing non-domestic or non-residential sewage as distinct from domestic wastewater.

*Instantaneous limit* is the maximum or minimum concentration or measurement of a pollutant property allowed to be discharged at any time for any length of time. For pollutants, compliance is typically determined by use of a grab sample.

*Interference* is a discharge, which alone or in conjunction with a discharge or discharges from other sources, both:

- (a) Inhibits or disrupts the POTW treatment processes, or operations or its sludge processes, use or disposal, and
- (b) Therefore, is a cause of violation of any requirement of the city's MPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued hereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resources Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solids Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

*Local limits* mean any regulation containing pollution discharge limits promulgated by the city in accordance with 40 CFR Section 403.5(c) and (d), which are deemed to be pretreatment standards and contained in subsection 26-604(c) of this article.

*Montana Pollutant Discharge Elimination System (MPDES) permit* is a permit issued pursuant to Section 402 of the Act (33 U.S.C. Section 1342), allowing discharge of pollutants from point sources into navigable waters of the United States or waters of the state.

*New source* means:

- (a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:
  - (1) The building, structure, facility or installation is constructed at a site at which no other source is located;
  - (2) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (3) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.
- (b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the

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criteria of subsections (a)(2) or (a)(3) of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

- (c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:
- (1) Begun, or caused to begin as part of a continuous onsite construction program:
    - (i) Any placement, assembly, or installation of facilities or equipment;
    - (ii) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
  - (2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

*Pass through* means a discharge which exits the WWTP into water of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the city's MPDES permit, including an increase in the magnitude or duration of a violation.

*Person* means any individual, partnership, co-partnership, firm, company, corporation, group, association, trust, estate, governmental entity, political subdivision, or any other legal entity, or their legal representatives, agents, or assigns.

*pH* is the intensity of acid or base condition of the solution expressed as the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution and reported as standard units (SU).

*Pollutant* means any dredged soil, solid waste, incinerator residue, filter backwash, sewage, garbage, septic waste, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD<sub>5</sub>, COD, toxicity, or odor) discharged into or with water.

*Pollution* means the alteration of the chemical, physical, biological, or radiological integrity of water by human activity.

*Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration may be obtained by physical, chemical or biological processes, process changes or by other means, except as prohibited by 40 CFR Section 403.6(d). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loadings that might interfere with or otherwise be incompatible with the POTW. However, where wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility must meet an adjusted pretreatment limit calculated in accordance with 40 CFR Section 403.6(e).

*Pretreatment requirement* means any substantive or procedural requirement related to pretreatment, other than a categorical pretreatment standard, imposed on an industrial user.

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*Pretreatment standard, national pretreatment standard, or standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act, which applies to industrial users. The term includes prohibitive discharge limits, local limits, and best management practices that are or may be established by the city. In cases of differing standards or regulations, the most stringent standard shall apply.

*Publicly owned treatment works (POTW)* means a treatment works as defined by Section 212 of the Act (33 U.S.C 1292), which is owned by the city. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature and any sewers, pipes or other conveyances which convey wastewater to the treatment plant. The term also means the municipality having jurisdiction over the indirect discharges to and the discharges from the treatment works.

*Rules and regulations* means all rules and regulations promulgated by the administrator for administration and operation of the municipal water and wastewater utilities as provided for in section 26-101 of this Code.

*Septage* means the mixed liquid and solid contents pumped from septic tanks used for receiving primarily segregated domestic wastes or wastes from sanitary conveniences.

*Significant industrial user (SIU)*: Except as provided in subsections (c) and (d) of this definition, a significant industrial user is:

- (a) An industrial user subject to categorical pretreatment standards; or
- (b) An industrial user that:
  - (1) Discharges an average of twenty-five thousand gallons per day (25,000 gpd) or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater);
  - (2) Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
  - (3) Is designated as such by the city on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.
- (c) The city may determine that an industrial user subject to categorical pretreatment standards is a non-significant categorical industrial user rather than a significant industrial user upon a finding that the industrial user never discharges more than one hundred gallons per day (100 gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the pretreatment standard) and the following conditions are met:
  - (1) The industrial user, prior to the city's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
  - (2) The industrial user annually submits the certification statement as found in 40 CFR 403.12(g) together with any additional information necessary to support the certification statement; and
  - (3) The industrial user never discharges any untreated concentrated wastewater.
- (d) Upon finding by the city that an industrial user meeting the criteria in subsection (b) of this definition has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standards or requirement, the city may at any time, on its own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(2), determine that such industrial user is not a significant industrial user.

*Slug discharge* means any discharge at a flow rate or concentration, which could cause a violation of the specific prohibitions in subsection 26-604(b). A slug discharge is any discharge of a non-routine, episodic nature,

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including but not limited to an accidental spill or a non-customary batch discharge, or a discharge which exceeds the hydraulic or design of an industrial users treatment system or any part of the treatment unit including a discharge which has a reasonable potential to cause interference or pass through or in any other way violate an applicable pretreatment standard or requirement or an industrial discharge permit issued by the city.

*Standard Industrial Classification (SIC)* means a classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972, as amended.

*State* means the State of Montana.

*Total suspended solids* are the total suspended matter, expressed in milligrams per liter, that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering in accordance with procedures approved in 40 CFR Part 136, as amended.

*Toxic pollutant* includes, but is not limited to, any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of Section 307(a) of the Act or as otherwise listed in 40 CFR Part 122, Appendix D.

*Wastewater or sewage* means the liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities and institutions whether treated or untreated, which are discharged into or permitted to enter the POTW.

*Wastewater treatment plant (WWTP)* is that portion of the wastewater system designed to provide treatment to wastewater.

*Waters of the state* means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the state or any portion thereof.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-603. Abbreviations.**

The following abbreviations shall have the designated meanings for the purposes of this article and the supplemental rules and regulations:

*BMCC*: Billings, Montana City Code.

*BMP*: Best management practice.

*BOD<sub>5</sub>*: Biochemical oxygen demand.

*CFR*: Code of Federal Regulations.

*EPA*: Environmental Protection Agency.

*LEL*: Lower explosive limit.

*mg/L*: milligrams per liter.

*MPDES*: Montana Pollutant Discharge Elimination System.

*POTW*: Publicly owned treatment works.

*SIC*: Standard Industrial Classification.

*SIU*: Significant industrial user.

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*SNC*: Significant noncompliance.

*TSS*: Total suspended solids.

*WWTP*: Wastewater treatment plant.

*U.S.C.*: United States Code.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-604. Prohibited discharges and limitations.**

- (a) General prohibitions. An industrial user may not introduce into a POTW any pollutant(s) which cause pass through or interference. These general prohibitions and the specific prohibitions in subsection (b) of this section apply to each industrial user introducing pollutants into a POTW whether or not the industrial user is subject to other pretreatment standards or requirements.
- (b) The following specific prohibitions apply to the discharge of wastewater to the POTW from all industrial users:
- (1) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit or sixty (60) degrees Celsius using the test methods specified in 40 CFR Section 261.21. The administrator may require industrial users with the potential to discharge flammable, combustible or explosive substances to install and maintain an approved combustible gas detection meter or explosion hazard meter. No two (2) successive readings on an explosion hazard meter at the point of discharge shall be more than five (5) percent, nor any one (1) reading more than ten (10) percent, of the lower explosive limit (LEL) of the meter.
  - (2) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with pH lower than 5.5 or greater than 12.5.
  - (3) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW resulting in the interference.
  - (4) Any pollutant, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW.
  - (5) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Celsius (104°F) unless the EPA, upon request of the POTW, approves alternate temperature limits.
  - (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.
  - (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.  
  
Any discharge containing a toxic, poisonous or infectious substance in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause worker health and safety problems or create any hazard in the receiving waters of the POTW.
  - (8) Any trucked or hauled pollutants, except as approved by the city in writing and discharged at the WWTP septage receiving station.

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- (9) Any water or waste containing free or floating oil and grease, or any discharge containing animal fat or grease by-product in excess of one hundred milligrams per liter (100 mg/L) except:
    - (i) A food service establishment that has installed and is properly operating and maintaining a grease interceptor and implementing required BMPs; or
    - (ii) An industrial user that is permitted as for trucked and hauled waste and discharges its waste at a discharge point specified by the city and in full compliance with its permit.
  - (10) Removing wastes collected in a grease trap, grease/sand interceptor, waste collection tank or other treatment device and reintroducing any portion of the wastes back into the wastewater collection system either directly or indirectly.
  - (11) Stormwater drainage from ground resulting in infiltration and inflow (I&I) through the industrial user's service line(s) or surface, roof drains, catch basins, unroofed area drains (e.g. commercial car washing facilities) or any other source unless otherwise approved by the administrator. Specifically prohibited is the connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or ground water to a building sewer or building drain which in turn is connected directly or indirectly to the city's wastewater collection system. No person shall connect or discharge water from underground drains, sump pump discharges, natural springs and seeps, water accumulated in excavation or grading or any other water associated with construction activities unless specifically authorized by the administrator.
  - (12) Any substance which may cause the POTW's effluent, sludge, or residue to be unsuitable for, or interfere with, the reclamation or reuse process.
  - (13) A slug discharge as defined in section 26-602.
  - (14) Any substance which will cause the POTW to violate the MPDES permit or the receiving water quality standards.
  - (15) Any pollutant discharged directly into a manhole or other opening in the POTW unless specifically authorized by the city or as otherwise permitted under this article. Prohibited is the opening of a manhole or discharging into any opening in violation of this article.
  - (16) Liquid wastes from chemical toilets, and trailers, campers or other recreational vehicles which have been collected and/or held in tanks or other containers shall not be discharged into the POTW except at locations authorized by the city to collect such wastes.
  - (17) No chemicals, materials, or substances, including but not limited to, paints, solvents, boiler or water treatment chemicals, sludges, chemicals, or wastes shall be stored in proximity to a floor drain or other sewer openings. Containers shall be clearly labeled and stored in a place where the chemicals, materials, substances or wastes, in case of leakage or rupture of the container, cannot enter the wastewater collection system. The storage of any chemicals, materials, substances or wastes that leak or have potential to leak or discharge into the wastewater collection system which may create an explosion hazard or in any way have a deleterious effect to the POTW or constitute a nuisance or a hazard to POTW personnel, the general public, the environment, or the receiving stream shall be prohibited.
  - (18) Any water contaminated as a result of discharge from aboveground and/or underground gasoline, diesel fuels, fuel oil, kerosene, and jet fuel tanks, tank accessories, and/or pipelines without applying for and obtaining a permit prior to discharge.
  - (19) Any wastes containing detergents, surface-active agents, or other substances in concentrations which cause excessive foaming in the POTW or cause or contribute to interference or pass through.

- (20) Wastes that have been collected and/or held in a tank or other container and where such wastes fail to comply with any pretreatment standard.
  - (21) Any radioactive substance, the discharge of which, does not comply with limits established by the district or other regulations set forth by the Montana Department of Environmental Quality or that violates any applicable federal standards.
  - (22) Any water or waste which contains grease or oil or any other substances that will solidify or become discernibly viscous at temperatures between thirty-two degrees (32°) Fahrenheit (0° Celsius) and one hundred fifty degrees (150°) Fahrenheit (65.5° Celsius).
  - (23) Any garbage that has not been properly shredded.
  - (24) Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substance capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the POTW.
  - (25) Any discharge containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the WWTP.
  - (26) Any noxious or malodorous gas or substance capable of creating a public nuisance.
- (c) Reserved.
- (d) The following pollutant limits are established to protect against pass through and interference and will be applied to discharges from significant industrial users through industrial wastewater permits or control mechanisms, based on the reasonable potential to exceed the following maximum allowable discharge limits:

| Pollutant   | Daily Maximum Discharge Limit <sup>(1)</sup> | Units <sup>(2)</sup> |
|-------------|----------------------------------------------|----------------------|
| Arsenic     | 1.52                                         | #/day                |
| Cadmium     | 0.04                                         | mg/l                 |
| Chromium    | 12.96                                        | mg/l                 |
| Chromium VI | 1.33                                         | mg/l                 |
| Copper      | 2.91                                         | mg/l                 |
| Cyanide     | 0.39                                         | mg/l                 |
| Lead        | 1.04                                         | mg/l                 |
| Mercury     | 0.0017                                       | mg/l                 |
| Nickel      | 3.44                                         | mg/l                 |
| Selenium    | 5.17                                         | #/day                |
| Silver      | 0.375                                        | mg/l                 |
| Zinc        | 12.76                                        | mg/l                 |

<sup>(1)</sup> All pollutants shown in the table are total.

<sup>(2)</sup> All mass limits (#/day) proportionately allocated to permitted users.

- (e) Dilution is prohibited as a substitute for treatment and shall be a violation of this article. Except where expressly authorized to do so by an applicable pretreatment standard or requirement, no industrial user shall ever increase the use of process water, or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement. The city may impose mass limitations on industrial users which are using dilution to meet

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applicable pretreatment standards or requirements or in other cases where the imposition of mass limitations is appropriate.

- (f) All industrial users subject to a categorical pretreatment standard shall comply with all requirements of such standard, and shall also comply with any limitations contained in this article. Where the same pollutant is limited by more than one pretreatment standard, the limitations which are more stringent shall prevail. Compliance with categorical pretreatment standards shall be the timeframe specified in the applicable categorical pretreatment standard.
- (g) The city may establish more stringent pollutant limits, additional site-specific pollutant limits, best management practices, or additional pretreatment requirements when, in the judgment of the city, such limitations are necessary to implement the provisions of this article.
- (h) Promulgation of standards.
  - (1) Upon the promulgation of the federal categorical pretreatment standard for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed by this article for sources in that subcategory, shall immediately supersede the limitations imposed by this article as required by the applicable categorical pretreatment standard.
  - (2) State requirements and limitations on discharges shall apply in any case where they are more stringent than federal pretreatment standards and requirements or those in this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13; Ord. No. 26-604, § 1, 9-11-17)

### **Sec. 26-605. Pretreatment and monitoring facilities.**

- (a) Treatment required. An industrial user shall provide necessary wastewater treatment at the industrial user's expense as required to comply with this article and shall achieve compliance with all pretreatment standards and requirements within the time limitations specified by the EPA, the state, or the city, whichever is more stringent. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the administrator for review and shall be acceptable before discharge from the facility. The review of such plans and operating procedures will in no way relieve the industrial user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the city under the provisions of this article.
- (b) Wastewater discharge control. The city may require an industrial user to restrict discharge during peak flow periods, designate that certain wastewater be discharged only into specified sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and demonstrate the industrial user's compliance with the requirements of this article.
- (c) Flow equalization. The city may require any industrial user discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An industrial discharge permit may be issued solely for flow equalization.
- (d) Monitoring facilities. The city may require an industrial user to install at the industrial user's expense, suitable monitoring facilities, instrumentation or equipment that allows for the representative sampling and accurate observation of wastewater discharges. Whether constructed on public or private property, the monitoring facilities shall be constructed in accordance with the city's requirements and all applicable construction standards and specifications. Monitoring equipment and structures shall be maintained in proper working order and kept safe and accessible at all times to city personnel. The monitoring equipment shall be located and maintained on the industrial user's premises outside of the building unless otherwise approved by the city. When such a location would be impractical, the city may allow such facility to be constructed in the public street or easement area, with the approval of the agency having jurisdiction over

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such street or easement, and located so that it will not be obstructed by public utilities, landscaping or parked vehicles.

- (e) Multitenant buildings. When more than one industrial user is able to discharge into a common service line, the city may require installation of separate monitoring equipment for each industrial user.
- (f) Flow, pH, LEL and other appropriate meters and instrumentation. If the city determines that an industrial user needs to measure and report wastewater flow, discharge process wastewaters necessitating continuous pH measurement or discharge wastewater that may contain flammable substances may be required to install and maintain, at the industrial user's expense, approved meters, structures and equipment.
- (g) Unless approved by the administrator in writing, no industrial user shall cover any manhole, sewer cleanout, or other openings in the wastewater collection system with earth, paving, or otherwise render it inaccessible.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-606. Industrial discharge permits.**

- (a) *Permits required.* All significant industrial users proposing to connect to, or discharge into, any part of the wastewater system shall apply for and obtain an industrial discharge permit prior and remit payment for all fees required by Rule 24.7 of the rules and regulations to commencing discharge to the POTW. A separate permit may be required for each industrial user, building or complex of buildings. Such significant industrial users shall immediately contact the city and obtain an industrial discharge permit.
- (b) *New industrial users: Applying for an industrial discharge permit.* Any industrial user required to obtain an industrial discharge permit who proposes to begin or recommence discharging into the POTW must apply for and obtain such permit prior to the beginning or recommencing of such discharge. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. The completed application for the industrial discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.
- (c) *Existing industrial users: Applying for an industrial discharge permit re-issuance.* An industrial user with an expiring industrial discharge permit shall apply for a new permit by submitting a complete permit application at least ninety (90) days prior to the expiration of the industrial user's existing permit. The industrial user shall file a permit application on forms provided by the city containing the information specified in subsection (f) below. An Industrial User with an existing permit that has filed a complete and timely application may continue to discharge as approved in writing by the city through an administrative extension of the existing permit if the delay in permit issuance is not due to any act or failure to act on the industrial user's part.
- (d) *Other industrial users.* The city may require other non-significant industrial users to apply for and obtain wastewater discharge permits or similar control mechanisms necessary to carry out the purposes of this article. The city may issue a zero discharge permit to prohibit the discharge of some or all non-domestic process wastewater from an industrial user.
- (e) *Enforceability.* Any violation of the terms and conditions of an industrial discharge permit, failure to apply for a permit as required, or discharging without a required permit shall be deemed a violation of this article and subjects the industrial user to enforcement by the city. Obtaining an industrial discharge permit does not relieve a permittee of its obligation to comply with all state and federal pretreatment standards or requirements.
- (f) *Permit application contents.* In support of the application, the industrial user shall submit, in units and terms appropriate for evaluation, the following information:

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- (1) Name of business, address of the facility, location of the discharge if different from facility address, and contact information of the authorized representative of the industrial user.
  - (2) Environmental permits. A list of any environmental control permits held by or for the facility.
  - (3) Description of operations.
    - (i) A brief description of the nature, average rate of production (including each product produced by type, amount, processes, and rate of production);
    - (ii) The Standard Industrial Classification(s) of the operation(s) carried out by such industrial user;
    - (iii) A schematic process diagram, which indicates all process tanks, process lines, treatment systems, drains, and points of discharge to the POTW from the regulated process;
    - (iv) Types of wastes generated;
    - (v) A list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW;
    - (vi) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes;
    - (vii) Number of employees; and
    - (viii) Hours of operation, and proposed or actual hours of operation.
  - (4) Time and duration of discharges including the date the industrial user first began discharge or plans to discharge to the POTW.
  - (5) The location for sampling the wastewater discharges from the industrial user.
  - (6) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR Section 403.6(e). For new sources and new permittees not currently discharging, an estimate of flows may be used for meeting the requirements of the baseline monitoring report required in subsection 26-611(a).
  - (7) Measurement of pollutants.
    - (i) The pretreatment standards applicable to each regulated process;
    - (ii) The results of sampling and analysis identifying the nature and concentration, and/or mass of regulated pollutants in the discharge from each regulated process where required by the standard or by the city;
    - (iii) Instantaneous, daily maximum and long-term average concentrations, or mass, where required, shall be reported;
    - (iv) The sample shall be representative of daily operations and shall be collected in accordance with procedures set out in section 26-610. Where the standard requires compliance with a BMP or pollution prevention alternative, the industrial user shall submit documentation as required by the city or the applicable standards to determine compliance with the standard; and
    - (v) Analyses must be performed in accordance with procedures set out in subsection 26-610(c).
  - (8) A list of hazardous waste(s) generated and a description of the storage area and procedures for the wastes.
  - (9) Slug discharge control plan for significant industrial users and other industrial users as described in section 26-602 shall be submitted as required by the city.

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- (10) Compliance schedule. If additional pretreatment and/or operation and maintenance (O&M) will be required to meet the pretreatment standards, the shortest schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard.

The following conditions shall apply to this schedule:

- (i) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.). No such increment shall exceed nine (9) months.
  - (ii) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the administrator including, as a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the administrator.
- (11) Certification. A statement, reviewed by an authorized representative of the industrial user and certified to by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.
- (12) Signatory certification. All industrial discharge permit applications and certification statements must be signed by an authorized representative of the industrial user and contain the applicable certification statement(s) in subsection 26-611(h).
- (13) Any other information as may be deemed by the administrator to be necessary to evaluate the permit application.
- (g) *Industrial discharge permit issuance.*
- (1) Permits shall be issued for a specified time period, not to exceed five (5) years. A permit may be issued for a period of less than five (5) years at the city's discretion or may be stated to expire on a specific date.
  - (2) Where the city is establishing enforceable permit specific pretreatment standards or requirements, the permit shall be noticed for public comment for thirty (30) days in a newspaper of general circulation that provides meaningful public notice. The city shall consider all comments that are received prior to issuing the permit.
  - (3) The city shall issue an industrial discharge permit to the applicant if the city finds that all of the following conditions are met:
    - (i) The applicant has provided a timely and complete permit application to the city;
    - (ii) The proposed discharge by the applicant is in compliance with the limitations established in this article;
    - (iii) The proposed operation and discharge of the applicant would permit the normal and efficient operation of the POTW; and
    - (iv) The proposed discharge by the applicant would not result in a violation by the city of the terms and conditions of its MPDES permit or cause pass through or interference.

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- (4) If the city finds that the condition set out in subsection (3)(ii) of this section is not met, the city may, at their discretion, issue an industrial discharge permit to the applicant if the conditions set out in subsections (3)(i), (3)(iii) and (3)(iv) of this section have been met and if the applicant submits, and the city approves, a compliance schedule setting out the measures to be taken by the applicant and the dates that such measures will be implemented to assure compliance with applicable pretreatment standards. At no time shall a discharge be allowed to cause a violation of any general or specific prohibition established in section 26-604 nor shall the final compliance date for a categorical pretreatment standard be extended.
- (5) Any person, including the industrial user, may petition the city to reconsider the terms of an industrial discharge permit within thirty (30) days of the permit issuance. Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal. In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit. The effectiveness of the industrial discharge permit shall not be stayed pending the appeal. If the city does not act on such appeal within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider, not to issue an industrial discharge permit, or not to modify a permit, shall be considered final administrative action for purposes of judicial review.
- (h) *Transferability.* Industrial discharge permits are issued to a specific industrial user for a specific operation. An industrial discharge permit shall not be reassigned or transferred or sold to a new owner, new industrial user, different premises, or a new or changed operation without the prior written approval of the city. Any succeeding owner shall comply with the terms and conditions of the existing permit until a new permit is issued. The permittee shall notify the city at least fourteen (14) days prior to any change of ownership.
- (i) *Industrial discharge permit conditions.* Industrial discharge permits shall be expressly subject to all provisions of this article and all other applicable regulations, user charges and fees established by the city. Permits may contain the following:
- (1) A statement that indicates the permit's issuance date, expiration date and effective date;
  - (2) A statement on permit transferability;
  - (3) The unit charge or schedule of user charges and fees for the wastewater to be discharged into a public sewer;
  - (4) Limits on the average and/or maximum wastewater constituents and characteristics including, but not limited to, effluent limits, including best management practices, based upon applicable pretreatment standards;
  - (5) Limits on average and maximum rate and time of discharge or requirements for flow;
  - (6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
  - (7) Self-monitoring, sampling, reporting, notification and record-keeping requirements including, but not limited to, identification of the pollutants to be monitored, sampling location, sampling frequency and sample type, based on federal, state and local law;
  - (8) Best management practices (BMPs) to control specific pollutants as necessary to meet the objectives of this article;
  - (9) Compliance schedules;
  - (10) Requirements for notification of the city of any new introduction of wastewater constituents or any significant change in the volume or character of the wastewater constituents being introduced into the wastewater treatment system;

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- (11) Requirements to control and report any slug discharges and notify the city immediately of any changes at its facility affecting potential for a spill or slug discharge and to notify the POTW immediately in the event of a slug, spill or accidental discharge to the POTW;
  - (12) Statements of applicable administrative, civil and criminal penalties for the violation of pretreatment standards and requirements, the permit, this article, and any applicable compliance schedule;
  - (13) Requirements to reapply for a new permit prior to expiration of the existing permit;
  - (14) Additional monitoring to be reported;
  - (15) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;
  - (16) Closure requirements for permitted facilities undergoing partial or complete closure activities to ensure closure activities are completed and wastes have been properly disposed and remaining access to sanitary and storm sewers are protected;
  - (17) Other conditions as deemed appropriate by the city to ensure compliance with all applicable pretreatment standards and requirements.
- (j) *Industrial discharge permit modification.* The city may modify an industrial discharge permit for good cause, including, but not limited to, the following reasons:
- (1) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
  - (2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of the industrial discharge permit issuance;
  - (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
  - (4) Information indicating that the permitted discharge poses a threat to the POTW, city personnel or the receiving waters;
  - (5) Violation of any terms or conditions of the industrial discharge permit;
  - (6) Misrepresentations or failure to fully disclose all relevant facts in the industrial discharge permit application or in any required reporting;
  - (7) To reflect a transfer of the facility ownership and/or operation to a new owner/operator;
  - (8) To correct typographical or other errors in the industrial discharge permit; or
  - (9) Upon request of the permittee, provided such request does not result in a violation of any applicable pretreatment standards or requirements or this article. The filing of a request by the permittee for a permit modification does not stay any permit condition.
- (k) *Industrial discharge permit revocation.* A violation of the conditions of a permit, this article or of applicable state and federal regulations may be reason for revocation of such permit by the city. Upon revocation of the permit, any wastewater discharge from the affected industrial user shall be considered prohibited and in violation of this article. Grounds for revocation of a permit include, but are not limited to, the following:
- (1) Failure of an industrial user to accurately disclose or report the wastewater constituents and characteristics of any discharge;
  - (2) Failure of the industrial user to report significant changes in operations or wastewater constituents and characteristics as required;
  - (3) Denial of access to the industrial user's premises for the purpose of inspection or monitoring;

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- (4) Falsification of records, reports or monitoring results;
  - (5) Tampering with monitoring equipment;
  - (6) Misrepresentation or failure to fully disclose all relevant facts in the industrial discharge permit application;
  - (7) Failure to pay fines or penalties;
  - (8) Failure to pay sewer charges, surcharges, or pretreatment programs fees;
  - (9) Failure to meet compliance schedules;
  - (10) Failure to provide advance notice of the transfer of business ownership of a permitted facility; or
  - (11) Failure to provide required reports, including but not limited to, a wastewater survey, baseline monitoring report, 90-day compliance report, permit application, self-monitoring report or other permit required reports or notifications within the timeframe required by the city.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-607. Recordkeeping.**

- (a) All industrial users shall retain, and make available for inspection and copying, all records, reports, monitoring or other data, applications, permits and all other information and documentation required by this article including documentation associated with best management practices.
- (b) Industrial users shall retain such records and shall keep such records available for inspection for at least three (3) years. This recordkeeping period shall be extended automatically for the duration of any litigation concerning the industrial user's compliance with any provision of this article, or when the industrial user has been specifically and expressly notified of a longer records retention period by the administrator.
- (c) Written reports will be deemed to have been submitted on the date postmarked. For reports which are hand delivered, the date of receipt of the report shall govern.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-608. Confidential information.**

- (a) All records, reports, data or other information supplied by any person or industrial user as a result of any disclosure required by this article or information and data from inspections shall be available for public inspection except as otherwise provided in this Section, 40 CFR Section 403.14 and the laws of the state.
- (b) These provisions shall not be applicable to any information designated as a trade secret by the person supplying such information. Materials designated as a trade secret may include, but shall not be limited to, processes, operations, style of work or apparatus or confidential commercial or statistical data. Any information and data submitted by the industrial user which is desired to be considered a trade secret shall have the words "confidential business information," stamped on each page containing such information. The industrial user must demonstrate to the satisfaction of the city that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the industrial user.

Information designated as a trade secret pursuant to this section shall remain confidential and shall not be subject to public inspection except as ordered by a district court judge or supreme court of the state. Such information shall be available only to officers, employees or authorized representatives of the city charged with

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implementing and enforcing the provisions of this article and properly identified representatives of the U.S. Environmental Protection Agency and the Montana Department of Environmental Quality.

Effluent data from any industrial user whether obtained by self-monitoring, monitoring by the city or monitoring by any state or federal agency, shall not be considered a trade secret or otherwise confidential. All such effluent data shall be available for public inspection.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

## **Sec. 26-609. Reserved.**

## **Sec. 26-610. Sample collection and analytical methods.**

- (a) *Sample collection.* Compliance determinations with respect to prohibitions and limitations in this article may be made on the basis of either grab or composite samples of wastewater as specified by the city. Such samples shall be taken at a point or points which the city determines to be suitable for obtaining a representative sample of the discharge. Composite samples may be taken over a 24-hour period, or over a longer or shorter time span, as determined by the city to meet specific circumstances.
- (b) *Sample type.* Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, and based on data that is representative of conditions occurring during the reporting period.
  - (1) Except as indicated in subsections (2) and (3) below, the industrial user must collect representative wastewater samples using 24-hour flow proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is required by the city. Where time-proportional composite sampling or grab sampling is authorized by the city, the samples must be representative of the permitted discharge.
  - (2) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Compositing samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the city, as appropriate. In addition, grab samples may be required to show compliance with instantaneous local limits, including pH.
  - (3) For sampling required in support of baseline monitoring and 90-day compliance reports required in section 26-611, a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organic compounds for facilities for which historical representative sampling data do not exist. Where historical data are available, the city may authorize a lower minimum. For the reports required by subsection 26-611(a), the industrial user is required to collect the number of grab samples necessary to assess and assure compliance with applicable pretreatment standards and requirements.
- (c) *Analytical requirements.* All pollutant analysis, including sampling techniques, to be submitted as part of an industrial discharge permit application, report, permit or other analyses required under this article shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and

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analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the city or other parties approved by the EPA.

(d) *[Records.]* Records shall include for all samples:

- (1) The date, exact place, method, and time of sampling and the name of the person(s) taking the samples;
- (2) The date(s) analyses were performed;
- (3) Who performed each analysis;
- (4) The analytical techniques/methods used, including method detection limits and QA/QC sample results;
- (5) Calibration and maintenance records;
- (6) All chain-of-custody records; and
- (7) The results of each analysis.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-611. Reporting and notification requirements.**

(a) *Periodic compliance reports—All significant industrial users.*

- (1) Any significant industrial user or other industrial user required by the city, subject to a federal, state, or city pretreatment standard or requirement must submit reports, at a frequency determined by the city but no less than once per six (6) months, indicating the nature, concentration of pollutants in the discharge which are limited by pretreatment standards and the average and maximum daily flows for the reporting period. In cases where the pretreatment standard requires compliance with a best management practices (BMPs) or pollution prevention alternatives, the industrial user must submit documentation required by the city or the pretreatment standard necessary to determine compliance status of the industrial user. All periodic compliance reports must be signed and certified in accordance with subsection (h).
- (2) All wastewater samples must be representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim that the sample results are unrepresentative of its discharge.
- (3) If an industrial user subject to the reporting requirement in this section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the city, using the methods and procedures prescribed in section 26-610, the results of this monitoring shall be included in the report.
- (4) The sampling and analyses required for the reporting outlined above may be performed by the city in lieu of the permittee. Where the city itself makes arrangements with the industrial user to collect all the information required for the report, the industrial user will not be required to submit the report.

(b) *Baseline monitoring reports (BMR)—Categorical industrial users.*

- (1) Within either one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR Section 403.6(a)(4), whichever is later, existing industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the city a report which contains the information listed in subsection (2) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become categorical industrial users subsequent to the promulgation of an applicable

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categorical pretreatment standard, shall submit to the city a report which contains the information listed in subsection (2) below. A new source shall report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source also shall give estimates of its anticipated flow and quantity of pollutants to be discharged from regulated process streams and other non-process streams.

(2) Industrial users described above shall submit the information set forth below.

(i) All information required in subsection 26-606(f).

(ii) Measurement of pollutants.

(A) The industrial user shall take a minimum of one (1) representative sample to compile the data necessary to comply with the requirements of this paragraph.

(B) Samples shall be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the industrial user should measure the flows and concentrations necessary to allow use of the combined wastestream formula in 40 Section CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR Section 403.6(e) this adjusted limit along with supporting data shall be submitted to the city.

(C) Sampling and analysis shall be performed in accordance with section 26-610.

(D) The city may allow the submission of a BMR which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(E) The BMR shall indicate the time, date, and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(F) Signature and report certification. All baseline monitoring reports must be signed in accordance with subsection (h) and signed by an authorized representative as defined in section 26-602.

(c) *Ninety-day compliance reports—Categorical industrial users.*

(1) New sources. All new sources subject to existing categorical pretreatment standards shall submit a report to the city within ninety (90) days from the date of first discharge to the POTW demonstrating actual and continuing compliance with those standards.

(2) Existing sources. All existing sources required to comply with newly promulgated categorical pretreatment standards shall submit a report to the city within ninety (90) days of the date on which compliance is required with those standards demonstrating that actual and continuing compliance with such standards has been achieved.

(3) Such 90-day compliance report shall contain at a minimum the information required in subsections 26-606(f)(6), (7), (10), (11), (12), and (13).

(d) *Twenty-four-hour notice and 30-day re-sampling.* If sampling performed by an industrial user indicates a violation of this article, the industrial user shall notify the city within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the city within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample if the following occurs:

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- (1) The city performs sampling at the industrial user's facility at a frequency of at least once per month.
  - (2) The city performs sampling at the industrial user's facility between the time when the industrial user performs its initial sampling and the time when the industrial user receives the results of this sampling. It is the sole responsibility of the industrial user to verify if the city has performed this sampling.
- (e) *Slug discharge control plan.*
- (1) Each industrial user shall provide protection from accidental and slug discharges of pollutants regulated under this article. Facilities to prevent the discharge of spills or slug loads shall be provided and maintained at the industrial user's expense.
  - (2) The city shall evaluate whether each significant industrial user needs a slug discharge control plan or other action to control spills and slug discharges. The city may require an industrial user to develop, submit for approval, and implement a slug discharge control plan or take such other action that may be necessary to control spills and slug discharges.
  - (3) A slug discharge control plan shall address, at a minimum, the following:
    - (i) Detailed plans (schematics) showing facility layout and plumbing representative of operating procedures;
    - (ii) Description of contents and volumes of any process tanks;
    - (iii) Description of discharge practices, including non-routine batch discharges;
    - (iv) Listing of stored chemicals, including location and volumes;
    - (v) Procedures for immediately notifying the city of any spill or slug discharge. It is the responsibility of the industrial user to comply with the reporting requirements in subsection (f);
    - (vi) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response; and
    - (vii) Any other information as required by the city.
  - (4) Notice to employees. A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees who to call in the event of an accidental or slug discharge. Employers shall ensure that all employees who work in any area where an accidental or slug discharge may occur or originate are advised of the emergency notification procedures.
- (f) *Reports of potential problems—Slug and spills.*
- (1) In the case of any changes at its facility affecting potential for a slug discharge as defined in section 26-602 or any actual discharge, including, but not limited to, spills, accidental discharges, discharges of a nonroutine, episodic nature, a non-customary batch discharge, or a discharge that may cause potential problems for the POTW, the industrial user shall immediately telephone and notify the city of the incident. This notification shall include:
    - (i) Name of the facility.
    - (ii) Location of the facility.
    - (iii) Name of the caller.
    - (iv) Date and time of discharge.
    - (v) Date and time discharge was halted.

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- (vi) Location of the discharge.
  - (vii) Estimated volume of discharge.
  - (viii) Estimated concentration of pollutants in discharge.
  - (ix) Corrective actions taken to halt the discharge.
  - (x) Method of disposal if applicable.
- (2) Within five (5) working days following such discharge, the industrial user shall, unless waived by the city, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the industrial user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the industrial user of any fines, penalties, or other liability which may be imposed pursuant to this article.
- (g) *Reports for non-significant industrial users.* If the city deems it necessary to assure compliance with provisions of this article, any industrial user of the POTW may be required to submit an industrial discharge permit application, questionnaire or other reports and notifications in a format and timeframe as specified by the city.
- (h) *Signatory certification.* All reports and other submittals required to be submitted to the city shall include the following statement and signatory requirements.
- (1) The authorized representative of the industrial user signing any application, questionnaire, any report or other information required to be submitted to the city must sign and attach the following certification statement with each such report or information submitted to the city.
- "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or the persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations."
- (2) If the authorized representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of this section and meeting the definition in section 26-602 must be submitted to the city prior to or together with any reports to be signed by an authorized representative.
- (i) *Compliance schedules.* Should any schedule of compliance be established in accordance with the requirements of this article, the following conditions shall apply to such schedule:
- (1) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.);
- (2) No increment referred to above shall exceed nine (9) months;
- (3) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the city including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it

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expects to comply with this increment of progress, the reason for delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the city.

(j) *Change in discharge or operations.*

- (1) Every permitted industrial user shall file a notification with the city a minimum of fourteen (14) days prior to any planned significant change in operations or wastewater characteristics. A significant change shall be a change equal to or greater than twenty (20) percent in the mass of a pollutant or volume of flow discharged to the POTW. In addition, this notification shall include changes to:
  - (i) Adding or removing processing, manufacturing or other production operations.
  - (ii) New pollutants used which may be discharged.
  - (iii) Changes in the listed or characteristic hazardous waste for which the industrial user has submitted or is required to submit information to the city under this article and subsection (k).
- (2) Known or anticipated facility closure. The industrial user is required to notify the city at least thirty (30) days prior to facility shutdown or closure which might alter the character, nature, quality, or volume of its wastewater.

(k) *Notification of the discharge of hazardous waste.*

- (1) Any industrial user shall notify the city, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261. Such notification to the city shall be made within the appropriate time frames specified in subsections (d), (f) and (j) of this section within twenty-four (24) hours of becoming aware of the discharge, whichever is shorter.

Such notification must include:

- a. The name of the hazardous waste as set forth at 40 CFR Part 261;
  - b. The EPA hazardous waste number;
  - c. The type of discharge (continuous, batch, or other);
  - d. An identification of the hazardous constituents contained in the wastes;
  - e. An estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month;
  - f. An estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve (12) months;
  - g. Certification that the industrial user has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical; and
  - h. Signatory certification as required by subsection (h).
- (2) Any industrial user shall notify the EPA Regional Waste Management Division Manager, and state hazardous waste authorities, in writing, of the discharge into the POTW of a substance which, if otherwise disposed of, would be hazardous waste under 40 CFR Part 261 and meets the reporting criteria specified at 40 CFR 403.12(p). Notification to the state and EPA is the responsibility of the industrial user and shall be made as required under 40 CFR Section 403.12(p). The industrial user shall copy the city on all notifications made to the state and EPA.
  - (3) In the case of any new regulation under Section 3001 of the Resource Conservation and Recovery Act (RCRA) identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Waste

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Division director, and state hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

- (4) This provision does not create a right to discharge any substance not otherwise allowed to be discharged by this chapter, a permit issued hereunder, or any applicable federal or state law.

(l) *Requests for information.*

- (1) A permittee shall furnish to the city, within the timeframe set by the administrator, any information which the city may request to determine whether cause exists for modifying, revoking, and reissuing, or terminating an industrial discharge permit, or to determine compliance with the industrial discharge permit or this article. A permittee shall also, upon request, provide to the city, within the timeframe required by the administrator, copies of any records that are required by the industrial discharge permit or this article.
- (2) When requested by the city, any industrial user shall submit information to the administrator regarding industrial processes, nature and characteristics of wastes and wastewaters generated at the industrial facility, method of disposal of wastes, or other information required by the administrator to meet the responsibilities under this article, state law, and 40 CFR Part 403. Failure to provide information within the timeframe specified shall be a violation of this article.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

**Sec. 26-612. Right of entry.**

- (a) Whenever it shall be necessary for the purposes of this article, the city may enter upon any industrial user's facility, property, or premises subject to this article for the purposes of:
- (1) Performing all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by an industrial user. Compliance monitoring and inspection shall be conducted at a frequency as determined by the city and may be announced or unannounced;
  - (2) Examining and copying any records required to be kept under the provisions of this article or of any other local, state or federal regulation;
  - (3) The city may use a camera to photograph any areas of the facility as deemed necessary for carrying out the duties of the industrial pretreatment program including, but not limited to, documentation of the industrial user's compliance status and for reinforcement of required written reports. The industrial user shall be allowed to review copies of photographs for confidentiality claims;
  - (4) Inspecting any monitoring equipment or method, pretreatment system equipment and/or operation;
  - (5) Sampling any discharge of wastewater into POTW; and/or
  - (6) Inspecting any production, manufacturing, fabricating or storage area where pollutants, regulated under this article, could originate, be stored, or be discharged to the POTW.
- (b) The occupant of such property or premises shall render all proper assistance in such activities. Where an industrial user has security measures in place which require proper identification and clearance before entry into its premises, the industrial user shall make necessary arrangements with its security personnel so that authorized representatives of the city will be permitted to enter without delay to perform their specified functions.
- (c) The administrator is entitled to enter all private properties through which the city or any connecting jurisdiction holds an easement.

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- (d) Failure to allow entry or unreasonable delays. In the event the administrator is refused admission or unreasonably delayed is a violation and may result in enforcement action as allowed for under this article including revocation of the industrial discharge permit.
  - (e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the administrator and shall not be replaced. The costs of clearing such access shall be borne by the user.
  - (f) If the administrator has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the city designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the administrator may seek issuance of a search warrant from a court of competent jurisdiction.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-613. Fees.**

- (a) *Purpose.* The purpose of this section is to provide for the payment to the city by industrial users of the POTW of all costs incurred in the implementation and administration of the industrial pretreatment program. The applicable charges and fees shall be set forth in a schedule adopted by the city council.
- (b) *Charges and fees.* The administrator may adopt additional charges and fees relating to the matters covered by this article, including fees for:
  - (1) Processing industrial discharge permit applications.
  - (2) Reimbursement of costs of operating the industrial pretreatment program.
  - (3) Measuring, monitoring, inspection and surveillance procedures, sampling, testing, and analyzing industrial user wastewater.
  - (4) Reviewing and approving accidental discharge procedures and facilities.
  - (5) Fees as the city may deem necessary to carry out the requirements contained herein.
  - (6) Fees to cover the added cost of handling or treating any wastes not covered by existing or regular monthly sewer service charges.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

### **Sec. 26-614. Compliance and enforcement.**

- (a) *Enforcement response plan.* The city may adopt policies and procedures as set forth in the city's enforcement response plan for carrying out the provisions of this article, provided that such policies and procedures are not in conflict with this article or any applicable state or federal law or regulation.
- (b) *Publication of industrial users in significant noncompliance.* The city shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the significant industrial users which, at any time during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. In addition, any industrial user found to be in significant noncompliance with subsections (3), (4) or (8) shall also be published in the newspaper. The following criteria shall be used to define significant noncompliance:

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- (1) Chronic violations of wastewater discharge limits, defined as those in which sixty-six (66) percent or more of all of the measurements taken during a six-month period exceed, by any magnitude, a numeric pretreatment standard or requirement, including instantaneous limits;
  - (2) Technical review criteria (TRC) violations, defined as those in which thirty-three (33) percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement including instantaneous limits multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease and 1.2 for all other pollutants except pH);
  - (3) Any other violation of a pretreatment standard or requirement (daily maximum, long-term average, instantaneous limit, or narrative standard) that the administrator determines has caused, alone or in combination with other discharges, interference or pass through, including endangering the health of city personnel or the general public;
  - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or the environment or has resulted in the city's exercise of its emergency authority to halt or prevent such a discharge;
  - (5) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction or attaining final compliance;
  - (6) Failure to provide, within thirty (30) days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports and reports on compliance with compliance schedules;
  - (7) Failure to accurately report noncompliance; or
  - (8) Any other violation or group of violations which may include a violation of best management practices, which the administrator determines may adversely affect the operation or implementation of the local pretreatment program.
- (c) *Administrative enforcement actions.*
- (1) *Notice of violation (NOV).* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may serve upon the industrial user a written notice of violation. Within five (5) working days of the receipt of such notice, an explanation of the violation and a plan for the satisfactory correction or prevention thereof, to include specific required actions, shall be submitted by the industrial user to the city. Submission of such a plan in no way relieves the industrial user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
  - (2) *Suspension of service.*

Endangerment to health or welfare of the community: The city, through other than a formal notice to the affected industrial user, may immediately and effectively halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW of the city or any wastewater system tributary thereto, by any means available to them, including physical disconnection from the wastewater system, whenever it reasonably appears that such discharge presents an imminent endangerment to the health or welfare of the community.

Endangerment to environment or treatment works: The city, after written notice to the industrial user may halt or prevent any discharge of pollutants into any natural waterway, surface drainage within the city, any area under jurisdiction of the city, the POTW, wastewater system tributary thereto, by any

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means available to them, including physical disconnection from the wastewater system, whenever such discharge presents or may present an endangerment to the environment or threatens to interfere with the operation of the POTW.

Any person notified of a suspension of the wastewater treatment service and/or the industrial discharge permit shall immediately stop or eliminate the contribution. In the event of a failure of the person to comply voluntarily with the suspension order, the city shall take such steps as deemed necessary including immediate severance of the sewer connection, to prevent or minimize damage to the POTW system or endangerment to individuals or the environment. The city may reinstate the industrial discharge permit and/or the wastewater treatment service upon proof of the elimination of the non-complying discharge.

A detailed written statement submitted by the industrial user describing the causes of the harmful contribution and the measure taken to prevent any future occurrence shall be provided to the city within five (5) days of the date of occurrence. Suspension of service shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.

- (3) *Administrative compliance order.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may issue an order to the industrial user responsible for the discharge directing that the industrial user come into compliance within a specific time. If the industrial user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the industrial user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.
- (4) *Consent order.* The city may enter into a consent order, assurances of compliance, or other similar documents establishing an agreement with any industrial user responsible for noncompliance. Such documents shall include specific actions to be taken by the industrial user to correct the noncompliance within a time period specified by the document. A consent order may include penalties, supplemental environmental projects, or other conditions and requirements as agreed to by the city and the industrial user.
- (5) *Show cause hearing.*
  - (i) The city may order any industrial user who causes or allows an unauthorized discharge to enter the POTW to show cause before the administrator why the proposed enforcement action should not be taken. A notice shall be served on the industrial user specifying the time and place of a hearing to be held by the administrator regarding the violation, the reasons why the proposed action is to be taken, and directing the industrial user to show cause before the administrator why the proposed enforcement action should not be taken. The notice of the hearing shall be served personally or be sent by registered or certified mail (return receipt requested) at least ten (10) days before the hearing. Service may be made on any agent or officer of a corporation.
  - (ii) The administrator may conduct the hearing and take the evidence, or may designate one or more persons to conduct the hearing and to take the following actions:
    - (A) Issue subpoenas requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearings, The administrator or the

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industrial user may petition the municipal court to enforce any subpoena issued pursuant to this section through the court's contempt powers.

- (B) Receive evidence from both the industrial user and the administrator on any relevant issue involved in such hearings, provided however, that the Montana Rules of Evidence shall not apply strictly to such evidence.
  - (C) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the administrator for final action thereon.
- (iii) At any hearing held pursuant to this article, testimony taken must be under oath and recorded. The transcript of testimony will be made available to any member of the public and any party to the hearing upon payment of reasonable charges for the preparation thereof. The hearing may be suspended or continued from time to time in the discretion of the presiding officer, provided that all evidence is received and the hearing is closed within sixty (60) days after it is commenced.
- (iv) After the administrator has reviewed the evidence, they may issue an order of findings and take an action or no action as necessary and appropriate.
- (6) *Cease and desist order.*
- (i) When the administrator finds that an industrial user is violating this article, an industrial discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the industrial user's past compliance history indicates that violations are likely to recur, the administrator may issue an order to the user directing it to cease and desist all such violations and directing the industrial user to:
    - (A) Immediately comply with all requirements;
    - (B) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.
  - (ii) Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the industrial user.
- (7) *Administrative fines.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may fine such industrial user in an amount not to exceed one thousand dollars (\$1,000.00) per day per violation. Such fines shall be assessed on a per-violation, per day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation. Issuance of an administrative fine shall not be a bar against, or prerequisite for, taking any other action against the industrial user.
- (d) *Judicial enforcement remedies.*
- (1) *Injunctive relief.* When the city finds that an industrial user has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement, the city may petition the Billings Municipal Court for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the industrial discharge permit, order, or other requirement imposed by this article on activities of an industrial user. The city may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the industrial user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
  - (2) *Civil penalties.*

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- (i) An industrial user who has violated, or continues to violate, any provision of this article, an industrial discharge permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable to the city for a maximum civil penalty not to exceed one thousand dollars (\$1,000.00) per day per violation. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of violation.
  - (ii) The city may recover reasonable attorneys' fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the city.
  - (iii) In determining the amount of civil liability, the city shall take into account all relevant circumstances including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the industrial user, and any other factor as justice requires.
  - (iv) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against an industrial user.
- (3) *Civil/administrative fine pass through.* In the event that an industrial user discharges such pollutants which cause the city to violate any condition of its MPDES permit and the city is fined by the EPA or the state for such violation, then such industrial user shall be fully liable for the total amount of the fine assessed against the city by the EPA and/or the state.
- (4) *Criminal prosecution.*
- (i) Any industrial user who violates or fails to comply with any provision of this article or with any orders, rules, regulations, permits and permit conditions issued hereunder, shall, upon conviction, be guilty of a misdemeanor. The penalty for such misdemeanor shall be a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed six (6) months, or both.
  - (ii) Any industrial user who knowingly makes, authorizes, solicits, aids, or attempts to make any false statement, representation or certification in any hearing, or in any permit application, record, report, plan or other document filed or required to be maintained pursuant to this article, or who falsifies, tampers with, bypasses, or knowingly renders inaccurate any monitoring device, testing method, or testing samples required under this article, shall, upon conviction, be guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment not to exceed six (6) months, or both.
  - (iii) The city may refer violations that warrant criminal prosecution to the U.S. Attorney General's Office, State Attorney General or USEPA Criminal Investigation Division or other appropriate agency. Such referral shall not preclude the city from taking a parallel administrative or civil enforcement action.
- (e) *Cost recovery.* In any judicial action, the city may recover reasonable attorney fees, court costs, deposition and delivery costs, expert witness fees, and other expenses of investigation, enforcement action, administrative hearings, and litigation if the city prevails in the action or settles at the request of the defendant. Any person who violates any of the provisions of this article or the rules and regulations shall become liable to the city for any expense, loss, or damage to the city or to the POTW occasioned by such violation including, but not limited to, investigative/monitoring expenses, fines, penalties, cleaning, repair or replacement work caused by and in connection with the violation. In addition, upon proof of willful or intentional meter bypassing, meter tampering, or unauthorized metering, the city shall be entitled to recover as damages three (3) times the amount of actual damages.
- (f) *Remedies nonexclusive.* The remedies provided for in this article are not exclusive of any other remedies that the city may have under the provisions of state law.

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(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

**Sec. 26-615. Pretreatment authority outside of city.**

In order to achieve and maintain compliance with the Clean Water Act, federal pretreatment requirements, state regulations, sewage grant conditions and MPDES discharge permit requirements, the city, as manager/operator shall have the authority to implement and enforce the pretreatment program against any industrial user within and outside of the city's territorial jurisdiction who discharges directly or indirectly to the POTW or any collection system connected to the city POTW.

To that end, all governmental sewage connectors, municipalities and sanitation districts, shall be required to adopt a regulatory pretreatment program either:

- (1) Is consistent with and as stringent with this article and the rules and regulations; or
- (2) Incorporates by reference the provisions of this article and the rules and regulations and specifically delegates authority to implement and enforce the pretreatment program to the city.

Connectors, municipalities, sanitation districts, shall also be required to approve necessary revisions to existing sewer service agreements or joint agreements granting the city the right to administer and physically enforce the connector's pretreatment program on behalf of and as agent for the connector district.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

**Sec. 26-616. Affirmative defenses to discharge violations.**

(a) *Upset.*

- (1) For the purposes of this article, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the industrial user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.
- (2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (3) below are met.
- (3) An industrial user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) An upset occurred and the industrial user can identify the cause(s) of the upset;
  - (ii) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
  - (iii) The industrial user has submitted the following information to the city within twenty-four (24) hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five (5) days):
    - (A) A description of the indirect discharge and cause of noncompliance;
    - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
    - (C) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

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- (4) In any enforcement proceeding, the industrial user seeking to establish the occurrence of an upset shall have burden of proof.
  - (5) Industrial users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.
  - (6) Industrial users shall control (decrease) production of all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.
- (b) *Prohibited discharge standards.* An industrial user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the specific prohibitions in any action brought against it alleging a violation of the specific prohibitions in subsections 26-604(b)(3), (4), (5), (6) or (7) where the user demonstrates that:
- (1) It did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass through or interference; and
  - (2) The industrial user had accurately disclosed the concentration of the pollutant(s) causing the pass through or interference in applications, reports, or other required documents as required; and either:
    - (i) A local limit designed to prevent pass through and/or interference, as the case may be was developed for each pollutant in the industrial user's discharge that caused pass through or interference, and the industrial user was in compliance with each such local limit directly prior to and during the pass through or interference; or
    - (ii) If a local limit designed to prevent pass through and/or interference, as the case may be, has not been developed for the pollutant(s) that caused the pass through or interference, the industrial user's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from the user's prior discharge activity when the POTW was regularly in compliance with the POTW's MPDES permit requirements and, in the case of interference, applicable requirements for sewage sludge use or disposal.
- (c) *Bypass.*
- (1) For purposes of this subsection:
    - (i) Bypass means the intentional diversion of wastestreams from any portion of an industrial user's treatment facility.
    - (ii) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
  - (2) Bypass not violating applicable pretreatment standards or requirements. An industrial user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provision of subsections (3) and (4) of this section but are reportable under subsections 26-611(a), (d), (f), (j) and (k), as appropriate.
  - (3) Notice.
    - (i) If an industrial user knows in advance of the need for a bypass, it shall submit prior notice to the director, if possible, at least ten (10) days before the date of the bypass.

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- (ii) An industrial user shall submit oral notice of an unanticipated bypass that exceeds applicable pretreatment standards to the administrator within twenty four (24) hours from the time the industrial user becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the industrial user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass. The administrator may waive the written report on a case-by-case basis if the oral report has been received within twenty four (24) hours.
- (4) Prohibition of bypass.
- (i) Bypass is prohibited, and the administrator may take enforcement action against an industrial user for a bypass, unless:
    - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
    - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
    - (C) The industrial user submitted notices as required under subsection (3) of this section.
  - (ii) The administrator may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three (3) conditions listed in subsection (4)(i) of this section.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

**Sec. 26-617. Severability; repealer; effective date.**

- (a) *Severability.* If any part or parts of this article are held by any court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of said article.
- (b) *Repealer.* That all ordinances or parts of ordinances in conflict herewith are hereby repealed.
- (c) *Effective date.* That this article [Ordinance Number 13-5600] shall be effective from and after final passage and as provided by law.

(Ord. No. 13-5600, § 1(Att. A), 5-28-13)

***ARTICLE 26-700. IRRIGATION DITCHES<sup>4</sup>***

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<sup>4</sup>Editor's note(s)—Art. 26-700 derives from Ch. 10.80 of the 1967 Code of Billings, Montana. Said chapter has been included herein as a new article at the discretion of the editor.

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## **Sec. 26-701. Definitions.**

For the purpose of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural.

- (1) *Shall* is mandatory and not merely directory.
- (2) *City* is the City of Billings, Montana.
- (3) *Irrigation ditch* is the total area occupied by the ditch, its banks concomitant structures, rights-of-way and easements, and includes all ditches, flumes, culverts or pipe used to transport water for irrigation purposes.
- (4) *Person* is any person, firm, partnership, association, organization, corporation, company, or entity of any nature.
- (5) *Public places* shall include all lands owned by the city.
- (6) *Public nuisance* means any dangerous or potentially dangerous condition, litter or debris condition arising or occurring by reason of an irrigation ditch passing through or existing within the city.
- (7) *City administrator* means the duly employed and acting chief executive of the city.
- (8) *Council* means the duly elected and qualified legislative body of the city.
- (9) *Costs and expenses* shall include the actual costs and expenses incurred and an allocable portion of administration costs incurred in processing the corrective action and collecting the amount due.

(Ord. No. 81-4343, § 1, 4-27-81)

## **Sec. 26-702. Not used.**

## **Sec. 26-703. Care and maintenance of irrigation ditches.**

Every person owning or operating any irrigation ditch or system or portion thereof within the city shall care for, maintain and control said irrigation ditch, system, water being transported and concomitant structures. Said care control and maintenance shall also apply with respect to interactions and reactions to structures and impediments not controlled or maintained by persons owning or operating the irrigation systems. The duty imposed hereby shall extend to control and removal of all obstructions, litter, debris, plant material, loose earth, rocks, stones, concrete and wood material without limitation in, on, or around said irrigation ditches.

(Ord. No. 81-4343, § 1, 4-27-81)

## **Sec. 26-704. Nuisance.**

Failure to care for and maintain said ditches as provided in section 26-703 shall constitute a public nuisance and may be punished as a violation of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

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**Sec. 26-705. City action, dangerous condition.**

In the event the public works director or his designee determines that a danger to the public or public or private property exists and is imminent the city shall attempt to notify the responsible persons. If they cannot be immediately located or if located and refuse or are unwilling to take the necessary action and the danger is such that immediate action must be taken, the city may take action to cure the problem and charge the cost and expense thereof to the owner or operator of the irrigation ditch or system. The determination to be made herein shall be at the sole discretion of the city.

(Ord. No. 81-4343, § 1, 4-27-81)

**Sec. 26-706. City action, problem condition.**

In the event a problem condition exists but is not dangerous as defined in section 26-705, notice of the condition shall be given to the owner or operator of the irrigation ditch or system and the owner or operator shall be allowed ten (10) days in which to cure the condition. In the event an extension of time is necessary to accomplish the cure, application may be made to the city administrator and the administrator may extend the time period to cure not to exceed an additional thirty (30) days. Upon failure of the owner or operator to cure the problem condition within the time allowed or to apply for an extension the city may cure the problem and charge the cost and expenses therefore against the owners or operators of the irrigation ditch or system.

(Ord. No. 81-4343, § 1, 4-27-81)

**Sec. 26-707. Notice.**

The notice provided in section 26-706 shall be by certified mail return receipt requested or by personal service on the owner, operator, employee or agent.

(Ord. No. 81-4343, § 1, 4-27-81)

**Sec. 26-708. Lien.**

The costs and expenses incurred by the city shall be documented and provided to the city clerk together with a legal description of the property upon which the city performed the service. The clerk shall cause a lien in a form similar to a mechanics lien to be filed with the clerk and recorder of Yellowstone County. The city may take action to collect the expenses and costs incurred either by foreclosure of the lien or by direct action against the persons owning or operating the irrigation ditches or systems. The provisions of this paragraph are in addition to and cumulative to all other penalties that may be imposed for violations of this chapter.

(Ord. No. 81-4343, § 1, 4-27-81)

**Sec. 26-709. Penalty for violation.**

Unless another penalty is expressly provided by law, every person convicted of a violation of this chapter shall be punished as provided by section 1-110.

(Ord. No. 81-4343, § 1, 4-27-81)

***ARTICLE 26-800. DENTAL AMALGAM***

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### **Sec. 26-801. Definitions.**

- (a) *Dental amalgam.* Dental amalgam is a liquid mercury and metal alloy mixture used in dentistry to fill cavities caused by tooth decay. Low-copper dental amalgam commonly consists of mercury, silver, tin, zinc, and other trace metals.
- (b) *Existing dental amalgam source.* All dental facilities or offices that were discharging dental amalgam prior to July 14, 2017 to the city. Existing sources must have been in compliance with the standards by July 14, 2020 and must have submitted a one-time certified compliance report by October 12, 2020 to the city. In the event that ownership is transferred, a new one-time certified compliance report must be submitted by the new owner within ninety (90) days of the transfer to the city.
- (c) *New dental amalgam source.* All dental facilities or offices that discharged dental amalgam after July 14, 2017 to the city. New sources also include any ownership transfer of an existing dental facility or office after July 15, 2020. All new sources must be in compliance with the waste management practices and record retention requirements set forth in this article and must submit a one-time certified compliance report to the city within ninety (90) days after the first discharge to the city or within ninety (90) days of any ownership transfer by the new owner.

( Ord. No. 21-5749 , § 1, 2-22-21)

### **Sec. 26-802. Dental amalgam mercury reduction.**

- (a) This article applies to all owners or operators of dental facilities or offices that remove, repair or place dental amalgam fillings. Owners and operators of dental facilities or offices that do not place or remove dental amalgam except in limited emergency, unplanned or unanticipated circumstances need only to submit the one-time compliance form by the dates set forth in section 26-801 subsections (b) and (c). If work in a dental office is limited to work that does not involve placing or removing dental amalgam, such as oral pathology, orthodontics, periodontics, oral and maxillofacial surgery/radiology, endodontics, or prosthodontics, then this article does not apply.
- (b) All owners and operators of dental facilities or offices shall implement the basic requirements for dental amalgam management established by the United States Environmental Protection Agency Dental Office Point Source Category 40 CFR Part 441, and set forth in section 26-803, BMCC.

( Ord. No. 21-5749 , § 1, 2-22-21)

### **Sec. 26-803. Waste management practices.**

All owners and operators of dental facilities or offices that remove, repair or place dental amalgam fillings shall comply with the following waste management practices:

- (a) Operate and maintain an amalgam separator that meets the criteria of 40 CFR 441.30, 441.40, and ISO 11143 according to the manufacturer's instructions. The amalgam separator shall have a design and capacity appropriate for the size and type of vacuum system.
- (b) Do not discharge any dental amalgam to a publicly owned treatment works (as defined in section 26-602). Waste must be collected in the separator and a separate amalgam waste bucket which will be hauled offsite as dental amalgam waste.
- (c) Lines must not be cleaned with oxidizing or acidic cleaners including but not limited to bleach, chlorine, iodine, and peroxide. Cleaners must have a pH between six (6) and eight (8).

- 
- (d) Adhere to all compliance reporting requirements listed in section 26-804.
  - (e) Complete and submit the city-provided compliance report forms for reporting the required information in section 26-804.
  - (f) If a malfunction with the amalgam separator is discovered, this malfunction must be documented and repaired or replaced within ten (10) business days.

( Ord. No. 21-5749 , § 1, 2-22-21)

**Sec. 26-804. Record retention.**


- (a) The manufacturer's user manual must be retained for the life of the amalgam separator, be posted near the amalgam separator, and be made available for review during all city inspections.
- (b) Amalgam separator logs including logged inspections, routine maintenance, and repairs must be posted near the amalgam separator and retained for a period of at least three (3) years from the present date and be made available for review during all city inspections. The amalgam separator must be inspected according to the user manual to ensure proper operation and maintenance; this inspection must be documented on the amalgam separator log.
- (c) Certificates verifying the proper disposal and recycling of dental amalgam waste buckets and containers from the amalgam separators must be retained for a minimum period of three (3) years from the present date and be made available for review during all city inspections.

( Ord. No. 21-5749 , § 1, 2-22-21)

**Sec. 26-805. Compliance.**

- (a) The owners or operators of dental facilities or offices shall allow the city to inspect the amalgam separator, amalgam waste storage areas and all above listed compliance reports, logs, and records. Inspection shall occur during the normal operations schedule of the dental facility or office. The city shall inspect dental facilities or offices according to appointments made in advance if this advanced notice does not impede enforcement of this article.
- (b) Any violation of this article may be considered a failure to comply with applicable federal standards and requirements and may constitute a violation of the Clean Water Act, and may also subject the owner or operator of a dental facility or office to the compliance and enforcement provisions set forth in section 26-614.

( Ord. No. 21-5749 , § 1, 2-22-21)

A circular splash of water, captured in a high-speed photograph, forms a ring-like shape against a clear blue background. The water droplets are frozen in time, creating a textured, crystalline appearance. The splash is centered in the upper half of the frame, with a black rectangular box overlaid on the lower right portion of the image.

BMCC Chapter 26  
Water and Wastewater Utilities  
First Reading and Public Hearing

January 22, 2024

# Why?



BMCC Chapter 26  
and Water and Sewer  
Rules and Regs

BMCC sets policy, Regs  
set standards and  
procedures  
Should not be  
repetitive



Rules and Regs June 2017



Reimbursement Agreements and  
billing process

Cleanup

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Stormwater

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Annexation terminology

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Definitions

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Billing

# Requested changes/clarifications

- Section 26-117. Prohibited Acts. (4) Bathe, swim or wade in any **finished** reservoir ~~or intake~~ to the city water supply within the corporate limits of the city
- Customer definition
- Backflow process
- Reimbursement payment conditions

# Backflow Prevention

- Backflow prevention devices as required under applicable fire, building, plumbing codes, and/or the City's Cross Connection Control Manual must be installed, maintained, repaired, and replaced in accordance with the applicable uniform codes. Testing of backflow prevention devices must be performed at the time of installation and at least annually thereafter by a certified backflow prevention assembly tester.
- Question about annual testing
- Question about cost

# Reimbursements

Every water or sewer connection will be checked

If City extended – require reimbursement

- Based on 2 year calculation

If privately funded extension – require reimbursement if:

- Agreement in place
- Based on 2 year calculation

No more reimbursement agreements

# 26-505.(a) Reimbursement Conditions

1. Must be extended by the developer at his expense.
2. Costs of any such facilities which are financed through special improvement districts shall not be reimbursed.
3. Total project costs for the extension of the special benefit facilities must be at least ten thousand dollars (\$10,000.00) and may include engineering costs in addition to construction costs.
4. Upon completion of the extension of the facilities, the developer must convey all right, title and interest in the facilities of the city.
5. Developer shall, at all times, provide to the city a current address for purposes of mailing reimbursement payments to developer. If the City does not have a current address on file at the time of reimbursement, the developer will not receive nor be due a reimbursement. If the developer has a right to reimbursement or reason to believe it is entitled to reimbursement that has not been received, the developer must make a request to the City for such reimbursement within five (5) years from date of connection to the main or its claim shall be waived. At no time does the city have an obligation to make reimbursement payments to developer's heirs, representatives, successors or assigns.
6. Extension of 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.
7. Violation of any of the conditions listed in this section or in the rules, regulations, resolutions and ordinances of the city may be grounds for denial of any reimbursement to developer.

# 26-505. (b) Reimbursement Payments

(1) Reimbursements are payable solely from revenues derived from payment of reimbursement fees as established in this article. Reimbursement payments are limited to reimbursement fees actually collected, less all administrative costs incurred by the city. ~~In no event will reimbursement payments exceed the actual cost to the developer of extending the facilities.~~

(2) Reimbursement fees paid to the city shall be accumulated and paid to developer annually on each November first following acceptance of the facilities by the city.

(3) Reimbursement payments shall not include any interest charges.

~~(4) Reimbursement payments to developer shall be limited to reimbursement fees paid to the city on or before the tenth (10th) anniversary of the date of acceptance of the facilities by the city.~~


(5) Any reimbursement fees paid to the city for facilities that were constructed by a developer whereby the developer does not meet all criteria of section 26-505 shall be retained by the city and used for construction of additional water and wastewater system facilities.

(6) All reimbursements made to the City that are part of an existing reimbursement agreement shall be paid to the developer in accordance with the terms of said agreement. Any reimbursements collected by the city that are not paid to a developer due to terms of the agreement shall be retained by the city and used for construction of additional water and wastewater system facilities.

# Ditches

## Sec. 26-702. Open irrigation ditches

- The city council deems it for the public interest and benefit of the city and the inhabitants thereof, and ordains that the use of all open irrigating ditches terminating within the corporate boundaries of the city shall be discontinued, except this chapter shall not prohibit the use of such ditch or ditches that are used by ten (10) percent or more of the abutting landowners on such ditch.

- 
- Budget and finance committee (December 2023)
  - City Council work session (January 2024)
  - Developers (January 18, 2024)
  - Public Hearing and First Reading (this meeting)
  - Second Reading (February 12, 2024)

A decorative graphic on the left side of the slide. It features a dark grey background with a cluster of 3D question marks. A white line and a blue line intersect at a point, creating a triangular shape that points towards the question marks. The blue line extends from the top left towards the bottom right, while the white line extends from the top left towards the bottom right, meeting the blue line at a point.

# Questions and Discussion

**City Council Regular**

**Date:** 01/22/2024  
**Title:** Council appointments to Boards and/or Committees and Council Subcommittees  
**Presented by:** Chris Kukulski, City Administrator  
**Department:** City Hall Administration  
**Presentation:** No  
**Legal Review:** Not Applicable  
**Project Number:** N/A

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**RECOMMENDATION**

Determine which council members will fill vacancies on each of the following boards.

- Big Sky Economic Development Board
- Beartooth Resource Conservation & Development (RC&D)

and Council Subcommittees:

- Legislative and Local Affairs Subcommittee
- Budget and Finance Subcommittee

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

As council member's terms of service have ended, council member vacancies remain on the following boards.

Big Sky Economic Development Board - The board meets on the 2nd Thursday of each month at 7:00 am. The Council's recommendation will be presented to the county commission for their consideration.

Beartooth RC&D - 3rd Thursday of odd numbered months @ 1:30 pm

Neither the City Charter nor the Council's Rules of Procedure dictate the process you use for determining council member appointments.

Currently, the Council Subcommittees meet as follows:

- Legislative and Local Affairs - The committee meets on the 2nd Wednesday of the month in the City Hall conference room, 4:00 - 5:00 PM and more often when the legislature is in session
- Budget and Finance - Wednesdays following the first Council Business meeting every month - City Hall Conference Room, 9:00-11:00 AM.

Resolution 23-11173 regarding council subcommittees is attached for your review.

**STAKEHOLDERS**

N/A

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

The proposed action has no financial impact.

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**Attachments**

Resolution 23-11173

## RESOLUTION 23-11173

### A RESOLUTION ESTABLISHING STANDING COUNCIL COMMITTEES

WHEREAS, the City desires to have a more comprehensive approach to policy making, and

WHEREAS, Billings, Montana City Code Section 2-223 authorizes the city council to create from its number council committees as needed; and

WHEREAS, on September 26, 2022, four standing committees were created to address ongoing areas of Council concern, including Budget and Finance, Legislative, Local Affairs, and Council Operations, and

WHEREAS, these committees have been in effect for approximately a year and Council finds it appropriate to make some modification to the criteria related to the committees and to consolidate the Legislative and Local Affairs committees.

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

1. The following standing Council committees are established:
  - a. Budget & Finance Committee
    - i. Three to five Council Members appointed by the Mayor
    - ii. Scope: This committee focuses on development of the CIP and city budget in conjunction with staff; budget amendment process; debt issuance; and contracts relating to budget and finance items like cost allocation, fee studies, audits, and other professional services.
  - b. Legislative & Local Affairs Committee
    - i. Three to five Council Members appointed by the Mayor
    - ii. Scope:
      - (a) This committee oversees the development of legislative proposals on behalf of the city of Billings; tracks relevant legislative committees, sub-committees, and policy developments; serves as a liaison to Billings-area legislators, and coordinates testimony among the Mayor, Council Members, and City Administrator.
      - (b) This committee focuses on building relationships with other local officials including the Yellowstone County Commission and Billings Public School Board.

- (c) This committee focuses on areas of shared importance among local government bodies, including public safety, emergency planning, education and workforce, economic development, long-term planning, and coordination of state and federal grant requests.
- (d) This committee may focus on federal legislation as the need arises, or when asked to do so by a majority vote of council.
- iii. Outside of the legislative session, the committee is specifically prohibited from expressing a formal city position on any legislation without approval from City Council. During the legislative session the committee is expected to work within the parameters adopted by the full council. This committee is specifically prohibited from expressing a formal city position on any legislation without approval from City Council.

c. Council Operations

- i. Three to five Council members including the Mayor, Deputy Mayor, and Mayor Pro Tempore
  - ii. Scope: this committee oversees general Council operations and logistics, including but not limited to agenda development, Council meeting rules, meeting efficiency, Council member relationships, strategic planning processes, new member orientation, and City Administrator annual review processes.
2. Except for the Council Operations Committee, committee member terms shall be two years.
  3. Each Committee shall select a chair to serve on an annual basis but for no more than two successive years.
  4. The Mayor shall only sit on the Council Operations Committee, but shall be considered an ex officio member of all remaining committees. Council Members are free to attend any committee meeting they wish and may be requested to participate in an advisory role on specific matters within a committee's jurisdiction.
  5. The purpose of these standing committees is for Council to explore policy and finance issues in depth. Committee meetings are open to the public and public comment is taken during the meetings. Minutes will be kept in accordance with all Montana open meeting laws.
  6. No committee is authorized to take binding action on behalf of the City of Billings or speak on behalf of City Council. The sole purpose of the committees is to

provide recommendations to the full Council. Committees may request the City Administrator provide staff support necessary to the work of the committee.

7. At the first meeting in January following each general municipal election, Council Members shall be appointed to the committees and each committee shall hold an organizational meeting within 30 days to review the general rules of the committee, including meeting date, time, and place and make any appropriate changes. The committee shall report any changes to the Council and, in that report, shall indicate whether staff support is requested. Committee rules shall be reviewed annually, and any proposed changes shall be submitted to Council.
8. REPEALER. Resolution 22-11076 is hereby repealed.
9. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the 27<sup>th</sup> day of November, 2023.



CITY OF BILLINGS

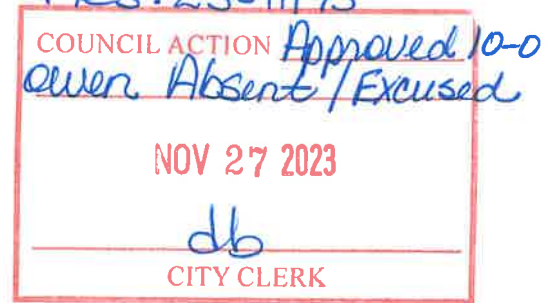
By: William A. Cole  
William A. Cole, Mayor

ATTEST:

By: Denise B. Bohlman  
Denise R. Bohlman, City Clerk

Res. 23-11173

City Council Regular  
 Date: 11/27/2023  
 Title: Resolution modifying Council subcommittees  
 Presented by: Gina Dahl  
 Department: Legal  
 Presentation: No  
 Legal Review: Yes  
 Project Number: N/A



**RECOMMENDATION**

Staff recommends Council adopt the resolution establishing Council committees and repealing Resolution 22-11076.

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

In September 2022, Council created four subcommittees: Council Operations, Legislative, Local Affairs, and Budget and Finance. These committees have been meeting and working on their related subject areas for the last year. With some practical experience with these committees, Council discussed the makeup and scope of the committees during a recent work session and found it appropriate to make some changes. As a result, Council has asked staff to present a resolution that combines the Legislative and Local Affairs committees and modifies the resolution to reflect these changes.

The attached resolution addresses the requested modifications and combines the Legislative and Local Affairs committees. Language was added to allow this committee to express opinions regarding legislation during a legislative session, which is a change from the previous resolution. Additionally, the term limits were eliminated to allow for committee members to remain on a committee for more than two consecutive terms. There were no other substantive changes to the resolution.

**ALTERNATIVES**

City Council may:

- Approve; or,
- Not Approve

**FISCAL EFFECTS**

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**Attachments**

Resolution

**RESOLUTION 23-\_\_\_\_\_**

**A RESOLUTION ESTABLISHING STANDING  
COUNCIL COMMITTEES**

WHEREAS, the City desires to have a more comprehensive approach to policy making, and

WHEREAS, Billings, Montana City Code Section 2-223 authorizes the city council to create from its number council committees as needed; and

WHEREAS, on September 26, 2022, four standing committees were created to address ongoing areas of Council concern, including Budget and Finance, Legislative, Local Affairs, and Council Operations, and

WHEREAS, these committees have been in effect for approximately a year and Council finds it appropriate to make some modification to the criteria related to the committees and to consolidate the Legislative and Local Affairs committees.

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

1. The following standing Council committees are established:

a. Budget & Finance Committee

- i. Three to five Council Members appointed by the Mayor
- ii. Scope: This committee focuses on development of the CIP and city budget in conjunction with staff; budget amendment process; debt issuance; and contracts relating to budget and finance items like cost allocation, fee studies, audits, and other professional services.

b. Legislative & Local Affairs Committee

- i. Three to five Council Members appointed by the Mayor
- ii. Scope:
  - (a) This committee oversees the development of legislative proposals on behalf of the city of Billings; tracks relevant legislative committees, sub-committees, and policy developments; serves as a liaison to Billings-area legislators, and coordinates testimony among the Mayor, Council Members, and City Administrator.
  - (b) This committee focuses on building relationships with other local officials including the Yellowstone County Commission and Billings Public School Board.

- (c) This committee focuses on areas of shared importance among local government bodies, including public safety, emergency planning, education and workforce, economic development, long-term planning, and coordination of state and federal grant requests.
    - (d) This committee may focus on federal legislation as the need arises, or when asked to do so by a majority vote of council.
  - iii. Outside of the legislative session, the committee is specifically prohibited from expressing a formal city position on any legislation without approval from City Council. During the legislative session the committee is expected to work within the parameters adopted by the full council.

c. Council Operations

- i. Three to five Council members including the Mayor, Deputy Mayor, and Mayor Pro Tempore
    - ii. Scope: this committee oversees general Council operations and logistics, including but not limited to agenda development, Council meeting rules, meeting efficiency, Council member relationships, strategic planning processes, new member orientation, and City Administrator annual review processes.
- 2. Except for the Council Operations Committee, committee member terms shall be two years.
- 3. Each Committee shall select a chair to serve on an annual basis but for no more than two successive years.
- 4. The Mayor shall only sit on the Council Operations Committee, but shall be considered an ex officio member of all remaining committees. Council Members are free to attend any committee meeting they wish and may be requested to participate in an advisory role on specific matters within a committee's jurisdiction.
- 5. The purpose of these standing committees is for Council to explore policy and finance issues in depth. Committee meetings are open to the public and public comment is taken during the meetings. Minutes will be kept in accordance with all Montana open meeting laws.
- 6. No committee is authorized to take binding action on behalf of the City of Billings or speak on behalf of City Council. The sole purpose of the committees is to provide recommendations to the full Council. Committees may request the City Administrator provide staff support necessary to the work of the committee.

7. At the first meeting in January following each general municipal election, Council Members shall be appointed to the committees and each committee shall hold an organizational meeting within 30 days to review the general rules of the committee, including meeting date, time, and place and make any appropriate changes. The committee shall report any changes to the Council and, in that report, shall indicate whether staff support is requested. Committee rules shall be reviewed annually, and any proposed changes shall be submitted to Council.
8. REPEALER. Resolution 22-11076 is hereby repealed.
9. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED AND APPROVED by the City Council of the City of Billings, Montana, on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF BILLINGS

By: \_\_\_\_\_  
William A. Cole, Mayor

ATTEST:

By: \_\_\_\_\_  
Denise R. Bohlman, City Clerk