OFFICIAL AGENDA
TUESDAY October 6, 2020
Meeting Start Time: 9:30 a.m.
Board of County Commissioners
Yellowstone County, Montana
Stillwater Building
316 N. 26th Street, Room 3108
Billings, MT
9:00 a.m. Agenda Setting

Pledge to the Flag: Moment of Silence: Minutes

REGULAR AGENDA

MEETING UPDATE

In response to recent public health concerns surrounding COVID-19, Board of County Commissioner meetings will be held in a different format. Meetings may include virtual video conferencing to comply with social distancing guidelines.

In an effort to honor your right to participate and allow for public comment we have set up a conference call line. **Please dial (406) 256-2724 - Conference ID# 277 749 960#**

The public may comment during the specific public comment periods listed on the agenda. Please have your phone set to "mute" until the public comment period is open.

The B.O.C.C. regular meeting will be televised live on Community 7 TV. (Channel 7 or 507 on Spectrum Cable) Community 7 TV may be accessed and viewed online at www.comm7tv.com.

If you have questions please contact the B.O.C.C. office at (406) 256-2701 or the Clerk and Recorder at (406) 256-2787.

9:30 a.m. BID OPENING

Bid Opening for the Sale of Excess Asphalt Millings in Zimmerman Park

9:30 a.m. PUBLIC HEARING

City-County Planning Division Fee Amendments - Resolution 20-74 to Adopt New and Revised Planning Division Fees for Project and Permit Applications

PUBLIC COMMENTS ON REGULAR AGENDA ITEMS

1. **COMMISSIONERS**
   Board Openings - One 5-Year Term on the Big Sky Economic Development Authority Board

2. **FINANCE**
   Budget Transfer for Road Fund's Fuel Island

3. **PLANNING DEPARTMENT**
   a. Schmitt Subdivision - Preliminary Minor Plat
   b. **Tabled Returned Item -** County Zone Change 703 – Portion of Lot 2, Block 1 Cherry Creek Estates – from R-96 to R-80 - A zone change request from Residential 9,600 (R-96) to Residential 8,000 (R-80), on a portion of Lot 2, Block 1, Cherry Creek Estates Subdivision, specifically the 8.62 acres south of Cherry Creek Loop and north of the city limits.

4. **PUBLIC WORKS**
   Resolution of Intent 20-75 to Create RSID 858C to Pave (Overlay Various Vista Butte Subdivision Roads)

PUBLIC COMMENTS ON CONSENT AGENDA ITEMS

CLAIMS

CONSENT AGENDA

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1. **CLERK AND RECORDER**
   Homestead Acres Subdivision and S.I.A.

2. **COUNTY ATTORNEY**
   Addendum to Contract for Dental Services at Yellowstone County Detention Facility

3. **ELECTIONS**

CTCL COVID-19 Response Grant

4. **FINANCE**

a. Yellowstone County Detention Facility Contract with Alternatives, Inc. for SCRAM Services

b. Sheriff's Office Request For Proposals for Dunn Mountain Communications Tower Replacement

c. Bond for Lost Warrant

d. Annual MOU with MT Wool Growers Association

e. Anderson Zurmuehlen Letter of Engagement for Audit Services

f. Earth First Aid Agreement Addendum

g. LGE (Local Government Entity) Certification Form

h. Facilities Recommendation of Award and Contract with Empire Roofing for Yellowstone County Detention Facility Kitchen Area Roofing Replacement

5. **PLANNING DEPARTMENT**

Final Resolution 20-73 For Zone Change #702 - A Zone Change Request from Agricultural Suburban (A-S) to Residential - 15,000 (R-150) on Certificate of Survey 1884 Tract 1A2, of Amended Tract 1, a 22.2 Acre Parcel of Land

6. **PUBLIC WORKS**

Contract with Great West Engineering for the Replacement of Bridge 28-02 and the Realignment of Alkali Creek Road

7. **HUMAN RESOURCES**

PERSONNEL ACTION REPORT - Sheriff's Office - 1 Appointment, 1 Salary & Other; **Detention Facility** - 3 Salary & Other; **Clerk of District Court** - 1 Termination

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FILE ITEMS

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1. **AUDITOR**

Payroll Audit September 1, 2020 to September 15, 2020

2. **CLERK AND RECORDER**

Board Minutes - Lockwood Water and Sewer District

3. **COMMISSIONERS**

a. Air Force Notice of Availability - Environmental Impact Statement

b. Montana's Non-Metropolitan Local Official Participation Process

c. City of Billings Proposed Street Lighting District #328

d. Letter from Mr. Rick Tweden Regarding Grandstand Demolition

e. Nomination Letter from NACo

4. **ELECTIONS**

Election Returns - Certification of the Municipal Special Election Held September 15, 2020

5. **FACILITIES**

Application to Use Courthouse Lawn

6. **FINANCE**

Information Technology Maintenance Agreement with Vertiv Services

7. **HUMAN RESOURCES**

September 1 through September 15 Payroll Audit

8. **JUSTICE COURT**

Subgrant Application Montana Board of Crime Control - Montana's First Domestic Violence Court Implementation Program

9. **PUBLIC WORKS**

Snowplowing Contracts with River Ridge Landscape for Clarksfork Estates RSID 723M and River Ranch Retreat RSID 806M

PUBLIC COMMENTS ON COUNTY BUSINESS

B.O.C.C. Regular Agenda Item

Meeting Date: 10/06/2020

Title: Bid Opening

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Bid Opening for the Sale of Excess Asphalt Millings in Zimmerman Park

BACKGROUND:

N/A

RECOMMENDED ACTION:

Refer the bids to staff.

B.O.C.C. Regular **Agenda Item**

Meeting Date: 10/06/2020

TITLE: Resolution to Adopt Planning Fee Increases and Schedule a Public Hearing

PRESENTED BY: Monica Plecker

DEPARTMENT: Planning Department

TOPIC:

City-County Planning Division Fee Amendments - Resolution 20-74 to Adopt New and Revised Planning Division Fees for Project and Permit Applications

INTRODUCTION:

The City/County Planning Division is proposing fee increases as part of the County's FY21 budget process. Planning Division staff discussed this proposal with the BOCC during its budget hearings and during a BOCC discussion held in August. Several options were presented to the BOCC during this time. Planning Staff has prepared a fee schedule consistent with direction received from the BOCC.

The Divisions goal in collecting fees is to cover the cost of providing services. Through the years the City and County fee schedules have developed major cost differences though the staffing, resources and processes are identical between jurisdictions. Typically staff will recommend nominal percentage increases in fees every two years. Given the significant differences between the two schedules a nominal increase will not achieve cost recovery and will not impact or decrease in a meaningful way the large gaps between the two fee schedules.

The Planning Division is proposing the following:

- Increase subdivision fees in three equal amounts over three fiscal years. Exception includes fees with $100 difference or less, those will be increased to match the city schedule with FY21.
- Increase zoning fees to match the city's fees in FY21.
- Adopt new fees in anticipation of the adoption of the Project Re:Code. These fees will not be effective until the adoption of Project Re:Code.

ALTERNATIVES ANALYZED:

The Board of County Commissioners may:

- Adpot the Resolution increasing fees; or
- Fail to adopt the Resolution and existing fees will remain in place.

FINANCIAL IMPACT:

The Planning Division depends heavily on fees for services provided to fund the division. It is estimated based on calendar year 2019 activity that increases could result in an increase of approximately $17,000 annually considering the gradual increases that are proposed. Failing to increase fees will continue to burden the division in utilizing other revenue streams to cover the cost of services related to subdivision and zoning.

RECOMMENDATION

Planning Staff recommends the BOCC hold a public hearing, consider public testimony and approve the Resolution.

Attachments

Resolution to Adopt Planning Fees

Exhibit A

Exhibit B

Resolution No. 20-74

Resolution to Adopt Revised Fee Schedule for City-County Planning Division Zoning and Subdivision Applications, Permits, and Project Re:Code fees

WHEREAS, the Yellowstone County Board of County Commissioners has adopted zoning and subdivision regulations and a fee schedule for the reviews required by the regulations. The Board uses the fees to pay for some of the costs associated with the reviews. The fees do not cover all of the costs associated with the reviews. The costs associated with the reviews have increased over the years. To have the fees cover more of the costs associated with the reviews, the City-County Planning Division has proposed an increase in the fees. Attached as Exhibit A is a copy of the proposed fee schedule.

WHEREAS, the Planning Division has proposed fees in anticipation of the future Adoption of Project Re:Code. Attached as Exhibit B is a copy of the proposed fee schedule.

WHEREAS, on September 15, 2020, the Yellowstone County Board of County Commissioners passed a resolution of intent to adopt a revised fee schedule for zoning and subdivision reviews and set a public hearing on the proposed revised fee schedule for October 6, 2020. On September 18 and September 25, 2020, the Yellowstone Clerk and Recorder published notice of the public hearing in the *Yellowstone County News*. On October 6, 2020, the Board held a public hearing on the proposed revised fee schedule. The Board heard comments on the proposed revised fee schedule. The Board determined that it would be in the best interest of the public to adopt the proposed revised fee schedule.

NOW THEREFORE, BE IT RESOLVED, The Yellowstone County Board of County Commissioners adopts the revised fee schedule for zoning and subdivision reviews. Attached, as Exhibit A and B, is a copy of the fee schedule. The revised fee schedule will have the people requesting the reviews pay more of the costs associated with the reviews. The fee schedule supersedes the previous fee schedule and shall remain in effect until superseded by another revised schedule. The newly adopted fee schedule (Exhibit A) shall become effective January 1, 2021. Exhibit B is only effective upon the adoption of Project Re:Code.

Passed and Adopted on the 6th day of October, 2020.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

_____
Denis Pitman, Chairman

_____
Donald W. Jones, Member

_____
John Ostlund, Member

ATTEST:

_____
Jeff Martin, Clerk and Recorder
Yellowstone County, Montana

Subdivision Fee Schedule - YCO FY21

SUBDIVISION APPLICATION REVIEW FEES		FY 21	FY 22	FY23
Pre-Application Meetings	(City Only)	$ 484	$ 593	$ 702
Preliminary Major Plat	6 to 40 lots	$ 2,801	$ 3,580	$ 4,359
	41 to 200 lots	$ 5,509	$ 6,299	$ 7,090
	Over 200 lots	$ 5,508	$ 6,299	$ 7,090
Preliminary Minor Plat		$ 1,415	$ 2,089	$ 2,763
Preliminary Subsequent Minor Plat		$ 1,415	$ 2,089	$ 2,763
Subdivision Variances	Residential	$ 511		
	Commercial	$ 628		
Phased Subdivision Opening		$ 1,732		
Final Major Plat (Fee at Check Print)	6 to 40 lots	$ 1,022	$ 1,504	$ 1,987
	41 to 200 lots	$ 1,460	$ 2,379	$ 3,299
	Over 200 lots	$ 1,639	$ 2,469	$ 3,299
Final Minor Plat(Fee at Check Print)		$ 1,152	$ 1,495	$ 1,838
Final Subsequent Minor Plat		$ 837	$ 1,337	$ 1,838
Expedited Plat (Fee at Check Print)		$ 836	$ 1,335	$ 1,835
**Exempt Plat (Fee at Check Print)		$ 200		
Corrections or Vacations of Recorded Final subdivision plats or		$ 309		
Corrections or Adjustments to Plats, Conditions, and supporting		$ 309		
Minor Adjustments		$ 309		
Major Adjustments	Major subdivisions affecting:			
	6 to 40 lots	$ 1,412	$ 1,476	$ 1,540
	41 to 200 lots	$ 4,236	$ 4,429	$ 4,621
	Over 200 lots	$ 4,750	$ 5,456	$ 6,161
	Minor subdivisions	$ 616		

**Fee Set by State Law

NOTE: Fees are rounded to the nearest whole number

Zoning Fee Schedule - YCO FY21

PLANNING APPLICATION AND PERMIT REVIEW FEES			FY 21
Zone Change	Residential		$ 1,062
	Commercial		$ 1,470
Land Use Contrary to Zoning			$ 482
Administrative Appeal of Zoning Interpretation			$ 182
Special Review	Residential		$ 1,062
	Commercial		$ 1,470
Variance	Residential		$ 531
	Commercial		$ 653
Planned Unit Development	<5 acres		$ 1,223
	>5 acres		$ 1,960
Deposit for zoning application posting signs (refunded after sign			$ 125
Temporary Use Permit		Initial review	$ 247
		Annual review	$ 163
		Bond	$ 1,650
Temporary Sign Permits			$ 16
Zoning Clarification (includes condo document review)		Written	$ 77
		On-site visit	$ 155
Zoning Compliance	Residential		$ 77
Zoning Compliance	Commercial		$ 115
County (calculate both side of sign in fee)			$3.00/sq. ft. ($2/Sq.ft. application fee, $1/Sq. ft. permit)
Sign - Change of Face Only			$ 25
Fence Permit (For Replacement and New Construction)			$ 30
For all Zone Change applications resubmitted within 1 year of a			$ 817
For all Special Review applications resubmitted within 1 year of a			$ 817
For all Variance applications resubmitted within 1 year of a			$ 817

FY 21 Project Re:Code Fees			
Administrative Relief			
	Base Fee	$	175.00
	Each Additional Rec	$	75.00
Planned Neighborhood Development			
	Neighborhood	$	1,400.00
	Comm/MU/TC	$	2,250.00
Landscape Plan			
	<1 Acre	$	230.00
	1-3 Acres	$	345.00
	3-5 Acres	$	460.00
	5+	$	575.00
Proportionate Compliance			
	Base	$	115.00
	Site (Add)	$	75.00
	Structure (Add)	$	50.00
Code Interpretation			
		$	77.00
Concept Development Meeting			
		$	482.00
Amendments to Approved SR Uses			
		$	115.00

Note: These fees are only intended to be collected once project Re:Code is adopted.

B.O.C.C. Regular Agenda Item 1.

Meeting Date: 10/06/2020

Title: BSEDA Board Opening

Submitted By: Erica Wiley

TOPIC:

Board Openings - One 5-Year Term on the Big Sky Economic Development Authority Board

BACKGROUND:

BSEDA Board member Robin Rude is unable to be reappointed as she is termed out.

RECOMMENDED ACTION:

Notification to the public of these openings

Attachments

Board Openings

YELLOWSTONE COUNTY BOARD OPENINGS

October 6, 2020

BIG SKY ECONOMIC DEVELOPMENT	5 year	1 full to 12/31/25

APPLICATIONS FOR THE ABOVE POSITIONS WILL BE ACCEPTED UNTIL 5:00 P.M. ON THURSDAY, NOVEMBER 5, 2020

September 15, 2020

AREA II AGENCY ON AGING	1 year	1 full to 6/30/21

- **NOTE: Applicant must be sixty (60) years of age or older and a participant of a recognized program for the aged**

BICYCLE & PEDESTRIAN ADVISORY COMMITTEE	3 year	1 full to 12/31/22

- **NOTE: To be eligible for the above board, applicants must live outside the incorporated limits of the City of Billings**

BOARD OF ADJUSTMENT	2 year	1 full to 12/31/21

- **NOTE: Eligible applicants for the above board must live outside of the limits of the City of Billings, but within the 4-1/2 mile zoning boundary. For further information, please contact Nicole Cromwell, Zoning Coordinator, at 657-8246.**

CITY/COUNTY PLANNING: DIST 3	2 year	1 full to 12/31/20
CITY/COUNTY PLANNING: DIST 4	2 year	1 full to 12/31/20
CITY/COUNTY PLANNING: DIST 6	2 year	1 full to 12/31/21

- **NOTE: To be eligible for the above special district boards, applicants must live AND own property within the boundaries of the district. To find which planning district you live in, please contact the City/County Planning Division at 247-8676.**

BLUE CREEK FIRE SERVICE AREA	3 year	2 full to 5/08/22
HUNTLEY PROJECT FIRE SERVICE AREA	3 year	1 full to 6/30/23
LAUREL FIRE DISTRICT #7	3 year	2 full to 12/31/22 1 full to 12/31/20 2 full to 12/31/21
LAUREL URBAN FIRE SERVICE AREA	3 year	2 full to 6/30/22

- **NOTE: To be eligible for the above special district boards, applicants must live OR own property within the boundaries of the district.**

BILLINGS URBAN FIRE SERVICE AREA ADVISORY BOARD	3 year	2 full to 12/31/22 2 full to 12/31/20 1 full to 12/31/21
LOCKWOOD PEDESTRIAN SAFETY DISTRICT ADV.	3 year	4 full to 12/31/22
PARK BOARD	3 year	1 full to 6/30/23

APPLICATIONS FOR THE ABOVE POSITIONS WILL BE ACCEPTED UNTIL 5:00 P.M. ON THURSDAY, OCTOBER 15, 2020

Applications can be picked up in Room 3101 of the Stillwater Building at 316 N 26th Street, downloaded from our website at **www.co.yellowstone.mt.gov**, or you can call 256-2701 to have an application mailed to you.

For a contact name for further information about a board you are interested in, please contact us at 256-2701.

All applications should be returned to: Board of County Commissioners, P.O. Box 35000, Billings, MT 59107 or bocc@co.yellowstone.mt.gov

B.O.C.C. Regular Agenda Item 2.

Meeting Date: 10/06/2020

Title: Budget Transfer for Road Fund's Fuel Island

Submitted For: Kevan Bryan, Finance Director

Submitted By: Kevan Bryan, Finance Director

TOPIC:

Budget Transfer for Road Fund's Fuel Island

BACKGROUND:

Finance is requesting approval of a budget transfer within the Road Fund to provide funding for a unanticipated fuel island project. See attached.

RECOMMENDED ACTION:

Public hearing, then vote to approve the transfer request.

Attachments

Fuel Island Budget Transfer

Yellowstone County

FINANCE
(406) 256-2718
(406) 254-7929 (FAX)

P.O. Box 35003
Billings, MT 59107-5003

October 1, 2020

Board of Yellowstone County Commissioners
P.O. Box 35000
Billings, MT 59107

Dear Board Members:

Please accept this letter as a written confirmation of our department's request to make a budget transfer within the Road Fund.

Your Policy #18-121 in Section N gives my department the authority to move up to $25,000 within a fund. This has been routinely performed over the years where unexpended funds are projected for that fund. These are then recapped both at the mid-year budget review and the end of year in a resolution for Board approval.

This request exceeds that amount. Therefore, per previous County Attorney guidance, we are placing this request on the public discussion agenda for October 5, 2020, then as a public hearing item on your agenda meeting for October 6, 2020. Upon your approval, we will post this requested budget transfer.

The Road Department has unexpected and unfunded need to replace much of its fuel island. The quote for this work is attached. Finance requests approval to move $52,000.00 from Road Fund's Contingency account (2110.000.401.430200.850) to its Capital Outlay-Equipment account (2110.000.401.430200.940).

As stated above, these changes will be listed with other transfers and adjustments given to the Board for approval at the mid-year budget meeting for FY21.

Thank you for your time and consideration in this matter.

Sincerely,

Kevan Bryan

Kevan Bryan
Finance & Budget Director

BID PROPOSAL

MARKETING SPECIALTIES

P.O. Box 141
Billings, Mt. 59103
Phone 406-245-6117 Fax 406-245-6217
Wats 1-800-548-7214

To:
Yellowstone County
Road and Bridge Department
3321 King Ave East
Billings, MT

9/17/2020

JOB
New fuel island card reader
New fuel pumps

We propose here-by to furnish material and labor --- complete in accordance with specifications below, for the sum of:

$51,983.54

Payment to be made as follows: EQUIPMENT DUE UPON DELIVERY TO JOB SITE OR OUR WAREHOUSE
REMAINDER PROGRESSIVELY BILLED

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications below involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner will carry fire, tornado and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

QTY	DESCRIPTION	UNIT PRICE	TOTAL
	Bid to install new fuel island card reader and 2 new fuel pumps		
1	PetroVend PV200 Fuel Island Terminal, Fuel Site Controller,	$7,750.00	$7,750.00
	Phoenix SQL Lite software, Factory direct startup training,		
	1000 cards and 500 transactions memory.		
1	48" Pedestal	$450.00	$450.00
1	Wireless Ethernet Kit	$1,790.00	$1,790.00
1	PCM-Pump Control Module	$935.00	$935.00
1	Tariff	$208.00	$208.00
2	Gasboy Fuel dispenser, with Pulse Output interface and light	$4,425.00	$8,850.00
1	Freight	$260.00	$260.00
2	Pump stands	$1,239.00	$2,478.00
2	Fire Valves	$149.00	$298.00
2	Solenoid Valves 1 1/2"	$999.00	$1,998.00
2	Hose Retrievers with standard base	$667.00	$1,334.00
1	Piping and piping bracing	$1,859.00	$1,859.00
2	Red Jacket 3/4hp Submersible Pumps	$1,945.00	$3,890.00
1	Gas nozzle, hose, swivel and breakaway	$278.54	$278.54
1	Diesel nozzle, swivel, breakaway and hose 1"	$420.00	$420.00
1	Electrical	$9,465.00	$9,465.00
1	Labor, installation and training	$9,720.00	$9,720.00
		TOTAL	**$51,983.54**

Above price does not include any applicable taxes. All taxes will be the responsibility of the purchaser.

Price valid for 30 days

B.O.C.C. Regular **Agenda Item 3. a.**

Meeting Date: 10/06/2020

SUBJECT: Schmitt Subdivision - Preliminary Minor Plat

THROUGH: Monica Plecker **FROM:** Dave Green

TOPIC

Schmitt Subdivision - Preliminary Minor Plat

INTRODUCTION

On September 1, 2020, the Planning Division received an application for minor preliminary plat approval for the proposed Schmitt Subdivision. The property is generally located on the southeast corner of the intersection of Alexander Road and Berean Road. This subdivision is Lot 2-B of Cornerstone Meadows Subdivision; it will create 2 lots from a 4.46-acre parcel of land. The subdivision is being processed as a minor plat because it meets the requirements of an amended plat. The applicant is proposing to develop Lot 2 of the proposed subdivision. This parcel of land is zoned Public, Residential 15,000 and Residential 9,600. The land is currently vacant with dryland grasses and shrubs.

RECOMMENDATION

Staff recommends the Board of County Commissioners conditionally approve the preliminary plat of Schmitt Subdivision and adopt the Findings of Fact as presented in the staff report.

VARIANCE REQUESTED

No variances are requested for this subdivision.

PROPOSED CONDITIONS OF APPROVAL

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

1. To protect public health and safety, prior to final plat approval, the applicant will provide a copy of the recorded MDEQ approval for the proposed water systems, septic systems and the proposed storm water management.

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

3. To minimize effects on the natural environment, prior to final plat approval a weed management plan and property inspection shall be completed by the County Weed Department.

4. To ensure future home construction on the lots meets the requirements of County Zoning, prior to final plat approval the applicant will add language in the SIA under Conditions That Run with the Land that informs lot purchasers of the requirement to obtain a zoning compliance permit before construction begins on the lot.

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

6. The final plat shall comply with all requirements of the County Subdivision Regulations, rules, regulations, policies, and resolutions of the Yellowstone County, including laws regarding moving houses onto or off the property, and the laws and Administrative Rules of the State of Montana.

PROCEDURAL HISTORY

- Pre-application meeting March 5, 2020
- Preliminary plat application submitted to Planning Division September 1, 2020
- Preliminary plat to Yellowstone County Board of County Commissioners October 6, 2020
- 35 working-day preliminary plat review period ends October 22, 2020.

PLAT INFORMATION

General location: Southeast corner of the intersection of Alexander Road and Berean Road

Legal Description: Lot 2-B of Cornerstone Meadows Subdivision

Owner/Subdivider: Warren Schmitt/Walley Schmitt

Surveyor/Engineer: WWC Engineering

Existing Zoning: Public, Residential 15,000 and Residential 9,600

Proposed Zoning: Same

Existing Land Use: Vacant dryland

Proposed Land Use: Residential

Gross area: 4.46 acres

Net area:4.46 acres

Proposed number of lots: 2

Max.: 2.7 acres
Min.: 1.76

Parkland requirements: There is no required parkland dedication as this is a minor subdivision.

PLANNING BOARD PUBLIC HEARING DISCUSSION

A public hearing is not required for minor subdivisions; however nearby property owners may attend the Board of County Commissioners meeting to provide public comment. The Planning Division has received no public comments or questions regarding the proposed subdivision.

YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS FINDINGS OF FACT

See Attachment: Finding of Fact

CONCLUSIONS OF FINDINGS OF FACT

See Attachment: Findings of Fact

RECOMMENDATION

Staff recommends the Board of County Commissioners conditionally approve the preliminary plat of Schmitt Subdivision and adopt the Findings of Fact as presented in the staff report.

Attachments

Findings of Fact

Proposed Plat

SIA

Waiver of Right to Protest

FINDINGS OF FACT

The City-County Planning Division Staff has prepared the Findings of Fact for Schmitt Subdivision. These findings are based on the preliminary plat application and supplemental documents addressing the review criteria required by the Montana Subdivision and Platting Act (76-3-608, MCA) and the Yellowstone County Subdivision Regulations (YCSR).

A. What are the effects on agriculture, local services, the natural environment, wildlife and wildlife habitat and public health and safety (76-3-608 (3) (a) MCA) (Section 3.2 (H) (2) YCSR)

1. Effect on agriculture and agricultural water users' facilities

The subject property is not used for agricultural purposes. The subject property has no irrigation facilities on the land. There is a small seasonal drainage ditch on proposed Lot 1. There will be no effect of agriculture water facility users with the subdivision of the land.

2. Effect on local services

a. **Water and Septic** – This subdivision does not currently have public water to the proposed lots. A water main has been installed in Alexander Road by Heights Water District. Sometime in the future, these proposed lots would be able to annex into the district to obtain public water. There is currently an approval from MDEQ for water on proposed Lot 2 of Schmitt Subdivision. The location will not be changed with this proposed subdivision from Lot 2-B Cornerstone Meadows Subdivision. The recorded MDEQ approval is document number 3736367. Lot 1 of Schmitt Subdivision will not have any water or septic systems on the site until a future date when MDEQ approval has been obtained. The applicant will provide a copy of the MDEQ approval for the water system at the time of final plat. **(Condition #1)** The maintenance and operation of a well will be the responsibility of the homeowner.

This subdivision does not currently have public sewer to the proposed lots. There is currently an approval from MDEQ for septic on proposed Lot 2 of Schmitt Subdivision. The location will not be changed with this proposed subdivision from the original location from Lot 2-B Cornerstone Meadows Subdivision. The recorded MDEQ approval is document number 3736367.

b. **Streets and roads** – There will be no new roads within the proposed subdivision. Access to the lots will be from Berean Road. This road does not require any additional right-of-way, it is currently a gravel surface road.

County Public Works has requested the existing one (1) foot no access strip remain on proposed Lot 1 along Alexander road as depicted on the plat.

c. **Fire and Police services** – The property is within the BUFSA for fire suppression. The existing subdivision does not have any fire suppression system and with only two

lots, it is not required to provide a dry hydrant. Should future subdivision take place it will be required at that time.

The Yellowstone County Sheriff's Department will provide law enforcement services. The Department did not voice concerns with the proposed two lots.

d. **Solid Waste disposal** – The Billings Landfill has capacity for solid waste disposal. Solid waste will be collected and disposed of by a private garbage collection company. Each lot owner will be responsible for arranging for collection.

e. **Storm water drainage** – Storm water drainage shall satisfy Yellowstone County Storm Water Management requirements. It is proposed in the SIA that the stormwater drainage will remain as it has historically drained on the lots. A storm water plan was already reviewed and approved by MDEQ. The recorded MDEQ approval is document number 3736367.

f. **School facilities** – The proposed subdivision is located within Independent School for elementary students. School District #2 will provide educational services for Middle and High School students. Medicine Crow for middle and Skyview for high school.

g. **Parks and recreation** – This proposed subdivision is not required to provide parkland. Yellowstone County Subdivision Regulations Section 10.8 A. A Minor Subdivision is not required to provide parkland.

h. **Postal Service –** The applicant will be required to coordinate the location of a delivery box and provide enough space for the delivery vehicle to pull out of traffic for safety. **(Condition #2)**

i. **Historic features** – No known historic or cultural assets exist on the site.

j. **Phasing of Development** - The applicant is not proposing to develop this subdivision in phases.

3. Effects on the natural environment

The development will use noxious weed control measures to prevent the spread of noxious weeds to adjacent developed or agricultural land. Prior to final plat approval, the applicant will apply for and obtain a weed management plan with the County Weed Department. That plan will be submitted with final plat approval. **(Condition #3)**

There are no apparent or known natural hazards on the property.

4. Effects on wildlife and wildlife habitat

There are no known endangered or threatened species on the property. A paragraph in the 'Conditions that Run with the Land' section of the SIA warns future lot owners of the likely presence of wildlife in the area and their potential to damage residential landscaping.

5. Effects on public health and safety
Plans and designs for the water and septic system have previously been approved and recorded with the County Clerk and Recorders office document number 3736367.

Fire and emergency services are provided for this proposed subdivision from BUFSA and the Yellowstone County Sheriff's department.

B. Was an environmental assessment required? If yes, what, if any, significant adverse impacts were identified? (76-3-603 MCA) (Chapter 9, YCSR)

An environmental assessment was not required for this subdivision pursuant Section 9.2 C of the County Subdivision Regulations.

C. Does the subdivision conform to the Yellowstone County 2008 Growth Policy, the 2018 Urban Area Transportation Plan and the Billings Area Bikeway and Trail Master Plan Update? [BMCC 23-302.H.4.]

1. **Yellowstone County - 2008 Growth Policy**

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

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

The subdivision is consistent with the type of residential development in the surrounding area.

- Goal: Controlled weed populations. (p. 9)

The developer shall complete a weed management plan, and shall provide a re-vegetation plan for any ground disturbed by development.

2. 2018 Urban Area Transportation Plan

The subject property maintains the road hierarchy of the Transportation Plan. As proposed, there are only local streets associated with this subdivision.

3. Billings Area Bikeway and Trail Master Plan (BBTMP)

There are no trails identified within the area of this subdivision. This development will not be required to build trails as part of the subdivision.

D. Does the subdivision conform to the Montana Subdivision and Platting Act (MSPA) and to local subdivision regulations? [MCA 76-3-608 (3) (b) and Section 3.2 (3) (a) YCSR]

The proposed subdivision meets the requirements of the MSPA and the YCSR. The subdivider and the local government have complied with the subdivision review and approval procedures that are set forth by local and state subdivision regulations.

E. Does the subdivision conform to sanitary requirements? [Section 4.8 (C) and 4.9

(C), YCSR]

The subdivider has received approval from the MDEQ for this subdivision.

F. Does the proposed subdivision meet any applicable Zoning Requirements? [Section 3.2 (H) (3) (e), YCSR]

The proposed subdivision is within Public, Residential 15,000 and Residential 9,600 zoning. Compliance with zoning will be confirmed with the zoning compliance permits the future homeowners will be required to submit prior to construction on the lots. This information will be included in the SIA under the heading Conditions that Run with the Land. **(Condition #4)**

G. Does the subdivision provide for necessary planned utilities? [MCA 76-3-608 (3) (c) and Section 3.2 (H) (3) (b), YCSR]

Private utilities are to be installed in the private road right-of-way. Should the private utility companies require easements the applicant will be required to coordinate the easements needed with the private utility companies.

H. Does the proposed subdivision provide for Legal and Physical Access to all lots? [MCA 76-3-608 (3) (d) and Section 3.2 (H) (3) (c) (d), YCSR]

Legal and physical access will be provided for the new proposed lots will be from Berean Road.

CONCLUSIONS OF FINDINGS OF FACT

- This subdivision does not create adverse impacts that warrant denial of the subdivision.
- Impacts to agriculture, agriculture water user facilities, local services, public health and safety, the natural environment, and wildlife should be minimal, and can be mitigated by reasonable conditions of final plat approval.
- The subdivision conforms to some of the goals of the Growth Policy.
- The applicant has complied with the MSPA and YCSR processes and the subdivision conforms to the law requirements.

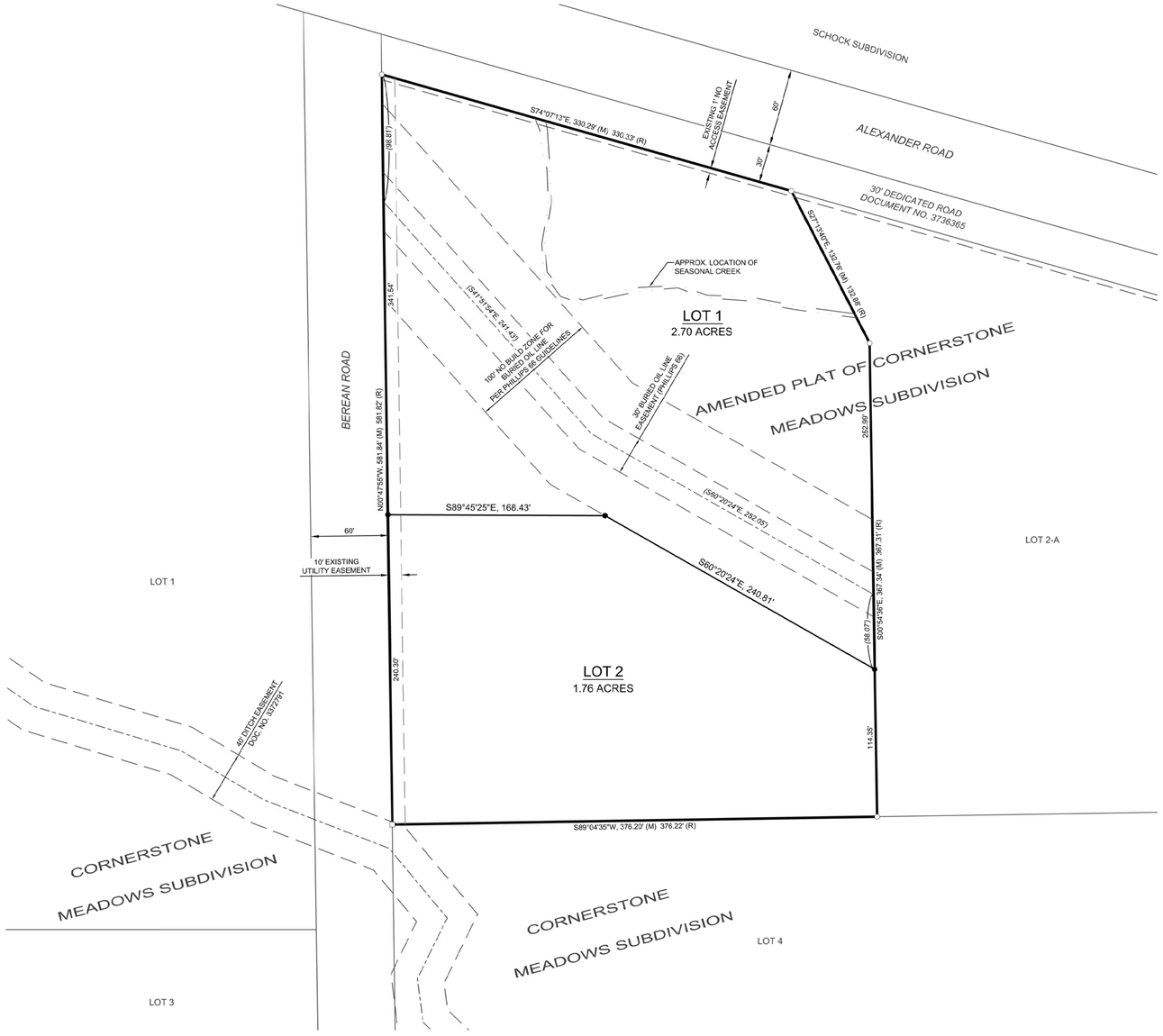
RECOMMENDATION

The Planning Division recommend conditional approval of the preliminary plat of Schmitt Subdivision and adopt the Findings of Fact as presented in the staff report, the SIA and Waiver.

SCHMITT MINOR SUBDIVISION

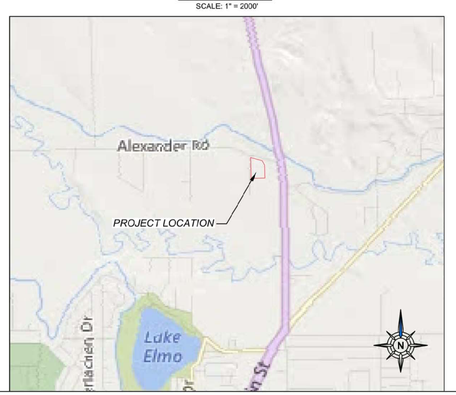
LOT 2-B OF AMENDED PLAT OF CORNERSTONE MEADOWS SUBDIVISION
AMENDING WITHIN NE1/4 OF SECTION 10, T01N, R26E, P.M.M.
YELLOWSTONE COUNTY, MONTANA

PREPARED FOR: MR. WALLY SCHMITT
DATE SURVEYED: MARCH 2020
PREPARED BY: WWC ENGINEERING



SCALE: 1" = 50'

VICINITY MAP
SCALE: 1" = 2000'



LANDOWNER'S CERTIFICATION

I, Warren Schmitt, the owner of the following tract of land, does hereby certify that it has caused to be surveyed, subdivided, and platted into lots, blocks, and streets as shown on the annexed plat, said tract being situated in the NE1/4 of Section 10, T1N, R26E, P.M.M., Yellowstone County, Montana, said tract being more particularly described as follows, to-wit:

Lot 2-B of Amended Plat of Cornerstone Meadows Subdivision, Lot 2, in Yellowstone County, Montana, according to the official plat on file in the office of the Clerk and Recorder of said County, under Document No. 3736365, containing a gross area and net area of 4.4621 acres, more or less, subject to all easements of record or apparent on the ground.

We do hereby certify that pursuant to Section 76-3-621(3)(d), M.C.A. and Yellowstone County Subdivision Regulations, a park dedication may not be required for a subdivision in which only one additional parcel is created.

We further certify that LOT 1 is exempt from DEQ review in accordance with A.R.M.17.36.605(2)(a), a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no facilities will be constructed on the parcel.

We further certify that LOT 2 is exempt from DEQ review in accordance with A.R.M.17.36.605(2)(ii), the division of land will not cause approved facilities to violate any conditions of approval, and will not cause exempt facilities to violated any conditions of exemption.

DATED THIS _____ DAY OF _____, 2020.

_____
Warren Schmitt

ACKNOWLEDGEMENT

State of _____)
) :SS
County of _____)

on this _____ day of _____ , 2020, before me, the undersigned a notary public for the State of _____, personally appeared Warren Schmitt known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

_____
Notary Public for the State of _____

CERTIFICATE OF SURVEYOR

I, John Bruckner, a Montana Registered Land Surveyor being first duly sworn, deposes and says that during the month of March 2020, a survey was performed under my supervision of a tract of land to be known as SCHMITT SUBDIVISION, in accordance with the request of the owner thereof and in conformance with Montana Subdivision and Platting Act; said subdivision being in accordance with the Landowner's Certificate and as shown on the plat; that the monuments found and set are of the character and occupy the positions hereon.

Dated the _____ day of _____, 2020

_____
John Bruckner
Registration Number 63052 LS

MONTANA
JOHN BRUCKNER
No. 63052 LS
LICENSED
STATE OF MONTANA
LAND SURVEYOR

CERTIFICATE OF RIVERSTONE HEALTH

This Certificate of Survey has been reviewed and approved by the Yellowstone City/County Health Department (d/b/a/ RiverStone Health)

Dated this _____ day of _____, 2020

_____
Reviewed by

CERTIFICATE OF COUNTY ATTORNEY

This Certificate of Survey has been reviewed by the County Attorney's Office and is acceptable to form

Dated this _____ day of _____, 2020

_____
Reviewed by

CERTIFICATE OF COUNTY TREASURER

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

Dated this _____ day of _____ , 2020

_____
Treasurer
Yellowstone County, MT

NOTICE OF APPROVAL

STATE OF MONTANA)
: ss
County of Yellowstone)

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

_____
President Date

_____
Executive Secretary Date

CERTIFICATE OF APPROVAL

STATE OF MONTANA)
: ss
County of Yellowstone)

We do hereby certify that we have examined the plat of SCHMITT SUBDIVISION, and find that said plat conforms with the requirements of the laws of the State of Montana and that the requirements for park donation have been met to the satisfaction of the City of Billings/Yellowstone County Board of Planning. It is therefore approved and the dedication to the public use of any and all lands sown on this plat as being dedicated to such use are accepted.

IN WITNESS WHEREOF, we have set our hands and the seal of Yellowstone County, Montana, this _____ day of _____, 20___

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

By: _____
Commissioner

By: _____
Commissioner

By: _____
Commissioner

Attest: _____
Clerk and Recorder

LEGEND

●	SET 5/8" REBAR W/ PURPLE PLASTIC CAP (BRUCKNER, 63052 LS)
○	FOUND ALUMINUM CAP (BEDARD, 11375 LS)
□	FOUND ALUMINUM CAP (ESSEX, 14184 LS)
———	PROPERTY BOUNDARY
(M)	MEASURED DISTANCE THIS SURVEY
(R)	RECORD DISTANCE AMENDED PLAT OF CORNERSTONE MEADOWS SUBDIVISION, LOT 2

NOTES:
1. BASIS OF BEARING: NAD83(2011) MONTANA STATE PLANE COORDINATE SYSTEM, GRID
2. DISTANCES: GROUND, INTERNATIONAL FEET

1/4	SEC.	TWP.	RGE.
	10	01N	26E

SCHMITT MINOR SUBDIVISION
JOB#: 2020-027

REVISIONS	
Date	By

WWC ENGINEERING
550 S 24th STREET W, SUITE 201
BILLINGS, MT 59102
(406) 894-2210

Drawn By: SLO | Checked By: JPB | Date: APRIL 2020 | Scale: 1" = 50'

PLOT STYLE: PDF.STB | PLOT DATE: 05/08/2020 | WWC v14.2.dll
FILE PATH: K:\Billings\Wally Schmitt\2020\07 Minor Subdivision 2 of Lot 2 B Cornerstone Meadows Sub\0\CAD\Sheets\Schmitt Minor Subdivision.dwg

Schmitt Subdivision

This agreement is made and entered into this ____ day of_____, 20____, by and between **WARREN SCHMITT,** whose address for the purpose of this agreement is **1207 WATSON PEAK ROAD, BILLINGS, MT**, hereinafter referred to as "Subdivider," and **YELLOWSTONE COUNTY,** Montana, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, the plat of **Schmitt Subdivision**, located in Yellowstone County, Montana was submitted to the Yellowstone County Board of Planning as a minor subdivision plat; and

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

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

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

I. VARIANCES

A. Subdivider requests no variances from the County's Subdivision Regulations, and hereby intends to conform to those Regulations.

II. CONDITIONS THAT RUN WITH THE LAND

1. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

2. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.

3. No water rights have been transferred to the lot owners. Irrigation ditches that exist on the perimeter of this development are for the benefit of other properties. Perimeter ditches and drains shall remain in place and shall not be altered by the Subdivider or subsequent owners.

4. 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.

5. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.

6. When required by road improvements, all fences and irrigation ditches in the public right- of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.
7. Lot owners or their agent will obtain an Access Permit from County Public Works prior to any construction on any lot within the subdivision. The application will include a site plan showing the desired location of the access and show that it meets the requirements outlined by the DEQ storm water requirements for the subdivision. Failure to do so will result in the lot owner or their agent removing what has been installed and locating the access in an approved location at the lot owners expense.

III. TRANSPORTATION

The subdivider agrees to guarantee all improvements for a period of one (1) year from the date of final acceptance by Yellowstone County.

1. Streets

This subdivision has no new dedicated public roads or streets. Access to the subdivision will be provided by Berean Road which is an existing county road.

2. Traffic Control Devices

No traffic control devices are required for this subdivision.

IV. EMERGENCY SERVICE

Emergency access to the subdivision is provided by Berean Road. The Billings Urban Fire Service Area (BUFSA) provides fire protection and paramedic services for the subdivision.

V. STORM DRAINAGE

No new drainage improvements are proposed for this subdivision. Storm drainage will stay as historically been done.

VI. UTILITIES

1. Water

Schmitt Subdivision is Lot 2-B of Amended Plat of Cornerstone Meadows Subdivision which has prior water approval from Montana Department of Environmental Quality and recorded per Document No. 3736367. The area of approved facilities will remain within Lot 2 of Schmitt Subdivision. A water main was installed in Alexander Road by Billings Heights Water District. Lot 2 of Schmitt Subdivision will be able to request annexation to Billings Heights Water District to obtain municipal water in the future.

No facilities requiring water supply, wastewater disposal, storm drainage or solid waste disposal shall be constructed on Lot 1 of Schmitt Subdivision until after Montana Department of Environmental Quality approval has been obtained.

2. Septic System

Municipal public sewer services are not available in the subdivision at this time. Schmitt Subdivision is Lot 2-B of Amended Plat of Cornerstone Meadows Subdivision which has prior wastewater approval from Montana Department of Environmental Quality and recorded per Document No. 3736367. The area of approved facilities will remain within Lot 2 of Schmitt Subdivision.

No facilities requiring water supply, wastewater disposal, storm drainage or solid waste disposal shall be constructed on Lot 1 of Schmitt Subdivision until after Montana Department of Environmental Quality approval has been obtained.

3. Power, Telephone, Gas, and Cable Television

Power and telephone are adjacent to the site and no utility extensions are required for Lot 1 and Lot 2.

VII. PARKS/OPEN SPACE

There is no parkland requirement for proposed Schmitt Subdivision, as this is a minor subdivision in which only one additional parcel is created [MCA 76-3-617(3)(d)].

VIII. IRRIGATION

There is no irrigation district affected by the proposed development.

IX. WEED MANAGEMENT

All noxious weeds on the latest Yellowstone County Noxious Weed List shall be controlled on all properties in the subdivision.

- A Weed Management Plan must be filed and updated as needed for approval by the Yellowstone County Weed Department. Said weed management plan shall contain the noxious weeds being addressed and the plan for the control of those weeds. All associated cost for noxious weed control is the responsibility of the owner of record.

- A revegetation plan shall be submitted as part of the management plan. A seeding recommendation can be obtained from the Yellowstone County Weed Department pursuant to Section 7-22-2152, MCA. The Yellowstone County Weed Department reserves the right to revise these recommendations based on the required site inspection.

X. SOILS/GEOTECHNICAL STUDY

A geotechnical study was not required for this subdivision. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lot.

XI. FINANCIAL GUARANTEES

There are no public improvements planned for this subdivision. Therefore, no financial guarantees are necessary at this time.

XII. LEGAL PROVISIONS

1. 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.

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

3. 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.

4. 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.

5. 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.

6. Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

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

"SUBDIVIDER" **Warren Schmitt**

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 Warren Schmitt, 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 Yellowstone County, this day of _____, 20_____.

"COUNTY"
COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By:_____
Chairman

_____
Commissioner

_____
Commissioner

Attest:_____
County Clerk and Recorder

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 Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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

Waiver of Right to Protest

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 Rural Special Improvement Districts (RSID's), which Yellowstone County may require for a period of twenty years from the date of this document's recording

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:

Schmitt Subdivision

Signed and dated this___day of_____, 20_____.

Subdivider/Owner

_____

STATE OF MONTANA)
: ss
County of Yellowstone)

On this____ day of_____, 20____, before me, a Notary Public in and for the State of Montana, personally appeared **Warren Schmitt,** known to me to be the person who executed the forgoing instrument and acknowledged to me that he/she executed the same.

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

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

B.O.C.C. Regular **Agenda Item 3. b.**

Meeting Date: 10/06/2020

SUBJECT: County Zone Change 703 - Cherry Creek Loop - R-96 to R-80

THROUGH: Jeff Martin, Clerk And Recorder **FROM:** Teri Reitz, Board Clerk

TOPIC

Tabled Returned Item - County Zone Change 703 – Portion of Lot 2, Block 1 Cherry Creek Estates – from R-96 to R-80 - A zone change request from Residential 9,600 (R-96) to Residential 8,000 (R-80), on a portion of Lot 2, Block 1, Cherry Creek Estates Subdivision, specifically the 8.62 acres south of Cherry Creek Loop and north of the city limits.

REQUEST

This is a zone change request for an 8.62 acre portion of Lot 2, Block 1, Cherry Creek Estates Subdivision, to change from Residential 9,600 (R-96) to Residential 8,000 (R-80). There is a concurrent City zone change for the portion of Lot 2 south of this property (City Zone change 983 - 1.98 acres). The proposed development plan will include a future annexation and subdivision of the property for the development of two-family townhomes. The townhomes are proposed to be sold to individual owners.

APPLICATION DATA

OWNER: Cherry Island, LLC

AGENT: Blueline Engineering, Marshall Phil, P.E.

LEGAL DESCRIPTION: 8.62 acres of Lot 2, Block 1 Cherry Creek Estates south of Cherry Creek Loop

ADDRESS: Cherry Creek Loop

CURRENT ZONING: R-96

EXISTING LAND USE: Vacant

PROPOSED USE: Townhomes - two-family dwellings

SIZE OF PARCEL: 8.62 acres in a total Lot 2 area of 20.195 acres

APPLICABLE ZONING HISTORY

SUBJECT PROPERTY	Zone Change #	DATE	FOR	APPROVED (Y/N)	ADDITIONAL DATA
Lot 2, Block 1 Cherry Creek Estates	**County ZC 496**	Feb 1998	A-1 to R-70 and RMH	Withdrawn	
	City ZC 633	April 1998	A-1 to R-70	Withdrawn	Northern lot on Wicks Lane
	County ZC 506	August 1998	A-1 to R-96	Approved	Riverview Estates east of Cherry Creek
	County ZC 524	Dec 1999	A-1 to PD with RMH & Public zones	Denied	BOCC recommended annexation
	County ZC 541	April 2001	A-1 to R-96 & Public	Approved	Subject Property

	County ZC 543	May 2001	A-1 to RMH & Public	Approved	Litigated & BOCC Decision Affirmed
	County ZC 551	March 2002	Clarifying Zone Boundaries R-96 & Public	Approved	
	City ZC 696	April 2002	A-1 to RMH, RMH to Public & R-96 to Public	Withdrawn	Mistaken submittal by agent
	City ZC 702	July 2002	RMH & Public to R-96	Denied	City Council initiated after annexation in June 2002
	County ZC 562	July 2003	A-1 to R-96	Approved	Small area east of MHP
	County ZC 673	March 2016	R-96 to RMH	Withdrawn	Subject Property
SURROUNDING PROPERTY	**Zone Change #**	**DATE**	**FOR**	**APPROVED (Y/N)**	**ADDITIONAL DATA**
1922 – 1950 Mary St	**County ZC 85**	4/27/1976	R-70 to RMH	Y	Court reversed ZC
1415 Yellowstone River Rd	**County ZC 312**	1/22/1982	R-70 to Public	Y	Eagle Cliff Nursing Home
1817 Bitterroot Dr	**County ZC 371**	11/84	R-70 to R-60	Withdrawn	Annexed
Bitterroot Dr & Walter Rd	**County ZC 505**	9/28/1998	R-70 to R-96	Y	Mulitple owners adjacent to Cherry Creek
1601 – 1747 Wicks Ln	**City ZC 637**	9/14/1998	R-70 to R-96	Y	Multiple owners adjacent to Cherry Creek
Caleb Park Hawthorne & Wicks Ln	**City ZC 761**	9/20/2005	R-70 to R-50	Y	Townhomes

CONCURRENT APPLICATIONS

City Zone Change 983 - the southern 1.98 acres of Lot 2. Current zoning is Public and proposed zoning is R-80. The City Zoning Commission recommended approval and the City Council will hold a hearing and consider the item on September 28, 2020.

SURROUNDING LAND USE & ZONING

NORTH: Zoning: R-96
Land Use: Vacant - remaining portion of Lot 2 north of Cherry Creek Loop in the County

SOUTH: Zoning: Public
Land Use: Vacant - land within the city limits and part of Lot 2

EAST: Zoning: RMH
Land Use: Cherry Creek and Danube Court Manufactured Home Park

WEST: Zoning: R-96 and R-70
Land Use: Large lot residential homes

REASONS

The current zoning of this portion of Lot 2, Block 1 of Cherry Creek Estates is Residential 9,600 (R-96). The current zoning of Lot 2 was approved by County Zoning Change 541 in May 2001. The Public zone portion was intended to accommodate an extension or connection to the bike & trail system along the Yellowstone River and for potential future park dedication to the city. All large subdivisions for residential purposes are required to either dedicate parkland or pay cash in lieu of dedication. The Public zoned portion of this lot was never offered as parkland dedication and is still owned by Cherry Island, LLC. The Cherry Creek Manufactured Home Park developed and maintains a neighborhood park within the court and Danube Court, the last phase of Cherry Creek, paid cash in lieu of parkland dedication.

The proposed zoning of R-80 will allow one and two-family dwellings on lots of 8,000 square feet for a one-family home and 10,000 square feet for a two-family dwelling. The developer intends to build primarily two-family dwellings and presented a concept site plan at the pre-application neighborhood meeting. The townhomes would be sold to individual owners. The concept plan shows an internal road connecting the northern and southern legs of Cherry Creek Loop with 33 two-family dwellings (66 dwelling units total). The total lot area in the proposed development is about 12 acres. The proposed 66 dwelling units would have about 7,900 square feet of lot area per unit or 5.5 dwelling units per acre. The Aspen Cove Townhomes to the north at the intersection of Wicks Lane and Bitterroot Drive are zoned Residential 7,000 (R-70). There are 34 townhomes on this 4.88 acre parcel and have a density of about 7 dwelling units per acre. The directly adjacent properties to the west are outside the city limits and developed at much lower densities of 1 to 1.5 dwellings per acre.

The Cherry Creek Estates development started in 1998 when the first of 11 zone change applications was filed with the Planning Division. Four of the zone changes were withdrawn, two were denied and five were approved. The County zone change that approved the Residential Manufactured Home (County ZC 543) zoning was litigated in district court. The suit did not overturn the County Commissioners' decision to approve the zone change. The property including this Public zoned portion of Lot 2 was subsequently annexed to the city in 2002. The City Council agreed to annex the property with the intent to initiate a zone change after the annexation. The Council initiated the zone change in July 2002 to change the RMH and Public zoning to Residential 9,600 (R-96). The owners protested the zone change triggering the requirement for a super-majority vote to approve the zone change. The Council failed to achieve a super majority vote in favor of the zone change so the RMH and Public zoning stayed in place.

The subject property has remained un-developed for the last 22 years while the Cherry Creek Manufactured Home Park and Danube Court were developed. An early zone change application for a Planned Development (County Zone Change 524) proposed an underlying zoning of RMH for the manufactured home park and Public for all of Lot 2. In this proposal, Lot 2 would remain vacant and be developed as a natural area park with landscaping and trails. The Zoning Commission recommended denial. The County Commissioners denied the Planned Development zone change in early 2000. The next approved zone change for the property was in May 2001 and the zoning has remained the same since that time.

The Planning staff has reviewed the application and recommended approval to the County Zoning Commission. The County Zoning Commission concurred with this recommendation. The 2006 Billings Heights Neighborhood Plan and the 2008 County Growth Policy encourage the development of infill property where city services already exist and new neighborhoods can be served efficiently. The Heights Neighborhood Plan adopted a general statement encouraging new neighborhoods and developments that are similar in nature to existing neighborhoods. Both plans encourage a mix of housing choices in neighborhoods. The proposed development of townhomes expands the housing options in this area of Billings Heights, and should be a good fit between the manufactured home park and the low density county residences to the west. Water and sewer are readily available to the property. Public safety services are fiscally constrained, but the adjacent neighborhoods are already served and this new development can be served as well.

RECOMMENDATION

The County Zoning Commission recommends approval and adoption of the findings of the 11 review criteria for Zone Change 703.

ZONING COMMISSION PUBLIC HEARING AND DISCUSSION

The County Zoning Commission held a public hearing on a virtual format on September 14, 2020. The agent Marshall Phil attended the hearing along with Myles Egan and Jeff Engel. Myles Egan and Jeff Engel have been engaged to market and build the future townhomes on behalf of the owner, Cherry Island, LLC. Written public comments were received and transmitted to the Zoning Commission and the applicant. Jason and Lindsey McGimpsey called in and provided comment to the Zoning Commission. Mari Hall also called in and provided public comment. Chad Morrison, a former resident of Cherry Creek Manufactured Home Park, called in public comment. All of the people who called in public comments urged the Zoning Commission to not recommend approval of the zone change. A primary concern was the history of the owners with poor management of the manufactured home park and the concern these new townhomes would be primarily rentals and mismanaged in a similar fashion. In addition, there were concerns about additional traffic, school age populations exceeding school capacity and general concerns with the aesthetics of the new development next to the large lot County residential homes on Bitterroot Drive.

The agents for the applicant provided a draft of the unit ownership documents and homeowners association responsibilities. Mr. Egan stated the townhomes will be 90 to 95 percent owner occupied as this provides the best financing and insurance rates. Mr. Engel stated each of the townhomes would be single level (no basements) with 2-3 bedrooms and a 2-3 car attached garage. The price point for each unit would be $240,000 to $250,000 and the homeowner fees would add $125 to $200/ month. The fees would cover all exterior maintenance including landscaping, snow removal, siding, and similar property maintenance. Mr. Phil explained the road through the development would be a public street so all utilities would be public utilities including water and sewer services. Mr. Phil stated he had contacted School District #2 about the new development and was told the schools had sufficient capacity to handle any new students from the townhomes. Mr. Phil stated the builder has agreed to a "no-build" area within 20 feet of the west property line behind the houses on Bitterroot Drive. In addition, there will be one tree per unit planted in this 20-foot wide no-build area and the townhomes will be about 50 feet east of the property line. Mr. Engel stated all the townhomes will have maintenance free exterior siding with earth tone colors. Mr. Egan stated he has been the primary agent for several Heights townhome projects and all are well managed and sold quickly.

Commissioner Ray made a motion to recommend approval. The motion was seconded by Chair Troy Boucher. Commissioner Tyler Bush expressed concern with the zone change based on the testimony from the surrounding owners. The Commission voted 2 in favor a 1 opposed to the recommendation. Mr. Bush opposed the motion.

PROPOSED COUNTY COMMISSION DETERMINATIONS

Before making a decision on County Zone Change 703, the Board of County Commissioners shall consider the following:

1. Is the new zoning designed in accordance with the Growth Policy?

The proposed zone change is consistent with the following goals of the 2008 County Growth Policy:

- Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans.
- New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County townsites
- Affordable housing for all income levels dispersed throughout the City and County.
- Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe

The proposed zone change is consistent with the following goals of the 2006 Billings Heights Neighborhood Plan:

- To provide safe, good quality and affordable housing in the Heights. Develop housing patterns that are compatible with existing neighborhoods. Encourage high density multi-family development along arterial routes. Maintain similar housing in established neighborhoods.

The proposed zoning will allow another housing choice in an area with limited housing choices – either manufactured homes or large lot single family dwellings. There are a few townhomes at the intersection of Wicks Lane and Bitterroot Drive but the market is under-represented for this high-demand housing choice. The Emma Jean Heights Subdivision to the north and west is zoned for one or two-family dwellings but is developing mostly as single family dwellings. Subdivisions further north and west have allowed similar housing choices by mixtures of zone districts. Existing demand for housing choice is going up for all ages of buyers including “boomers” and millennials just buying a first home. The proposed zoning would allow a townhome choice in an area where two choices pre-dominate – a manufactured home or a detached single family residence on a larger lot. The overall density of 4 to 6 dwelling units per acre will remain essentially the same throughout the Cherry Creek Subdivision.

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. Will the new zoning facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirement?
Transportation: The proposed zoning will not significantly increase post-development traffic volume. The applicant will be required to prepare a Traffic report to accurately assess the capacity of the surrounding street network to handle the increased traffic from the townhome development. Any improvements or mitigation will be determined by the City Traffic Engineer.
Water and Sewer: The City will provide sewer to the property. Billings Heights Water will provide water service.
Schools and Parks: Schools and parks should 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 with the zone change.

4. Whether the new zoning will promote public health, public safety and general welfare?
Public health and public safety will be promoted by the proposed zoning. The additional dwelling units will help increase the number of rate payers to the city utility systems and increase the taxable value of the property. Current property taxes paid are about $92.00 per tax year. Comparable townhomes to the north in Aspen Gateway pay between $1,500 and $2,000 per tax year per townhome. There are 34 townhomes in Aspen Gateway and there are 66 proposed townhomes on the subject property.

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?
Traffic generation from 66 new dwelling units will be between 650 to 800 new vehicle trips per day. This trip counts includes trips to the new residences for services such as mail, deliveries, solid waste and similar as well as the trips by the occupants. The new subdivision will have sidewalks and will connect to other sidewalks and pedestrian facilities in the neighborhood.

7. Will the new zoning promote compatible urban growth?
The new zoning does promote compatibility with urban growth. The proposed zoning will allow this parcel to provide new housing compatible with the existing neighborhoods to the west and east.

8. Does the new zoning consider the character of the district and the peculiar suitability of the property for particular uses?

The proposed zoning does consider the character of the district and the suitability of the property for the proposed use. The proposed zoning will allow a housing choice that is in demand in the area.

9. Will the new zoning conserve the value of buildings?
There are no existing buildings on the property. Manufactured homes to the east will be the closest to the new development but there is a significant planted buffer yard and 6-foot high screening fence. To the west, most of these homes will be 160 to 200 feet from the back of the new townhomes. In general, new construction tends to increase adjacent building and property values.

10. Will the new zoning encourage the most appropriate use of land in Yellowstone County?
The proposed zoning will allow the development of another housing choice in this area of Billings Heights. This is the most appropriate use of the land.

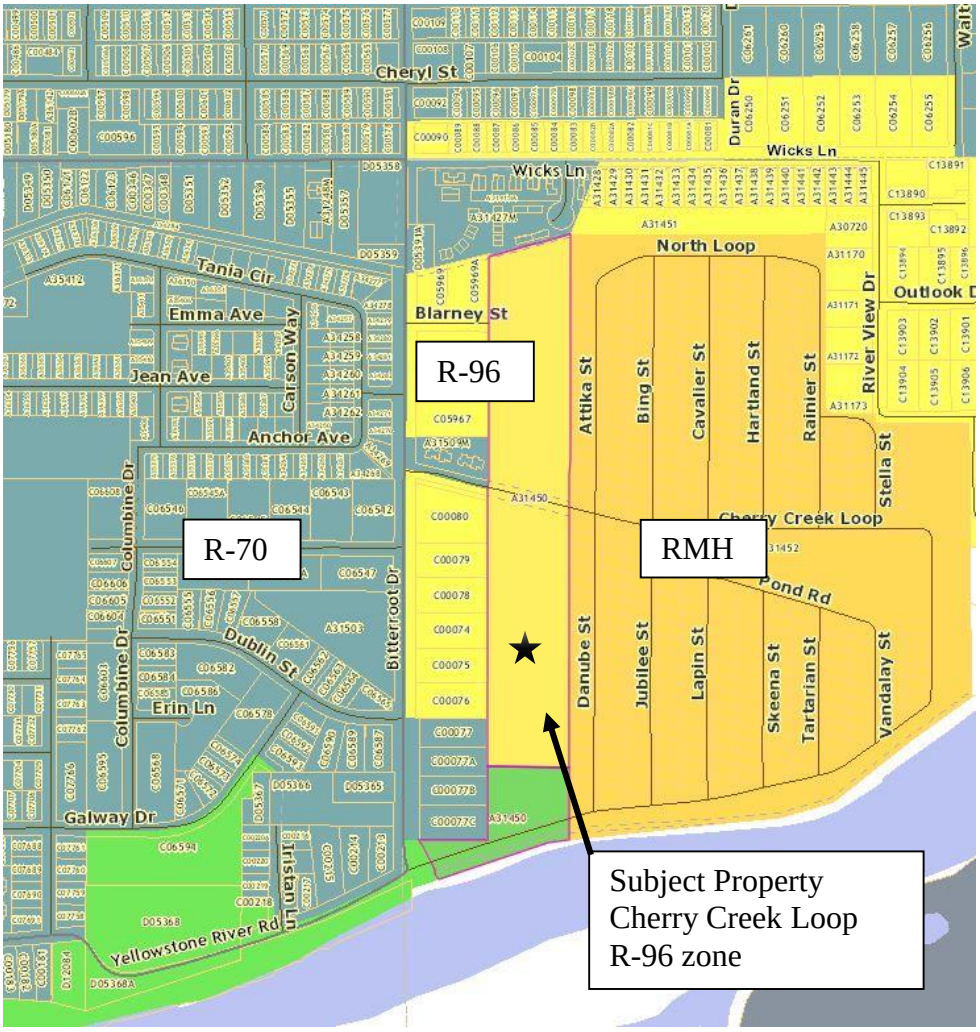
11. Will the new zoning be as compatible as possible with the adjacent zoning in the City?
The proposed zoning of R-80 will be identical with the proposed zoning for the city portion of Lot 2 and is compatible with the existing Residential Manufactured Home (RMH) zoning to the east. There is a significant existing landscaped buffer between the two properties. This will increase the compatibility of the two developments.

Attachments

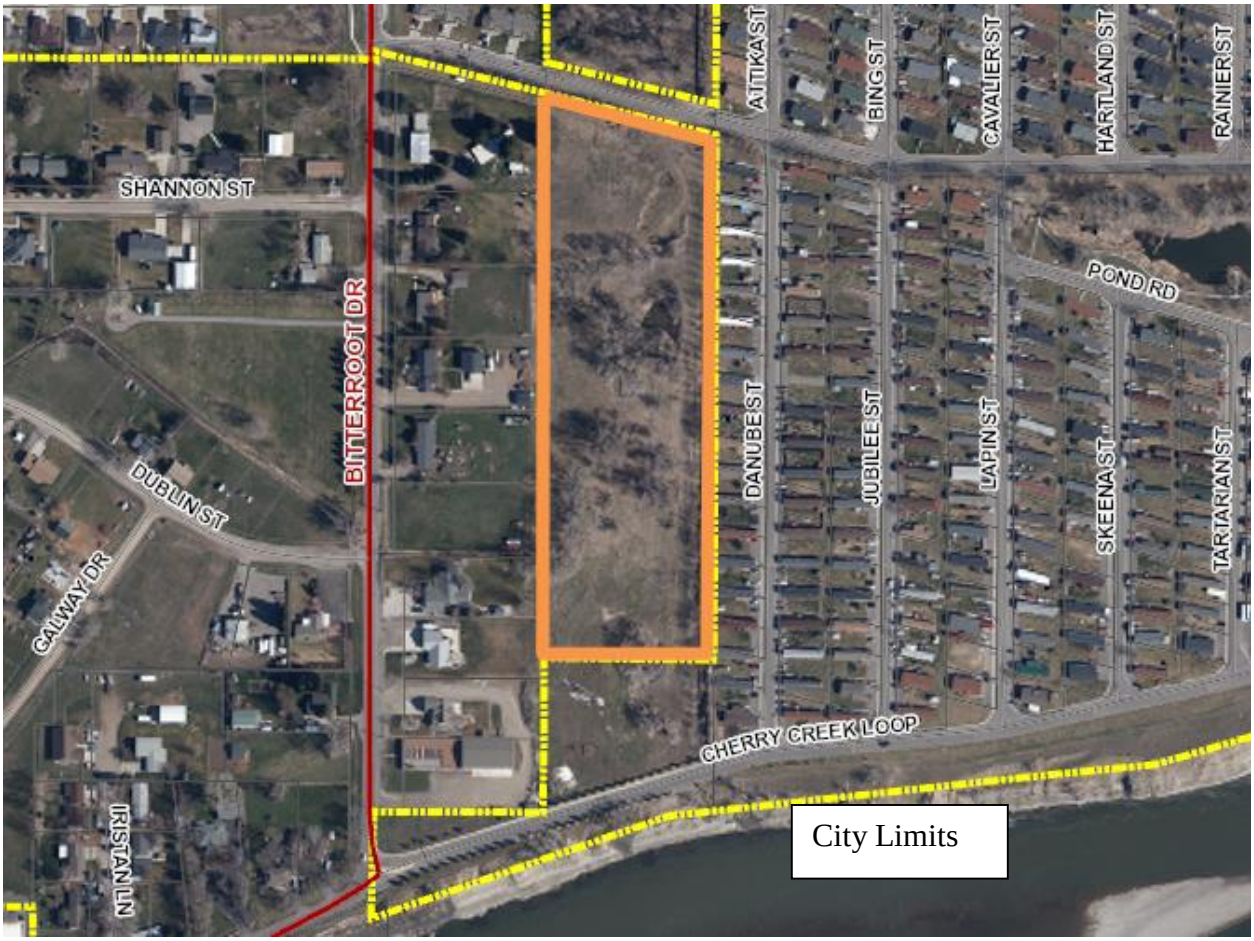
Zoning Map and Site Photos
Application and Letter
Draft Unit Ownership Document
Public Comments as of Sept 1
Muller Public Comment Sept 13
Billings Heights TF Comment Sept 14

Surrounding Zoning

Zone Change 703 – Cherry Creek Estates Lot 2, Block 1



Wicks Ln
Wicks Ln
North Loop
Tania Cir
Emma Ave
Blarney St
Jean Ave
Carson Way
Anchor Ave
Attika St
Bing St
Cavalier St
Hartland St
Rainier St
River View Dr
Stella St
Cherry Creek Loop
Shannon St
Columbine Dr
Bitterroot Dr
Pond Rd
Dublin St
Danube St
Jubilee St
Lapin St
Skeena St
Tartanian St
Vandalay St
Erin Ln
Yellowstone River Rd
Subject Property
Cherry Creek Loop
R-96 zone



Subject Property

Subject Property Photos

Subject Property- view south from Cherry Creek Loop

View west to intersection of Cherry Creek Loop & Bitterroot Drive

View east to the entrance of Cherry Creek Estates MHP

View south and west across subject property

View south from Cherry Creek Loop across subject property

Gate at Cherry Creek Loop access to subject property

Zone Change 703 – Cherry Creek Loop – R-96 to R-80

APPLICATION FORM

COUNTY ZONE CHANGE **County Zone Change #** 703 **- Project #** P2-20-00184

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the Yellowstone County Unified Zoning Regulations.

Present Zoning: R-9600

Proposed Zoning: R-8000

Tax ID # A31450 COUNTY COMMISSIONER DISTRICT # 2

Legal Description of Property:

CHERRY CREEK ESTATES SUB, S24, T01 N, R26 E, BLOCK 1, Lot 2, ACRES 20.196, **MULTIPLE DISTRICTS**-(SD 02-16.77 AC,SD 2-3.42 AC) (04 AMND ANNEX RESOL #03-17967 (04)

Address or General Location (If unknown, contact County Public Works):

Cherry Creek Loop

Size of Parcel (Area & Dimensions): 375,619 SF 348.55 x 1067.8 x 338.76 x 1118.93

Present Land-Use: Vacant

Proposed Land-Use: Duplex Housing Development

Covenants or Deed Restrictions on Property: Yes____ No x

If yes, please attach to application

*** Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Cherry Island LLC

(Recorded Owner)

5855 Elysian Rd Billings MT, 59101

(Address)

406-254-2106 jclause@wmc-i.com

(Phone Number) (email)

Agent(s): BLUELINE ENGINEERING

(Name)

724 1ST AVE N, BILLINGS MT 59101

(Address)

406-294-2294 MPHIL@BLUELINE-ENG.COM

(Phone Number) (Email)

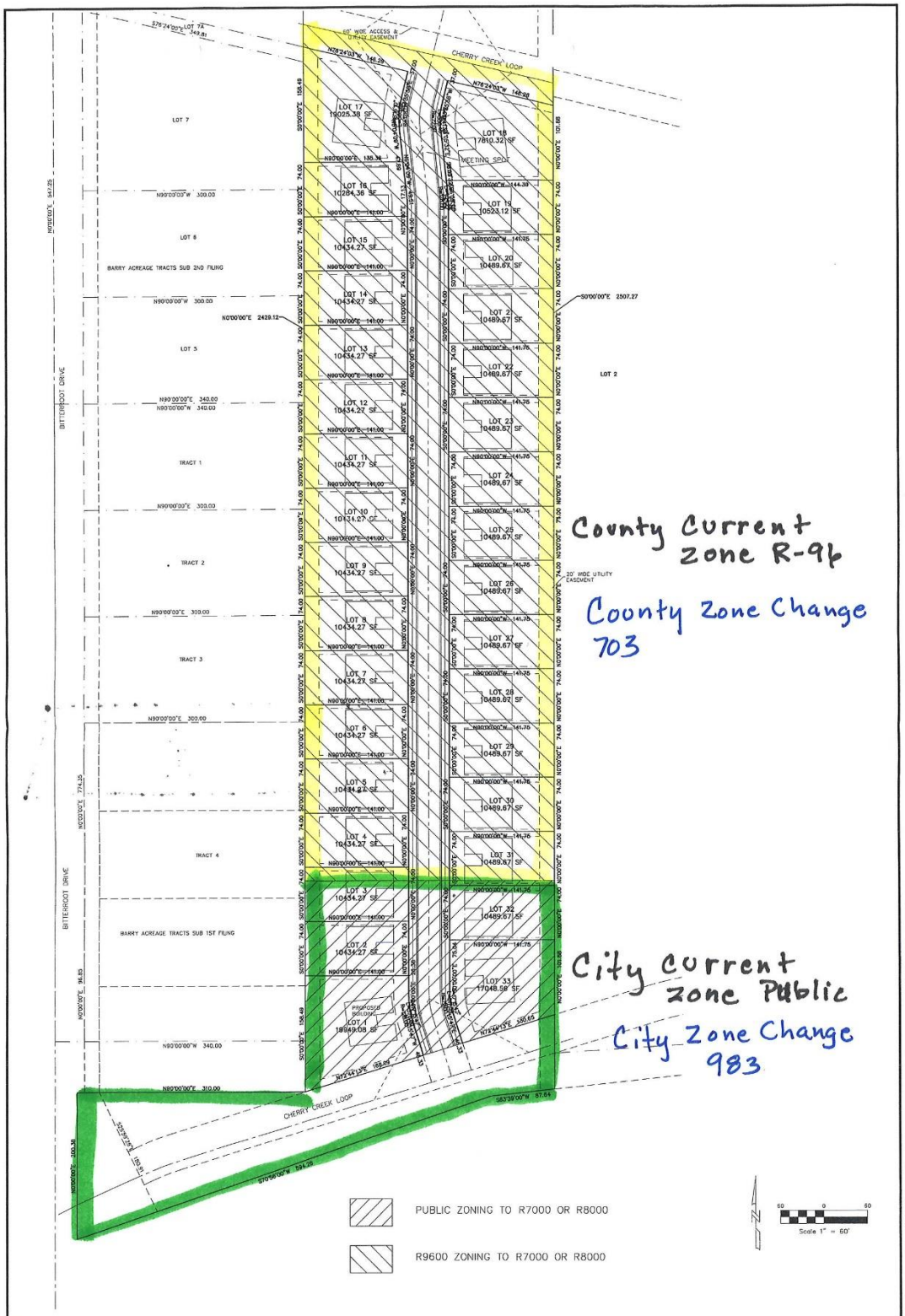
I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Zone Change. Also, I attest that all the information presented herein is factual and correct.

Signature (Recorded Owner) Date: 8-3-20

RECEIVED
AUG 03 2020
PLANNING & COMMUNITY SERVICES DEPARTMENT

Date Stamp

County Zone Change 2020_2021 updated Nov 8, 2019



~SHEET~ 1/1

LOT 2, BLOCK 1,
CHERRY CREEK ESTATES SUB
SITE PLAN

DRAWING: SITE09.DWG
SCALE: 1"=60'
CHECKED BY: MDP
DRAWN BY: KLP
DATE: 6/22/20
JOB: 19091
NO. DATE REVISIONS

blueline ENGINEERING
724 1ST AVENUE N
BILLINGS, MT 59101
PHONE (406) 294-2294
FAX (406) 294-2295

blueline
ENGINEERING

July 31, 2020

Planning & Community Services Department
2825 3rd Ave North, 4th Floor
Billings, MT, MT 59101

To Whom It May Concern:

We are submitting this Zone Change Application for the following: the area zoned Pubic in the southern half of Lot 2, Block 1, Cherry Creek Estates Subdivision, Section 24, T1N, R26E, P.M.M. in Yellowstone County, Montana (Tax ID # A31450);

This Zone Change is being submitted to you after several discussions with Staff, neighbors, and the Heights Task Force. It is clear from these discussions that the neighborhood wants to see a project that protects against rundown appearances, reduces crime, and preserves land values. Therefore, a Zone Change of R-8000 has been requested to provide the largest lots available in Zoning, while still being able to build duplex townhomes. The single-family zoning of R-9600, drives the costs above the target market to achieve affordable housing. Single-family homes are not the best transitional zoning from the RMH property. Past zone changes in the area have shown that the higher density uses are not what planning and the neighborhood desire.

To help achieve the desires of these residents, we are preparing documents to allow the townhomes to be owned with individual water and sewer services. An HOA will be formed that will provide for oversight of building and property appearances, lawn and snow removal services. An HOA also helps form a strong neighborhood with pride of ownership. Other concerns with utility and street maintenance will be dealt with by that infrastructure being owner and maintained by the City of Billings and the Heights Water District.

Zone change #673 was a request to change this site from R-96 to RMH and the staff recommended denial. Item 8 in the zoning consideration stated that the request "may not be the best match for the character of the area." It further stated that "A zoning of R-70 on the subject property might be more suitable in density and lot size per unit to transition from the RMH zoning on the east to the R-96 zoning to the west, as well as fit with the existing R-70 zoning in the area." This staff recommendation has been used in helping make the decision to request R-8000 zoning.

The following paragraphs are in response to the questions found within the County Zone Change Application.

1. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?

   The rezoning of this property supports the Growth Policy in the following ways:

<u>Essential Investments (relating public and private expenditures to public values)</u>

a. *The safety of all users and the connectivity of the transportation system are important criteria to consider in roadway designs and transportation plans*

The road serving this development being owned and maintained by the city through tax on the proposed lots. Being a public access from N Cherry Creek Loop to S Cherry Creek Loop would be further improve connectivity as the connecting roads to the east are private.

b. *Public transit and commercial air service are critical to ensure access to and around the City*

Public transit would benefit from the ability to enter either N Cherry Loop to pick up passengers from the nearby housing and then loop around through a public street and leave via S Cherry Loop.

c. *Planning and construction of safe and affordable Interconnected sidewalks and trails are important to the economy and livability of Billings.*

To ensure the development has safe and interconnected sidewalks the new public road would have 5' boulevards and 5' sidewalks on both sides. The sidewalks will be maintained, cleaned, and snow removed by the HOA.

d. *Developed parks that provide recreation, special amenities (community gardens, dog parks, viewing areas), and active living opportunities are desirable for an attractive and healthy community*

It is anticipated that the Parks Department will request cash-in-lieu for this development.

e. *Natural landscapes are an important part of Billings heritage and help protect the environment.*

The Development includes ample backyards and encourages planting trees and grasses. In addition, a "no build" zone will run the length of the west boundary and will be landscaped with trees.

f. *Landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors*

The public right of way will have a 5' boulevard that will be more visually appealing to residents and visitors. The boulevard will be landscaped and maintained by the HOA.

g. *Public health and safety and emergency service response are critical to the well-being of Billings' residents, businesses, and visitors*

Public health and safety will benefit from a public road bridging North and South Cherry Creek roads that will be maintained by the city. This is also a public turn around in closer vicinity to the more remote Stella St N, Erin St, and Vandalay St. Giving emergency vehicles easier access.

h. *Infill development and development near existing City infrastructure may be the most cost effective*

Infill development is preferred when possible near existing City infrastructure. This development is a prime example of an infill project with infrastructure existing on the north, south, and running through the middle. The development is also has existing development on all sides.

i. *Accessibility, friendly and cost effective government are important public value.*

This will not apply to this development

j. *The history and heritage of Billings are cornerstones of our community*

The history and heritage of Billings are cornerstone of our community and few things are as crucial to our history as the Yellowstone River. This development boarders right on the river and many residents would travel and experience Yellowstone River Road's beautiful view every day. New development in this area could spark more interest and, in the future, and extension of Yellowstone River Road, and N Cherry Creek Loop could become a scenic drive location.

k. *Neighborhoods that are safe and attractive and provide essential services are much Desired*

A well-developed HOA with the means to enforce its rules and regulations will ensure this development will be and remain a safe and attractive neighborhood.

l. *Infrastructure and service investments that stabilize or improve property values, secure future utility costs, consider maintenance costs, and improve our environmental quality far into the future (i.e. energy efficient) are desirable*

Permanent "stick built" homes would be an improvement over the mobile home courtyard to the east. In addition, the new crossroad would provide another cross connection of utilities from N Cherry Loop to S Cherry Loop to provide redundant service in case of incident.

m. *It is important to factor in maintenance costs when programming public spaces and infrastructure*

Maintenance of infrastructure will be paid for by tax on the developed lots.

n. *Integrated, long range water planning that better utilizes existing resources and treatment options, and when necessary acquires new ones, is vital.*

the development in an infill project and will not be extending city water service beyond its current reaches.

o. *Regulatory compliant water and wastewater treatment plants that provide sufficient capacity will help sustain community growth*

The development will be on city water and sewer. These will be maintained by the tax provided by the developments lots.

p. *A supportive school system that inspires, motivates, and prepares students for meaningful employment is important for ensuring a high quality, competitive community*

The school system has been contacted and adequate school space has been confirmed. The new influx of residents to the area also means an increase in revenue for any school bond measures passed.

Place making (Enhance, maintain, preserve, and improve existing public places)

a. *A multi-use community recreational facility is desirable*

It is anticipated that there will be no community recreational facilities as part of this development.

b. *Enhancement and maintenance of public spaces and buildings through City stewardship is integral to a vibrant community*

The road, will be the city's and can be enhanced and maintained through their Stewardship.

c. *Park master plans and transportation plans are important to facilitate the preservation and improved public access to the Yellowstone River and the Rims*

The development will provide another access point to N Cherry Creek Loop which runs parallel to the bank of the Yellowstone River. The development is adjacent to Two Moon Park, is 0.5 miles from Hawthorne Park, 0.33 miles From Primrose Park, and 0.8 miles from the Billings Bike Trail network.

d. *Public and private partnerships are valuable for creating enhanced entryways into Billings*

The entryway into the subdivision will have an enhanced design including landscaping and signage.

e. *Locally grown foods help sustain agriculture, provide healthy options, and support local businesses*

Locally grown foods can help sustain agriculture and foster healthier lifestyles. This development includes ample backyard space that would be ideal for home gardens. The lot currently has a lush mix of trees, bushes, and grasses without any irrigation.

f. *The history and heritage of Billings are cornerstones of our community*

The history and heritage of Billings are cornerstone of our community and few things are as crucial to our history as the Yellowstone River. This development boarders right on the river and many residents would travel and experience Yellowstone River Road's beautiful view every day. New development in this area could spark more interest and, in the future, and extension of Yellowstone River Road, and N Cherry Creek Loop could become a scenic drive location.

g. Natural landscapes are important because they define the uniqueness of Billings and help protect the environment and beautify neighborhoods

Natural landscapes are an important part of Billings heritage and help protect the environment. The Development include very ample backyards and encourages planting trees and grasses. In addition a "no build" zone will run the length of the west boundary and will be landscaped with trees.

h. Encouraging the installation of art in public spaces enhances the places and showcases the talents and diversity of the community

No art is currently planned for this development.

i.

j. Enhancing public buildings and spaces to be more efficient in their uses of energy, money, and space is important to having a vibrant and livable City

No public building will be part of this development and the public right-ow-way will be owned by the city.

<u>Community Fabric (attractive, aesthetically pleasing, uniquely Billings)</u>

a. Developed landscape areas in commercial areas encourage more pedestrian activity andvibrant commercial activity

There are no commercial areas as part of this development

b. Attractive streetscapes provide a pleasant and calming travel experience in urban and suburban neighborhoods

The streets will be maintained by the city and the sidewalks and boulevards will be maintained by the HOA to ensure a pleasant streetscape.

c. Outdoor public spaces provide casual and relaxing gathering areas for people

There will be no outdoor public spaces in this development.

d. *Planning and construction of interconnected sidewalks and trails are important to the livability of Billings*

To ensure the development has safe and interconnected sidewalks the new public road would have 5' boulevards and 5' sidewalks on both sides. The sidewalks will be maintained, cleaned, and snow removed by the HOA.

e. *Developed parks that provide recreation, special amenities, and active living opportunities are desirable for an attractive and healthy community*

It is anticipated that the Parks Department will request cash-in-lieu for this development.

f. *Natural landscapes and parks are important because they define the uniqueness of Billings and help protect the environment*

Natural landscapes are an important part of Billings heritage and help protect the environment. The Development include very ample backyards and encourages planting trees and grasses. In addition, a "no build" zone will run the length of the west boundary and will be landscaped with trees.

g. *Cost-effective landscaping of public rights-of-way and entryways makes Billings more visually appealing to residents and visitors*

The public right of way will have a 5' boulevard that will be more visually appealing to residents and visitors. The boulevard will be landscaped and maintained by the HOA and encouraged to use landscaping or low impact landscaping.

Strong Neighborhoods (livable, safe, sociable, and resilient neighborhoods)

a. *Zoning regulations that allow a mixture of housing types provide housing options for all age groups and income levels*

The housing for this development will be affordable duplex style home units. Will affordable they will have individual water and sewer services so they can each be privately owned and sold. This will provide a transition of affordable homes between the neighboring mobile home court to the neighboring single family homes.

b. *Walkable neighborhoods that permit convenient destinations such as neighborhood services, open space, parks, schools and public gathering spaces foster health, good will and social interaction*

There will be no public gathering locations as part of this development but there will be full sidewalk access on all sides of the street.

c. *Safe and livable neighborhoods can be achieved through subdivision design that focuses on complete streets, pedestrian-scale street lights, street trees and walkable access to public spaces*

The development will have complete streets with 5' sidewalks and 5' boulevards maintained by the HOA.

d. *Zoning and subdivision regulations that utilize Crime Prevention Through Environmental Design (CPTED) strategies result in safer neighborhoods*

Because the HOA will be enforcing landscaping rules and home maintenance rules it will be following the CPTED #3 principal: territorial reinforcement, and #4 principal: maintenance.

e. *Implementation of the Infill Policy is important to encourage development of underutilized properties*

This development is an infill project.

f. *Public safety and emergency service response are critical to the well-being of Billings' residents and businesses*

Public health and safety will benefit from a public road bridging North and South Cherry Creek roads that will be maintained by the city. This is also a public turn around in closer vicinity to the more remote Stella St N, Erin St, and Vandalay St. Giving emergency vehicles easier access.

Home Base (healthy, safe, and diverse housing options)

a. *A mix of housing types that meet the needs of a diverse population is important*

This development is a transitional project from the mobile home court to the east to the single-family homes to the west. This will provide a diverse mix of hosing options in the local areas as a whole.

b. *The Housing Needs Assessment is an important tool to ensure Billings recognizes and meets the demands of future development*

The Billings Housing Needs Assessment clearly states that Billings' population is on the rise and the need for more housing is a critical as ever. This is especially true of lower income housing for 1st time renters/owners, low income households, elderly retired persons, and minority groups. One of the benefits of developing duplex homes instead of single-family homes is an increase in affordability and availability. The duplexes in this development will have individual water and sewer services to each half and thus they can be bought individually. This gives an opportunity, especially to young couples and first-time buyers, to own a home rather than rent. Owning one's

home is always preferable to renting. Another advantage to the duplex system is that it allows caretakers and family members of disabled and elderly people to live close by while giving both parties a large degree of independence.

c. *Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe*

This development will provide affordable housing with an HOA designed to keep the neighborhood healthy, clean, and safe.

d. Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings

To ensure the development has safe and interconnected sidewalks the new public road would have 5' boulevards and 5' sidewalks on both sides. The sidewalks will be maintained, cleaned, and snow removed by the HOA.

e. *Public safety and emergency service response are critical to the well-being of Billings' Residents*

health and safety will benefit from a public road bridging North and South Cherry Creek roads that will be maintained by the city. This is also a public turn around in closer vicinity to the more remote Stella St N, Erin St, and Vandalay St. Giving emergency vehicles easier access.

f. *Homes that are safe and sound support a healthy community*

The duplexes proposed for this development are locally designed and will be built by local contractors to City of Billings and national standards of safety.

g. *Accessory dwellings units provide an important type of affordable housing options if compatible*

No accessory dwellings will be part of this development.

h. *Energy efficient housing can reduce energy consumption*
The duplexes proposed for this development are designed to be energy efficient and according to the newest home insulation regulations.

<u>Mobility and Access (transportation choices in places where goods and services are accessible to all)</u>

a. *Connecting people to places with transportation choices is vital to the well-being of Billings' residents, businesses and visitors*

The development will provide another public road loop access for busses to pick up passengers from this development as well as the nearby trailer court.

b. *Safe and accessible transportation systems benefit everyone's quality of life*

This development will have sidewalks on both sides and the HOA will ensure they will be safe and clear of snow and debris.

c. *Affordable public transit is much desired*

No dedicated public transit will be part of this development but it will be accessible by bus.

d. *Development oriented to transit routes will provide more transportation choices and is Preferred*

Public transit would benefit from the ability to enter either N Cherry Loop to pick up passengers from the nearby housing and then loop around through a public street and leave via S Cherry Loop.

e. *"Safe Routes to Schools" promotes physical health and reduces vehicle trips, earning parents more time and less costs for transportation*

To ensure the development has safe and interconnected sidewalks the new public road would have 5' boulevards and 5' sidewalks on both sides. The sidewalks will be maintained, cleaned, and snow removed by the HOA. This would provide a safe route for children within the development and those passing through from the southern end of the mobile home court.

f. *Planning and construction of interconnected sidewalks and trails are important to the economy and livability of Billings*

To ensure the development has safe and interconnected sidewalks the new public road would have 5' boulevards and 5' sidewalks on both sides. The sidewalks will be maintained, cleaned, and snow removed by the HOA

g. *On-street bike facilities promote predictability for all users*

No on-street bike facilities are planned as part of this development.

h. *Expanded air service ensures that Billings remains a competitive and an accessible destination*

No air-services are planned as part of this development.

i. *Technology can reduce congestion and facilitate emergency vehicle travel at railroad crossings*
There are no railroad crossings in this development.

Prosperity (promoting equal opportunity and economic development)

a. *Predictable, reasonable City taxes and assessments are important to Billings' taxpayers*

Predictable and reasonable City taxes and assessments are important to Billings taxpayers. This development would add 33 new duplexes with a total of 66 taxable units.

b. *A diversity of available jobs can ensure a strong Billings' economy*

The development would be built by local contractors and designed by local architects and engineers. Once finished the development's HOA would contract local business for lawncare and snow removal creating more local jobs opportunities.

c. *Successful businesses that provide local jobs benefit the community*

There will be no commercial development as part of this subdivision.

d. *Community investments that attract and retain a strong, skilled and diverse workforce also attracts businesses*

New affordable housing opportunities give new workers a foot in the door to start their life in Billings and advance through the job force.

e. *Retaining and supporting existing businesses helps sustain a healthy economy*

New workers moving into the affordable housing of this development would most likely shop in local businesses.

f. *Continued workforce training benefits the community and helps attract and retain Businesses*

This does not apply to this development

g. *Strategically placed industrial parks will encourage a more diverse city economy, and will better help manage effluent and emission from industrial processes*

There will be no industrial parks as part of this development.

1. Explain your need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.

   The existing zoning of R-9600 is not the most compatible adjacent zoning to RMH zoning. Affordable duplex housing is the perfect transitional zoning to buffer the neighbors to the west.

Additional information and materials specified within the Application forms are included in those forms and/or attached to this letter. We thank you very much for your continued support on this request, and for your consideration of our re-zoning application. Please feel free to contact me at (406) 294-2294 if you have any questions.

Sincerely,

Marshall Phil

Marshall Phil

Pre-Application Statement of Owner(s) or Agent(s)

The owner(s), contract purchasers (if any) and agents (if any) are required to submit this completed form and any attachments along with a completed zone change application packet, including any required fees, for a zone change to be processed by the Planning Division.

1. **Present Zoning**: R-9600
2. **Written description of the Zone Change Plan** including square footage or acres of proposed new zoning: Change to R-8000, 382430 SF 1139x349x1057x339
3. **Subject Property Map**: please attach to this form
4. **Legal Description of Property**:

   CHERRY CREEK ESTATES SUB, S24, T01 N, R26 E, BLOCK 1, Lot 2, ACRES 20.196, **MULTIPLE DISTRICTS**-(SD O2-16.77 AC,SD 2-3.42 AC) (04 AMND ANNEX RESOL #03-17967 (04)
5. **Roster of persons who attended the pre-application neighborhood meeting**: please attach to this form
6. **A copy of the meeting notice.** please attach to this form
7. **A brief synopsis of the meeting results.** please attach to this form
8. **The undersigned affirm the following:**
   1) The pre-application neighborhood meeting was held on the 27, day of July, 2020.
   2) The zone change application is based on materials presented at the meeting.

Owner (s): Cherry Island LLC Telephone: 406-254-2106

Address: 5855 Elysian Rd Email: jclause@wmc-i.com

Billings MT, 59101

Agent (s): BLUELINE ENGINEERING Telephone: 406-294-2294

Address: 724 1ST AVE N, BILLINGS MT 59101 Email: MPHIL@BLUELINE-ENG.COM

CHERRY CREEK ZONE CHANGE MEETING

Held on location of property in question on 7/27/2020 6:00 PM

Participants

Leon Clause – Owner/Developer

Jeff Engel – Contractor/Consultant

Marshall Phil – Engineering Consultant

Joseph LaFountain – Engineering Consultant

Pam Ellis – Heights Task Force and Neighbor

Karmen Higginbotham – Neighbor

Rhonda & Kass Ioane – Neighbor

Jason McGimpsey – Neighbor

Bridger McGimpsey – Neighbor

Orion McGimpsey – Neighbor

Lindsay McGimpsey – Neighbor

Tracy Marsh – Neighbor

Terry Dennis – Neighbor

Aaron Higginbotham – Neighbor

Meeting Highlights

Marshall Phil – Project scope is subdivision development of 33 lots with duplex homes. Duplex homes would require changing the current zoning from R-9600 and public to R-7000 or R-8000.

Pam- will the units/ duplexes be rented or sold by the developer

Leon – the units will mainly be sold but it is jointly owned by him and his 2 brothers and cannot say with certainty what percent they will sell or rent

Marshall – condominium documents will be put in place so individual units can be sold with individual water and sewer services.

Jason – what percentage of the units will be sold versus rented? this can cause problems with HOA control while project is still being developed and while units remain unsold

Aaron- Also concerned with how many units would be rented out by the developer

Marshall- With 33 duplexes and thus 66 units the HOA will have the power to ensure rules and regulations involving tenants and appearance will be enforced

Jason- What about the buffer yard mentioned/promised during previous development/zoning (this was a concern of all neighbors and the heights task force)

Marshall- The buffer yard mentioned was never intended to have the entire parcel of land go undeveloped indefinitely. (Neighbors as a whole disagreed with this)

All Neighbors and Heights task force- voiced concern/dissatisfaction with the state of the nearby Cherry Creek trailer courts development and maintenance. Worried that this will be similar. They stated that the current trailer court has high crime rate, drug use, and sex offenders. Cherry Creek trailer court was developed by the father of the current developer.

Leon & Marshall Response- The HOA will prevent these problems because of the size of the development will give it the "teeth" to sue/evict problem tenants. The development will be on city water, sewer, stormwater, and the road will be a public road maintained by the city. None of the improvements will be privately owned and will be maintained by the taxes paid to the city. The HOA will have provisions for yard maintenance snow removal and upkeep.

All Neighbors – the "buffer yard" (as above) helps separate the trailer court from their homes. They like the land undeveloped.

Marshall Response- The subdivision will still act as a buffer from the trailer court as an area of lower density zoning than the trailer court.

Leon- He has to pay the taxes on the undeveloped land.

All Neighbors and Task Force- would like to see HOA draft.

Rhonda Ioane – how many duplexes will there be and how big are the units, the lots look small

Jason- how big are the lots

Marshall – The lots are more than 10,000 square feet and the units 3500 square feet. The lots are very deep, 140', so they look small on the map but have very large backyards.

Terry Dennis – will the development have irrigation wells to maintain landscape?

Leon- it could

Marshall – The duplexes will be on city water.

Jason- will that affect the groundwater? Have any Boring been done.

Rhonda Ioane- we have well water; what affect will it have on us?

Marshall – Geotech boring on this property have not been done. Nearby wells indicate that there will be plenty of water. The well would only be for landscape irrigation the homes will have city water service. Bores will be done when the project is farther along in accordance with MTDEQ and DNRC.

Rhonda Ioane- I have a drain field what effect will it have on my drain field?

Marhsal- the drain field is up hill of development so none.

Jason- has any topo been done of the land where will the duplexes sit?

Marshall- topo has been done, some dirt work will be required but you always want to move as little dirt as possible.

Pam and Neighbors- Pam initially brought up how many new students would be coming from the development but all the Neighbors were concerned about this. Great concern about over crowding in all levels of schools.

Marshall- 27 new students would be added as estimated by 40% of homes have 1 child, according to the Lincoln center Beartooth's target enrollment is 385 and are currently at 354 so it will not be over-crowded. Skyview is at capacity but the Lincoln center stated the Lockwood high school will be taking students and Medicine Crow has more capacity.

Pam- Lockwood relieves the overcrowding that would have necessitated opening an alternative high school in Billings; the bulge of new students that necessitated building 2 new middle schools are now moving into high school. The estimates do not include the impact of the Cal Kunkl development on Barrett Road.

Karen and others - believe the city average for children per home to be greater than national avg. and duplexes whether occupied by renters or owners would more likely be younger families with children

Terry - kids have to wait for the bus at the corner of Cherry Creek Loop and Bitterroot because they bus won't come down the street. And there is no bus shelter or sidewalk.

Terry & Pam – Could a bus shelter be added? People driving by are uncomfortable with the number of students standing at the corner unsheltered

Jason & Pam – has a traffic impact study been done?

Marshall – not at this stage of development but it will be required as part of subdivision development.

Pam- what is the recode zone for the area?

Marshal - we will find out what the recode zoning will be

All – discussion about the type of homes that can/will be put in. What can go onto R-9600, 8000, 7000, can it be duplex, trailer, double wide, modular homes, stick built.

Neighbors and the Task Force- would prefer homes similar to the existing nearby houses.

Discussion with Leon after the meeting with Pam and Terry

There is no open space for children or people with dogs to recreate. This neighborhood has no accessible neighborhood parks. Cal Kunkl's development on Barrett has 1 acre in the planned development agreement for open space for children. This may be a good "quality of life" improvement, leaving a buffer area and creating a more desirable living environment.

RETURN TO:
BLUELINE ENGINEERING
724 1ST AVE N
BILLINGS MT 5101

DECLARATION OF UNIT OWNERSHIP FOR CHERRY ISLAND SUBDIVISION

CHERRY ISLAND, LLC., owner of lot described below, does hereby make and submit for filing the following Declaration under the Unit Ownership Act of the State of Montana, Section 70-23-101, et seq. Montana Code Annotated. These units are, pursuant to 70-23- 102(14) MCA.

1. DEFINITIONS.

In the interpretation of the Declaration and the Bylaws of CHERRY ISLAND SUBDIVISION Homeowners Association, the following definitions shall apply:

(a) "Association" means the CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION, being all the unit owners acting as a group in accordance with the Declaration and duly adopted Bylaws. The Association is a Montana Non-Profit Corporation.

(b) "Building" means each building comprising a part of CHERRY ISLAND SUBDIVISION project.

(c) "Bylaws" means the Bylaws of the CHERRY ISLAND SUBDIVISION Homeowners Association.

(d) "Capital Expenses" means the expense of capital improvements to common areas; "capital improvements" are improvements to the common areas not constructed by Developer.

(e) "Common Elements" means the general common elements and the limited common elements.

(t) "Declaration" means the Declaration of Unit Ownership for Cherry Island subdivision.

(g) "Developer" is CHERRY ISLAND, LLC., or any person or entity to whom it transfers or assigns its development rights hereunder. A grant of a deed to a single completed unit by Developer shall not be deemed a transfer of development rights. If developer sells one or more units to a home builder for

the purpose of construction. the home builder shall obtain written approval of Developer for all building plans prior to commencement of construction.

(h) "Eligible Mortgage Holder" means the holder of the first mortgage or trust indenture on any unit which has requested in writing that the Association notify it of any proposed action requiring the consent of a specified percentage of eligible mortgage holders.

(i) "General Common Elements" means the general common elements specifically described in paragraph 9 below, and all other elements of Cherry Island subdivision project necessary or convenient to its existence, maintenance and safety or normally common use.

G) "Limited Common Elements" means those common elements designed in this Declaration or by agreement of the units' owners as reserved for the use of fewer than all of the unit owners.

(k) "Majority of the Unit Owners" means a majority of the votes of the unit owners.

(l) "Unit" is defined in paragraph 4 of the Declaration.

(m) "Unit Owners or Owner" means the person, partnership, LLC or corporation owning a unit, including a contract purchaser if a Notice of Purchaser's Interest is recorded with the Yellowstone County Clerk and Recorder, and including co-owners and designated representatives of any partnership, LLC or corporation, owning a unit. "Unit owner" shall also include Developer, until completion and occupancy of all units owned by Developer. A lessee of a unit shall not be considered a unit owner, unless as designated by the owner of record, following the procedures set forth in 70•23-102(17) MCA.

2. <u>SUBMISSION TO UNIT OWNERSHIP.</u>

The purpose of this Declaration is to submit the real property herein described and the improvements constructed thereon to the duplex form of ownership and use provided by Chapter 23, Title 70, Montana Code Annotated, hereinafter referred to as the "Montana Unit Ownership Act". The definition of terms in this Declaration and the Bylaws of the Association shall be those definitions used in the Montana Unit Ownership Act, except as otherwise provided above. The real property included within the project, which shall be named "CHERRY ISLAND SUBDIVISION" is located in Yellowstone County, Montana, and is Cherry Island LLC The property is described as follows:

Lot 2, Block 1 Cherry Creek Estates Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

The provisions of this Declaration and the Bylaws of Cherry Island subdivision Homeowners Association shall be covenants running with the land and shall be binding on all owners, their

tenants and guests, for so long as the real property described herein is subject to the provisions of the Montana Unit Ownership Act.

3. DESCRIPTION OF PROJECT.

The project will consist of thirty-three (33) buildings with two (2) units in each building. Each building shall be of wood frame construction. Each building shall have a concrete foundation and will have an asphalt shingle roof. There will be decorative rock on the lower three to four feet of each building. Interior walls are of sheetrock. All duplexes will be one story with a crawl space and with an attached two car garage. The proposed location of each unit, and the unit number for each unit is shown on Exhibit "A" attached hereto. Exhibit "B" attached hereto, includes the floor plans which Developer presently intends to use. Subject to prior review and approval by the City County Planning Division, Developer reserves the right to modify or change the site plan shown in Exhibit "A", to change the floor plans shown on Exhibit "B", to use additional floor plans, to otherwise change the number and location of units and the common elements upon the real property described above, and to change the construction materials used in the units without consent of any other owner or any lender. Exhibit "C" attached hereto shows land area included in each unit.

4. DESCRIPTION OF UNIT.

Each unit consists of the area bounded by the exterior surfaces of the walls, the soil under the concrete slab, and the exterior surface of the roof, including the garage, and the common walls between the duplexes in the building to the center of the common wall separating two duplexes. The land beneath a duplex, and the land beneath the garage, private driveway, walkways, front porch or front entry, deck or patio serving only one duplex shall be part of the unit. The driveway, front entry, the air conditioning compressor, if any, the sidewalk and the mailbox serving only one duplex are also part of the unit. Utility lines and pipes which serve only one home shall be a part of the unit from the interior of the unit to the point where they are metered or join lines or pipes serving other units.

5. PLAN OF DEVELOPMENT.

The project may be developed in up to three phases. Developer may begin construction of phases in any order and may simultaneously construct buildings in more than one phase. Exhibit "A", attached hereto, is a site map showing all buildings and improvements which Developer now plans to construct on the property and showing the boundaries of each phase. Subject to prior review and approval by the City County Planning Division, Developer hereby reserves the right, in its sole discretion and without consent of any other owner or any lender, to change the number of units constructed, to divide a phase into two or more phases, to increase or decrease the number of buildings, and to change the design and location of the buildings and units to meet the requirements of the sales market.

Developer may proceed with such construction, without consent of the 'Association or the unit owners, subject to the following conditions:

(a) Prior to conveyance or occupancy of each home, Developer's architect, engineer or surveyor shall execute and record an amendment to this

Declaration with the Yellowstone County Clerk and Recorder. The amendment shall include a floor plan for the newly constructed home, and a site plan showing the location of said home, if different from the plans attached to this Declaration, or shall identify the floor plan attached to this Declaration used for the new unit.

(b) Upon completion of all buildings and other improvements, Developer or Developer's architect, engineer or surveyor shall record a notice of completion, together with a final as-built site plan for the project.

(c) In the event of termination of the project prior to construction of 33 duplexes, Developer shall record an amendment to this Declaration, setting forth a reallocation of the percentage of undivided interest of each unit in the common elements. The interest of each unit shall equal one divided by the total number of duplexes constructed.

(d) New buildings shall be similar in materials, style and quality to the existing buildings. However, subject to prior review and approval by the City County Planning Division, developer reserves the right to modify the design and mixture of buildings and floor plans to meet market requirements.

From and after the recording date of each of the above described amendments, the following consequences shall ensue:

(e) The owners of each newly constructed home identified in the amendment shall have nonexclusive rights to use general common elements to the same extent as the owner of all the other completed homes.

(f) The owners of each newly completed home shall be assessed in accordance with their ownership interest in the common elements. However, no new unit shall be assessed for, nor shall it have any obligation for debts or deficits in existence at the effective date of the unit's first occupancy.

(g) Each home shall be treated as a part of the project developed as a whole from the beginning, except to the extent otherwise provided herein. From and after the date of the amendment, the new homes shall be treated as though they have been developed, held, occupied and used by the owners as part of a single, undivided project.

To facilitate construction and completion of the project, Developer hereby:

(h) Reserves an easement over and upon common elements for the purpose of access for constructing additional homes and common elements.

(i) Reserves solely to Developer the right to grant utility easements reasonably necessary to the ongoing development of the project, without approval of any unit owner.

(l) Reserves the right to use water and electricity provided to the above described property or any home for construction purposes, provided that Developer shall reimburse the provider for the reasonable cost of such water and electricity.

(k) Subject to prior review and approval by the City County Planning Division, reserves the right to amend this Declaration, without approval of any unit owner or any lender, to create additional general or limited common elements or change the location of general or limited common elements, to provide that the project has been terminated and no further homes will be constructed, to change the location on the lot of any building, to add a more complete

description of newly constructed homes, to record additional plats and plans

to supplement or modify those included herein, and to amend the percentage of interest in common elements attached to each home in accordance with the provisions of the Declaration. Each unit owner, and each holder of a mortgage or trust indenture on the home, by acceptance of a deed to the unit or by recordation of a mortgage trust indenture on the home, shall be deemed to consent to amendment of this Declaration by Developer in accordance with this plan of development.

Any liens arising as a result of Developers ownership of and construction of additional units shall not attach to the interests of other unit owners or those of first mortgagors of other units.

6. TERMINATION OF THE PROJECT.

Developer may terminate its right to build additional buildings at any time prior to completion of all phases by recording a notice of termination with the Yellowstone County Clerk and Recorder. Upon termination, Developer may, at its option, elect to include the land on which a building has not been built as a general common element of the project, or alternatively, Developer may elect to remove the unbuilt land from the project (the excluded land), after subdividing the above-described real property. The notice of termination shall state which of these options has been elected by Developer.

If developer, upon termination, elects to designate the unbuilt portions of the above-described real property as general common elements of the project, upon recordation of the Notice of Termination, Developer's obligation to pay taxes and assessments on the land shall cease and terminate and Developer shall have no further obligation to make any improvements to any portion of the above-described real property. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in proportion to the undivided interest of completed units and shall include a conveyance of Developer's interest in the common elements from Developer to all existing unit owners. All unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting the recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to inclusion of undeveloped land as a general common element of the project and to the above described conveyance of Developer's interest in the common elements.

If, upon termination, Developer elects to subdivide the above-described real property, the subdivision plat shall conform to local zoning requirements and restrictions. The real property and improvements included in the project shall include all completed units, the land beneath each unit and between units, the private streets serving the completed units, and the utilities and other common area improvements serving the completed units; if necessary, Developer shall grant to all unit owners easements across the excluded land for utilities and for use of the stormwater detention system. Developer shall have the right to grant easements on behalf of all unit owners, to benefit the land removed from the project, for use of new or existing utility lines and pipes, and the stormwater detention system, by the owners of the excluded property and for use of the existing roads which provide access to the excluded property. Easements for new utility lines, if any, shall cross the common elements only. The notice of termination shall amend this Declaration to reallocate the undivided interest in the common elements in accordance with the formula set forth in Section 7 below.

Any land excluded from the project shall no longer be subject to the provisions of this Declaration or the Bylaws of the Association and may thereafter be used for any lawful purpose.

Unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to consent to subdivision of the real property, to removal of unbuilt land from Cherry Island subdivision , to the granting and reserving of the easements described above, and to all conveyances needed to vest ownership of the included property in the existing unit owners and to vest ownership of the excluded property in Developer's name. Unit owners, their lenders, mortgagees, successors and assigns, or anyone claiming by or through them, by accepting and recording a deed (or by recording a notice of purchasers interest in the event of a contract sale) to any unit or a mortgage or trust indenture upon a unit are hereby deemed to grant unto Developer the power, pursuant to 70-15-301 MCA to take all actions necessary to accomplish such subdividing and conveyancing without further consent by any other owners or lenders. Any land removed from the project shall be owned by Developer free and clear of this Declaration.

7. OWNERSHIP

Each unit, an appurtenant undivided interest in the common elements, the use of limited common elements reserved for that unit, membership in Cherry Island subdivision Homeowners Association, and the assessment account for that unit shall be inseparable, and may be conveyed, devised or encumbered only as a whole. Any conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an individual unit owner's interest in the common elements shall be void unless the unit to which that interest is attached is also included in the transfer.

Each unit owner shall be a fee simple owner of such unit and of an undivided interest in the common elements, subject to provisions of this Declaration and the Bylaws of Cherry Island subdivision Homeowners Association.

During the construction of the project, the undivided interest in the common elements appurtenant to each unit shall be 1/33 each. If Developer records an amendment to this Declaration which indicates that more than or less than 33 homes will be built, this fraction will be adjusted to one divided by the total number of homes Developer intends to build in the project. Upon completion of construction of all units included in the project, the undivided interest in the common elements appurtenant to each unit shall equal one divided by the total number of homes in the project.

8. USE

The primary use for which each unit is intended is that of a residential dwelling. Additional restrictions on use are set forth in the Bylaws of the Association

9. COMMON ELEMENTS

(a) General Common Elements. The general common elements include the private streets within the project, the landscaped and yard areas, sprinkler systems, wells and pumps that provide water for landscaping, handicapped parking spaces, if any, the storm water drainage system, the water and sewer lines, and utility lines, cables and pipes which serve more than one unit, the water meter vault, mailbox structure, if any, and all other elements of the project which serve more than one unit, excluding the limited common elements described below.

(b) Limited Common Elements. The front yard area serving only that unit.

10. COMMON EXPENSES:

All of the following Association expenses shall be charged to the unit owners as a common expense, according to each unit owner's percentage of undivided interest in the common elements:

(a) Administrative expenses of the Association, including management accounting and legal fees incurred by the Association.

(b) The Association's costs of enforcing this Declaration and the bylaws and the rules and regulations of the Association to the extent such costs are not paid by the violating member, if any.

(c) The cost of maintenance, repair and replacement of units and common elements for which the Association is responsible, including the cost of maintenance and repair of the exterior of the buildings, except glass and doors, including garage doors, and the cost of snow removal from driveways. Walkways, front sidewalks and sidewalks in the right of way adjoining this project, if any, when there is an accumulation of two inches or more, the cost of maintenance, repair and operation of the wells, pumps and sprinkler systems, the cost of maintenance and repair of the common water and sewer lines and the storm water drainage system, and the cost of watering, mowing and fertilizing all lawns, trees and shrubs and landscaping. The cost of maintenance and repair and snow removal for private roads providing access to the units when there is an accumulation of two inches or more, will be a common expense.

(d) The cost of irrigation water and to all units and to the common elements.

(e) The cost of maintenance of the storm water detention ponds, if any; the sub-surface boulder pits, the inlets, if any, and any other cost for keeping the storm water retention area in good repair and condition.

(f) Insurance premiums for all insurance purchased by the Association, as required or authorized in the Bylaws of Cherry Island subdivision Homeowners Association.

(g) Capital expenses for capital improvements approved by owners of 90% of the units, and the cost of maintenance and repairs to those improvements.

(h) Income taxes payable by the Association, if any, and corporation fees payable to the Montana Secretary of State.

(i) Any other expense designated as common in this Declaration or in the Bylaws of the Association.

G) Common expenses approved by 75% of the unit owners entitled to vote.

Co-owners of a unit shall be jointly and severally liable for payment of common expenses for the unit owned.

Expenses for maintenance or repairs incurred due to the misuse or neglect of a unit owner or that of the owner's family members, tenants and guests, shall be payable by such unit or owner.

11. SEWER, WATER, GARBAGE AND STORM WATER DRAINAGE SYSTEM.

The Heights Water will read only one water meter for Cherry Island subdivision, and one bill for each water meter is sent to the unit owner. The City of Billings' fee for sewer and dumpsters and garbage removal is on the monthly bill received by the unit owner. The Association shall pay the irrigation water, sewer, and garbage bill each month, and the cost of these items provided to all of the units and the cost of water provided to the common areas, shall be a common expense and will be

collected in the same manner as a common expense. In the event of nonpayment, the Association shall have all of the remedies set forth in paragraph 14 below. Each owner, by acceptance of a deed to a unit, or by execution of this Declaration, contracts and agrees that the Association shall have a lien on that owner's unit for any unpaid bills for water, sewer and garbage provided to the unit; the lien may be foreclosed by the Association in the same manner as the lien for common expenses.

Blueline Engineering has prepared an Operation and Maintenance Manual for the Water, Sanitary Sewer and Storm Drain Systems serving Cherry Island subdivision and has also prepared a separate Stormwater Operation & Maintenance Manual for the Cherry Island Subdivision as required by the City of Billings; and the Association will maintain these systems in accordance with these Manuals and the expense of so doing will be a common expense. All owners, their tenants, employees and/or guests will comply with all procedures recommended in these Manuals which may from time to time be updated.

12. MEMBERSHIP IN THE CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION.

Each unit owner shall be a member of Cherry Island subdivision Homeowners Association. So long as Developer or a Builder to whom development rights have been transferred owns any unit, there shall be two classes of Membership, i.e., the Developer/Builder Members and Owner Members. Membership shall be appurtenant to and may not be separated from ownership of a unit. Owners shall be entitled to one vote for each unit owned. Developer and each Builder shall have one vote for each completed unoccupied unit and each uncompleted unit owned by it. When more than one person holds an interest in any unit, all such persons shall be members; the vote for such unit shall be exercised as owners determine, but in no event shall more than one vote be cast with respect to any unit.

13. COVENANT TO PAY MAINTENANCE ASSESSMENTS.

Assessments shall be made by the Association for all common expenses described in this Declaration, or the Bylaws of the Association. Assessments will begin at the time Developer closes the sale of the first unit in the project. Thereafter, the obligation to pay assessments for a unit shall start upon completion of the home. The Developer, for each completed unit owned by it, and each unit owner, by acceptance of a deed, whether or not it shall be expressed in said deed, is deemed to covenant and agree to pay Cherry Island subdivision Homeowners Association all periodic and special assessments made by the Association for common expenses and to waive any right said owner may have, under the laws of the United States or the State of Montana, to claim a homestead exemption for said assessments. Assessments shall not include costs attributable to homes under construction or to units on which home construction has not yet begun.

If a mortgagee, a beneficiary of a first trust indenture, or other purchaser obtains title to a unit by purchasing at a foreclosure sale on a first mortgage or first trust indenture, such acquirer of title and its successors and assigns, shall not be liable for the unit's unpaid regularly budgeted common expense assessments chargeable to such unit which became due prior to the foreclosure sale unless expressly assumed by them. The mortgagee, beneficiary of a first trust indenture, or other purchaser, shall be liable for any fees and costs incurred by the Association in attempting to collect unpaid assessments.

14. REMEDIES FOR NON-PAYMENT OF ASSESSMENTS.

All sums assessed by the Association but unpaid for the share of common expenses chargeable to any unit, and all other monies owed by a unit owner to the Association, together with interest, late payment fees, collection costs, costs of suit or arbitration, and reasonable attorney fees,

shall constitute a lien on such unit, and if filed of record, may be foreclosed in the same manner as a construction lien. During any such foreclosure, the unit owner shall be required to pay a reasonable rental for the unit, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the rent.

Each assessment, together with interest at the rate of 10% per annum, late payment fees, collection costs or costs of suit or arbitration, and reasonable attorney fees, shall also be the personal obligation of the owner of the unit against which the assessment was made at the time the assessment fell due and a suit to recover a money judgment for unpaid assessments shall be maintainable by the Association against said owner without foreclosing or waiving the lien securing the same.

In addition to the foregoing remedies, the Association may also shut off the water to the unit of any owner who fails to pay an assessment within 15 days after the due date, and may continue to withhold water to the unit until such time as all assessments, together with accrued interest and cost of shutting off and turning on the water, if any, are paid by the owner. The Association shall not shut off the water to any unit unless, at least ten days before shutting off the water, it notifies the unit owner of its intent to shut off the water, by letter send certified mail to the most recent address provided by the owner to the Association.

The costs of collection of delinquent assessments, including but not limited to, court costs, costs of filing liens, and attorney fees, shall be the obligation of the non-paying unit owner, shall be deemed a common expense chargeable only to the non-paying unit owner, and may be added to the next regular assessment for that unit. Such costs shall be a lien on the unit of the non-paying owner and, if unpaid, the lien may be foreclosed in the same manner as alien for unpaid common expenses.

If a mortgagee, beneficiary of a trust indenture, or other purchaser of a unit obtains title to the unit as a result of foreclosure of a first mortgage of trust indenture, such acquirer of title, its successors and assigns shall not be liable for common expenses or assessments chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer unless expressly assumed by them. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners, including such acquirer, its successors and assigns. However, no sale or transfer of a unit shall relieve the acquirer from liability for assessments thereafter becoming due or from the lien thereof.

15. PROCESS.

Service of process in the cases provided for in Section 70-23-901, Montana Code Annotated, shall be made upon JOCK CLAUS., of 5855 ELYSIAN ROAD Billings, MT 59106. This provision may be amended in the manner provided in Section 70-23-902, MCA.

16. RIGHTS AND OBLIGATIONS OF DEVELOPER.

Until all units are built and sold, the Developer owning the unit shall pay the proportionate share of real property taxes attributable to units not yet built or built but not yet sold by it. Developer shall insure, to the extent it deems necessary, all units under construction, and pay the cost of such insurance.

For each completed unit owned by it, Developer shall have all of the rights and duties afforded to any owner under the terms of this Declaration, the Bylaws of Association, and Montana law.

17. EASEMENTS.

There shall exist for the benefit of each unit and as a burden on the other units the following easements:

(a) Easement through the general common elements for ingress and egress for all persons making use of such common elements in accordance with the terms of this Declaration. Each unit owner shall have an unrestricted right of ingress and egress across the common elements to his or her unit.

(b) Easements through the common elements for maintenance, repair and replacement of the common elements. Use of these easements, however, for access to the interior of units shall be limited to reasonable hours, except that access may be had at any time in case of emergency.

(c) Every portion of a unit which contributes to the structural support of a building shall be burdened with an easement of structural support for the benefit of the other unit in that building.

(d) Easements through the units and common elements for all facilities for the furnishing of utility services within any building or to the common area, which facilities shall include but not be limited to conduits, ducts, plumbing and wiring; provided that the easements for such facilities through a unit shall be only substantially in accordance with the plans of the building.

(e) Easements for encroachments (and maintenance thereof) of any portion of the general common elements or limited common elements upon a unit or units so long as they stand, and easements for encroachments (and maintenance thereof) of any portion of a unit upon the general common elements, limited common elements, and upon an adjoining unit or units, so long as they stand.

Such encroachments and easements shall not be considered or determined to be encumbrances either on the general common elements, the limited common elements, or on the units for purposes of marketability of title.

18. GRANT OF EASEMENTS FOR SERVICES

The undersigned hereby grants an easement over and across the common elements and the driveways and sidewalks for mail service, solid waste services, fire service, police protection, other emergency vehicles and other publicly-owned vehicles being used for official federal, state, or local governmental purposes.

19. GRANT OF UNTILITY EASEMENTS. The undersigned hereby grants unto Montana-Dakota Utilities, Co., to Northwestern Energy, to Quest, to Charter Communications and to all other providers of utilities, cable television and internet access, an easement across the above-described real property for the purpose of providing underground utilities, cable television and internet service to each unit, together with the right of ingress and egress for the purpose of installing, maintaining, repairing and replacing all necessary underground pipes, lines and cables. To the extent that they can conveniently to do so, all grantees shall use the same trench for placement of pipes, lines and cables serving each of the units. This easement may not be used for providing utilities, cable television and internet service to any real property not described in Section 2 above.

20. UNITS SUBJECT TO DECLARATION, BYLAWS, RULES AND REGULATIONS AND RESTRICTIVE COVENANTS.

All present and future owners of units shall be subject to, and shall comply with the provisions of this Declaration, the Bylaws, and rules and regulations adopted by the Association, as

these instruments may be amended from time to time. The execution of a contract for deed by a unit owner or the acceptance of a deed thereto shall constitute acceptance of the provisions of such instruments by such owner. All owners shal1 be responsible for insuring compliance by their tenants, family members, other occupants of their unit and their guests. The provisions of the Declaration and the Bylaws, and rules and regulations adopted by the Association shall be covenants running with the land and shall bind any person having an interest in such unit as though the provisions were recited and fully stipulated in each deed or conveyance thereto. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of the Declaration. No provision in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

21. ARBITRATION AND RIGHTS OF ACTION.

The Association and any aggrieved unit owner shall have the right to binding arbitration and the right to maintain an action for specific performance to compel arbitration or enforce a decision of an arbitrator against any unit owner or the Association for failure to comply with the provisions of this Declaration, the Bylaws of the Association, or any rules and regulations adopted by the Association, except for claims of non-payment of assessments, fines or other monies owed the Association by any owner, and foreclosure of the lien for unpaid assessments, fines, or other monies OWED the Association, which claims shall be enforced by a Court action.

The prevailing party in any such action and in binding arbitration shall be entitled to recover its costs and attorney fees actually incurred from the losing party. In addition, the Association shall be entitled to recover from any owner violating the provisions of this Declaration, the Bylaws of the Association, or the rules and regulations duly adopted by the Association, including failure to pay assessments or other monies owed the Association when due, all costs and attorney fees incurred in compelling compliance or collection, without filing for arbitration or bringing a court action. Owners shall be responsible for non-compliance by their tenants, unless the tenant has been designated as the owner pursuant to 70-23106(17) MCA, and for non-compliance by members of the owner's or tenant's family or guests.

22. EMINENT DOMAIN

(a) If a portion of the common elements only is acquired by eminent domain and if a separate award is not made to each unit owner, the award shall be allocated to each unit owner in proportion to each unit owner's percentage of undivided interest in the common elements.

(b) If a part of the project which includes one or more individual units is acquired by eminent domain, the award shall be allocated to unit owners as follows:

(i) The owner of each individual unit taken shall receive the fair market value of his unit, including his interest in the common elements, whether or not any common elements are actually taken. Thereafter, the unit owner shall be divested of his entire property interest in the project attributable to the unit taken and shall have no further property interest in the property, including the common elements. Said common elements sha11 be rea1located to the remaining unit owners in proportion to each remaining owner's percentage of undivided interest in the common elements. In addition, the owner of each individual unit taken, following compensation, shall have no further voting rights in the project as owner of the unit taken.

(ii) The remainder of the award, if any, shall be divided among the remaining unit owners in proportion to each owner's percentage of undivided interest in the common elements.

(c) If all of the project is acquired by eminent domain and a separate award is not made to each unit owner, each unit owner and any holders of mortgages or liens on the unit shall receive the fair market value of the unit, excluding its appurtenant interest in the common elements; the balance of the award, less any costs incurred by the Association in determining the fair market value of each unit, shall be divided among the unit owners in proportion to the unit's ownership interest in the common areas.

(d) The directors of the Association shall represent the unit owners in any eminent domain negotiations, legal proceedings, settlements or agreements; each unit owner, by acceptance of a deed, irrevocably appoints the Association as that owner's attorney in fact for this purpose.

(e) Payment of any award shall be made jointly to the owners of a unit and the lender(s) having a mortgage on the unit, if any.

23. PROTECTION OF LENDERS.

(a) **Eligible Mortgagee Protection.** Except as specifically provided in this Declaration or in the Montana Unit Ownership Act, no provision of this Declaration shall be construed to grant any owner or to any other person, any priority over any lien rights of an Eligible Mortgage Holder pursuant to its Security Interest in the case of distributions of insurance proceeds or condemnation awards.

(b) **Subordination.** Notwithstanding any contrary provision of this Declaration, the lien of any assessment for common expenses upon any unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect the rights of an Eligible Mortgage Holder; provided, however, that such subordination shall apply only to assessments on a unit which have become due and payable prior to a sale or transfer of such unit pursuant to a decree of foreclosure, and to any deed or other proceeding in lieu of foreclosure and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the unit from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

(b) **Notice of Actions.** Upon written request from a holder, insurer or guarantor of a first mortgage on any unit or an Eligible Mortgage Holder, the Association shall provide said holder, insurer, guarantor or each Eligible Mortgage Holder with timely written notice of:

i. Any condemnation loss or any casualty loss which affects a material portion of the duplex project or any unit in which there is a security interest held by such holder, insurer, guarantor or Eligible Mortgage Holder.

ii. Any Delinquency in the payment of common expense assessments owed by an owner whose unit is subject to a first security interest held by such such holder, insurer, guarantor or Eligible Mortgage Holder, which remains uncured for a period of 90 days;

iii. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

iv. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders; and

v. Any judgment rendered against the Association.

(c) **Inspection of Books.** The Association shall permit any Eligible Mortgage Holder to inspect the books and records of the Association during normal business hours upon three (3) days written request.

(d) **Financial Statements.** The Association shall provide any Eligible Mortgage Holder which submits a written request, with a copy of an annual financial statement within 90 days following the end of each fiscal year of the Association. Such financial statement may be audited by an independent certified public accountant if any Eligible Mortgage Holder requests it, in which case the Eligible Mortgage Holder requests it, in which case the Eligible Mortgage Holder shall bear the cost of the audit. The Association shall require that the cost of audit be paid in advance.

(e) **Enforcement.** The provisions of this article are for the benefit of Eligible Mortgage Holders and their successors, and may be enforced by any of them by any available means, at law, or in equity.

(f) **Attendance at Meetings.** Any representative of an Eligible Mortgage Holder may attend and address any meeting which an owner may attend.

24. AMENDMENT.

(a) Until sale of all of the units by Developer, or occupancy of all of the units, this Declaration, may be amended by Developer without consent of any other unit owner or any lender.

(b) After sale or occupancy of all of the units, this Declaration, except Section 15 may be amended by affirmative vote of 75% of the unit owners; if a unit has more than one owner, only one owner of that unit need consent. Amendments of a material adverse nature to Eligible Mortgage Holders must also be approved by Eligible Mortgage Holders that represent at least 51% of the votes of units that are subject to mortgages. Approval shall be assumed when an Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within sixty days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested. No other Amendment need be approved by Eligible Mortgage Holders and no Amendment shall require the approval of any holder of a mortgage or trust indenture other than Eligible Mortgage Holders.

(c) All amendments to the Declaration shall be recorded in the office of the Yellowstone County Clerk and Recorder, Billing's, Montana, and no amendment will be effective until it is recorded.

25. CONFLICTS.

In the event of any conflict between this Declaration and the provisions of the bylaws of Cherry Island subdivision Homeowners Association, the provision of this Declaration shall govern and apply.

26. WARRANTY.

Developer gives no warranty, express or implied, on any of the units or common area improvements, but will transfer to the initial owners and the Association all manufacturers and dealers warranties receive from the general contractor on appliances, materials, fixtures and equipment, and any warranty given by the general contractors who constructed the buildings and common area improvements.

The Warranty from the general contractor will not cover cracks in the concrete foundation or floor, or in the concrete driveway or sidewalks, normal maintenance items or conditions resulting from wear and tear or misuse or negligence , including failure to provide reasonable and necessary maintenance, or any defect resulting from damage for which any third person is responsible. Contractor shall not be responsible for any damage to the home, including water damage or damage to the foundation , resulting from changes to the finished grade of the land by the homeowner, landscaping contractors, or any other third party, by altered rain gutter extenders, leaking underground sprinklers, or any landscaping which disrupts drainage away from the building. Contractor warranties may also have additional exclusions.

Return To:
Blueline Engineering
724 1st Ave. N.
Billings, Montana 59101

BY-LAWS
OF
CHERRY ISLAND SUBDIVISION
HOMEOWNERS ASSOCIATION

Section 1. APPLICABILITY OF BYLAWS. The provisions of these Bylaws are applicable to Cherry Island subdivision which have been submitted to the provisions of the Montana Unit Ownership Act pursuant to the Declaration of Unit Ownership for Cherry Island subdivision. Cherry Island subdivision are located upon the following described real property located in Billings, Yellowstone County, Montana:

> Lot 2, Block 1Cherry Creek Estates Subdivision, in the City of Billings, Yellowstone County, Montana, according to the official plat thereof on file and of record in the office of the Clerk and Recorder of said County, under Document No. _____.

All present or future owners, tenants, or any other person who might use the facilities of the above-described property in any manner, are subject to the provisions of these Bylaws. The acquisition, rental, or occupancy of any of the units will signify that these Bylaws are accepted, ratified, and will be complied with.

Section 2. MEMBERSHIP, MEETINGS AND VOTING.

a} Membership. Each unit owner shall be a member of CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION, hereinafter called "the Association", a non-profit corporation. Until all units are sold and occupied, the Association will have be two classes of membership. AH unit owners, except Developer, shall be Class A Members; Developer shall be the only Class D Member. If the ownership of any unit is vested in more than one person, and while each such owner shall be a member, the co-owners or joint owners of the unit shall be deemed to be one member for the purpose of voting and the determination of any required quorum. Each unit owner shall be entitled to one vote and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Until completion or termination of the project, Developer, or its successors or assigns, shall be deemed the owner of each unit not yet completed and each unit on which construction has not begun, and shall have one vote for each such unit.

b} Ownership. Ownership shall be determined according to the records of the Clerk and Recorder of Yellowstone County, Montana; except that a personal representative, conservator or trustee may vote in person or by proxy with respect to any unit owned or held by him or her in such capacity ,

THESE BYLAWS PROVIDE FOR BINDING ARBITRATION OF DISPUTES

whether or not the same shall have been transferred to his or her name by a duly recorded conveyance. Owners shall also include those purchasing units under purchase contracts who have an equitable interest in the unit as disclosed by the public record in the office of the Yellowstone County Clerk and Recorder, and in such an event the equitable owner shall be considered as the only owner of such unit. Tenants shall be deemed to be owners only if the record owner has complied with the provisions of§ 72-23-102(17), MCA.

1) **Voting.** The owners of each unit shall be entitled to one vote per unit and the vote for any unit owned by more than one person shall be exercised as such co-owners may among themselves determine. Whenever a unit is owned by two or more persons, any one of such owners may vote, in the absence of protest by the others. Votes may be cast in person or by proxy.

2) **Proxies.** Proxies may be made by any person entitled to vote. They shall be valid only for the particular meeting designated and must be filed with the Secretary on or before the appointed time of the meeting.

3) **Annual and Special Meetings.** The annual meeting of the Association shall be held on the second or third Saturday of August of every year on the day and time and place designated by the Board of Directors. Additional regular and special meetings of the Association may be held at such times and places as shall be agreed upon by the unit owners or by a majority of the Board of Directors. Notice of all meetings shall be given to each member personally or by mail, telephone, e-mail or facsimile at least ten
(10) days prior to the day named for such meeting. Except as otherwise provided below, the Association shall have the responsibility of electing directors to administer the operation of Cherry Island subdivision.

4) **Agenda for Annual Meeting**, the agenda for the annual meeting shall include the following:

5) I) Determination of quorum.

2) Approval of minutes of last meeting.

3) Presentation of financial report for past year and budget for coming year.

4) Report Board opinion of adequacy of limits on insurance coverage.

5) Election of Directors.

6) Appointment of Arbitrator, as provided below.

7) Old business, if any; and

8) New business.

Meetings shall be conducted in accordance with Roberts Rules of Order.

6) **Quorum.** Except as otherwise provided in these Bylaws, or in the Declaration, the presence, in person or by proxy, of Voting Members representing a majority of the total Owner Class A votes, and a majority of the total Developer Class D votes in the Association shall constitute a quorum at all Association meetings; and any action by the members shall require approval of a majority of the members present at the meeting.

7) **Arbitrator.** Until all units have been sold, the Developer shall appoint one person who is not a member to serve as Arbitrator for the Board and members. After all units are sold, at each annual meeting, the owners shall mutually agree upon and appoint one person who is not a member to serve as Arbitrator for the Board and members for the coming year. In the event of a dispute or disagreement between the directors or members which cannot otherwise be resolved without a lawsuit, except non-payment of assessments, the issue sha11 be presented to the Arbitrator and the decision of the Arbitrator shall be binding upon the Association, its members, and its Board of Directors. The Arbitrator shall be paid a reasonable amount for the arbitration services. If an Arbitrator is not selected by the members, one or more Arbitrators shall be appointed in the manner provided by the Montana Uniform Arbitration Act, or any successor to that Act. Claims of non-payment of assessments or other monies owed the Association and foreclosure of a lien for unpaid assessments or monies owed the Association are NOT subject to binding arbitration. Every unit owner by acceptance of a deed shall be deemed to consent and agree to arbitration of disputes, as provided in these Bylaws and in the Declaration of Unit Ownership for Cherry Island subdivision.

8) **Manner of Obtaining Approval of Unit Owners.** Approval of all decisions and resolutions of the Association which require the approval of unit owners may be obtained by vote at an annual or special meeting, or by written ballot or petition, circulated among the owners.

Section 3. BOARD OF DIRECTORS.

a) **Number of Directors.** The affairs of the Association shall be governed by a Board of Directors composed of three owners. Directors shall be elected by class vote so long as Developer owns any units. The Class A owners shall elect two of the Directors, and the Class D owner shall elect the third Director. After construction and sale of all units by Developer, the Class A owners shall elect all Directors, and the number of Directors may be increased upon affirmative vote of 75% of the members entitled to vote.

b) **Term of Office.** At the first annual meeting, the Owner Members shall elect two Directors for a one-year term. The Developer Member(s) shall elect one Director for a two-year term of office. Thereafter, the term of office of each Director shall be for two years.

c) **Nomination and Election.** Candidates for Directors shall be nominated from the floor at each annual meeting. Each unit owner in a class shall be entitled to one vote for each vacancy in the Board of Directors to be elected by that class; cumulative voting shall be permitted. The candidates receiving the greatest number of votes from the members entitled to vote shal1 serve as Directors for the fo11owing term.

If a quorum cannot be obtained for an annual meeting, the existing Directors shall continue to serve until the next annual or special meeting is held and new Directors are elected; or, as an alternative, the existing Directors may contact members to determine who is willing to serve as a Director and deliver a written ballot to all owners for voting. The ballot shall contain the names of all owners willing to serve for the term(s) to be filled.

d) **Qualifications of Directors.** Directors must be members of the Association, or, in the case of partnerships, LLCs, LLPs and corporate members, a designated representative of the corporate member, partnership, LLP or LLC.

e) **Compensation.** No compensation shall be paid to directors for their services as director(s) unless salaries for directors are approved by vote of one owner of each unit. However, directors shall be reimbursed for actual expenses incurred in the performance of their duties.

I) **Meetings.** Regular and special meetings of the Board of Directors may be held at such times and places as shall be determined by the Directors. Notice of such meetings shall be given by the Secretary to each Director and to the Treasurer and President of the Association, personally or by mail, telephone or facsimile, or e-mail at least three (3) days prior to the day named for such meeting. If notice is given by e-mail, the Association shall maintain a record of all e-mails sent. A majority of the Directors shall be needed for a quorum and any action by the Board shall require approval of a majority of the Directors present at the meeting. Directors may have telephone meetings, so long as all Directors are present, or given the opportunity to be present, and each Director is able to speak to and be heard by the others. Unless otherwise agreed by all Directors, meetings shall be conducted in accordance with Roberts Rules of Order. In any event, all Directors shall be given an opportunity to briefly speak without repeated interruptions, and formal votes sha11 be taken and recorded. Information concerning major actions by the Board shall be properly disseminated to all members of the Association in a manner to be determined by the Board. Owners may attend Board meetings but their participation in the meetings may be limited to the extent determined by the Directors present at the meeting.

g) Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association and may do all acts and things as are not prohibited by law, the Declaration, or these Bylaws directed to be exercised by the members. In addition, the Board of Directors shall have the following powers and duties:

1) To enforce the provisions of the Declaration of Unit Ownership and these Bylaws by appropriate action.

2) To determine the amount of any assessments payable by the unit owners for common expenses and to allocate and assess said expenses among unit owners in proportion to their respective interests in the common elements. Assessments shall include reasonable reserve funds. The Board shall have the authority to invest reserve funds in any manner not inconsistent with the needs of the Association.

3) In its discretion, to impose special assessments for major repairs or improvements and for emergencies, as they are incurred.

4) To send written notice of any change in the regular assessments and written notice of any special assessment to each unit owner at least thirty (30) days before its due date.

5) To record and foreclose a lien against any unit for unpaid assessments or to bring an action at law against the owner personally obligated to pay the same.

6) To adopt a schedule of late payment fees, with consent of 75% of the members entitled to vote.

7) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge

may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

8) With consent of a majority of the unit owners entitled to vote, to adopt a schedule of fines for violation of the Declaration, these Bylaws, or the duly adopted rules and regulations of the Association.

9) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate.

10) To procure and maintain insurance required or authorized to be purchased by the Association.

11) To pay all debts of the Association.

12) To grant and accept easements, permits and licenses on behalf of all unit owners, as necessary for the proper operation of the project.

13) To contract for repairs, maintenance, alterations, additions, and improvements which are the obligation of the Association.

14) Upon written request from any person, agency or corporation having an interest or prospective interest in a unit, to prepare and furnish within a reasonable time an audited financial statement of the Association for the immediately preceding tax year, at the requesting party's expense. The Board shall require that audit expenses be paid in advance of beginning the audit.

15) The Board shall review and approve or disapprove requests from unit owners for consent to modify, alter or add to the exterior of a unit, or any limited or general common element. In evaluating proposed additions or alterations, the Board shall consider the compatibility of external design, scale, color and type and quality of materials with existing structures, and the location relative to existing structures. The board shall also consider the cost of maintaining the addition or alteration, if that cost is to be borne by the Association, and any interference with the quiet enjoyment of the common area or adjoining units, by neighboring unit owners. Failure of the Board to approve or disapprove a request within 45 days after submission shall be deemed a disapproval by the Board. Except as otherwise specifically provided herein or in the Declaration of Unit Ownership for Cherry Island subdivision, no owner shall modify, alter or add to the exterior surface of a unit or any limited or general common element without prior written approval of the Board; provided, however, that Developer shall not be required to obtain approval of the Board for new units being constructed by Developer or other modifications or alterations made by the Developer. The Board of Directors may appoint an Architectural Review Committee to review, approve or disapprove such requests by unit owners.

16) To remove or replace any unapproved modifications or additions to the exterior of any unit, or to the limited or general common areas at the expense of the offending unit owner.

17) To file annual corporate reports with the Montana Secretary of State and to pay the required fee.

18) To prepare income-tax returns for the Association, if required by State or Federal law, and to pay all taxes owed.

19) To provide any notices required by these Bylaws or the Declaration of Unit Ownership for Cherry Island subdivision.

20) In its discretion, to delegate any of the above-mentioned powers and duties to one or more officers or employees of the Association, or to an independent contractor or agent.

21) To engage the services of a paid manager or managing agent. If the Board hires a professional management agent, the contract with that agent must permit termination of the contract by either party, without penalty, after 90-day advance notice of termination is given.

22) To supervise all officers, agents and employees of the Association, to ensure that they properly perform their duties.

h) **Board of Directors as Trustee for Unit Owners.** The Board of Directors is hereby irrevocably appointed as trustee for the unit owners of all of the units, and for each of them, to manage, control and deal with the interests of such unit owners in the common elements and the exterior of each duplex as necessary to permit the Board of Directors to fulfill all of its powers, rights, functions and duties.

The Board of Directors is hereby irrevocably appointed as Trustee for each unit owner, each mortgagee, other named insured(s), and their beneficiaries and any other holder of a lien or other interest in the homes or the property to:

1) insure the units and common areas, as provided in these Bylaws.

2) adjust and settle all claims arising under insurance policies purchased by the Board of Directors.

3) execute and deliver releases upon the payment of claims; and

4) act on their behalf in any condemnation proceeding or act of eminent domain.

The mortgagee and guarantor of the mortgage on any unit shall have the right to timely written notice of any condemnation or casualty loss that affects a material portion of the project or the unit securing its mortgage.

i) **Resignation and Removal of Directors.** Any director may be removed from office by the majority vote of the unit owners of the class electing the Director. In the event of resignation or removal of a Director, the vacancy shall be filled at a special meeting of the unit owners, or by written ballot circulated among the owners, in the manner provided for the election of directors, with the person so elected serving the balance of the unexpired term. Sale or transfer of the only unit owned by a Director shall be a resignation by the selling Director, if the Director no longer owns an interest in any unit.

Section 4. OFFICERS.

a) **Board Elects Officers.** The Board of Directors shall annually elect a President, a Secretary, and a Treasurer. The Board, in its discretion, may also elect a Vice-President. No two offices may be held by the same person except the offices of Secretary and Treasurer. The officers of the Association shall hold office at the pleasure of the Board and may be removed by the Board, with or without cause. In the event of a vacancy, the Board shall elect a successor at any regular meeting or at any special meeting called for such purpose. JOCK CLAUS shall serve as interim President and Secretary, respectively, until the first annual meeting of the Association.

b) **Qualifications of Officers.** Directors may also serve as officers but are not required to do so. Officers may be Directors or other members of the Association.

c) **Duties.** The President shall preside at all meetings of the Association and of the Board of Directors, shall supervise the affairs of the Association and its officers, shall have all of the powers and duties usually vested in the office of President and shall also perform such other duties as from time-to-time may be imposed by the Board of Directors. The Vice-President, if any, shall act in the place of the President and shall have such other duties as may be assigned by the Board of Directors. The Secretary shall keep all books and records of the Association and the Board of Directors and record all minutes of meetings of both, shall keep a record of all members of the Association, and shall serve all required notices. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate itemized accounts of all receipts and disbursements in books belonging to the Association, in chronological order. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time-to-time be designated by the Board of Directors. All checks over $500.00 shall be signed by two officers.

d) **Compensation.** Any officer may be compensated, in a reasonable amount, as determined by the Board of Directors.

Section 5. LIABILITY OF OFFICERS AND DIRECTORS. The Officers and Directors of the Association shall not be liable to the Association or any unit owners for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct or bad faith. Except to the extent that such damages and expenses are satisfied by the Officers and Directors liabi1ity insurance, the Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that the person is or was an Officer or Director of the Association against damages and expenses, including attorney fees, judgments, fines and amounts paid in settlement incurred by the person in connection with such action, suit or proceeding if the Officer or Director acted in good faith and in a manner the Officer or Director reasonably believed to be in, or not opposed to, the best interests of the Association. If not satisfied by insurance proceeds, such damages and expenses shall be a common expense.

Section 6. INSPECTION OF RECORDS. The books, records and papers of the Association and a copy of the current Declaration of Unit Ownership, Bylaws, Articles of Incorporation and Rules and Regulations, if any, for Cherry Island subdivision, shall be open for inspection by any unit owner and by holders, insurers and guarantors of first mortgages on units, at any reasonable time, after reasonable notice to the Secretary.

Section 7. EMERGENCY ACCESS. Directors and their manager, if any, shall have the right to enter any unit in case of an emergency originating in or threatening such unit, whether or not the owner or occupant is present at the time.

Section 8. INSURANCE.

a) Except as otherwise provided in subsection **(k)** below, the Board of Directors shall insure all of the duplex units, the perimeter fence around the project installed by the Developer, if any, and all common element improvements, including every part of every building and all fixtures attached or affixed to any part of a building by screws, nails, glue, cement or other building material, against loss or damage by fire and other casualty in an amount representing the full insurable value thereof, less a deductible in an amount to be determined by the Board. Such insurance shall be "all-in" coverage. Works of art or purely decorative items normally not considered to be part of the real estate when a duplex unit is sold are not fixtures, even though temporarily attached to a wall with nails or screws.

b) The Board of Directors shall purchase public liability and property damage insurance, insuring the Association and unit owners for liability for personal injuries to, or the death of, any person, or damage to property resulting from the ownership, use or occupancy of the property, with policy limits to be determined by the Board, but no less than One Million Dollars ($1,000,000.00) per occurrence and Two Million Dollars ($2,000,000.00) per aggregate.

c) The Board of Directors shall purchase fidelity insurance coverage for all persons handling Association monies, name the Association as insured, in an amount equal to the maximum funds held by the Association. If the Board employs a management agent, the agent must have its own fidelity insurance policy, providing the same coverage required above.

d) The Board shall purchase Officers and Directors liability insurance, covering each member of the Board and each Officer of the Association; the amount of coverage shall be determined by the Board. If the Association has employees, the Board shall purchase workers compensation insurance for the employees and shall purchase such other insurance as it deems advisable or as required by state or federal Jaw.

e) The cost of all insurance purchased by the Association shall be a part of the common expense.

f) All insurance policies shall be issued by an "A" rated or better company approved by FNMA, if available; Directors shall seek to obtain the best insurance value, considering the coverage, the price, the financial stability of the insurer, and the history of the insurer in promptly and properly handling claims.

g) In the event of a loss exceeding One Thousand Dollars ($1,000.00), all Association insurance proceeds shall be paid to the Board of Directors as trustee for disbursement.

h) Each policy shall contain a standard mortgagee clause in favor of each mortgagee or trust indenture beneficiary, or contract of sale endorsements in favor of the contract sellers of any units and shall require the insurer to notify the Association, each unit owner, and each first mortgage holder, in writing, of any lapse, cancellation or substantial change to the policy at least ten days prior to the date on which such cancellation or change takes effect. Duplicate originals of all new insurance policies and of all policy

renewals, together with proof of payment of premiums, shall be delivered to all mortgagees and contract sellers of units at least ten days prior to expiration of the then current policies.

i) The Board of Directors shall annually review the adequacy of limits of coverage of insurance policies, sha11 obtain an appraisal from an insurance company or other knowledgeable person or business of the full replacement value of the covered improvements, without deduction or depreciation, for the purpose of determining the amount of property insurance required under this section, and report its findings and opinion regarding insurance to the membership of the Association at its annual meeting.

j) Insurance policies shall contain waivers of subrogation and waivers of any defense based on co-insurance or of invalidity arising from any acts of the insured.

k) Unit owners shall not be prohibited from carrying other insurance for their own benefit provided that all policies shall contain waivers of subrogation and provided that the liability of the carriers issuing insurance obtained by the Board of Directors shall not be affected or diminished by reason of any such additional insurance carried by any unit owner. Insurance purchased by the Association shall not cover personal items, such as furniture or clothing inside the units. Owners must insure their personal property and obtain liability insurance to cover injury or damage occurring on or within their unit if they wish such insurance coverage. Owners should also consider obtaining loss assessment insurance. If any major improvements are made to the interior of a unit after initial purchase of the unit, (for example, if an owner later finishes an unfinished basement), those improvements (betterments) must be insured for fire and other casualty on the owner's personal insurance policy if the owner wishes to have insurance. Insurance on such betterments will not be purchased by the Association. Replacement of worn fixtures or equipment with similar new ones shall not be deemed a betterment. Owners must insure the fence enclosing their yard, if any, if they wish such insurance coverage.

l) Insurance payments for a fire or other property loss insured by the Association shall be applied by the trustee to repair or replacement of the damaged property. In the event the amount needed to repair or replace general common elements, is in excess of insurance payments, the amount needed shall be assessed to the unit owners as a common expense. If the amount needed to repair or replace limited common elements or a unit or units is in excess of insurance payments, the amount needed shall be paid by the owner of the unit or units or the owner using the limited common element. If insurance proceeds exceed the replacement cost of the property, excess proceeds shall be credited to the accounts of all unit owners. Property which is repaired or replaced after a loss shall conform in style, quality and appearance to the property as it existed prior to the loss.

m) The Association shall pay, as a common expense, the deductible amount for any property loss insured by the Association if the damage is only to the general common elements; provided, however, if the insured loss is due to the misuse, carelessness or negligence of a unit owner, the unit owner shall pay the amount of the insurance deductible. In all other cases, owners of the damaged units shal1 pay the deductible in proportion to the amount of the loss to each damaged unit reported on the insurance claim."

Section 9. PROPERTY LOSS. Property damaged by fire or other casualty must be repaired or rebuilt unless there is a total loss of all units, all unit owners agree not to rebuild, and there is agreement not to rebuild by mortgagees that represent at least fifty-one percent (51%) of the votes of the units that are subject to mortgages held by eligible mortgage holders. Insurance payments for a property loss insured by the Association shall be applied by the Board, or its designated Trustee, to repair or replacement of the damaged property, except in the event of a total loss of all units and a unanimous decision of all owners not

to rebuilt. Units which are repaired or replaced after casualty shall conform in style, quality and appearance to the unit as it existed prior to the casualty. In the event of a decision not to rebuild, the units and common elements must be sold. The net proceeds of sale and the insurance proceeds from the Association's policy, after deduction of the cost of cleanup, if any, shall be divided among the unit owners in proportion to each unit's undivided interest in the common elements. Checks shall be issued jointly to each owner and any holder of mortgages or liens on the owner's unit.

Section 10. ASSESSMENTS FOR COMMON EXPENSES.

a) **When Assessments Begin.** The owner of each completed unit shall be obligated to pay monthly and special assessments for common expenses imposed by the Association, beginning upon closing of the sale of the unit or a certificate of occupancy is issued for the unit, whichever occurs first.

b) **Amount.** Prior to the annual meeting, the Board of Directors shall prepare an Association budget for the corning year. A copy of that budget, together with a statement of the amount of each month assessment for the coming year, shall be delivered to each unit owner at least one week before the annual meeting. During construction, each monthly assessment for a unit shall be equal to the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, divided by the total number of completed units. Upon completion of all units, each monthly assessment shall equal the total estimated common expenses for the coming year, plus a reasonable reserve allowance for replacement of improvements, divided by twelve, multiplied by the percent of undivided interest in the common elements for the assessed unit. Assessments shall be due and payable on the first day of each month. If an annual budget is not prepared as required, the monthly assessment due shall be equal to the amount of the monthly assessment for the previous year until changed by the Board of Director after preparation of a new budget. The regular monthly assessments may be changed by the Board at any time it determines that the changes is necessary or advisable. Written notice of the amount of any changed monthly assessment shall be given, by mail or otherwise, to each unit owner at least thirty (30) days in advance of the first payment due date for the assessment. Except for changes in the amount of the monthly assessments, no bills or other notices that monthly assessments are due need be given by the Association. Assessments must be based upon and computed by using the percentile interest that each unit owner has in the common elements.

c) **Record Keeping:** All assessments collected by the Association may be commingled in a single fund from which shall be paid the expenses for which the assessments are made. Separate records of payments received shall be kept for each unit.

d) **Interest and Late Fees.** Assessments paid more than ten (] 0) days after the date when due shall bear interest at the rate of ten percent (10.0%), per annum from the date when due until paid; in addition, late paying owners shall be obligated to pay a late fee if a schedule of late payment fees has been adopted by the Board of Directors. All payments upon assessments shall be applied first to late fees, then to interest and then to the earliest assessment due.

e) **Special Assessments.** Special assessments may be made by the Board of Directors for capital improvements only upon an affirmative vote of all of the members entitled to vote. The Board may impose special assessments for unanticipated emergency expenses without a vote of the members.

f) **Due Date.** Regular monthly assessments shall be due and payable, in advance, on the first day of each month. The Board shall establish the due date for special assessments. Fines imposed by the Board shall be due and payable 20 days after the Board notifies the unit owner of the fine.

g) **No Exemption from Payment.** No unit owner is exempt from payment of any common expense by waiver of the use or enjoyment of those items paid for or by abandonment of the unit.

h) **Account Balance Transfers with Unit.** No unit owner shall be entitled to receive the balance in that owner's assessment account upon sale of the owner's unit. The account balance shall pass with sale of the unit to the credit of the new unit owner. This provision shall not be deemed to prohibit a selling owner from collecting the balance of that owner's assessment account from a purchaser.

i) **Remedies for Failure to Pay.** The remedies for failure to pay assessments are set forth in the Declaration of Unit Ownership; those remedies are incorporated by reference into these Bylaws.

Section 11. MAINTENANCE OF UNITS AND COMMON ELEMENTS.

a) **Association Responsibilities.** The Association sha11 be responsible for any maintenance, repair, and replacement of common elements and for maintenance and repair of the exterior of the buildings, except replacement of glass and doors, including garage doors. The Association shall pay for maintenance, upkeep and repair of the interior streets, for watering and mowing lawns, for fertilization of lawns, trees and shrubs, and for snow removal from interior streets, driveways and front sidewalks when there are two inches or more accumulation of snow. The Association is responsible for the upkeep of the community mail boxes at each location. The Association shall replace lost mailbox keys and bill the member mailbox user. Maintenance of the sprinkler systems, the on-site stormwater facilities and the water meter vaults, the water mains, the well and pump, and the fire hydrant and valves located within the project, shall be the Association's responsibility. The Association shall also be responsible for maintenance of the sanitary sewer facilities for the project which serve two or more units, if the facilities are not maintained by the City of Billings.

The Association may employ personnel necessary for all required maintenance, upkeep and repair. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair, so that the properties will reflect a high pride of ownership.

b) **Unit Owner Responsibilities.** Every unit owner shall be responsible for all maintenance of and repairs to the interior of that owner's unit, for prompt replacement of broken glass in the unit, and for prompt repairs to all doors, including garage doors. All utility lines and pipes, fixtures and equipment serving only one unit shall also be maintained, replaced and kept in repair by the unit owner. Owners shall be responsible for all damages to the other units or to the common elements resulting from the owner's failure to effect such maintenance and repair. Each unit owner shall be responsible for paying all taxes and assessments on his unit and for payment for all utilities provided to his unit.

All maintenance and repairs for which an owner is responsible shall be paid for by the owner. In the event an owner or tenant fails or refuses to provide adequate maintenance or repairs, the Association may, after ten day advance written notice to the owner, enter into the owner's unit and make the needed repairs or do the maintenance, and charge the actual cost of such repairs or maintenance to the unit owner. Any such costs shall be a lien on the unit on which repairs were made or maintenance was done, and if unpaid, may be foreclosed in the same manner as a lien for common expenses.

Each owner shall use a reasonably high standard of care in performing the maintenance set forth above, so that the entire project will reflect a high pride of ownership. The Board of Directors of the Association shall be the final authority in determining whether an owner is providing adequate maintenance and repair.

c) **Maintenance of On-Site Water, Stormwater, Sewer and Fire Facilities.** The Association is responsible for the maintenance for the irrigation water, sanitary sewer and storm drain systems serving the project; and the Association will maintain these systems in accordance with paragraph 11 of the Declaration of Unit Ownership for Cherry Island subdivision. The Association shall engage a certified operator to maintain the water and fire suppression system. The finished grade of the land in the project must not be changed after completion without prior review and approval of a civil engineer and, if required, by the Montana Department of Environmental Quality and/or by the City Engineer for the City of Billings. The Association shall use a reasonably high standard of care in providing such maintenance, management and repair.

d) **Fences.** A perimeter fence may be installed by Developer, and the Association shall be responsible for maintenance, repair or replacement of the perimeter fence, if any. An owner may install a fence only if approved by the Board of Directors or by an Architectural Review Committee in accordance with Section 12(f) below, and provided that it match or compliment the perimeter fence, if any, or other fences within the project. Approval of a fence may require installation of a gate or gates to facilitate yard mowing. The owner shall be responsible for the cost of installation, maintenance, repair or replacement of such a fence, excepting that the cost of installing, maintaining and replacing a fence dividing the yards of two adjoining units that are both fenced shall be split equally between the parties. Costs of maintenance, repair or replacement required by damage to fences caused by a unit owner or owners or their guests shall be paid for that unit owner or owners.

e) 20 Foot No Build Zone. A 20-foot no build zone will be added across the west border of the Lot 2, Block 1, Cherry Creek Estates Subdivision. No fences, sheds, or permanent structures may be placed in this area. In addition, one tree per unit will be planted in this no build zone. The Association shall be responsible for the cost of installation, maintenance, repair or replacement of this area and trees. Costs of maintenance, repair or replacement required by damage to this area of trees caused by a unit owner or owners or their guests shall be paid for that unit owner or owners.

Section 12. RESTRICTIONS ON USE.

The following restrictions apply to use of all units and common areas:

a) Types of Uses Allowed. The property shall be used only for residential purposes except that an owner may use a portion of his unit for an office or studio so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant and provided the use complies with the applicable zoning ordinances of the City of Billings and applicable CC&R's for the subdivision in which the project is located. In addition, Developer shall have the right to maintain a construction office, a model home, and a sales office on the property until all homes are sold.

b) Use of Common Elements. The common elements shal1 be used only for the furnishing of the services and facilities for which they are reasonably suited, and which are incidental to the use and occupancy of the units.

c) Pets. A maximum of one dog, and two cats shall be permitted in each unit only if kept under the owner's control at all times; however, the Board has the right in its sole discretion, to waive this pet restriction in extraordinary circumstances. No wolf hybrids or vicious breeds of dog. including but not limited to, Pitbull's, Rottweilers, Staffordshire's, Doberman Pinschers, German shepherds or Mastiffs shall be permitted in the project. No pets shall be a1lowed to run loose on the common areas. Owners shall be responsible for promptly cleaning up after their pets and for payment for any damage caused by their pets. Owners shall pay a fine, imposed by the Board, of $50.00 for a second violation of any of the

pet restrictions and a fine of $ I 00.00 for each additional violation thereafter. In

addition, the Board may require an owner to either keep a pet inside or permanently remove it from Cherry Island subdivision project if the Board receives two bona fide complaints that the animal is a nuisance from one or more other owners within a six (6) month period.

No pet owner shall al1ow their animal to defecate on common areas, driveways, sidewalks or public streets without immediately removing the waste from the area and properly disposing of it. In no case, are pet owners to allow the waste to remain in common areas, driveways, sidewalks or public streets, thereby becoming a nuisance to others. The penalties set forth in the foregoing paragraph will be strictly enforced.

d) **No Livestock or Poultry.** No livestock or poultry may be kept or raised in any unit or on the common elements.

e) **Nuisances.** No nuisances or unlawful activities shall be allowed on or within any unit or the common areas, nor shall any use or practice be allowed which interferes with the peaceful possession or proper use of the property.

f) **Alterations to Buildings and Common Elements.** Nothing sha11 be done in, on, or to any unit or in, on or to the limited or general common elements which will impair the structural integrity of any building. No alterations may be made to the stormwater detention facility, berms or drains installed by Developer without the consent of the Department of Environmental Quality and/or the City of Billings. Except as otherwise provided herein, no unit owner or occupant, except Developer, shall erect or place on the limited or general common elements, any building or structure, including fences, walls, patios, decks and screen doors, nor add or remove landscaping, nor make any other additions or alterations to any common areas, or to the exterior of a home or unit, except in accordance with plans and specifications approved in writing by the Board of Directors or by an Architectural Review Committee if one is appointed by the Board of Directors. If plans and specifications have not been approved in writing within 45 days after submission, they shall be deemed disapproved. This restriction does not apply to Developer during construction of units and landscaping of common areas.

In evaluating proposed additions or alterations, the Board of Directors shall consider the harmony of external design, scale, height, color and type and quality of materials and harmony with existing structures, and the location relative to existing structures. The Board of Directors shall also consider the cost of maintaining the addition or alteration, if that cost is to be borne by the Association, and any interference with enjoyment of the common area or a neighboring unit by neighboring unit owners.

g) **Satellite Dishes and Antennas.** No TV antennas, or TV satellite dishes exceeding one meter in diameter or diagonal measurement, and no air-conditioning units, wiring or any other device shall be installed on the exterior of any building, in a yard, or on common elements without prior written approval by the Board. Owners may install a maximum of two small satellite dishes or antennas not exceeding one meter in diameter or diagonal measurement in the yard at the back or side of their duplex, or on the exterior surface of their home or garage, without prior approval of the Board of Directors. The location of the satellite dish must comply with the ordinances of the City of Billings. The Developer strongly recommends that satellite dishes not be installed on a roof. The owner of any unit having a satellite dish or antenna on the surface of the building shall be solely responsible for any damage to the building or to the interior of any unit resulting from placement of the dish or antenna on the building surface.

h) **Trampolines.** No trampolines are permitted, except inside a home.

i) **Garbage.** All garbage and trash must be placed in the proper receptacles designated for refuse collection, and no garbage or trash shall be placed elsewhere on any common element or outside any building; all trash containers, must be kept inside the garage except on collection days.

j) **Hot Tubs.** No outdoor hot tubs shall be permitted without prior written consent of the Board.

k) **Noise.** Residents and their guests shall exercise care about making noise which may disturb other residents. No unit owner shall operate or permit to be operated any sound producing device in a unit or on common elements between the hours of 11:00 p.m. and the following 7:00 a.m., if such noise shall disturb or annoy other residents or unit owners. Noise made by construction workers between the hours of 7:00 a.m. and 10:00 p.m. shall not be a violation of this restriction.

I) **Storage.** Toys, bicycles, tricycles, wading pools, tools, lumber, materials or equipment of any type must be stored inside the owner's home or garage when not in use and shall not be left unattended in front yards, driveways or on any common area used by more than one unit owner. A Unit owner shall not permit the accumulation of junk or debris on the land which is part of that owner's unit, or the common areas. Unit owners shall not leave any items unattended on grassy areas that will interfere with lawn mowing.

m) **Parking.** Unit owners shall not park vehicles in such a manner as to block sidewalks or driveways nor shall they permit any member of their family, guests or tenants to do so. No parking is permitted in any driveway approach or on common areas. Unit owners and their family members and tenants shall not park in designated visitor parking spaces. Junked or non-operational vehicles, boats and trailers, campers, 5th wheels and motor homes shall not be parked on common areas or in driveways for a period exceeding five consecutive days or 30 total days in any one calendar year. Improperly parked vehicles may be removed at the owner's expense.

No vehicle which does not have a visible handicapped permit or handicapped license plate may park in designated handicapped parking spaces. Vehicles violating this handicapped parking restriction may be towed at the vehicle owner's expense.

n) **Blocking Access.** Owners shall not permit any occupant or guest to take any action which impairs vehicle or pedestrian access to another unit.

o) **Fire Prevention.** No unit owner shall perform any act or store anything within or immediately adjacent to his unit which might increase the rate of fire insurance or increase the probability of fire as a result of such act or the storage of such items.

p) **Hazardous Substances.** No storage of chemicals or hazardous substances, except household cleaning products, shall be permitted in any unit, or in the common areas. No disposal of any hazardous substance shall be permitted anywhere within the Cherry Island subdivision project.

q) **Prohibited Activities.** No unlawful use shall be made of any unit, the common areas, or any part thereof.

r) **Fines.** In addition to the fines for pet violations set forth above, the Board of Directors is hereby authorized to adopt a schedule of fines for violation of any of the provisions contained in this

Section and for violation of any additional rules and regulations adopted by the Board pursuant to Section 13 below, and to assess such fines against all owners who violate these provisions.

The owner of each unit shall be responsible for fines resulting from the conduct of the occupants of the unit and their guests. In the event any owner, occupant, or guest of any occupant fails to abide by the provisions of this Section or the rules adopted pursuant to Section 13 below, the Board shall be entitled to recover from the unit owner all costs and attorney fees incurred by it in compelling compliance, with or without initiating arbitration or filing a lawsuit, including collection of fines imposed for violations. If an owner wishes to dispute the imposition of a fine against that owner, the owner must submit the dispute to the Arbitrator within six weeks after receipt of written notice of the fine; failure of an owner to submit the dispute to arbitration within six weeks shall be deemed an admission that the fine was properly imposed by the Board. All fines shall be a lien on the unit of the owner against whom they are imposed, and if unpaid, the lien may be foreclosed in the same manner as a lien for common expenses.

Section 13. RULES AND REGULATIONS. Administrative rules and regulations concerning the use of the common elements may be promulgated and amended by the Board of Directors with the approval of Seventy-Five percent (75%) of the members entitled to vote; provided, however, that no restrictions on the use of the common elements, in addition to those established in these Bylaws, shall be effective until such time as all units have been completed and sold or occupied, unless approved by the Developer.

A copy of the current rules and regulations shall be provided to each unit owner by the Secretary of the Association, without cost, upon receipt of a request therefor.

Section 14. WORKING CAPITAL. The Developer, as agent of the board of Directors, shall collect from the initial purchaser of each unit, at the time of closing, an initial capita] payment equal to two months assessments for the unit. The Developer sha11 be entitled to retain the Buyers pro-rata share of insurance for the current premium period if Developer paid the premium for the unit sold for that period; otherwise the premium shall be paid to the Association's insurance agent. The remainder of each initial capital payment collected from the buyers shall be delivered to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, including insurance, initial maintenance, equipment, supplies, organizational costs, furnishings for common areas, and other startup costs and for such other purposes as the Board of Directors may determine. These funds may not be used by Developer to defray any of its expenses, constructions costs, or other financial obligations, and shall not be considered to be repayment of regular monthly assessments.

Section 15. LIABILITY OF THE ASSOCIATION AND UNIT OWNERS. The Association shall not be liable to any unit owner or any family member or tenant of any owner for any failure to provide services paid for as a common expense, or for any uninsured injury or damage to person or property caused by the elements, or resulting from water, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment onto a unit. The Association shall not be liable to any unit owner or any family member or tenant of any owner for uninsured loss or damage, by theft or otherwise, of articles which may be stored upon any of the common elements. This shall not be deemed to be a waiver of any liability between unit owners. No diminution or abatement of any assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the common elements, or from any action taken by the Association to comply with any law, ordinance or with the order or directive of any government authority. The Association shall not be liable to any unit owner or any family member or tenant of any owner for uninsured injury or damage to person or property caused by another unit owner. Any such liability shall be attributable solely to the

responsible unit owner. The Association shall not be liable to any unit owner or any family member or tenant for uninsured personal injuries or uninsured injuries to property occurring on common elements.

Section 16. AMENDMENTS.

a) Prior to completion of the project. these Bylaws may be amended by Developer, or its successors or assigns. Each owner, by acceptance of a deed to any unit, shall be deemed to consent to any such amendment by Developer, or its successors or assigns, and to have granted to Developer, or its successors or assigns, the power, pursuant to § 70-15-301, MCA, to make such amendments.

b) These Bylaws may be also amended by the Association in a duly-constituted meeting called for such purpose or by written petition, circulated among the owners; provided, however, that no amendment shall take effect without the approval of the Developer, or its successors or assigns, until such time as all units have been sold by the Developer or its successors or assigns. No such amendment shall take effect unless approved by at least seventy-five percent (75%) of the unit owners entitled to vote and until a copy of the Amendment. certified by the President and Secretary of the Association, is recorded in the office of the Clerk and Recorder of Yellowstone County, Montana; provided, however, that the Bylaws shall always include those particulars required to be included therein by the Montana Unit Ownership Act.

c) The consent of at least fifty-one percent (51%) of the eligible mortgage holders shall be required for a change in any of the following:

i) Changes in insurance requirements; and
ii) Changes in any provisions which expressly benefit mortgage holders, insurers or guarantors.

Section 17. BYLAWS ARE COVENANTS. The provisions of these Bylaws shall be covenants running with the land and shall be binding on all owners, their tenants and guests, for so long as the real property describe herein is subject to the provisions of the Montana Unit Ownership Act.

Section 18. CONFLICTS. In the event of any conflict between these Bylaws and the provisions of the Montana Unit Ownership Act or the Declaration of Unit Ownership of Cherry Island subdivision, the latter two shall govern and apply.

Section 19. ENFORCEMENT AND WAIVER. These Bylaws may be enforced in the manner set forth in the Declaration of Unit Ownership for Cherry Island subdivision and in these Bylaws. In the event the Board of Directors shall refuse or neglect to enforce the provisions of these Bylaws or the Declaration of Unit Ownership or duly-adopted Rules and Regulations, any unit owner shall have the right to do so.

Failure of the Association, its Board of Directors or any of its members to enforce the provisions of these Bylaws or the Declaration of Unit Ownership for Cherry Island subdivision or any Rules and Regulations adopted by the Association shall not be deemed a waiver of the right to do so in the future.

The losing party in any lawsuit or arbitration proceeding brought to enforce these Bylaws, or the Declaration, or to foreclose a lien described in the Declaration or these Bylaws, or to collect unpaid assessments for common expenses, shall be obligated to pay the reasonable attorney fees incurred by the prevailing party, together with costs incurred in the lawsuit or arbitration proceeding. In any lien foreclosure action against a unit, the owner of the unit shall be required to pay a reasonable rental for the unit, and the plaintiff in the foreclosure action shall be entitled to the appointment of a receiver to collect the

rent. In the event the services of any attorney are used by the Association or its Board of Directors to enforce these Bylaws, without filing a lawsuit or initiating arbitration, the party violating these Bylaws shall be obligated to pay the attorney fees incurred by the Association; the attorney fees shall be a lien on the unit of the violating owner. The lien may be enforced in the same manner as a lien for unpaid assessments for common expenses.

Section 20. DEFINITIONS. The terms used herein shall have the definitions set forth in the Declaration of Unit Ownership for Cherry Island subdivision.

Section 21. HEADINGS. The headings used in these Bylaws are for convenience only and shall not be deemed to limit the provisions of these Bylaws.

Section 22. NOTICE. Any written notice required or provided for in these Bylaws, or in the Declaration of Unit Ownership for Cherry Island subdivision shall be hand delivered or mailed by certified mail, return receipt requested, to the last address provided by the owner to the Association. A notice sent by certified mail shall be deemed delivered three (3) days after the date when mailed, whether or not actually received by the owner to whom it was sent.

IN **WITNESS WHEREOF,** the undersigned, being the owner of the property to which these Bylaws apply and being the interim President and Secretary of the Association, have executed this instrument as evidence of the adoption of the aforesaid Bylaws of the Association and hereby certify that the foregoing is a true and correct copy of the Bylaws of the Association.

DATED this _____ day of _____, 20__

CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION

_____

Jock Claus

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this_____ day of _____20__, before me, the undersigned, a Notary Public for the State of Montana, personally **Jock Claus** known to me to be the President of **CHERRY ISLAND SUBDIVISION HOMEOWNERS ASSOCIATION,** whose names are subscribed to the foregoing Bylaws and acknowledged to me that they executed the same.

IN WITNESS WHERE, I have hereunto set my hand and affixed my Official Seal the date in this certificate first above written.

_____
Notary Republic for the State of Montana

September 1, 2020

To the Members of the City Zoning Commission,

The Heights Task Force wishes to express its opposition to the proposed zone change that would facilitate new development to the west of the Cherry Creek mobile home park. Heights Task Force members have been actively involved in conversations with representatives of the developer, seeking answers on a number of critical concerns. To date, those concerns have been either dismissed or ignored. The concerns of the Heights Task Force, as outlined below, show that on a number of points, the proposed zone change falls short of the 10 criteria that the Commission considers in approving a zone change. Because the proposed zone change does not meet all 10 criteria, the Heights Task Force respectfully requested that the application be denied.

The Cherry Creek Manufactured Home Park (Cherry Creek MHP) is a high-density neighborhood that is already experiencing challenges with public safety, transportation, student safety, and access to parks and recreation. Facility operations and maintenance by the previous Cherry Creek MHP owners – the same developers on this proposed zone change and project – have been problematic for many residents. A satellite image of the neighborhood is provided on the last page of this letter to allow the Commission a better visual on the density of the area.

Criterion #3 – Public Health/Public Safety/General Welfare

Crime in this neighborhood is already a significant concern. Allowing higher density development that exacerbates the overcrowding in the area will certainly continue to place the safety and general welfare of people living in this neighborhood at risk. During multiple Heights Task Force meetings, residents of the Cherry Creek MHP have indicated that crime is a serious concern. In just the last week, there has been a theft, an assault, and three disturbing the peace incidents in the area of the proposed zone change.

Allowing more high-density development will make these conditions worse, not better. During a recent Task Force meeting, a member of the Billings Police Department indicated that calls to the area typically require two police cars to respond, as weapons are often involved. Increasing the density of development in this area is not consistent with promoting public safety or the general welfare of the neighborhood.

Criterion #4 – Transportation/Water/ Sewerage/Schools/Parks/Other Public Requirements

Traffic congestion in the area remains a significant concern at current levels, without the addition of 600-800 vehicle trips per day. In particular, neighbors have indicated that a large number of students are waiting on the corner for busing, as school buses do not enter the Cherry Creek MHP. The combination of additional students waiting for the bus with no shelter or safe waiting area and hundreds of additional vehicle trips per day is a meaningful safety concern that the Zoning Commission should consider.

Similarly, both the developer application and the staff memo seem to disregard the measurable impact on nearby public schools. Beartooth Elementary serves this neighborhood and is already, according to the developer, at 92% occupancy. Medicine Crow Middle School is currently operating at a similar

enrollment rate. The proposed zone change would allow a higher density of housing, meaning that more children are likely than if the area retained its current zoning. An influx of families to the project area would push both Beartooth and Medicine Crow to near capacity, and that is without factoring in other projects under development in the same area. Further, Billings Public Schools is indicating record enrollment this year, meaning that ordinary community growth is already putting a strain on existing elementary facilities. Retaining the current zoning is the best way to limit adverse impacts on neighborhood schools.

The project developers have indicated they will not develop any parks or recreation facilities in the area. The Cherry Creek MHP has virtually no recreational space available and residents are indicating that the current property owners are directing that outdoor play equipment be removed. While the current operations of the Cherry Creek MHP are no longer the responsibility of the Applicant, it bears upon the Zoning Commission's consideration that existing recreational options are already severely constrained in the neighborhood. The addition of 66 units to the area without any additional improvements to parks, trails, or recreational space falls far short of the criterion to facilitate the provision of parks through a zoning change.

Finally, many neighbors and property owners in the area have raised multiple questions regarding impacts on water that have been unanswered by the Applicant. Specifically, it is not clear how the proposed zone change, allowing higher density building, would impact neighbors on wells. Because the Applicant does plan to use well water for irrigating the development, neighbors are rightfully concerned about the water table and no information has been provided in response to that concern.

Criterion #6 -- Motorized/Non-motorized Transportation

As stated above, neighbors in the area have concerns over the current traffic congestion as well as the lack of proposed solutions if the zoning were changed to allow higher density development. The Applicant does not propose to develop any walking trails, bike paths or other neighborhood amenities that would promote the use of non-motorized transportation options.

Availability of Housing Options

Many of the zoning criteria speak to the desire for diversity in housing options. Throughout the staff memo and the Applicant documents, the need for options other than detached single-family homes is repeated frequently. Yet, the analysis of the zoning change appears to completely ignore the 96-unit duplex and four-plex development in the vicinity of Medicine Crow Middle School. The analysis provided characterizes this area of the Heights as lacking in housing options but fails to mention the Barrett Road project as providing a meaningful number of additional housing options. Further, the Barrett Road project includes improvements to traffic routes, sidewalks and pedestrian pathways, and recreational options – all of which have been expressly rejected as options by the developers of the Cherry Creek project. Considering that there will be an influx of higher density options in the immediate vicinity of the proposed new development, there is no need to change the zoning to facilitate housing diversity in the neighborhood.

Homeowners' Association

Residents of the Cherry Creek MHP and neighbors in the area have spoken at both task force meetings and the community meeting for this project about the long legacy of broken promises by the Applicant.

Commitments to develop park space, maintain streets and common areas, and improve safety have not been upheld. Residents in the area are rightfully concerned that the same history will be repeated in this project if higher density development is allowed.

It appears that, in response to these concerns, the Applicant is offering to establish a Homeowners' Association (HOA) in the area, which would ostensibly be tasked with maintaining the character of the neighborhood and acting in a way to preserve property values. Unfortunately, establishing an HOA in no way solves the very legitimate concerns of residents in this area. The developer has indicated that some units might be sold, others will be retained by the developers as rental units, and it is impossible to predict now how many units might be sold or rented. Because the developers intend to retain units for rentals, there is a clearly foreseeable scenario in which the developers simply control the HOA. Typically, an HOA operates on the concept of one vote per home, to be exercised by the homeowners themselves. Thus, rental properties held by the developers will give the Applicant multiple votes in an HOA, as it is the property owner, not renter, who votes in a typical HOA. If 51% of the units are retained by the developers, they would then fully control the HOA and have the capacity to override the wishes of other owners in the Association. Both neighborhood residents and the Task Force have requested drafts of the HOA proposal, but no documents have been provided.

The Zoning Commission does not need to consider the existence of an HOA in its evaluation of the 10 zoning criteria, but to the extent that the Applicant is suggesting that concerns about safety, property values, or general development impact can be addressed through the proposed HOA, we would submit that is simply not the case. Absent assurances that the HOA is structured in a way to serve as an entity fully independent of the property developers, the proposed HOA will have no impact on any of the concerns raised by residents or the zoning criteria.

Based on the concerns identified in this letter, the Heights Task Force requests that the proposed zone change be rejected, as it fails to meet all 10 of the zone change criteria. The current zoning allows for responsible housing development that is consistent with the character of the neighborhood without the volume of negative impacts that would be caused by higher-density development.

Thank you for your consideration of these comments.

Sincerely,

Jennifer Owen
Chair, Heights Neighborhood Task Force

River View Dr
River View Cir
Outlook Dr
Erin St
Rally Point Water
River View Dr
David B. Bakken, RPh
Cherry Creek Community Center
Vandalay St
Rainier St N
Tartarian St
Pond Rd
Hartland St N
Skeena St
N Cherry Creek Loop
North Loop
Cavalier St N
S Cherry Creek Loop
Odds, Ends, and Such
Temporarily closed
Bing St N
Jubilee St
Jubilee St
N Cherry Creek Loop
S Cherry Creek Loop
Attka St N
Danube St
Blarney St
N Cherry Creek Loop
Bitterroot Dr
Youth Dynamics
Bitterroot Dr
Bitterroot Dr
Bitterroot Dr
Shannon St
Riverside Cemetery
Dublin St
Carson Way
Anchor Ave
Galway Dr

September 1, 2020

Zoning Commission
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

Dear Zoning Commission, City Council and Yellowstone County Commissioners:

We are writing this letter in opposition to the proposed zoning change in Cherry Creek Estates from R-96 and P to R-8000. The zoning change will have long term negative effects on the neighborhood and surrounding area. There is no support in the neighborhood for this zoning change.

This is the list of criteria for a zone change from the City of Billings website:

- Whether the new zoning was designed in accordance with the comprehensive plan

  This expansion does not comply with the comprehensive plan. In the plan that Cherry Creek submitted in order to get approval for initial buildout, the owners agreed that these areas would be a 'buffer zone' between the trailer houses and the landowners on Bitterroot. That is detailed in the documents that Jason and Lindsay McGimpsey submitted.

- Whether the new zoning was designed to lessen congestion in the streets

  This expansion adds 66 new homes in this area. The engineer on this project admitted he had not done a traffic study to assess the current usage. The area already has 370 trailers and now to add 66 more residents, the traffic will only increase. The entry in and out of Cherry Creek is backed up on a regular basis.

- Whether the new zoning will promote health and general welfare.

  Adding another 66 units in this area will not promote the health and welfare – the engineer has not yet done a study on how the water/sewer in the new development will affect the wells and septic systems of the homes on Bitterroot Drive. Since the ownership of these units will remain with the Clause family, the idea that the duplexes will be kept up any differently than the trailer court has been is not believable. The trailer court has a long history of buildings that are outside of zoning codes, abandoned vehicles, police visits and convicted sex offenders in residence next to children. While Cherry Creek now is under new ownership, the past history of the Clause family's management of the facility and refusal to enforce zoning regulations indicates that this property would be maintained in a similar fashion. The Clause family has a total disregard to the neighborhood and the overall Heights neighborhoods.

- Whether the new zoning will be secure from fire, panic and other dangers

  The duplexes will be dead end streets - the schematic we saw at the meeting does not appear to address whether a fire truck could enter and exit the area safely.

- Whether the new zoning will provide adequate light and air

This new facility will not provide adequate light and air for the existing homeowners. It infringes upon their properties with a large fence and will most likely add to the crime and misc vandalism issues that the current property owners experience.

- Whether the new zoning will prevent the overcrowding of land

  Absolutely will be overcrowding – 66 units in that small of an area? There will absolutely be overcrowding.

- Whether the new zoning will avoid undue concentration of population

  Absolutely will concentrate people on a small plot of land, with at least 66 new cars in and out, up to 120 cars.

- Whether the new zoning will facilitate the adequate provision of transportation, water, sewerage, schools, parks, fire, police and other public requirements

  Given the current level of police calls and fire calls, adding 66 more residences will only add to the number of police and fire calls. Currently, the City of Billings Police department responds to several calls a day at Cherry Creek. The previous management at Cherry Creek (Clause) would not screen residents. It is reasonable based on that previous management style that this new 66 unit development will be the same.

- Whether the new zoning gives reasonable consideration to the character of the district

  Absolutely not. All the housing around this area is single family, with the exception of the south side of Wicks lane to the north. Those units are owner occupied and maintained. The single family housing across the street and adjacent to Cherry Creek makes this densely populated proposal foolish.

- Whether the new zoning gives reasonable consideration to peculiar suitability of the property for particular uses

  Absolutely not – no consideration to the suitability of the property has been given. This property was meant to be a buffer between the trailer park and the residents. Building 66 units on it will only overcrowd the property

- Whether the new zoning was adopted with a view to conserving the value of buildings

  Absolutely not. With the building of these units, the houses to the west will lose their value. The area was meant to be a 'buffer' between the trailers and the house – for the very intent to preserve the value of the existing houses. Adding 66 units of duplexes will undermine the value of the homes.

- Whether the new zoning will encourage the most appropriate use of land throughout the City of Billings.

The most appropriate use of this land is the buffer it was set aside for. The fact that the units will be owned and maintained by the same landowner that built and maintained Cherry Creek should be enough to shut this down.

Prior to this application, one was submitted to expand into this area in 2016. After touring the trailer park and looking over the condition of the area and the lack of maintenance and lack of zoning enforcement for buildings, the Zoning board made a recommendation NOT to allow the change. I would like the commission to examine that decision and the reasons for it before considering this one. While Cherry Creek has been sold to a new management group and there is now hope that it will become a more suitable community for the Heights, no guarantees are made.

Since this would be managed by the same people that couldn't manage and maintain Cherry Creek, I would ask the commission to vote "NO" on this expansion request also.

Sincerely,

Tracy Marsh

Barry and Tracy Marsh

Tracy A Marsh

Barry Marsh

Bartley, Robbin

From: Ed Hostettler <edhostettler@yahoo.com>
Sent: Tuesday, September 1, 2020 10:16 AM
To: Bartley, Robbin
Subject: [EXTERNAL] Comment for Zoning Commission meeting 9/1/20

ATTENTION: This email originated from outside of the City of Billings. Use caution when clicking links or opening attachments unless you recognize the sender and are expecting the contents.

Dear Members:

I am asking you to reject the request to change from single family to multi-family zoning requested by the owners of Cherry Creek MHP. At the last Heights Task Force meeting, two residents of Cherry Creek MHP recommended rejection for this change. These residents sited the continual lying and deception by the ownership of this mobile park. The Billings Police reports at our task force meetings site numerous calls to Cherry Creek. Your approval of this zone change will result in significantly increasing density and consequent impact on traffic, schools, and probably even more Billings Police calls for service.

You know that a fire call last year resulted in the loss of a manufactured home because the management of Cherry Creek turned off the water to the hydrants. By the time the Billings Fire Dept. was able to get water for suppression, the home was a total loss. This is typical of the management of Cherry Creek by all accounts. Please deny this application for change.

Edwin Hostettler
1305 Nutter Cir
Billings MT 59105

09/01/2020

RE: Zone Change

Robbin / Tammy,

The original agreement upon approve of Cherry Creek, was to be used at a "**undeveloped**" buffer zone. I am writing you to express my concern for this new development. Cherry Creek is the worst and most problem area in Billings. As a lifelong Heights resident, in my option, your approval of this will degrade the Heights area even more so. This new development is owned by the same people who developed Cherry Creek. It has been nothing but a thorn in the City as well as the police and first responders.

This land was setup as a buffer zone by Cherry Creek Land Developers and as agreed upon, should remain exactly that. This will effect over populated schools and property values of surrounding houses negatively.

Therefor I am strongly against this development.

Sincerely,

Aaron & Karmen Higginbotham

1315 Bitterroot Dr.

Billings, MT 59105

September 1, 2020

Zoning Commissioners
2825 3rd Avenue North, 4th Floor
Billings, MT 59101

Dear Zoning Commission, City Council, and Yellowstone County Commissioners,

We are writing this letter in opposition to the proposed zoning change in Cherry Creek Estates from R-96 and P to R-8000. This zoning change would have long-term negative impacts on our neighborhood and the surrounding area. There is no support within our neighborhood or our community for this proposed zoning change and no citizen in good conscious could support any additional dwelling units of any kind within this development.

Several documents and meeting minutes have been discovered which reference the 300' buffer zone (the area which is up for consideration of a zone change) zoned R96 to satisfy surrounding property owners, community members, and Commissioners, in order to develop the trailer park in the first place. Neighborhood concerns have not changed (they, in fact, have gotten greater as the development has become what we all feared), nor should the buffer zone be eliminated.

The zone change request does not meet several of the 11 criteria that you use to aide in your review of proposed zone changes. Cherry Creek Estates does not meet the criteria set forth in items 1, 2, 3, 4, 6, 7, 8, 9, or 11. A series of flimsy justifications have been provided as part of the application which all do not stand upon any type of further research.

The proposed zone change is not in accordance with the City of Billings Growth Policy. Cherry Creek most certainly does not provide neighborhood character, visual appeal, or quality of life for its residents. The majority of the 370 trailer homes as well as the "parks" and common areas located within the development are in a constant state of disrepair. They are not providing a service to low income people. The development does not fit the criteria of MCA 76-3-102, specifically Items 2, 3, 5, and 6. Cherry Creek is already overcrowded and has been developed far beyond the 300 unit maximum outlined within the development agreement. With close to 370 units, an additional 66 dwelling units this area will be the most densely populated in Yellowstone County.

As a community, we recently passed the School District #2 bond issue (the owners of Cherry Creek actively fought the bond issue – not wanting to pay their fair share for the impact that their development's residents have had on the overcrowding of local schools). This bond money has gone, in big part, to addressing our District overcrowding issues. Our local elementary school, Beartooth Elementary, has experienced extreme overcrowding, and this issue has been resolved with the redistricting and addition of Medicine Crow Middle School. If Cherry Creek adds additional dwelling units (which were not accounted for in the projected growth of our area), this will easily result in a significant number of additional children flooding into the schools and again creating overcrowding / accreditation issues. The recently approved zone change adjacent to Medicine Crow will also have to be factored into this decision.

This area requires **multiple** daily visits from the City of Billings Police **and** Fire Department (please reference reports which are available from the City of Billings Police Department), and is a known area for drug use, drug distribution, child abuse and neglect, burglary, property damage, assault, vandalism, noise disturbances, harassment, DUI, restraining order violations, forgery, fraud, firework use, custodial interferences, trespassing, and weapons violations. The attached headlines from the Billings Gazette offers further evidence illustrating the problems this development has faced in recent years. An additional 66 dwelling units will only increase the burden on already strained City services.

On top of all of this illegal activity, there are many registered violent/sex offenders in this development (including a Level 3 and a Level 2 offender). At the time of the last zone change request in 2016, over half of the registered violent/sex offenders east of Main St. live within Cherry Creek.

We invite you to tour Cherry Creek Estates and witness first-hand the reasons that our neighborhood and the Heights community are not in support of adding additional dwelling units to the existing 370. The owners did not and could not maintain what they had. Now the same family would like an opportunity to create another large low-income development with more empty promises utilizing the same ownership model in which they are able to take financial advantage of low income families. The two class action lawsuits which they lost are enough evidence of their business practices and ethics.

Our neighborhood is made up of hundreds of single-family, owner-occupied homes adjacent to and bordering Cherry Creek Estates. We have a pride of ownership, and an eye towards making Billings and our local community the best it can be. We do not appreciate being subjected to a slight variation of the same zoning change request presented in 2016. There is no logical reason to again subject the community and neighborhood to yet another attempt by this developer at creating a significantly worse situation than currently exists in this development.

Please help us in our efforts to keep Billings great!

Sincerely,

Jason & Lindsay McGimpsey

Attachments
MCA 76-3-102
Cherry Creek rules/regulations
Development plan for Cherry Creek Estates
8/24/01 County Commissioners Meeting Minutes
Aerial map of Cherry Creek and buffer area
Cherry Creek Development responses
Environmental Assessment of Cherry Creek
Cherry Creek headlines

Montana Code Annotated 2015

76-3-102. Statement of purpose. It is the purpose of this chapter to:

(1) promote the public health, safety, and general welfare by regulating the subdivision of land;

(2) prevent overcrowding of land;

(3) lessen congestion in the streets and highways;

(4) provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements;

(5) require development in harmony with the natural environment;

(6) promote preservation of open space;

(7) promote cluster development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services;

(8) protect the rights of property owners; and

(9) require uniform monumentation of land subdivisions and transferring interests in real property by reference to a plat or certificate of survey.

History: En. Sec. 2, Ch. 500, L. 1973; amd. Sec. 1, Ch. 498, L. 1975; amd. Sec. 1, Ch. 552, L. 1977; R.C.M. 1947, 11-3860; amd. Sec. 1, Ch. 272, L. 1993; amd. Sec. 2, Ch. 468, L. 1995; amd. Sec. 2, Ch. 348, L. 2001.

Provided by Montana Legislative Services

GENERAL TERMS OF RULES AND REGULATIONS
FOR
CHERRY CREEK ESTATES SUBDIVISION

1. Each lot in the manufactured home park shall be known as a residential lot and shall be used solely for residential purposes. No structure shall be erected, altered, placed or permitted upon any lot other than one (1) single family manufactured home per lot; a garage and storage building not to exceed a combined size of 720 SF. No additions or enclosed entries shall be constructed to any manufactured home.

2. No structure other than a manufactured home exceeding 1,000 SF in size which shall be used for residential purposes. All manufactured homes shall be at least 14 feet wide and shall not be over five years old at the time of placement on to a lot. Axles and tires shall be removed upon placement and before skirting.

3. The exterior of any garage or storage unit shall be constructed of new materials and be completed in its entirety before it can be used for any purpose. All wooden structures shall be sided with conventional siding and shall be kept well maintained at all times. Other prefab storage units must be approved by the Board of Directors of Cherry Creek Development, Inc. and thereafter kept well maintained.

4. Plans and specifications for all garages to be built on any lot shall be submitted by the lessee to the Board of Directors for review, and upon receiving written approval, the lessee shall purchase a City of Billings building permit.

5. No swine, poultry, or other livestock shall be kept on said premises; however domestic pets may be kept by the lessee of which domestic pet shall be defined as meaning not more than two dogs and not more than two cats per living unit. All pets shall be confined to the lessee's premises at all times, or kept on a leash.

6. No construction equipment or materials of any nature can be stored unless for the purpose of immediate construction. No trash, obsolete materials, non-operating or non-licensed vehicles or portions thereof, or other refuse shall be allowed to accumulate on any of the above-described lots. No camp trailers, trailers, boats and such shall be stored on the lot, unless it can be stored inside a building meeting the above size requirements.

7. No noxious, offensive or illegal activity shall be carried out upon any lot, nor shall anything be done thereon which may become a nuisance or annoyance or to the extent that the same becomes unsightly or unsafe; nor shall any motor vehicle used in organized automobile or stock car races be stored or maintained on said premises.

8. All garbage containers shall be stored so that they will be concealed from the view of streets.

9. All manufactured homes shall be located in accordance with the regulations of the City of Billings. The front setback shall be at least 20 feet. No structure shall be built within 8 feet of the manufactured home.

10. No fence or hedge shall be of more than 4 feet in height. All fence materials must be new at the time of installation. Placement of fence, hedge or trees will be restricted per City of Billings ordinance line of clear vision at intersections.

11. The lessee of any lot shall be responsible for keeping the grass and weeds cut on his lot, even though he may not have a home on the lot at all times. The Board of Directors reserves the right to enter onto any lot to cut any grass and weeds that may appear to be unsightly, and the cost of same may be assessed against the renter of the lot or living unit.

12. Each manufactured home shall be skirted within 30 days after it is moved onto the lot. Skirting shall be of a color similar to the home and shall be kept well maintained and in good repair.

DEVELOPMENT PLAN
FOR
CHERRY CREEK ESTATES SUBDIVISION

LEGAL DESCRIPTION: Lot 1, Block 1, Cherry Creek Estates Subdivision located in the NW¼ and SW¼ Section 24, T.1N., R.26E., P.P.M., Yellowstone County.

THE PURPOSE of this development is to provide for and satisfy some of the need for modern manufactured housing. In recent years, there have become fewer and fewer available manufactured housing lots for rent. This low is creating increased lot rents and hardships for the elderly on fixed income and young families starting out. The location of this development is ideal because of the landscaped buffer that can be provided, the ability to connect to public utilities, the assurance that the proposed design is the limit of the expansion, the large amount of open space that can be retained, and the ability to provide amenities for public as well as the residents of the development.

A. BUILDING AND USE RESTRICTIONS:

Unless expressly designated to the contrary, all standards or requirements of the City of Billings and Yellowstone County Zoning Regulations shall be followed for the type of use within each of the areas listed below:

1. LAND USES :

   a. Single family, double and triple wide manufactured homes. The entire development shall be privately owned lots for rent.

2. USES PERMITTED:

   a. Single-family residential manufactured home structures shall be built to HUD code and will meet all standards as stated in the Unifield Zoning Regulations, Section 27-608, Item 2, Manufactured Homes, Class A. Structures shall be built with conventional materials used in the housing industry. No specific requirement for foundation shall be required.

   b. All other uses allowed by right in the R-9600 zoning district as set forth in Section 27-305 of the BMCC.

   c. Uses requiring special review approval as defined in Section 27-305 shall be required to proceed through the special review process set forth in Section 27-1503 of the BMCC.

B. SUPPLEMENTAL AREA YARD AND HEIGHT REQUIREMENTS FOR BOTH UNDERLYING ZONES:

All set backs will be per fire code requirements.

C. BUILDING DESIGN:

1. Exterior portion of development shall have homes built post 1995 of a minimum size of 1,100 square feet. The exterior of the home shall have at least two architectural options, such as dormer, a window option, or other as approved by Cherry Creek Development, Inc. Garages and one shed shall be allowed, combined total square footage not to exceed 800 square feet. Garage and shed shall be similar color of home.

2. Interior portion of development must have homes at least a minimum of 960 square feet and homes shall be built post 1990. The home exterior shall be built of conventional materials.

D. ESTIMATED DEVELOPMENT SCHEDULE: All improvements in the Planned Development will be constructed within five years of the date of the Council approval.

1. Within six months of development approval: Begin grading and layout of project.

2. Within twelve months of Preliminary Plat approval:

   a. Begin construction of sewer and water infrastructure, electrical, telephone, gas, and roads for Phase I.

   b. Begin construction of some of the amenities.

   c. Begin grading work on proposed 9 hole golf course.

3. Within 18 months of Preliminary Plat approval:

   a. Begin work on the greens area of the first 9-holes of proposed 18 hole golf course.

   b. Start Construction of Phase II.

   c. Construction will be complete on Phase I (150 units).

4. Within 24 months of Preliminary Plat approval:

   a. Construction of road, sewer and water infrastructure will be completed on Phase II.

b. Completion of first 9 hole of proposed 18 hole golf course.

c. Completion of Clubhouse.

5. At 36 months after Preliminary Plat approval:

a. Begin construction of remaining amenities.

6. All items of construction will be completed by 60 months after preliminary plat is approved.

E. OTHER SPECIAL AGREEMENT:

1. Easements: To be established. Possibility for Storm Drain Easement, Bikepath Easement, lift station provision issues to discuss to with the City.

2. Screening bordering neighbors to west: A 6-foot fence shall be provided specifically along the border of neighbors to the west. In no event shall the screening be placed as to obstruct clear site vision of street intersections.

3. Other requirements: Unless expressly designated above, all other standards or requirements of the City of Billings development standards, building, zoning and site development ordinances shall be followed.

F. REVERSION:

If for any reason this Planned Development is not implemented and construction improvements within the development schedule in above Paragraph I.4 and in conformance with this Development Plan, nor are any dwelling units in place within five years of zone change approval, then this property shall revert back to the previous zoning.

IN WITNESS WHEREOF, the parties have set their hands and seals the day and year first above written.

CHERRY CREEK DEVELOPMENT, INC.

By _____

Its _____

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 1999, before me, a Notary Public for the State of Montana, personally appeared _____, known to me to be the _____ of CHERRY CREEK DEVELOPMENT, INC. that executed the within instrument and acknowledged to me that such corporation executed the same.

_____
Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

CITY OF BILLINGS, MONTANA

By _____
Mayor

Its _____
City Clerk

STATE OF MONTANA)
: ss.
County of Yellowstone)

On this _____ day of _____, 1999, before me, a Notary Public for the State of Montana, personally appeared _____ and _____, known to me to be the Mayor and City Clerk, respectfully, of the City of Billings, Montana, and acknowledged to me that they executed the same on behalf of the City of Billings.

_____
Notary Public for the State of Montana
Residing at _____
My Commission Expires _____

REGULAR MEETING OF THE BOARD OF COUNTY COMMISSIONERS

Billings, Montana

Friday, August 24, 2001

The meeting was called to order at 10:00 a.m.

PRESENT - Commissioners Reno, Chairman, Ziegler, and Kennedy; Board Clerk, Tammy Dexter; Clerk and Recorder, Tony Nave.

PLEDGE TO THE FLAG - Held.

ADD-ON REQUEST - COMMISSIONERS - TO REGULAR AGENDA - Letter to John Althof, Montana Department of Transportation re: Closure of Railroad Crossings in Huntley Experiment Station. Commissioner Kennedy MOVED to add this item to the Agenda. Commissioner Reno seconded the motion. Unanimous.

Commissioner Reno noted that item #3a. - Court Services - Federal Appropriation Grant Application had been removed from the Agenda. This item will be on the August 28, 2001 Agenda.

10:00 A.M. - PUBLIC HEARING - Closing Assets and Liabilities of Human Services Fund to the General Fund. Now was the time, date, and place for the above public hearing. Commissioner Reno called on Scott Turner, Finance Director. Mr. Turner informed the Board that the 2001 legislature passed Senate Bill 339 effective July 1, 2001. Mr. Turner explained that this bill transfers all counties public assistance programs and administration to the State of Montana. Mr. Turner noted that fund 2120 (Human Services Fund) had a fairly sizeable reserve, and became available at the discretion of the Board of County Commissioners. Mr. Turner reminded the Board that the General Fund was going to be one-time appropriated with $1,000,000 of these assets in the FY02 County's Health Insurance Fund. Mr. Turner noted that $50,000 of the Human Services Capital Improvement Funds would be designated to Riverside Cemetery, and $24,000 of the Capital Improvement Funds would be designated as a reserve for possible leasehold improvements, and the balance of the Human Services Capital Improvement Funds would be designated for projects by the Board of County Commissioners. Commissioner Kennedy noted that the County only owes state expenses from FY01.

Commissioner Reno opened the public hearing and called for proponents and/or opponents. None. Commissioner Reno closed the public hearing. Commissioner Kennedy MOVED to execute Resolution #01-65 (Closing Assets and Liabilities of Human Services Fund (2120) to the General Fund). Commissioner Ziegler seconded the motion. Unanimous.

ADD-ON ITEM - COMMISSIONERS - Letter to John Althoff, Montana Department of Transportation re: Closing Railroad Crossings at Huntley Experiment Station. Commissioner Reno read the letter aloud for the record. Commissioner Kennedy noted that after visiting with users of Osborn Park, a Huntley Experiment Station employee, and Huntley Museum Board members, they were very adamant that these railroad crossings were needed and should not be closed. Commissioner Ziegler asked if the letter was appropriate, or if a public hearing should be held regarding the issue. John Ostlund, County Road Superintendent, was present and stated that he agreed with the people from Huntley - these should remain open. Commissioner Kennedy MOVED to execute the above letter to John Althof, Montana Department of Transportation. Commissioner Ziegler seconded the motion. Unanimous.

10:15 A.M. - FINAL BUDGET HEARING - Adoption of FY02 Budget. Now was the time, date, and place for the above public hearing. Commissioner Reno called on Scott Turner, Finance Director. Mr. Turner informed the Board that many pieces of new legislature had some major impacts on county budgets. Mr. Turner stated that the State had taken some revenue resources away from local governments. Mr. Turner noted that there was a 3% inflationary growth factor that the State would be assuming. Mr. Turner reminded the Board that 3.3 mills was given to the County Attorney's budget last year, and they were now separated from the General Fund; they are now the Public Safety County Attorney Fund. Mr. Turner stated there was an increase of 5.1 mills county-wide. Mr. Turner noted that $1,000,000 would be transferred into the County's Health Insurance Fund as a one-time bonus (from closing the Human Services Fund). Mr. Turner stated there were nine (9) new FTE positions, mostly for the County Attorney's Office and the Detention Facility. Mr. Turner went briefly went over the Detention Facility expenses. Mr. Turner reminded the Board that the Youth Services Center had $89,000 reallocated to bring their staff up to comparability of employees doing similar jobs at better pay. Mr. Turner noted that, overall, the budget was balanced. Mr. Turner alerted the Board that next year could be a little different with union contracts, higher costs of utilities, and health insurance, just to name a few.

Commissioner Reno opened the public hearing and called for proponents and/or opponents. **Joe White** 1403 1st Avenue North, recommended that the Board hire an executive assistant to carry out orders for the Board. Commissioner Reno closed the public hearing. Commissioner Ziegler MOVED to approve the FY02 Yellowstone County Budget. Commissioner Kennedy seconded the motion. Unanimous.

COMMISSIONERS - A.) Public Board Discussion - Decision on Zone Change #543 - Cherry Creek Development. This item was brought back to the Board due to a misunderstood motion at the original public hearing. This was a zone change request from Agricultural-Open Space to Residential Manufactured Home and Public on property generally located south of Wicks Lane and east of Bitterroot Drive. Commissioner Kennedy MOVED to deny Zone Change #543. Commissioner Ziegler seconded, noting that

5-24-01

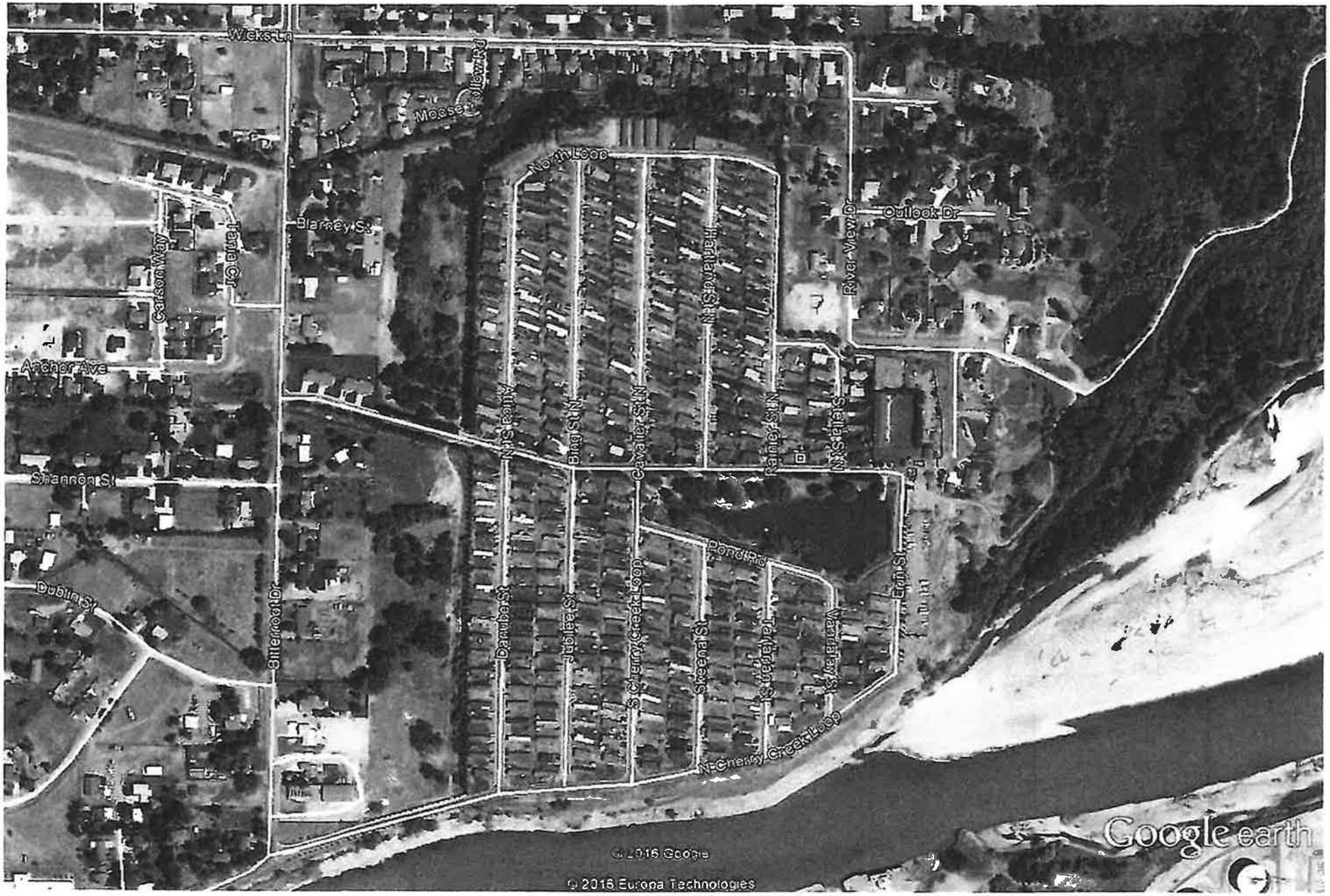
he was only seconding the motion to open the floor for discussion. Commissioner Kennedy noted that he was basing his motion on the recommendation of the Planning staff and Zoning Commission, along with the 12 criteria required for a zone change. Commissioner Kennedy went over the 12 criteria and gave reasons for each: 1) Is the new zoning designed in accordance with the Comprehensive Plan? The new zoning may not protect against the encroachment of incompatible or unrelated uses. The new zoning may not prevent establishment of new uses that conflict with adjacent or nearby existing uses. The new zoning does not capitalize on using existing public sewage service; 2) Is the new zoning designed to lessen congestion in the streets? The portion of the property included in this zone change is zoned Agricultural-Open Space, and would allow 1 dwelling unit per 10 acres, for a maximum density of 8 dwelling units. It should be noted that any change to a different residential classification will allow for more dwelling units and in turn create more traffic than the existing agricultural zoning. The proposed change to Residential Manufactured Home will substantially increase traffic on the surrounding street network. The maximum potential density for this development is 597 manufactured homes. Nothing has been submitted with this application that would limit the number of allowed manufactured homes other than the 6,000 square feet per unit requirement. A Traffic Accessibility Study was previously completed for this property; however, the current proposal is substantially different than the previous proposal; 3) Will the new zoning secure safety from fire, panic, and other dangers? Applicable codes will look at this. This property is currently located in the Billings Urban Fire Service Area. At the time of subdivision submittal, the Fire Department will examine hydrant location and the widths of the interior streets; 4) Will the new zoning promote health and general welfare? Applicable codes will look at this. At the time of subdivision submittal, the C/C Health Department, along with the Department of Environmental Quality, will review the proposed sewage disposal system; 5) Will the new zoning provide adequate light and air? Applicable codes should assure this; 6) Will the new zoning prevent overcrowding of land? Applicable codes should assure this. The Zoning Regulations require a minimum of 6,000 square feet of lot area per dwelling unit the RMH zone; 7) Will the new zoning avoid undue concentration of population? Applicable codes should assure this. The property will be subject to the minimum lot area requirements found in the Zoning Regulations; 8) Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements? Transportation: Approval of this zone change would cause significant increases in the amount of traffic on the surrounding street network; Water and sewerage: This property can be served by the Heights Water District and is currently proposed to have some type of on-site sewage treatment. The effects of this on-site treatment may be much more deleterious to the surrounding environment, especially the Yellowstone River, than connecting to City sanitary sewer service; Schools: This development will cause an increase in the number of children attending the surrounding schools. In addition, the closest elementary school, Beartooth Elementary, was closed by the School Board for the upcoming 2001-2002 school year; Parks: This property will be required to provide parkland dedication and/or cash-in-lieu at the time that the property is subdivided or reviewed for a manufactured home court; Fire and police: Any significant residential development on this property will cause an increase in the need for both of these services. The property is currently within the Billings Urban Fire Service Area and would get primary law enforcement from the County Sheriff; 9) Does the new zoning give reasonable consideration to the character of the district? The subject property has Residential-9,600, Residential 7,000, and Public Zoning surrounding it, with most of this development consisting of larger lot single family development. The Public zoning is an appropriate district in the area proposed; 10) Does the new zoning give consideration to peculiar suitability of the property for particular uses? The zone change as proposed does try to take advantage of the potential unsuitability of the site for structures on permanent foundations. In addition, the area proposed as Public would provide an area for a future trail corridor along the Yellowstone River; 11) Was the new zoning adopted with a view to conserving the value of buildings? The new zoning may adversely affect the value of adjacent buildings and properties; 12) Will the new zoning encourage the most appropriate uses of land throughout such county or municipal areas? No, for reasons mentioned previously. Commissioner Ziegler noted that staff contends that a project of this size produces a huge impact on the County, when annexation from the City could be obtained. Commissioner Ziegler noted that the applicant did apply for annexation, but was rejected; the argument was also presented that the City was not gaining any tax benefits to address these alleged impacts. Commissioner Ziegler stated that 6 of the 12 criteria have the same connotation that the "applicable codes should assure this." Commissioner Ziegler stated that he felt the main discussion was with condition #8 which addresses transportation, water, sewer, schools, parks, fire, and police. Commissioner Ziegler stated that if that is all the Board has to stand on, since the Board was unable to place conditions on the zone change, he would stand not in support of denial, but in proceeding with approval. Commissioner Ziegler addressed the 12 criteria noting that the criteria for approval would be almost the same, except on #2 - the size of the units was discussed, and access off of Bitterroot Drive was discussed, which was designated as a principal arterial street; #3 - applicable codes; #4 - applicable codes; #5 - applicable codes; #6 - applicable codes; #7 - applicable codes; #8 - discussed on July 3, 2001 at great length; #9, #10, #11 - same responses that Commissioner Kennedy read aloud; #12 - yes, for reasons mentioned previously. Commissioner Reno stated that the developer had controlled the destiny of the 300' surrounding this potential development. Commissioner Reno stated that the notice needed to be for 300' adjacent landowners, "didn't say 301, didn't say 1/2 a mile, it says 300'." Commissioner Reno stated that he would like to know the impact this would have on properties outside the 300'. Commissioner Reno stated that item #1 primarily talks about adjacent land values; the developer controls the adjacent land values with earlier actions the Board had taken approving R-9,600. Commissioner Reno addressed #2. Commissioner Reno stated that there was a city councilman who stated in the *Billings Gazette* that the city needed more high density housing, and building it on a high arterial street like Wicks, seemed like the best place for it. Commissioner Reno noted that items #3, #4, and #5 the Zoning Board had no problems with; #6, #7, #8 - transportation had been addressed. Commissioner Reno noted again that the city councilman would like to have Wicks as a higher volume street. Commissioner Reno noted that the Board does not condition water and sewer - the State of Montana does that. Commissioner Reno stated that the schools were looking for students - Beartooth Elementary was closed due to lack of students. Commissioner Reno noted there was no issue with park or fire. Commissioner Reno addressed #9 - "I would like to vote against this, but can't. I don't know how many uses you have for an abandoned gravel pit." Commissioner Reno stated that it seemed reasonable to have affordable housing, somewhat out of view, in an abandoned gravel pit. Commissioner Reno stated, "as such, I cannot support the motion to deny." Commissioner Reno

called for the vote on the motion to deny Zone Change #543. Commissioner Kennedy voted yes. Commissioners Reno and Ziegler voted no. Commissioner Ziegler MOVED to approve Zone Change #543 (Resolution of Intent to Approve #01-70). Commissioner Reno seconded the motion. Commissioner Reno called for the vote. Commissioners Ziegler and Reno voted yes. Commissioner Kennedy voted no. Motion duly carried. Commissioner Kennedy noted that what happened today was completely different from July 3, 2001. Mark English stated that the Board decided to approve the zone change, and it was fine that they changed their decision. Mr. English informed the Board that they would need to provide a written order of why they approved the zone change, and the County Attorney's Office would help them prepare that document. Commissioner Ziegler MOVED to execute a written order stating why the Board reversed their previous decision, and was now approving Zone Change #543. Commissioner Reno seconded the motion. Commissioner Reno called for the vote. Commissioners Ziegler and Reno voted yes. Commissioner Kennedy voted no. Motion duly carried. B.) Resolution Recognizing Big Sky Economic Development Authority as Lead Organization for Economic Development throughout Yellowstone County. Commissioner Ziegler MOVED to execute Resolution #01-66. Commissioner Kennedy seconded the motion. Unanimous.

CLAIMS - None were presented.

CONSENT AGENDA - 1. COMMISSIONERS - A.) Beartooth RC & D - Agreement - Participation in Beartooth RC & D Economic Development District. Yellowstone County is assessed a base feel of $1,250 plus $0.1107 cents per capita (based on the 1990 census population of 127,258) for a total assessment of $15,337; B.) Letter to Montana Migrant Council re: Appointment of County Auditor, Susan Lupo, as County Representative on Billings Community Housing Resource Board; C.) Amusement Gaming Application & Permit - Alkali Creek PTA; **2. PURCHASING** - Bridge Department - Request to Expend - New Forklift in the amount of $40,932.00; **3. COURT SERVICES** - A.) Federal Appropriation Grant Application - REMOVED; B.) Agreement with Justice System Assessment & Training. The purpose of this contract was to purchase the services of approximately 20 hours of training in assessment tools including, but not limited to Risk Assessment for Training and the Substance Use Survey. The financial consideration of the contract was $4,100, payable upon completion of training and upon receipt of an invoice submitted by JSAT. The contract shall be effective August 1, 2001 and end September 30, 2001; **4. WEED DEPARTMENT** - FY02 Special County Weed District/Reservation Grant Agreement - Purchase of Four-Wheeler ($6,200.00); **5. DES/GSA** - Montana Disaster & Emergency Services Division - Payroll Authorization Forms; **6. FINANCE** - A.) Bond Resolution #01-67 - R.S.I.D. #679/679M - 69th Street West &Yellowstone Place; B.) Bond for Lost Warrant - HAD Management (Michelle L. Fisher); **7. HUMAN RESOURCES** - Personnel Action Report: **WESTERN HERITAGE CENTER** - RESIGNATION - Wanda Bronson, Office Manager; **FILE ITEMS - 1. YELLOWSTONE COUNTY TRAFFIC SAFETY** - FY02 Plan & Budget; **2. CITY OF LAUREL** - Notice re: Expansion of Special Improvement Lighting District #2. Commissioner Kennedy MOVED to execute and file all items on the Consent Agenda, with #3a removed. Commissioner Ziegler seconded the motion. Unanimous.

The meeting was adjourned at 11:04 a.m. by Commissioner Reno.



Google earth

feet 2000

meters 900

353 TOTAL

CHERRY CREEK DEVELOPMENT
12 CONSIDERATIONS AND RESPONSES

1. IS THE NEW ZONING DESIGNED IN ACCORDANCE WITH THE COMPREHENSIVE PLAN?

Yes. This development will protect against encroachment of incompatible or unrelated land uses by allowing orderly and rational residential development during the various stages of economic and residential growth cycles. This development will help provide greatly needed housing for moderate income people, as well as provide infill.

The zoning will retain and improve the existing residential neighborhood by permitting orderly development that will enhance the area. The proposed buffer area will assure green open space between adjacent developments and this one. The new zoning will assure compatible housing to surrounding owners. Zoned as it is now, the surrounding owners are not assured of compatible housing; more particular, they are not even assured residential use.

Furthermore, this planned manufactured housing development, in an area that is buffered by open land to the north and west, and bordered by the river on the south and east, is in accordance with the comprehensive plan. This planned development zoning will provide the most benefit to all members of the community, by providing needed spaces for manufactured homes in an area that can be served by public utilities. This is private property and is not there for the adjoining property owners exclusive recreational enjoyment and use. However, with the proposed plan development, the community, as a whole, can gain from the benefits.

The following pages of the Yellowstone County Comprehensive Plan seem to concur with points regarding this property and its particular use.

A. Page B-13: States there is a need for this type of housing as over half of the census work in the retail trade and service industries and their wages are below the county average of $16,187.00 per year.

B. Page C-1: Encourages adequate housing supply for all income levels and new housing construction in ALL neighborhoods.

C. Page C-2: Refers to Mixed Housing Development Policy, encourages a variety of housing types and/or styles within proposed housing developments. Alternative housing types should be available within the county. Strategy is to inventory Residential Manufactured Housing (RMH) zoning districts in the City to

ESTABLISH THE AVAILABILITY of lots for manufactured housing as well as the suitability of the sites for residential development. This is done by and coordinated by the Planning Department, City, County Zoning Commissions and elected officials.

D. Page C-9: "Court rental spaces in 1987 were approximately $130/month". Today, rents are as high as $275/month. For retired persons on fixed income, this is becoming a large burden. State statutes recommend that a comprehensive plan include setting forth development, improvements and extensions of areas to be set aside for use as trailer court and sites for mobile or manufactured homes.

E. Page C-16: Needs assessment by household type shows a trend toward smaller household, single person and non-family householders.

F. Page H-2: Capitalize on existing public water supply systems. Strategy encourage new development within areas already provided with public water systems by stimulating developer interest with benefits analysis and by creating an incentive system. The City and County should explore the possibility of a relaxed SID policy for infill areas with less than 50 percent development.

G. Page H-14: Contamination of drinking water by underground sewage systems is of serious concern to Yellowstone County, therefore, the intent is to be in complete compliance with State and County sanitary regulations. It should be noted that wells that do not meet state standards also contribute to the contamination.

H. Page H-15: The formation of the Billings Heights Water District was in large part due to the widespread contamination of drinking wells by septic systems. This development intends to utilize Heights Water District.

I. Page I-1: Policy to protect the County agriculture industry from encroaching land uses which are not compatible with agriculture. Strategy - Promote the use of cluster development, throughout the Planned Development process, which will concentrate residential areas and maintain open space.

J. Page K-39: Infill development, one of the most strategic ways to limit urban sprawl is to identify and utilize existing vacant land within areas already developed and served with adequate roads and public facilities.

2. IS THE NEW ZONING DESIGNED TO LESSEN CONGESTION ON THE STREETS?

Any residential development will increase traffic to some extent. This property has two major arterial streets that are designed to carry and will carry the traffic flow on Bitterroot Drive and Wicks Lane.

Scott Walker, the transportation planner of Yellowstone County, has confirmed that Bitterroot Drive at the present time could easily handle another 1,500 trips each way and Wicks Lane can take an extra 1,500 trips to the west.

This proposed development area is included in the Transportation Study of 1990 and the recent update. The travel demand forecast for Heights area is to "grow a little faster than average". In addition, capacities according to the comprehensive plan (Software of 1985) showed a two-lane urban street capacity of 6,000 to 8,000 average daily trips.

The City of Billings Met Transit System runs directly west of the development, which may be a benefit for the City of Billings by filling partially full buses. There is also STI, special transportation to assist elderly and handicapped citizens who cannot use other public transportation. In addition, the development will give consideration to running daily van shuttle to shopping malls, courthouse, etc.

As development progresses in the general area and new links to major highways redirect traffic flows on Main Street, congestive traffic areas will be identified and the necessary steps will be implemented to reduce congestion.

The comprehensive plan (Page K-25) states that the journey to work as compared to other larger communities, Billings still has relatively moderate traffic congestion and commuter time.

Please refer to the Traffic Accessibility Study on this project for additional information.

3. WILL THE NEW ZONING SECURE SAFETY FROM FIRE, PANIC, AND OTHER DANGERS?

Yes, the new zoning will require that the development be constructed according to the State of Montana requirements and those requirements will assure that all safety issues are taken into account. The development of this property may even reduce the fire possibility by reducing the large number of dried weed areas and replacing with green grass and landscaping and by bringing the availability of water within the property boundaries. The residents along Bitterroot Drive may benefit also by being able to connect to Heights Water District.

Fire hydrants will be installed as required. Any other dangers will be identified and protected by following all applicable codes and laws.

4. WILL THE NEW ZONING PROMOTE HEALTH AND GENERAL WELFARE?

Yes. This zoning will promote health and general welfare of the residents and community. Providing public sewer and water service to the development will better benefit the community. This development will take nothing from the surrounding owners and will offer the benefit of improved services to their property, thereby increasing their property values. It will promote the health of the surrounding property owners. This development will not effect groundwater of the surrounding owners. The comprehensive plan states, in general, groundwater is plentiful and close to the surface. This is evident at the property site. Webster's Dictionary describes *health* as the overall condition of an organism, *general* as involving the whole, and *welfare* as an organized effort to improve the circumstances of disadvantaged.

5. WILL THE NEW ZONING PROVIDE ADEQUATE LIGHT AND AIR?

Yes. There is currently adequate light and air and the proposed development density with the use of land buffers and open space will not detract from either issue.

6. WILL THE NEW ZONING PREVENT OVERCROWDING OF LAND?

Yes, by providing the proposed buffer area and the use of the lands for public benefit along the Yellowstone River corridor. The development will provide a certain amount of land that will never be developed but set aside for the enjoyment of the public forever. The surrounding neighbors have requested a zoning of 9600, which would allow around 475 residences on the 105 acres. Our proposal is designed as a cluster development that allows for plenty of open space and is in agreement with the comprehensive plan and only plans for approximately 300 households.

7. WILL THE NEW ZONING AVOID UNDUE CONCENTRATION OF POPULATION?

Yes, the area is presently underdeveloped for the City services that are being provided. With other residential zoning on this property and public facilities, the population concentrations could potentially be as high as 760 households. However, this planned development zone request with the proposed buffer area will limit the number of households and assure undue concentrations of population.

8. WILL THE NEW ZONING FACILITATE THE ADEQUATE PROVISIONS OF TRANSPORTATION, WATER, SEWERAGE, SCHOOLS, PARKS, FIRE, POLICE, AND OTHER PUBLIC REQUIREMENTS?

Transportation: Wicks Lane and Bitterroot Drive are already designated as major arterial streets. Improvements required to these existing streets will be as required and needed to develop the area. The planned development number of residences will be less than the City residential zone 9600 would allow.

Water: Plans are to have municipal water service provided by Billings Heights Water District to the development. Comprehensive Plan H-15 states City of Billings can easily serve 168,000 and could serve as many as 250,000 households if necessary by the year 2000.

Sewerage: Sewer service will be provided by City of Billings.

Schools: Impact on the schools should be minimal and very well may help the schools financially. Manufactured home facilities today are seeing much higher percentages of young married couples and older retired persons. Beartooth Elementary School, when built, was designed to hold an additional 200 students than are attending at present. Castle Rock Middle School and Skyview High School also were both designed to hold more students than are attending today. The planned development anticipates that a large segment of residents will be households without children.

Park: There will be an on-site park provided. It will be built and maintained by the development.

Fire: Fire hydrants will be installed per fire district designation. There should be no significant impact to the local department.

Police: This development will not have a significant impact on the existing law enforcement. Street lights will be installed and a local security firm will be hired to make nightly rounds. This will help curb crime and vandalism. Increased tax revenues generated by this development will help to offset any increased costs to the local infrastructure and service agencies.

9. DOES THE NEW ZONING GIVE REASONABLE CONSIDERATION TO THE CHARACTER OF THE DISTRICT?

There has been considerable thought given to the character of the district and the existing neighborhood. The character of the district is partly County and partly City of Billings. There is the rural surrounding along Bitterroot Drive directly west of the proposed development due to the one acre lots. There is more of an urban surrounding along

Wicks Lane as the homes have been built on 10,000 square foot lots. We have worked with the surrounding neighbors for well over a year, and have presented many different proposals. The surrounding neighbors have not been open to any changes or suggestions presented. Stating they will only agree with 9600 zoning in this area. However, this zoning allows for over 475 units and creates a new set of disagreements for everyone involved. The development of this parcel as proposed, limits the population density, proposes a cluster development and maintains the character of the residential district by providing an open space buffer. The buffer should greatly improve and increase the value of all bordering properties and the community as a whole.

10. DOES THE NEW ZONING GIVE CONSIDERATION TO PECULIAR SUITABILITY OF THE PROPERTY FOR PARTICULAR USES?

This property is currently zoned agricultural and it is not suitable for any type of agricultural use. The proposed zone change is highly suitable for a cluster development. There is plenty of room to allow for a buffered zone away from neighboring areas. According to the comprehensive plan, it is in the best interest of any community to be connected to municipal services, which the parcel of land can provide. In addition, the benefit this parcel of land can provide back to the community as a whole is abundant. The need for manufactured home spaces is so great, it is imperative that provisions be made available for the residents of the community.

11. WAS THE NEW ZONING ADOPTED WITH A VIEW TO CONSERVING THE VALUE OF BUILDING?

Yes, this is one reason the planned development has designated the proposed buffer area. The area will enhance and increase the value of the buildings and homes adjacent to it and offer beautiful open space. Additional buffers, such as a fence, are planned along the western portion of property.

12. WILL THE NEW ZONING ENCOURAGE THE MOST APPROPRIATE USE OF LAND THOUGHOUT SUCH COUNTY OR MUNICIPAL AREAS?

Yes. This planned development allowing residential manufactured housing is the most appropriate use of this land. Other residential zoning allows for stick-built construction on basements, which cannot be used on this land. In addition, the property overlooks the river facing a refinery, therefore, high-end residential housing is probably not a workable plan. This development may even help direct development away from good agricultural land, which the comprehensive plan seeks to protect. The zone change will slow urban sprawl of small acreage's out in the County, the only remaining place where HUD approved manufactured homes can be placed. HUD is a federal housing code and cannot be discriminated against. Yellowstone County with more population than any

other county has the least HUD housing of any other County in Montana. There is an intense need for this type zoning in Yellowstone County.

ENVIRONMENTAL ASSESSMENT FOR CHERRY CREEK MANUFACTURED HOME PARK

— Bibliography

Total Acreage : 105 acres
Buffer Area : 46.6 acres
RMH : 58.4 acres

A. CURRENT LAND USE:

Vacant. This property is currently zoned Agricultural Open. Due to the fact that this property is next to the City of Billings within the 4½ mile jurisdiction and in the comprehensive plan. There are certain restrictions on this property that make it of no use for agricultural purposes.

B. ENVIRONMENTAL AND EFFECT ON THE NATURAL ENVIRONMENT:

1. Surface Water: The particular area where the manufactured home park is proposed was a mined gravel pit. The material removed from the existing terrain during the mining process varies from 14 feet to 24 feet deep. The surface water that is flowing on-site is seepage from the existing banks. We plan to collect such water in pipe and ditches and divert it to the large holding pond along with stormwater. There is an irrigation ditch on the northwest corner of the site. All water in and around the proposed manufactured home park site was created when the site was mined. This pond was an old sand washing pit. We plan to improve flowing water by diverting it around project and adding irrigation water to it during the summer. We also plan to upgrade and make the old sand washing pond larger and appropriately landscape the area. Of course any and all work will be done according to Sate of Montana Environmental Quality Specifications.

2. Groundwater: The area of the proposed manufactured home park has been mined out and there is no gravel or sand to classify a water aquifer. The complete site is setting on a sandstone layer at varying depths of 10 feet to 30 feet. At present there is some water that sets on the sandstone and gradually flows toward the Yellowstone River. The majority of the surface water is picked up with drain ditches and collected in two ponds and eventually runs into the river. There is a potable water aquifer at a depth of 100 feet to 250 feet through the sandstone layer. Any development to the site will not impact this aquifer.

3. Geology-Soils-Slopes:

a. Rock falls or slides: The south side edge of the property has a steep sandstone cliff that could be a hazard. This area will be fenced to eliminate injury from a fall.

b. Slides - land, mud, snow: None.

c. High water table: Ponds will be constructed as to eliminate any problems. River water is one-fourth mile away and situated on a lower tier that is 30 plus feet lower than development.

d. Unstable and expansive soils: The site proposed as the manufactured home park is the upper terrace which has been mined for gravel and reclaimed. The areas that were not mined according to the soil survey of Yellowstone County is dominated by Keiser Silty Clay Loam and Bew Clay. These soils are among the best in Yellowstone County in terms of SCS capability classification. The lower terrace (part of the proposed buffer area/green space) along the river is comprised of Haverson/Hysham Loams. No material on-site fits as unstable or expansive soil.

e. Excessive slope: The site proposed for the manufactured home park is a fairly flat piece of property that is gently sloping within a range of 0-7 percent. The transition slope between the upper terrace and lower terrace ranges from abrupt to easily negotiable, with most of it falling into the 7-10 percent range. The lower terrace is relatively level again.

4. Vegetation: The upper terrace has been mined and reclaimed and has a mixture of smaller cottonwood trees, willows, same grasses and weeds. The lower terrace has a mixture of old growth cottonwoods and willows. The slopes and river bottom is grassed in with native grasses along with small trees and willows.

5. Wildlife: There are no known key wildlife areas on the property and no endangered species. The known wildlife on the property are white tailed deer, beaver, and squirrel.

6. Historical Features: There are no historic, archeological or cultural sites, structures or objects on the site.

7. Visual Impact: The area of the proposed manufactured home park is located on the upper terrace, however, it is approximately 20 plus feet lower than both roadways (Bitterroot Drive and Wicks Lane) and other bordering properties. In addition, the distance between bordering properties and the development is

approximately 300 feet and will have a landscaped buffer. With the proposed development setting lower and encircled with a green space buffer, the site will be virtually unseen from Bitterroot Drive and Wicks Lane. The buffer area will also be landscaped with trees in conjunction with other bordering property enhancements.

C. COMMUNITY IMPACT AND CRITERIA FOR PUBLIC INTEREST:

1. Effects on Agriculture:

a. The effects on agriculture have already occurred during the period the property was mined for gravel. The property cannot be used for agricultural purposes. The proposed residential use will protect other parcels of good agricultural land from being used for manufactured home parks.

b. There is no productivity of the land.

c. The property was purchased for development.

d. The surrounding properties are currently used for residential housing.

2. Effects on Local Services and the Public Health and Safety:

a. Water:

1. Water for fire and domestic uses will come from the Billings Heights Water District.

2. The proposed manufactured home park, when complete, will require 100,000 gallons of water for day to day domestic use (estimated at 330 gal per household). With an 8-inch existing water main at Wicks and Duran, this development can be looped in with an 8-inch water main that would conservatively be able to provide 1,000,000 plus gallons of water per day.

3. The Billings Heights Water District meets all State Department of Health and Environmental Sciences for quality, quantity and construction.

4. N/A.

5. N/A.

6. N/A.

7. N/A.

8. N/A.

9. The development will be privately owned and will be maintained as such.

b. Sewage Disposal:

1. It is the intent of the owners to connect to City of Billings sewer system. A lift station will need to be installed. All proposed new development will be per Department of Health and Environmental Sciences.

2. N/A.

3. The manufactured unit has not been determined yet.

4. N/A.

5. N/A.

6. The system will be installed on Phase I of the project and it will be financed with a construction loan.

7. As the proposed development will be privately owned, the proper qualified person will be retained to maintain the system.

c. Solid Waste Disposal:

1. Solid waste collection will be collected by City of Billings.

2. N/A.

3. N/A.

4. N/A.

5. The proposed disposal method meets Department of Health and Environmental Sciences.

d. Roads:

1. New roads within the development will be built and maintained for private use.

2. Necessary improvements or deletions will be done when such problems are identified and will be included in the Development Agreement.

3. Dust will be controlled by paved streets, a green space buffer surrounding the development and by the development landscaping of trees and grasses.

4. An approved storm drain system will be installed to eliminate erosion and water pollution. Street maintenance will be provided by the owner of the development.

5. When fully developed and operating at a 90 percent fill ratio the estimated traffic flow will be:

   a. 90 percent = 270 households

   b. On any day 20 percent will not leave their home = 54.

   c. On any day 55 percent of households will leave with home and return once = 148 or 297 trips.

   d. On any day 25 percent of households will leave and return twice = 67 or 135 trips.

   e. On any day 25 percent of households will receive at least one visitor = 67 or 135 trips.

Traffic Impacts?

Our estimated traffic flow is 567 trips per 24-hour period.

6. The present traffic flow on Bitterroot Drive is 1,600 vehicles per day. Terry Smith, Traffic Engineer for the City of Billings said this roadway can handle another 6,400 vehicular trips a day with no changes. Wicks Lane directly west of Bitterroot Drive has a traffic count of 1,600 at present. This street can also handle substantially more traffic.

7. The development will have two main egress roadways, one at Bitterroot Drive and Erin Street and the other at the end of Yellowstone River Road where it transcends to Bitterroot Drive. Both of these egress locations will handle the anticipated traffic and will be constructed for safe travel.

e. Utilities:

1. The plat has not been submitted, but we have spoken with all utilities.

2. Natural gas will be supplied by MDU. Electricity supplied by MPC. Telephone will be supplied by USWEST. All utilities are readily available.

3. All utilities will be placed in a common trench and will be placed per each phase of construction.

f. Emergency Services:

1. Fire protection. As this development is in the jurisdiction of City of Billings, the project will require placement of fire hydrants and the City of Billings will provide fire protection.

2. Police protection will be provided by the City of Billings. We will also implement a neighborhood watch program and employ the services of a private security patrol.

3. Ambulance Service will be provided by all ambulance service available and provided in the City of Billings.

4. Medical Services will be available the same as anyone else in the City of Billings.

5. Fire, police, ambulance and medical services can all be handled with the present personnel and facilities.

6. N/A.

7. The additional taxes paid by this development will serve to offset additional costs.

g. Schools:

1. The available educational facilities are Beartooth Elementary, Castle Rock Middle School, and Skyview High School which at present can accept another 128, 58, and 65 students, respectively. The superintendents office stated they were not at capacity.

2. Our estimate of school children from this development based on past experience associated with manufactured housing. All figures are based on full capacity. Past experience has shown that 7 out of 10 households will not have any children.

Elementary:	60 students
Middle School:	30 students
High School:	30 students

h. Land Use:

1. All project development will be discussed with all departments and all work will be done to meet any and all land use regulations and all comprehensive requirements.

2. The property does not border any public lands, however, majority of property will be used for recreation.

3. Development will have no effects on adjacent land uses.

4. There is one concrete structure that will be removed as it may be considered a safety hazard.

5. There is no on-site or off-site uses that create a nuisance.

i. Housing:

1. This development will be designed for a maximum of 300 single family residences. The units will be manufactured homes.

2. The development is not planned specifically for second homes, but the development will have in place a care-taking facility for vacationing residents.

3. With the necessary department approvals, State approvals and preliminary plat approval we anticipate starting construction spring

of 2000. It is our estimate that Phase I homes will be placed by the end of 2001. We anticipate Phase II to be 90 percent filled by the end of 2003.

4. The density of the manufactured home portion only will be 8,600 square feet per household.

j. Parks and Recreation Facilities:

The development will have the buffer area surrounding it. The river bottom will be included in this area. We also propose to have some ground set aside for a park and recreation facility. This facility would include a picnic area, horseshoe, basketball, and community hall. A trail system will be designed so they can be used and utilized as nature trails for the residents within the development.

k. Effects on Taxation:

1. Prior land assessments were on 189.15 acres in Yellowstone County and 6.55 acres in the City of Billings.

2. The annual tax revenue prior to development is a combined assessment of $4,670.09. Based on County Assessor input and the review of other similar properties, we estimate when the property is fully developed and all homes are placed on property, that Yellowstone County will receive approximately $405,000.00 tax revenue per year. This would amount to 8,762 percent more than what the property is contributing at the present time. In addition, according to the Montana Board of Housing and research done by MSU-B this development will contribute another $1.1 million in taxes and fees to the community.

3. The only proposed special assessment planned is street lighting for the development.

l. Effects on wildlife, wildlife habitat and areas of rare endangered or unique plan species:

The development will not have an adverse effect on wildlife and wildlife habitat. The measures that will be taken do not disturb and preserve lush areas of trees, brush, willows, and grasses will be left intact . Within and near the development and the buffer area we will plant trees, shrubs, and grasses therefore adding to the pleasant environment.

Cherry Creek Headlines

-15-year-old charged with negligent homicide in teen's accidental gun death in Billings' Heights

-Saturday night fire guts Heights home as firefighters battle dry hydrants

-5-year-old boy riding a bicycle injured in Heights accident

-City Council puts off action on irksome mobile home park

-Heights developers seek annexation again

-Commissioners vote no on Heights project

-Mobile home plan lacks supporters

-Cherry Creek lots filling after years of controversy

-Boy accused of planning school massacre held without bail

-Man who forced way on Billings school bus arrested

-Developers, city again in dispute 9/15/2009

-Poisoning likely at Cherry Creek

-Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension

-Teen shooting suspect held on charges of assault with a weapon, endangerment

-Cherry Creek mobile home expansion denied

-Trailer home fire causes $20,000 in damage

-Man pleads not guilty in Cherry Creek subdivision shooting that injured a pregnant woman.

-Billings Fire Department calls in extra crews after back-to-back structure fires in the Heights

-Man served 216 days in jail for shooting at man who owed him $100

Cherry Creek Homes accused of charging undisclosed, illegal fees

Local residents have brought a class-action suit against Cherry Creek Development after a similar lawsuit found in part that Cherry Creek was incorrectly charging late fees.

Adam and Breea Somers are suing Cherry Creek Development and RJC Investment after the companies failed to disclose finance fees.

Cherry Creek is a mobile home park in the Billings Heights with 362 trailer lot spaces.

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. Stevee Mallas and Jacob Tallbull sued after Cherry Creek posted a delinquency notice on their mobile home. Cherry Creek was acting as an agent of RJC Investment, according to the lawsuit.

Mallas and Tallbull paid a $3,512 down payment on a mobile home. The couple financed the additional $40,388 needed to purchase the mobile home, according to the suit. They began making monthly payments toward the principal in 2010.

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged $50 if payments were five or more days late.

Yellowstone County District Court Judge Russell Fagg entered judgement on the nondisclosure of the finance charge and the legality of the late fees. Because the contract did not disclose the finance charge and because late fees can only be evaluated by a creditor after a payment is 10 days late, Fagg ruled Cherry Creek and RJC are barred from collecting any "finance, delinquency or collection charge on the contract."

In his judgement, Fagg found the Cherry Creek contracts violated at least four parts of the Montana Retail Installment Sales Act.

The same attorney who represented Mallas and Tallbull, Michael Eakin, was hired to represent the Somerses in their class action suit. The Somerses' lawsuit seeks to prevent Cherry Creek from collecting finance charges against mobile home residents who have similar contracts and illegal late fees.

The Somerses justified the class action suit by noting that many of the tenants of the mobile park cannot afford legal representation for their claims.

Eakin declined to comment on the Mallas and Tallbull suit, which is ongoing. He also declined to comment on the class action lawsuit, which will go before Yellowstone County District Court Judge Gregory Todd. Cherry Creek has not yet issued a response to the class action.

Cherry Creek resident Maria Kraftenberg said she has lived at the mobile home park for less than a year. Over the past few months, the park's management has changed and last month residents received new rules about maintenance of the area, Kraftenberg said. The park now has a curfew and rules about how many people can live in each trailer, Kraftenberg said.

September 1, 2020

TO: Members of the City of Billings Zoning Commission

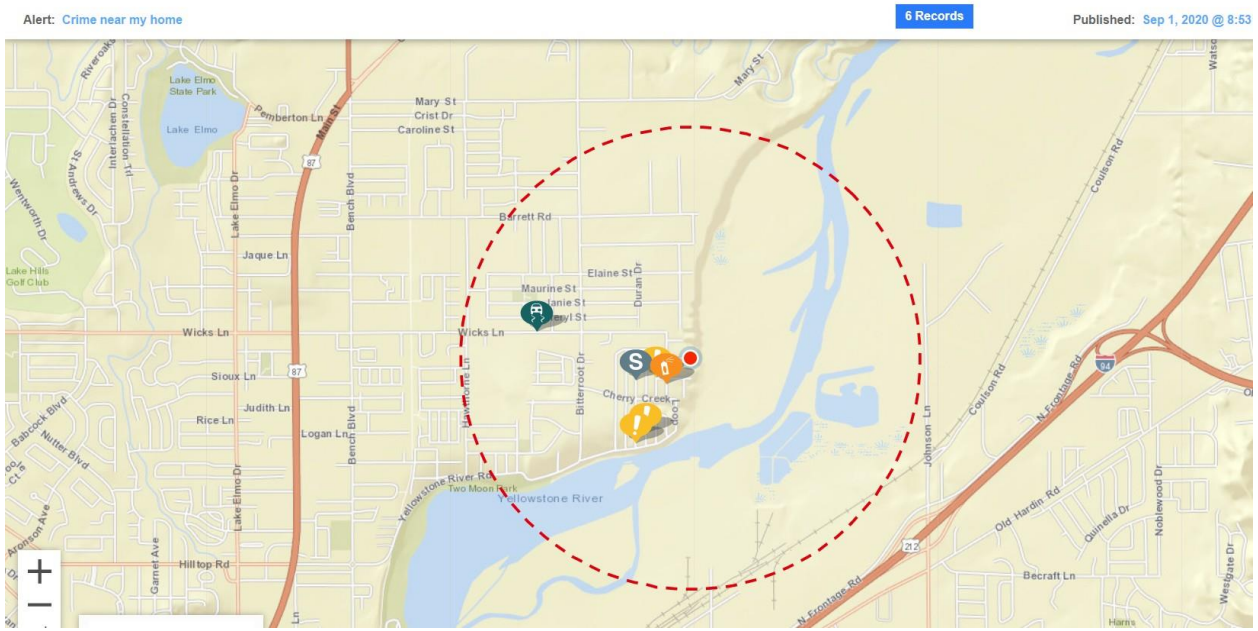
FROM: Pam Ellis

CRIME AND CHERRY CREEK

Whether the new zoning will promote public health, public safety and general welfare?

Public health and public safety will be promoted by the proposed zoning. The additional dwelling units will help increase the number of rate payers to the city utility systems and increase the taxable value of the property.

BELOW IS A PICTURE OF POLICE CALLS AT CHERRY CREEK 8/31/2020. We have had as many as 15 police calls in one day within the last 2 months; there have been 0 days that have no police calls to Cherry Creek.



Disturbing the Peace

Disturbance

0 BLK LAPIN ST | 8/31/2020 @ 12:36 PM
Billings Police

Disturbing the Peace

Disturbance

0 BLK RAINIER ST | 8/30/2020 @ 8:39 PM
Billings Police

Disturbing the Peace

Disturbance

0 BLK SKEENA ST | 8/30/2020 @ 12:22 PM
Billings Police

Vandalism

Vandalism

0 BLK STELLA ST | 8/29/2020 @ 10:01 PM
Billings Police

Sex Crimes

Sex Offense

0 BLK CAVALIER ST | 8/28/2020 @ 8:32 PM
Billings Police

Billings Police Department: Heights TF Area Crime Stats: August 2019-July 2020

Heights TF/Cherry Creek Calls for Service: August 2019 - July 2020

Cherry Creek %: what percentage of total Heights calls occurred in Cherry Creek

	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Jan-20	Feb-20	Mar-20	Apr-20	May-20	Jun-20	Jul-20	**Total**
Heights TF	282	207	258	215	249	251	251	216	224	236	261	243	2,893
Cherry Creek	9	11	10	10	8	13	14	18	10	15	17	11	146
Cherry Creek %	3.19	5.31	3.88	4.65	3.21	5.18	5.58	8.33	4.46	6.36	6.51	4.53	5.05

Cherry Creek %: what percentage of total Heights reports occurred in Cherry Creek

** Heights TF data is for all of Heights, including Cherry Creek*

Bobbi Johnson | Crime Analyst | 08.14.2020

Is there census data for how many people in the HTF area vs how many live in Cherry Creek?

Johnson, Bobbi

Aug 19, 2020, 9:02 AM (13 days ago)

to me

Last year, I estimated the population of each task force using the Census block groups data.
However, Census boundaries do not match the Heights (or any task force area) exactly, so it is a ballpark estimate at best.

The number I use for the Heights population is 28,426.
Below is the caveat I put in the task force report concerning this number.

I don't have a population for Cherry Creek.
It is within block group 3, which includes other areas beyond Cherry Creek. However the population estimate could be close as the other area doesn't seem to include a lot of housing.
You can see the block group area in the attached pic.
According to the Census 2017 5-year population estimate, this block group (block group 3, geoid: 301110007023) had a population of 2,734.
But again, you have to take this number with a grain of salt.

Hope this helps.
Let me know if you have any other questions,

Bobbi Johnson
Crime Analyst
Billings Police
406.657.8455

Cherry Creek % of Heights Population = 2734/28,426 or 10%

Schools and Parks: Schools and parks should not be affected by the proposed zoning.

There are no accessible parks for children living in the current Cherry Creek Mobile Home Park.

Billings mobile home owner picking up pieces after fire

Park-owned hydrants went dry as fire burned

By: Zoe Zandora
Posted at 6:27 PM, Oct 28, 2019 https://www.ktvq.com/news/local-news/billings-mobile-home-owner-picking-up-pieces-after-fire

and last updated 2:17 PM, Oct 29, 2019

BILLINGS — It was an emotional day for Chad Morrison as he walked through the ashes left behind of his belongings lost in a weekend fire at his Billings Heights mobile home.

"I tried to see if there was anything I could do. I tried a fire extinguisher. I couldn't do nothing. I had to back off," he said Monday.

An accidental fire destroyed Morrison's mobile home Saturday evening, and two malfunctioning fire hydrants didn't help.

Those hydrants are private property that is the responsibility of the owners of the mobile home park, Cherry Creek Homes.

"The owner and his wife, they- bless their heart- they brought by two gift cards. One for Ginger and one for myself. And their exact statement was they are going to make this right," Morrison said.

While battling the fire, the Billings Fire Department had trouble using two fire hydrants that seemed to be malfunctioning. That struggle didn't necessarily slow firefighters' ability to combat the fire, but it could have

hindered the mop up, according to Billings Fire Marshal Michael E. Spini.

These hydrants are on private property, which means it is Cherry Creek's responsibility. So what happened? Why didn’t the hydrants work?

"The hydrants didn’t work due to an underground gate valve being partially closed," Cherry Creek homes owner Jock Clause said.

But how that happened- he doesn’t know.

"First thing Sunday morning, Jock and family members were down here checking all of the hydrants cause it was completely unknown. Nobody knew. So they came down and made sure everything was up to par and going. So everything is charged and working the way they should," Morrison said.

Clause says the last time they checked the valves was back in 2018. The valve was open and all pipes were tested and charged fully, ready to use.

The fire caused an estimated $35,000 in property and content damages. Yet Morrison says he has no ill will against the property owners.

Adding that they are going to make it right, he said, "I can't thank them enough. They are such wonderful people."

Fire marshal: Heights mobile home fire was caused by gas fireplace valve

Mike Kordenbrock Oct 27, 2019 https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article_3437b8a0-8e79-57a3-918e-2c153974aab0.html

A fire that burned through a mobile home in the Billings Heights Saturday night was caused by the failure of a valve on a gas fireplace, according to the Billings Fire Department.

"A gas valve failed in a natural gas fireplace in the home and ignited the wood paneling on the wall behind the fireplace," Assistant Fire Marshal Bill Tatum said by email Sunday.

There were no people inside when the fire began, but multiple pets inside the home died. The fire took place at around 7:36 p.m. on the 30 block of Lapin Street. The firefighting effort was complicated by dry hydrants in the area that forced the fire department to rely on water tenders to supply hoses with water.

"The fire gutted the back end of the mobile home and spread throughout the rest of the structure," a BFD press release said.

It was initially unclear what caused the fire. The fire department had planned to return to the scene of the fire Sunday and continue investigating during daylight hours but the investigation eventually concluded that the fire was accidental.

Neither the property nor its contents were insured. The property and content loss is estimated to be $35,000, according to the fire department.

Billings fire department says hydrants are functioning again in Heights mobile home park

Mike Kordenbrock Oct 29, 2019 https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html

Chad Morrison and Stacy Foley share the story of the fire that destroyed a mobile home and killed the pets inside on Lapin Street Saturday night. The pets included a pug dog named Rick, a Pomeranian named Fred, four ferrets, an Guinea pig and fish. Many of the pets were owned by Ginger Avery, the resident of the mobile home. Morrison said a faulty gas fireplace valve caused the fire. He praised the owners of the mobile home park for their promise to help with the uninsured home. "They're fantastic people," Morrison said. A Billings Fire Department fire marshal was testing fire hydrants in the area after it was reported firefighters were unable to get water from the closest hydrant during the fire.
LARRY MAYER, Billings Gazette

A valve that was shut off resulted in multiple fire hydrants not functioning Saturday night during a house fire in the Cherry Creek Homes mobile home park, according to the Billings Fire Department.

The lack of water supply to the hydrants was discovered as firefighters worked to extinguish **a fire that burned through a mobile home**, destroying the interior and killing multiple pets.

The battalion chief on scene Saturday night, Darrek Mitchell, had said during the fire response that the blaze was knocked down before the hydrant issue was discovered, but that the fire rekindled as firefighters tested a second nearby hydrant that also wasn't functioning.

Engine tanks and tender trucks, which carry their own limited supply of water, were used to contain the fire.

Testing done Monday morning determined the switched off valve affected only Lapin Street, Fire Marshal Mike Spini said. After the valve, opened the hydrants again were functional, Spini said.

The water lines, valves and other infrastructure in Cherry Creek are privately owned by the mobile home park.

"They're responsible for maintaining them," Spini said. "They don't know how it got shut off."

Spini said the issue appeared accidental and that following the testing the fire department has no other immediate plans related to the issue.

Water is supplied to Cherry Creek from the Billings Heights Water District.

The fire department's investigation determined the fire Saturday night was accidental and caused by a gas valve that failed in a natural gas fire place. The wood paneling behind the fireplace ignited, causing the fire to spread.

The owner of the mobile home that burned, Chad Morrison, remained emotional Monday morning, crying at times as he described his situation. Neither the mobile home nor its contents were insured.

For the past several years Morrison had lived with Ginger Avery at 32 Lapin St. where they had numerous pets including a pug named Rick, a Pomeranian named Fred, four ferrets, a guinea pig and a fish. Many of the pets belonged to Avery. All died as a result of the fire.

Morrison had recently been in the process of moving next door. Avery said that ownership of the mobile home would have been transferred to her soon, but all that has been put on hold because of the fire.

He was not home when the fire happened and Avery was out of town, Morrison said. The fire department estimated the value of the property and contents lost at $35,000.

Morrison said he does maintenance work at the mobile home park. He said he knows that the hydrant issue has led to criticism of the Cherry Creek owners, Jock and Kathy Clause. He defended them and said knowing how hard this has hit him they've offered to help him out going forward.

"They're good people," he said.

Morrison said he has a place to stay and is now focused on trying to help out Avery. The public can donate to help both people at the Cherry Creek front office. Dawna Webster, a front office assistant, said the most pressing issue right now is that Avery needs a place to stay as things continue to be sorted out after the fire. The fire destroyed most of her possessions.

"People know that bad things happen to good people, and we have a really large community here," Webster said of why she was organizing the donation drive. "Trying to take care of people within our community is really important to us."

Morrison was working Monday to board up windows. He said it's unclear what, if anything, can be saved from the burned out trailer.

Cherry Creek Homes accused of charging undisclosed, illegal fees

By ASHLEY NERBOVIG Nov 8, 2016 https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html

Two local residents have brought a class-action suit against Cherry Creek Development after a similar lawsuit found in part that Cherry Creek was incorrectly charging late fees.

Adam and Breea Somers are suing Cherry Creek Development and RJC Investment after the companies failed to disclose finance fees.

Cherry Creek is a mobile home park in the Billings Heights with 362 trailer lot spaces.

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. Stevee Mallas and Jacob Tallbull sued after Cherry Creek posted a delinquency notice on their mobile home. Cherry Creek was acting as an agent of RJC Investment, according to the lawsuit.

Mallas and Tallbull paid a $3,512 down payment on a mobile home. The couple financed the additional $40,388 needed to purchase the mobile home, according to the suit. They began making monthly payments toward the principal in 2010.

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged $50 if payments were five or more days late.

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The Somerses justified the class action suit by noting that many of the tenants of the mobile park cannot afford legal representation for their claims.

Eakin declined to comment on the Mallas and Tallbull suit, which is ongoing. He also declined to comment on the class action lawsuit, which will go before Yellowstone County District Court Judge Gregory Todd. Cherry Creek has not yet issued a response to the class action.

Cherry Creek resident Maria Kraftenberg said she has lived at the mobile home park for less than a year. Over the past few months, the park's management has changed and last month residents received new rules about maintenance of the area, Kraftenberg said. The park now has a curfew and rules about how many people can live in each trailer, Kraftenberg said.

Cherry Creek applied to expand the subdivision by 80 mobile homes **earlier this year**, but the Yellowstone County Zoning Commission denied the zoning change request.

Cherry Creek did not respond to requests for comment.

15-year-old girl pronounced dead after shooting in Billings Heights

Montana Standard | 2019-05-12
https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article_0964456f-cbdd-5d0c-9f84-3b550a447d36.html

The Billings Police Department responded to a shooting in a trailer park in the Billings Heights that left one teen dead on Saturday night.

A 15-year-old girl was pronounced dead on scene by law enforcement. The shooting occurred on 12 Stella Street in the Cherry Creek Estates trailer park in the Heights around 7:30 p.m. Saturday, according to BPD Sgt. Nate West.

The girl had a single gunshot wound when officers arrived, West said. No suspects were taken into custody. No other injuries were reported and no one was taken to a hospital, he said.

Police are treating the incident as a "suspicious shooting," but there is currently no threat to public safety, West said.

A detective unit was on scene investigating the incident, he said.

A coroner's unit was also on scene as of 8:45 p.m.

The Billings police and American Medical Response responded to the incident.

An investigation is ongoing.

Teen killed in Billings shooting identified; police still investigating

Mike Kordenbrock May 14, 2019 https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html

The Billings Police Department responds to a reported shooting in a mobile home park in the Billings Heights that left one teen dead on Saturday night.
BETHANY BAKER, Billings Gazette

The 15-year-old girl killed Saturday night by a single gunshot wound was identified Tuesday morning by the Yellowstone County Coroner's Office as Tionna Rowland of Billings.

The Billings Police Department has continued investigating Rowland's death after she was fatally shot at around 7:30 p.m. at an address on Stella Street, a part of the Cherry Creek Estates mobile home park in the Heights.

"The investigation is ongoing, and there have been no charges or arrests made," BPD Lt. Brandon Wooley said in an email to The Gazette early Monday evening, in which he referred to Rowland's death as a tragedy. "There is still more to be done before we can come to conclusions regarding the nature of death."

In a press release sent out on Tuesday afternoon Wooley said no further details could be released due to "the on-going nature of the investigation and the involvement of juveniles."

Saturday night, BPD Sgt. Nate West had said there was no current threat to public safety and that detectives were on scene. No other injuries were reported, he said.

Rowland was a freshman at Skyview High School. School District 2 Superintendent Greg Upham said the district had activated its crisis team of counselors to provide support to Skyview, Medicine Crow Middle School and if needed, Beartooth Elementary.

Upham said the crisis team is made up of counselors at other SD2 locations who can mobilize to deal with tragedies affecting students. Bringing the crisis team to a school allows counselors already in place to continue their normal work duties, while the crisis team handles additional students' needs as the circumstances may warrant.

"We strive in tragedies obviously to support our students, staff and any adults that need help," Upham said. "But at the same time we

want to keep our operations as normal as possible just for the stability of all students."

Low-key council meeting likely

MATT HAGENGRUBEROf The Gazette Staff Oct 21, 2007

https://billingsgazette.com/news/local/low-key-council-meeting-likely/article_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html

Bucking a recent trend, tonight's City Council meeting may not run until early Tuesday morning, but the council still has a bevy of issues before it. Some are routine and some may draw discussion, but none should be as controversial as recent changes to the city's electronic sign ordinance.

First up, the council will consider a request from the developers of the Cherry Creek mobile home park in the Heights to allow for a planned expansion. The first phase of the mobile home park began after council approval in 2003. The city stipulated then that a second phase could be developed once the first phase was built and reviewed by the city.

That review is done, and the council must decide how many homes will be allowed in the second phase. In the agreement between the city and the developers, Roy and Jock Clause, the park can expand to include another 174 homes if it has met all of the conditions set in 2003. If the conditions aren't all met, the city can limit the new expansion to as few as 111 new homes.

City staff reviewed the agreement and found that the first phase of the park mostly met the conditions. But for phase two, city planners recommend that all required improvements, like utilities, landscaping and streets, be completed or guaranteed before the city issues any building permits. Also, the park must add a few trees to lots in the first phase, resolve a few code violations and adjust how much money it will contribute for building intersections near the park.

Then, the council will consider expanding the boundaries of the Downtown Business Improvement District to include the future site of the Stockman Bank building at the corner of Fourth Avenue North and North 28th Street.

In late August, Stockman Bank asked the council to expand the district to include its property. Assistant City Administrator Bruce McCandless said the move is minor but another step toward a new downtown bank.

"This shows that Stockman's commitment to downtown is real and it's strong," said Greg Krueger of the Downtown Billings Partnership.

The district is a group of business owners who pay Downtown Billings Partnership workers to keep sidewalks clean and promote downtown Billings. BID workers are known for their distinctive purple shirts.

The council will also consider a zone change on 400 acres recently annexed by the city along Roundup Road past the Billings Heights. The developer of the land, Gary Oakland, wants to build up to 1,200 single-family homes on lots averaging 8,200 square feet.

Oakland is asking the city to rezone the land from Residential 9600 to Residential 7000, which means smaller lots and more affordable housing, he said. The subdivision would have 10 to 12 phases, each with 75 to 100 homes, built over 10 to 15 years.

The development would be built using a design concept called coving, in which the streets and lots are curvy and include more open space. Oakland's subdivision plan includes 36 acres of parks.

Although on the agenda, the council will not vote on an agreement with the Lockwood Sewer and Water District to provide wastewater

treatment to the district. The council is expected to table the issue until Nov. 13 after it decided last week to allow city staff to add more stringent language and safeguards to the agreement.

City Council puts off action on irksome mobile home park

MATT HAGENGRUBER Of The Gazette Staff Oct 22, 2007
https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html

The City Council on Monday night delayed action on expanding a mobile home park in the Heights, but council members couldn't hide their displeasure with the park or its developer for not following city guidelines.

The developers of the Cherry Creek Estates mobile home park want to go ahead with a planned expansion of the park. Under a 2003 development agreement, a future City Council could limit the expansion to 111 new homes only if the park failed to meet certain development conditions.

Council members, angry at their seeming inability to cancel the project outright, voted 9-1 to revisit the issue on Nov. 26. In that time, they have asked City Attorney Brent Brooks to see if the city could back out of the agreement.

In the 2003 agreement, the park could add another 174 homes if it met all of the conditions from the city, which include one tree per lot, a fence surrounding the park and traffic limits.

If not all the conditions were met, the city could limit the expansion to 111 new homes. City staff said the park had numerous violations, including many junk cars in yards. Opposition to the expansion grew quickly.

"I don't want to approve this," Mayor Ron Tussing said. "I'd understand if there was one problem, but the fence, traffic, code enforcement. What other choice do we have? The only thing we can do is scratch off a few units from (the developer's) proposal."

Several council members said they want to stop the expansion entirely and questioned how the city could accept an agreement where it can't stop development.

Ward 2 Councilman Larry Brewster said the developers, Roy and Jock Clause, would probably sue the city if the expansion is stopped. The developers didn't attend the meeting.

In other business, the council adopted zoning changes for a proposed 400-acre subdivision along Roundup Road in the Heights.

Developer Gary Oakland wants to build up to 1,200 homes on the site and asked the city to change the zoning from Residential 9600 to Residential 7000, which allows for smaller lots. A 100-foot buffer strip along the northeastern edge of the property would stay at Residential 9600 zoning to please neighboring homeowners, who worried that their 15,000-square-foot lots would sit awkwardly with the newer 8,200-square-foot lots. Several homeowners came to the meeting and persuaded the council to change the eastern edge of the buffer to 200 feet.

Near the end of the meeting, council members got into a heated debate over the firefighters' lawsuit and how the city plans to pay the firefighters.

In 2000, 116 current and former firefighters sued the city, claiming that they had been underpaid. The city recently lost that lawsuit and could have to pay more than $4 million to the firefighters. A more definitive sum will probably be announced at a Nov. 1 hearing.

Tussing said he thinks the city has done a poor job in explaining that it won't pay for the lawsuit using money from the public safety mill levy that began in 2004.

The city plans to pay for the lawsuit by making cuts to the Fire Department, including rescinding seven job offers. Firefighters have criticized that decision.

Ward 3 Councilman Vince Ruegamer said the city will pay the firefighters and that it's "none of their damn business" where the money comes from.

The council also passed several minor budget amendments, expanded the Downtown Business Improvement District to include Stockman Bank property and delayed action on an agreement with the Lockwood Water and Sewer District until Nov. 13.

Mobile-home park developer fears city's mind is made up

Owner says violations noted by city will be, or have been, cleared up

MATT HAGENGRUBER Of The Gazette Staff Nov 23, 2007
https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html

The developer of a Heights mobile-home park under review by the Billings City Council said his park has complied with conditions set by the city, but council members are still trying to thwart expansion plans.

In 2003, Jock Clause and his father, Roy, built the first phase of Cherry Creek Estates. The pair now wants to build a second phase according to a development agreement with the city signed in April 2003. The park is located at Wicks Lane and Bitterroot Drive.

In the development agreement, the Clauses could develop 189 lots in the first phase and another 174 in the second phase, for a total of 363.

But if the City Council determined that the developers didn't comply with all requirements, the council could limit the second phase to as few as 111 lots. At a council meeting Oct. 22, several council members expressed anger with the development and said conditions hadn't been met.

The council is expected to decide the issue at its Monday night meeting, and Jock Clause is worried that council members have made up their minds to limit the park's expansion.

"We have approval for 363 lots, and it was just a formality to go before the City Council for this," he said. "We feel we've complied with everything they've asked. But only being able to build 300 lots won't work for us."

At the Oct. 22 council meeting, council members realized that they were mostly forced to stick with the 2003 agreement. Several asked if the agreement could be canceled entirely, but City Attorney Brent Brooks told the council to act cautiously to avoid legal trouble. Jock Clause said legal action is a last resort.

"We'll look at our options. We may have to seek a neutral party to make a decision," he said. "But we don't want to go there. It's a waste of money."

At the Oct. 22 meeting, Heights Councilwoman Joy Stevens asked Brooks to clarify language in the development agreement saying that the agreement could be declared "obsolete" by the council, and whether that meant the council could stop the expansion entirely. At a planning session Monday night, Brooks told council members that the city thinks violations can be mitigated, so stopping the expansion is unlikely. Limiting the expansion is more realistic, he said.

City planning officials told council members at the Oct. 22 meeting that the development had several violations, including an insufficient number of trees, junk cars in yards, gaps in a required fence, an emergency access gate that was open and being used by construction trucks, and 27 percent more car traffic than expected. Officials also pointed to a swale on the edge of the property that filled with water.

A month later, Jock Clause said all of those violations have been fixed or that Cherry Creek has financially guaranteed that they will be fixed.

Each lot is required to have one tree, and Clause said they can't be planted until spring.

The park will probably contribute more money to have several nearby intersections improved, and Clause told the city he'd fix gaps in the wooden fence. The emergency gate now has a chain holding it closed, and water from the swale will be pumped back into one of two storm water ponds.

The park sits on a reclaimed gravel pit and overlooks the Yellowstone River. Across the river sits the ExxonMobil refinery. The entire development is about 80 acres, and each phase covers about half of that area. Some minor construction has already begun on the second phase, and about 50 lots sit empty in the first phase. The park has a new community center, overlooking a pond, that is used for meetings, weddings and other events.

Clause said most construction of the second phase will begin in the spring, and he expects it to be filled with mobile homes within three to four years.

The development has caused some controversy since it was first planned, but Jock Clause said he's pushing for full development because manufactured homes are affordable homes, and demand will be rising.

"There's nothing wrong with this project," he said. "They want affordable housing; that's what we're providing there now. I think (the council) has some people out there putting pressure on them" against the project.

Businesses on council agenda

MATT HAGENGRUBEROf The Gazette Staff Nov 25, 2007
https://billingsgazette.com/news/local/businesses-on-council-agenda/article_6a4621c1-84aa-594c-9ff1-3e72da00906a.html

The City Council faces a relatively light agenda for tonight's meeting. The most contentious issue may be approving the second phase of the Cherry Creek Estates mobile home park.

The council will likely pass numerous plats, subdivision changes and minor annexations in its consent agenda before taking up a few other issues: the Cherry Creek plan, a public hearing for the South Billings Boulevard urban renewal plan and a public hearing on allowing small retail businesses in residential neighborhoods.

Citizens will have an opportunity to comment on an urban renewal plan for a large area in south Billings. If approved, a tax increment finance district would be created in early 2008, which would allow infrastructure improvements in the area over the next 15 years. The district includes the site of the planned Cabela's store.

Also, the council will hold a public hearing and take up a zone change that would allow small retail businesses in residential neighborhoods. The city's zoning commission voted 4-0 this month to approve the zone change.

The change would allow for bakeries, restaurants, laundries and small grocers up to 3,000 square feet, but not gas stations. City officials said the change keeps neighborhoods diverse and decreases traffic, since people can walk to nearby businesses instead of driving.

No special review is needed for businesses in neighborhoods already zoned for high-density residential complexes, like apartments. Special review is needed, however, for businesses in lower-density neighborhoods. Current businesses would be exempt until they remodel or make major changes.

Cherry Creek expansion OK'd

MATT HAGENGRUBER Of The Gazette Staff Nov 26, 2007
https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html

The City Council gave reluctant approval Monday night to a second phase at Cherry Creek Estates mobile home park in the Heights, assuming the developers bring the first phase into compliance.

The park's developers, Roy and Jock Clause, want to add 174 lots to the 189 built in the first phase, for a total of 363. According to the development agreement signed in 2003, the city couldn't prevent the second phase; it could only limit it to 111 lots if it determined that the park wasn't in compliance with the agreement.

Saying the park wasn't in compliance in several areas, the council voted 10-1 to limit the development to 300 lots. The council's motion stated that the second phase can't be built until the first phase is brought into compliance.

"The threat of not having additional units approved is the only way to ensure compliance," Councilman Larry Brewster said. "They could have had all these things up to snuff before they applied (for the

second phase). They could have been in compliance, and they were not."

City planning staff told the council that the park was required to have one tree per lot, and it was missing 58 trees. The city also found gaps in a fence surrounding the park, an extra storm water retention pond, an unsecured emergency access gate and 27 percent more traffic than expected.

City staff and Jock Clause said most of the problems are already fixed and that the remaining problems will be fixed by spring. Frustrated after the meeting, Clause said his development was based on 363 lots. Having just 300 lots makes things much more difficult financially.

"We financially cannot comply with the conditions with only 300 units," he said. "We bent over backward for these people."

In other business, the council:

n Voted 11-0 to create a South Billings Boulevard urban renewal district. A few people spoke for the plan and a few spoke against it, expressing concern that their taxes would rise if the district is created. Several council members assured them that their taxes would not increase any more than if the district didn't exist.

Council members said the taxes from any new businesses or improvements in the district stay in the district and will be used mostly for infrastructure improvements, including streets or sewer lines.

The district would run generally from State Avenue and Laurel Road on the north to south of the interstate in some places and from Mullowney Lane on the west to Washington Street on the east.

On an 8-3 vote, the council added language to the plan that allows the city to use its power of eminent domain to facilitate infrastructure improvements in some cases. The original plan didn't allow for the use of eminent domain in the district. That power allows the city to acquire private property for public uses. City officials said eminent domain is rarely used.

n Tabled until March an ordinance that would have allowed small retail businesses in residential neighborhoods. Concerned about tattoo parlors and alcohol sales, the council sent the ordinance back to city staff for more clarification on what types of businesses would be allowed.

City planner Nicole Cromwell said the new rules would diversify neighborhoods and prevent divisions between neighborhoods and business districts. But Ward 1 Councilman Jim Ronquillo said the era of small-time groceries in his neighborhood is over.

"There used to be 10 of those mom-and-pop stores. How many are left today? Not a one," he said.

Developers fight for water in court

ED KEMMICK Of The Gazette Staff Mar 8, 2004 https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article_9f2e02b8-781a-5464-b245-358defadfc45.html

The owners of a mobile home park under construction in the Heights are in a courtroom battle with the County Water District of Billings Heights over water connections to the site.

In late February, the water district obtained a temporary injunction barring Cherry Creek Development from hooking up any more mobile homes to its water distribution system, and now it is seeking a permanent injunction until the case can be settled in court. District Judge Gregory Todd issued the temporary order on Feb. 13, and on Friday attorneys for both sides submitted briefs arguing their positions.

The Cherry Creek Estates Subdivision, an 81-acre site just south of Wicks Lane and east of Bitterroot Drive, is being developed by Roy and Jock Clause, who entered into an agreement with the water district last April. The district agreed to provide water service and the Clauses agreed to install a water main to serve the subdivision.

The water district contends that the Clauses have put in a water main from Shannon Street to Erin Lane, but have not completed the larger portion of what is called the Bitterroot main extension, from Erin to Wicks Lane.

The water district, represented by Kristin Omvig of the Crowley law firm, said the Clauses have been aware since at least April 16, 2003, that they needed to complete the water line extension all the way to Wicks before the district would allow them to hook up to its system.

Even though the extension wasn't completed, the district says, one of its employees noticed in mid-December that a mobile home was parked in the Cherry Creek Estates Subdivision, and the resident of the home confirmed that it had water service.

The employee, Gary Crick, said he checked the main valve going into the subdivision and noticed that the top of the valve box had been broken off, and the box had been filled with gravel and dirt. He said he dug down to the valve and saw that it had been turned on.

"The valve appeared to have been tampered with because the District did not open the valve and has never authorized or approved water service to the Subdivision," the water district said in court documents.

The district learned that an additional mobile home was being moved into the subdivision on Feb. 6, and another on Feb. 12. The next day, Judge Todd issued the temporary order barring the Clauses from "any further placement of mobile homes within the Cherry Creek Subdivision and connection of such mobile homes to the District's water system."

As of Feb. 25, Crick said, eight mobile homes - five double-wides and three singles - had been moved into the subdivision.

The Clauses' attorney, Bruce Fain, said the judge's order didn't prohibit placing any more mobile homes on the site. He said it only barred the Clauses from moving any homes there and hooking them up to the water district's lines.

As for the larger issue, the Clauses said in papers filed Friday that the agreement between the district and the Clauses says nothing about the water main from Erin to Wicks, and any requirements added afterward, whether in letters or verbally, have no legal standing.

Entities like the water district "can't simply issue unwritten and un-memorialized imperial decrees," the Clauses said.

In its court briefs, the district noted that William Enright, an engineer with Morrison, Maierle Inc., testified that without the Bitterroot main extension, if there was a main break on Wicks near Walter Road, water pressure in some of the district's lines would drop below 20 pounds per square inch. Below that pressure level, he said, non-potable water could back up and contaminate the entire water system, which services more than 10,000 clients.

The Clauses argued that Enright based his comments on guidelines established by the state Department of Environmental Quality, and yet the "requirement makes no reference whatsoever to a water main break, which certainly would have been included if it was to be analyzed." They also say the DEQ approved their plans for the subdivision.

The Clauses' brief says "possible injury to the District, predicated upon its Doomsday scenario, is not as certain as the damage that will happen to the Defendants if they are not permitted to continue with their project."

They suggested that the best way to handle the dispute would be for the water district to pay for extending the water main to Wicks and then to sue the Clauses for breach of contract. They also asked the judge to deny the restraining order or, if he does grant it, to require the water district to post a bond large enough to protect the Clauses if they are unable to repay $2 million in loans on the project.

The Clauses have been working for six or seven years to develop the mobile home park, often against the opposition of a group of

neighbors who organized under the name United Residents of East Billings.

After the land was annexed by the city, the City Council voted last spring to allow development on the former gravel pit. The Clauses were to develop up to 160 sites during Phase 1 of the project, and then, if the development won the approval of the council, up to more than 300 in a second phase.

Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension

ED KEMMICK Of The Gazette Staff Mar 24, 2004

https://billingsgazette.com/news/local/water-main-work-to-resume-on-heights-mobile-home-park-developers-follow-court-ruling-on/article_d3513d54-7313-51d4-9905-91446e36ff3c.html

The developer of an 81-acre mobile home park in Billings Heights said Wednesday that construction should begin today on the final segment of a water main that will service his subdivision.

Roy Clause of Cherry Creek Development said he and his son, Jock Clause, will complete the project, estimated to cost $80,000, so they can continue filling up their mobile home park at Wicks Lane and Bitterroot Drive.

"You'd think that would satisfy everybody," Roy Clause said.

The Clauses' decision to proceed with the project came after a district judge ruled Monday in favor of the County Water District of Billings Heights in its lawsuit against the developers.

Judge Gregory Todd's order prohibited the Clauses from moving any more mobile homes onto their Cherry Creek Estates Subdivision and hooking them up to the district's water lines until the dispute was settled in court. Todd also turned down the Clauses' request to require the water district to post a bond large enough to cover their $2 million investment in the project.

The dispute arose over the Clauses' contention that they were not obligated, as part of their agreement to be serviced by the water district, to build a water main from Shannon Street to Wicks Lane along Bitterroot Drive.

They installed about 20 percent of that line, from Shannon to Erin Lane, but claimed that the agreement did not require them to complete the extension to Wicks. Todd ruled that the Clauses knew as early as April 16 last year that completion of the entire extension was a condition for being annexed into the Heights water district.

Todd said the Clauses never disputed that provision until Sept. 24, when they informed the water district board that the agreement mentioned no such obligation. Although the agreement didn't specially mention the extension, Todd ruled, the requirement was spelled out in many conversations and letters.

"The district was consistent and clear in what Cherry Creek was to do, including the building of the BME," or Bitterroot Main Extension, Todd said, and the Clauses' insistence that they didn't have to build it "refutes the plain language of the agreement."

The water district had argued that the Clauses' failure to put in the full extension would mean that in the event of a water line break, water pressure in some of the district's lines would drop below 20 pounds

per square inch. At that level, the district's engineer said, nonpotable water could back up and contaminate the entire water system.

"Not only the plaintiff, but the 10,000 other customers comprising the Billings Heights Water District, are likely to suffer irreparable harm if the defendants are not enjoined from further placement of the mobile homes within the subdivision prior to completion of the BME," Todd ruled.

In court documents filed earlier in the case, the water district said that even though the Clauses hadn't received permission to connect to its water system, a mobile home was moved into the subdivision in December, and a district employee was told by a resident of the home that it had water service. The employee then found that the main water valve going into the subdivision had been tampered with and turned on.

According to Roy Clause, the mobile home park is designed to accommodate 362 mobile homes - 192 in Phase 1 of the project and 170 homes in Phase 2.

September 1, 2020

TO: Members of the City of Billings Zoning Commission

FROM: Pam Ellis

RE: HISTORY OF CHERRY CREEK IN THE NEWS

Below are quotes from news articles about the development of the Cherry Creek Mobile Home Court arranged in chronological order. I have attached the complete articles in sets of articles that include all on a single topic.

Developers fight for water in court

ED KEMMICK Of The Gazette Staff Mar 8, 2004 https://billingsgazette.com/news/local/developers-fight-for-water-in-court/article_9f2e02b8-781a-5464-b245-358defadfc45.html

The owners of a mobile home park under construction in the Heights are in a courtroom battle with the County Water District of Billings Heights over water connections to the site. ...

The water district, represented by Kristin Omvig of the Crowley law firm, said the Clauses have been aware since at least April 16, 2003, that they needed to complete the water line extension all the way to Wicks before the district would allow them to hook up to its system.

Even though the extension wasn't completed, the district says, one of its employees noticed in mid-December that a mobile home was parked in the Cherry Creek Estates Subdivision, and the resident of the home confirmed that it had water service. ...

In its court briefs, the district noted that William Enright, an engineer with Morrison, Maierle Inc., testified that without the Bitterroot main extension, if there was a main break on Wicks near Walter Road, water pressure in some of the district's lines would drop below 20 pounds per square inch. Below that pressure level, he said, non-potable water could back up and contaminate the entire water system, which services more than 10,000 clients.

Water main work to resume on Heights mobile home park; Developers follow court ruling on water main extension

ED KEMMICK Of The Gazette Staff Mar 24, 2004

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The Clauses' decision to proceed with the project came after a district judge ruled Monday in favor of the County Water District of Billings Heights in its lawsuit against the developers. ...

"The district was consistent and clear in what Cherry Creek was to do, including the building of the BME," or Bitterroot Main Extension, Todd said, and the Clauses' insistence that they didn't have to build it "refutes the plain language of the agreement."

Low-key council meeting likely

MATT HAGENGRUBEROf The Gazette Staff Oct 21, 2007

https://billingsgazette.com/news/local/low-key-council-meeting-likely/article_7b113d1d-eb1e-592e-b27b-9ac194b8d9c3.html

In the agreement between the city and the developers, Roy and Jock Clause, the park can expand to include another 174 homes if it has met all of the conditions set in 2003. If the conditions aren't all met, the city can limit the new expansion to as few as 111 new homes.

City staff reviewed the agreement and found that the first phase of the park mostly met the conditions. But for phase two, city planners recommend that all required improvements, like utilities, landscaping and streets, be completed or guaranteed before the city issues any building permits. Also, the park must add a few trees to lots in the first phase, resolve a few code violations and adjust how much money it will contribute for building intersections near the park.

City Council puts off action on irksome mobile home park

MATT HAGENGRUBER Of The Gazette Staff Oct 22, 2007
https://billingsgazette.com/news/local/city-council-puts-off-action-on-irksome-mobile-home-park/article_c3ce9fd2-81e0-5627-a0cc-24f8afbc9096.html

The City Council on Monday night delayed action on expanding a mobile home park in the Heights, but council members couldn't hide their displeasure with the park or its developer for not following city guidelines. ....

"I don't want to approve this," Mayor Ron Tussing said. "I'd understand if there was one problem, but the fence, traffic, code enforcement. What other choice do we have? The only thing we can do is scratch off a few units from (the developer's) proposal."

Several council members said they want to stop the expansion entirely and questioned how the city could accept an agreement where it can't stop development.

Ward 2 Councilman Larry Brewster said the developers, Roy and Jock Clause, would probably sue the city if the expansion is stopped. The developers didn't attend the meeting.

Mobile-home park developer fears city's mind is made up

Owner says violations noted by city will be, or have been, cleared up

MATT HAGENGRUBER Of The Gazette Staff Nov 23, 2007
https://billingsgazette.com/news/local/mobile-home-park-developer-fears-citys-mind-is-made-up/article_b9c410a2-dbb1-512c-94b9-ff75dc9d9ffc.html

At the Oct. 22 council meeting, council members realized that they were mostly forced to stick with the 2003 agreement. Several asked if the agreement could be canceled entirely, but City Attorney Brent Brooks told the council to act cautiously to avoid legal trouble. Jock Clause said legal action is a last resort.

"We'll look at our options. We may have to seek a neutral party to make a decision," he said. "But we don't want to go there. It's a waste of money."

At the Oct. 22 meeting, Heights Councilwoman Joy Stevens asked Brooks to clarify language in the development agreement saying that the agreement could be declared "obsolete" by the council, and whether that meant the council could stop the expansion entirely. At a planning session Monday night, Brooks told council members that the city thinks violations can be mitigated, so stopping the expansion is unlikely. Limiting the expansion is more realistic, he said.

City planning officials told council members at the Oct. 22 meeting that the development had several violations, including an insufficient number of trees, junk cars in yards, gaps in a required fence, an emergency access gate that was open and being used by construction trucks, and 27 percent more car traffic than expected. Officials also pointed to a swale on the edge of the property that filled with water.

A month later, Jock Clause said all of those violations have been fixed or that Cherry Creek has financially guaranteed that they will be fixed.

Businesses on council agenda

MATT HAGENGRUBEROf The Gazette Staff Nov 25, 2007
https://billingsgazette.com/news/local/businesses-on-council-agenda/article_6a4621c1-84aa-594c-9ff1-3e72da00906a.html

The City Council faces a relatively light agenda for tonight's meeting. The most contentious issue may be approving the second phase of the Cherry Creek Estates mobile home park.

Cherry Creek expansion OK'd

MATT HAGENGRUBER Of The Gazette Staff Nov 26, 2007
https://billingsgazette.com/news/local/cherry-creek-expansion-okd/article_2b36bb0a-c00a-5a9b-acbc-7a9cb2c6688e.html

The park's developers, Roy and Jock Clause, want to add 174 lots to the 189 built in the first phase, for a total of 363. According to the development agreement signed in 2003, the city couldn't prevent the second phase; it could only limit it to 111 lots if it determined that the park wasn't in compliance with the agreement.

Saying the park wasn't in compliance in several areas, the council voted 10-1 to limit the development to 300 lots. The council's motion stated that the second phase can't be built until the first phase is brought into compliance.

"The threat of not having additional units approved is the only way to ensure compliance," Councilman Larry Brewster said. "They could have had all these things up to snuff before they applied (for the second phase). They could have been in compliance, and they were not."

City Council approves Heights mobile home court

MATT HAGENGRUBER Of The Gazette Staff Sep 22, 2009
https://billingsgazette.com/news/local/government-and-politics/city-council-approves-heights-mobile-home-court/article_f956a358-a73b-11de-b004-001cc4c03286.html

The council voted 7-2 - with council members Shoots Veis and Peggie Gaghen voting no - to approve the mobile home court, which is located near the Cherry Creek Estates mobile home court off of Bitterroot Drive.

Called Danube Court, the project angered council members last week when developers Roy and Jock Clause brought it before the council for approval.

In 2007, council members had restricted the second phase of the Cherry Creek Estates park because they said the developers hadn't followed the development agreement. Back then, the council had limited the Clauses to 111 lots in the second phase of Cherry Creek Estates, even though the Clauses wanted to build 174 lots.

The 62 lots in Danube Court are one less than the 63 lots that the council took away from Cherry Creek Estates. But the old development agreement didn't prevent the Clauses from subdividing their property again and building a new mobile home court, which they accomplished with Danube Court. ...

"I understand the heartburn that some of us are having, that there may have been some circumvention," Tussing said. "But they seem to have done it legally."

15-year-old girl pronounced dead after shooting in Billings Heights

Montana Standard | 2019-05-12
https://mtstandard.com/news/state-and-regional/year-old-girl-pronounced-dead-after-shooting-in-billings-heights/article_0964456f-cbdd-5d0c-9f84-3b550a447d36.html

A 15-year-old girl was pronounced dead on scene by law enforcement. The shooting occurred on 12 Stella Street in the Cherry Creek Estates trailer park in the Heights around 7:30 p.m. Saturday, according to BPD Sgt. Nate West.

Teen killed in Billings shooting identified; police still investigating

Mike Kordenbrock May 14, 2019 https://billingsgazette.com/news/local/teen-killed-in-billings-shooting-identified-police-still-investigating/article_c5a958be-7ab7-5dc3-b43e-1e0547ebe7a8.html

Cherry Creek Homes accused of charging undisclosed, illegal fees

By ASHLEY NERBOVIG Nov 8, 2016 https://billingsgazette.com/news/state-and-regional/crime-and-courts/cherry-creek-homes-accused-of-charging-undisclosed-illegal-fees/article_ca93c4ea-e1c6-58c3-9bbf-9df686ecc7a5.html

The class action suit follows a favorable ruling earlier this year for another couple living in the mobile home park. ...

Cherry Creek's contract with the couple violated multiple consumer protections of the Montana Retail Installment Sales Act, the Mallas and Tallbull lawsuit alleged. The contract did not state how much the finance charge would be over the life of the contract, according to the lawsuit. The contract also stated the couple would be charged $50 if payments were five or more days late. ...

Yellowstone County District Court Judge Russell Fagg entered judgement on the nondisclosure of the finance charge and the legality of the late fees. Because the contract did not disclose the finance charge and because late fees can only be evaluated by a creditor after a payment is 10 days late, Fagg ruled Cherry Creek and RJC are barred from collecting any "finance, delinquency or collection charge on the contract."

In his judgement, Fagg found the Cherry Creek contracts violated at least four parts of the Montana Retail Installment Sales Act.

Billings mobile home owner picking up pieces after fire

Park-owned hydrants went dry as fire burned

By: Zoe Zandora
Posted at 6:27 PM, Oct 28, 2019 https://www.ktvq.com/news/local-news/billings-mobile-home-owner-picking-up-pieces-after-fire

While battling the fire, the Billings Fire Department had trouble using two fire hydrants that seemed to be malfunctioning.

Fire marshal: Heights mobile home fire was caused by gas fireplace valve

Mike Kordenbrock Oct 27, 2019 https://billingsgazette.com/news/local/fire-marshal-heights-mobile-home-fire-was-caused-by-gas-fireplace-valve/article_3437b8a0-8e79-57a3-918e-2c153974aab0.html

Billings fire department says hydrants are functioning again in Heights mobile home park

Mike Kordenbrock Oct 29, 2019 https://billingsgazette.com/news/local/billings-fire-department-says-hydrants-are-functioning-again-in-heights-mobile-home-park/article_dec4c6fe-e4b5-5a0a-bcd4-7934de00f83f.html

A valve that was shut off resulted in multiple fire hydrants not functioning Saturday night during a house fire in the Cherry Creek Homes mobile home park, according to the Billings Fire Department.

The lack of water supply to the hydrants was discovered as firefighters worked to extinguish **a fire that burned through a mobile home**, destroying the interior and killing multiple pets. ...

Testing done Monday morning determined the switched off valve affected only Lapin Street, Fire Marshal Mike Spini said. After the valve, opened the hydrants again were functional, Spini said.

Bob and Becky Muller

1225 Bitterroot Drive
Billings, MT 59105
Phone: 406-672-1194 or 406-672-1194
Bobmuller216@msn.com or moegirl63@outlook.com

September 13, 2020

Planning Division
Planning & Community Services Department
2825 3rd Avenue North 4th Floor
Billings, MT 59101

Letter for denial of variances requested

RE: County Zone Change 703 – Cherry Creek Loop – R-96 to R-80 AND City Zone Change 983 – Cherry Creek Loop – Public to R-80

To: City/County Planning Divisions, Board of Adjustment, Ms. Deines, Ms. Bohlman, and Ms. Cromwell,

We own property at 1225 Bitterroot Drive, Billings MT 59105. We are writing to object to the variance requests as detailed below. In the rebuttal below, we do not believe that the request meets the required approval criteria and therefore, should not be approved. We kindly ask that this email and the attached letter be included for the record for both the September 22, 2020, County Zone Change 703 – Cherry Creek Loop – R-96 to R-80 and for September 28, 2020, City Zone Change 983 – Cherry Creek Loop – Public to R-80.

Summary of our argument

Variances should only be granted in those unique cases where an applicant cannot develop a piece of property according to the existing standards without incurring hardship, due to unique conditions that set them apart from other properties in the same district.

As stated in city code Sec 27-1506 (a) Authority: The city board of adjustment shall have the authority to grant a variance from the terms of this chapter in specific cases where it is found that the granting of the variance will not be contrary to the public interest and where because of special conditions with respect to the lot shape or topography, a literal enforcement of the provisions of the chapter would result in unnecessary hardship".

According to the Yellowstone County Zoning Regulations, May 2019, page 14, the following definitions exist:

R-96 Residential 9.6000: A zone intended to promote primarily a sing-family residential environment on lots that are served by public water and sewer service.

R-80 Residential 8.000: A residential zone intended to primarily provide a single-family residential environment with provisions for duplexes that are served by public water and sewer service.

By these definitions, this property owner is not prohibited from developing R-96, and there is nothing that is either unique or particular about this property that would prevent the said applicant from developing affordable single-family residential homes.

We agree that young couples and first-time home buys should have the opportunity to purchase homes, but, in an R-96 zone, affordable housing can be built. As homeowners and owners of rental property in R-96 zoning districts, there is a considerable variable in property value for all income levels. We fail to see how this property owner has provided proof of hardship by asking for a said variance, nor how R-96 is not compatible with their current property of RMH zoning,

Currently, the property owners of Cherry Creek Subdivision own as well as rent property in the Cherry Creek Trailer park. We fail to understand how, as owners, they ensure "safe neighborhoods" in this proposed new subdivision when they cannot enforce their current rental or home-owned properties in the RMH zone from high crime rates. We understand their father developed this property initially, but they are now the owners. By adding HOA fees, this does not, nor can it provide safer housing. It also adds costs to property owners that they are trying to promote as low-income families. How do they propose to have affordable housing with HOA fees?

- In the letter provided by Blueline Engineering, page 1, paragraph three, "An HOA will be formed that will provide for oversight of building and property appearances, lawn and snow removal services. An HOA also *helps form a strong neighborhood with pride of ownership*"
- In the letter provided by Blueline Engineering, page 3, letter K: "Neighborhoods that are safe and attractive and provide essential services are much desired." Answer: *A well-developed HOA with the means to enforce its rules and regulations will ensure this development will be and remain a safe and attractive neighborhood"*.
- In the letter provided by Blueline Engineering, page 8, letter C: Common to all types of housing choices is the desire to live in surroundings that are affordable, healthy and safe". Answer: "This development will provide affordable housing with an *HOA designed to keep the neighborhood health, clean, and safe*".

In a report from https://www.crimemapping.com/map/mt/billings/, there were 41 records on file from March 17, 2020, through September 12, 2020, within ¼ mile of our residence with all 41 being on or in Cherry Creek Loop subdivision.

As stated in the letter by Blueline Engineering, paragraph 1, page 1, "It is clear from these discussions that the neighborhood wants to see a project that protects against rundown appearances, reduces crime, and preserves land values" and "past zoning changes in the area have shown that the higher density uses are not what planning and the neighborhood desire". We disagree as we have spoken to neighbors and no one we have spoken to is in favor of this variance. It has a direct impact in a negative way on surrounding property values.

We are also opposed to this variance as there are many unknowns as noted by the "Cherry Creek Zone Change Meeting" held on 7/27/2020 as outlined in the letter with the zone requests that contradict their request in the 11-page document that Blueline Engineering produced for evidence and as stated by Marshall and/or Leon:

- "Cannot say with certainty what percent they will sell or rent"
- "HOA will prevent these problems"
- "It could" to the question of irrigation wells
- "Nearby wells indicate that there will be plenty of water"

By these quoted statements, there is the uncertainty of selling or renting; thus, their request to change zone so they can build a duplex for selling is inaccurate. They cannot "prevent" anything from occurring by requiring an HOA fee. In response to wells being drilled and that wells in the area have "plenty of water" is, in fact, false. The two properties directly South of us have dried up wells and cannot use them and now utilize Heights Water District. Our well is dependent on the irrigation ditch that flows by our property line to the North. This does not indicate "plenty of water" to us.

Finally, as documented in the C56: Cherry Creek Dev Plan and C56: Cherry Creek Responses 76105.07(11-18-99) there were provisions built into this subdivision as stated here: "The location of this development is ideal because of the landscaped buffer that can be provided" (Development plan, page 1) and "The development will provide a certain amount of land that will **never** be developed but set aside for the enjoyment of the public **forever**" responses, page 4, #6. Based on these documents this should be a moot point for discussion and variance of said request for County Zone Change 703 and City Zone Change 983.

Conclusion

Zoning regulations protect the property rights and values of not only owners but also neighbors and the larger community. As detailed in our letter above, we are not in favor of these variances for the following reasons:

1. The property owner is not enduring hardship by complying with the current R-96 zoning request
2. They cannot ensure lower crime rates
3. They cannot ensure property values to the west of these proposed variances will be maintained or improved
4. They cannot verify if they are selling or renting these properties, which contradicts their stated intent in paragraph 2 "to help achieve the desires of these residents, we are preparing documents to allow the townhomes to be owned".
5. They do not hold the vision of the Heights Task Force, as noted by feedback on the minutes from the July 27, 2020 meeting.
6. Buffering promise documentation as put forth in Cherry Creek Dev Plan and Responses from 11-18-99 76105.07.

While we typically would support the applicant's right to develop the property for R-96, given these facts we are opposed to any development in this buffer zone but specifically for the request to change the zone from R-96 to R-80.

Respectfully,

Robert (Bob) and Rebecca (Becky) Muller

Robert Muller

Rebecca L Muller

Attachment: C56: Cherry Creek Dev Plan and C56: Cherry Creek Responses 76105.07 (11-18-99).

September 14, 2020

To the Members of the County Zoning Commission,

The Billings Heights Neighborhood Task Force wishes to express its opposition to the proposed zone change that would facilitate new rental housing development to the west of the Cherry Creek mobile home park. Heights Task Force members have been actively involved in conversations with representatives of the developer, seeking answers on a number of critical concerns. To date, those concerns have been either dismissed or ignored. The Task Force is particularly concerned that this project is being characterized as homes for sale, when the developers and their representatives have been clear that an unspecified number of units will be retained for rental.

The concerns of the Heights Task Force, as outlined below, show that on a number of points, the proposed zone change falls short of the 11 criteria that the Commission considers in approving a zone change. Because the proposed zone change does not meet all criteria, the Heights Task Force respectfully requested that the application be denied.

The Cherry Creek Manufactured Home Park (Cherry Creek MHP) is a high-density neighborhood that is already experiencing challenges with public safety, transportation, student safety, and access to parks and recreation. Facility operations and maintenance by the previous Cherry Creek MHP owners – the same developers on this proposed zone change and project – have been problematic for many residents. Allowing further high-density rental development in this neighborhood will exacerbate the many serious challenges faced in by residents. A satellite image of the neighborhood is provided on the last page of this letter to allow the Commission a better visual on the density of the area.

Criterion #3 – Transportation/Water/ Sewerage/Schools/Parks/Other Public Requirements

Traffic congestion in the area remains a significant concern at current levels, without the addition of 600-800 vehicle trips per day. In particular, neighbors have indicated that a large number of students are waiting on the corner for busing, as school buses do not enter the Cherry Creek MHP. The combination of additional students waiting for the bus with no shelter or safe waiting area and hundreds of additional vehicle trips per day is a meaningful safety concern that the Zoning Commission should consider.

Similarly, both the developer application and the staff memo seem to disregard the measurable impact on nearby public schools. Beartooth Elementary serves this neighborhood and is already, according to the developer, at 92% occupancy. Medicine Crow Middle School is currently operating at a similar enrollment rate. The proposed zone change would allow a higher density of housing, meaning that more children are likely than if the area retained its current zoning. An influx of families to the project area would push both Beartooth and Medicine Crow to near capacity, and that is without factoring in other projects under development in the same area. Further, Billings Public Schools is indicating record enrollment this year, meaning that ordinary community growth is already putting a strain on existing elementary facilities. Retaining the current zoning is the best way to limit adverse impacts on neighborhood schools.

The project developers have indicated they will not develop any parks or recreation facilities in the area. The Cherry Creek MHP has virtually no recreational space available and residents are indicating that the current property owners are directing that outdoor play equipment be removed. While the current operations of the Cherry Creek MHP are no longer the responsibility of the Applicant, it bears upon the Zoning Commission's consideration that existing recreational options are already severely constrained in the neighborhood. The addition of 66 units to the area without any additional improvements to parks, trails, or recreational space falls far short of the criterion to facilitate the provision of parks through a zoning change.

Finally, many neighbors and property owners in the area have raised multiple questions regarding impacts on water that have been unanswered by the Applicant. Specifically, it is not clear how the proposed zone change, allowing higher density building, would impact neighbors on wells. Because the Applicant does plan to use well water for irrigating the development, neighbors are rightfully concerned about the water table and no information has been provided in response to that concern.

Criterion #4 – Public Health/Public Safety/General Welfare

Crime in this neighborhood is already a significant concern. Allowing higher density development that exacerbates the overcrowding in the area will certainly continue to place the safety and general welfare of people living in this neighborhood at risk. During multiple Heights Task Force meetings, residents of the Cherry Creek MHP have indicated that crime is a serious concern. In just the last month, there have been 20 serious incidents, including thefts, an assault, and multiple disturbing the peace incidents in the area of the proposed zone change.

Allowing more high-density development will make these conditions worse, not better. During a recent Task Force meeting, a member of the Billings Police Department indicated that calls to the area typically require two police cars to respond, as weapons are often involved. Increasing the density of development in this area is not consistent with promoting public safety or the general welfare of the neighborhood.

Criterion #6 -- Motorized/Non-motorized Transportation

As stated above, neighbors in the area have concerns over the current traffic congestion as well as the lack of proposed solutions if the zoning were changed to allow higher density development. The Applicant does not propose to develop any walking trails, bike paths or other neighborhood amenities that would promote the use of non-motorized transportation options.

Availability of Housing Options

Many of the zoning criteria speak to the desire for diversity in housing options. Throughout the Applicant documents, the need for options other than detached single-family homes is repeated frequently. Yet, the analysis of the zoning change appears to completely ignore the 96-unit duplex and four-plex development in the vicinity of Medicine Crow Middle School. The analysis provided characterizes this area of the Heights as lacking in housing options but fails to mention the Barrett Road project as providing a meaningful number of additional housing options. Further, the Barrett Road project includes improvements to traffic routes, sidewalks and pedestrian pathways, and recreational options – all of which have been expressly rejected as options by the developers of the Cherry Creek project. Considering that there will be an influx of higher density options in the immediate vicinity of

the proposed new development, there is no need to change the zoning to facilitate housing diversity in the neighborhood.

Homeowners' Association

Residents of the Cherry Creek MHP and neighbors in the area have spoken at both task force meetings and the community meeting for this project about the long legacy of broken promises by the Applicant. Commitments to develop park space, maintain streets and common areas, and improve safety have not been upheld. Residents in the area are rightfully concerned that the same history will be repeated in this project if higher density development is allowed.

It appears that, in response to these concerns, the Applicant is offering to establish a Homeowners' Association (HOA) in the area, which would supposedly be tasked with maintaining the character of the neighborhood and acting in a way to preserve property values. Unfortunately, establishing an HOA in no way solves the very legitimate concerns of residents in this area. The developer has indicated that some units might be sold, others will be retained by the developers as rental units, and it is impossible to predict now how many units might be sold or rented. Because the developers already intend to retain units for rentals, there is a clearly foreseeable scenario in which no HOA is ever established. The Applicants may attempt to sell a few units to ostensibly comply with their promises, but ultimately hold all properties as rentals. There is no obligation on the part of the developers to sell, and the long history of broken promises by the developers in this neighborhood is basis for legitimate concern. Should the developers conclude that their financial interests are best served by keeping all properties as rentals, this neighborhood will end up with more of the same high-density rental congestion that has already adversely impacted this neighborhood.

Both neighborhood residents and the Task Force have requested drafts of the HOA proposal, but no documents have been provided. The Zoning Commission does not need to consider the existence of an HOA in its evaluation of the zoning criteria, but to the extent that the Applicant is suggesting that concerns about safety, property values, or general development impact can be addressed through the proposed HOA, we would submit that is simply not the case. There is no way to ensure that properties will be sold, that an independent HOA would ever be established, or that these properties would differ in any meaningful way from the history of neighborhood harm caused by the developers in the Cherry Creek MHP.

Based on the concerns identified in this letter, the Heights Task Force requests that the proposed zone change be rejected, as it fails to meet all 11 of the zone change criteria. The current Residential 9600 zoning allows for responsible development that is consistent with the character of the neighborhood without the volume of negative impacts that would be caused by higher-density development.

Thank you for your consideration of these comments.

Sincerely,

Jennifer Owen
Chair, Heights Neighborhood Task Force

River View Dr
River View Cir
Outlook Dr
Erin St
Rally Point Water
River View Dr
David B. Bakken, RPh
Cherry Creek Community Center
Vandalay St
Rainier St N
Tartarian St
Pond Rd
Hartland St N
Skeena St
North Loop
N Cherry Creek Loop
Cavalier St N
S Cherry Creek Loop
Odds, Ends, and Such
Temporarily closed
Bing St N
Jubilee St
Jubilee St
N Cherry Creek Loop
S Cherry Creek Loop
Attka St N
Danube St
Blarney St
N Cherry Creek Loop
Bitterroot Dr
Youth Dynamics
Bitterroot Dr
Bitterroot Dr
Bitterroot Dr
Shannon St
Riverside Cemetery
Dublin St
Carson Way
Anchor Ave
Galway Dr

B.O.C.C. Regular Agenda Item 4.

Meeting Date: 10/06/2020

Title: Resolution of Intent to Create RSID 858

Submitted By: Mike Black

TOPIC:

Resolution of Intent 20-75 to Create RSID 858C to Pave (Overlay Various Vista Butte Subdivision Roads)

BACKGROUND:

Resolution of Intent to create RSID 858 to pave Pave (overlay various Vista Butte Subdivision roads)

RECOMMENDED ACTION:

Set public hearing.

Attachments

Resolution of Intent to Create

Exhibit 1

Exhibit A (Map)

Exhibit B (Property Owners)

EEOPC

YELLOWSTONE COUNTY BOARD OF COUNTY COMMISSIONERS

Resolution No. 20 – 75

Resolution of Intent to Create Yellowstone County Rural Special Improvement District No. 858C

WHEREAS, pursuant to Sections 7-12-2101 through 7-12-2113 of the Montana Code Annotated, a board of county commissioners has the authority to create a rural special improvement district to construct roads. To create a district, a board should pass a resolution of intent, set a public hearing, provide notice of the public hearing, receive protests, hold a public hearing, consider protests and pass a resolution that either creates or does not create the district.

WHEREAS, the Yellowstone County Board of County Commissioners received a request from Frank Pelican, who owns land in Vista Buttes Subdivision, to create a rural special improvement district to pave (overlay) portions of the roads in the Subdivision, in particular Vista Loop Dr., and Pond Rd. Recently, the developer paved these roads in the Subdivision. The developer did not pave the roads to the required thickness. To pave the roads to the required thickness Frank Pelican would like the Board to create a District. If the Board creates the District, Rural Special Improvement District No. 761M will maintain the roads. The developer created the district to maintain the roads when it created the Subdivision. Exhibit 1 contains the specifics of the District such as name, location, map, parcels, property owners, activities, costs, assessment method, assessment and engineer. Below is a summary of the specifics of the District.

District Summary

District Name:	Yellowstone County Rural Special Improvement District No. 858C
District Location:	Vista Butte Subdivision
District Parcels:	15 parcels
District Activities:	Pave (overlay) Vista Loop Dr., and Pond Rd.
District Costs:	$93,891.13 estimated total
District Assessment Method:	Per parcel
District Assessment:	Annual assessment $1,004.67 per parcel estimated
District Duration:	7 years
District Engineer:	Michael Black, PE – Yellowstone County Public Works Department

NOW THEREFORE, BE IT RESOLVED,

The Yellowstone County Board of County Commissioners intends to create a rural special improvement district to pave (overlay) particular roads in Vista Buttes Subdivision. On November 17, 2020, at 9:30 am in Room 3108 of the Stillwater Building (316 North 26th Street) the Board shall hold a public hearing on the creation of the District. At the hearing, the Board will receive comments on the creation of the District and consider protests as to the creation of the District. The Board orders the Yellowstone County Clerk and Recorder to publish notice of the public hearing, mail notice of the public hearing to all property owners within the proposed District, receive written comments and protests on the creation of the District and provide the comments and protests to the Board before the hearing. After the hearing, if enough property owners have not protested the creation of the District and the Board believes that it is in the best interest of the public to create the District, it will pass a resolution to create the District. Conversely, if either enough property owners have protested the creation of the District or the Board believes that it is not in the best interest of the public to create the District, it will pass a resolution not to create the District.

Passed and Adopted on the 6th day of October 2020.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

_____
Denis Pitman, Chair

_____
Donald W. Jones, Member

ATTEST:

_____
John Ostlund, Member

_____
Jeff Martin, Clerk and Recorder

Chronology
Agenda – October 1, 2020
Resolution of Intent – October 6, 2020
First Publication / Mailing – October 9, 2019
Second Publication – October 16, 2020
Protest Deadline – November 16, 2020
Public Hearing / Resolution – November 17, 2020

Documents
Exhibit (Public Works Department / Finance Department / GIS Department)
Map, Properties and Property Owners List, Cost Estimate and Assessment Estimate
Resolution of Intent (County Attorney)
Minute Entry of Resolution of Intent Meeting (Clerk and Recorder)
Notification (County Attorney)
Affidavit of Mailing / Publication / Comments / Protests (County Attorney)
Resolution (County Attorney)
Minute Entry of Meeting of Public Hearing / Resolution Meeting (Clerk and Recorder)

Exhibit 1

Yellowstone County Rural Special Improvement District No. (858C)

District Summary

District Name:	Yellowstone County Rural Special Improvement District No. 858C
District Location:	Vista Buttes Subdivision
District Parcels:	15 parcels
District Activities:	Pavement Overlay (Vista Loop Dr., Pond Rd.)
District Costs:	$93,891.13 estimated total
District Assessment Method:	Per parcel
District Assessment:	Annual assessment $1,004.67 per parcel estimated
District Duration:	7 years
District Engineer:	Michael Black, PE – Yellowstone County Public Works Department

District Name:
The name of the District shall be Yellowstone County Rural Special Improvement District No. 858C.

District Location:
Yellowstone County Rural Special Improvement District No. 858C shall include the parcels in Vista Butte Subdivision. Attached is a map of Yellowstone County Rural Special Improvement District No. 858C (EXHIBIT A).

District Parcels:
Yellowstone County Rural Special Improvement District No. 858C shall include 15 parcels in Vista Butte Subdivision. The parcels benefited by the paving of the roads shall be included in the District. Attached is a list of the legal description of each parcel and the current owner of each parcel in Yellowstone County Rural Special Improvement District No. 858C (EXHIBIT B).

District Activities:
Yellowstone County Rural Special Improvement District No. 858C shall overlay various roads (Vista Loop Dr., Pond Rd.). Yellowstone County Rural Special Improvement District No. 761M shall maintain the roads.

District Costs:
The Yellowstone County Public Works Department estimates it will cost approximately $93,891.13 to pave (overlay) the roads. This is only the cost to pave (overlay) the roads. It does not include the cost to maintain the roads. The actual cost to pave (overlay) the roads may be more or less. The exact cost to pave the roads shall be determined when the County awards the contract to pave the roads. The Public Works Department estimates the annual cost to maintain the roads to be approximately $400.00. Attached is an explanation of the cost to pave and maintain the roads (EXHIBIT C).

District Assessment Method:
Yellowstone County Rural Special Improvement District No. 858C shall use the per parcel method of assessment to finance the construction of the roads. If the number of parcels increases during the term of the District, the maintenance assessment district (RSID 761M) shall be modified to account for the increased number of parcels.

District Assessment:
The Yellowstone County Finance Department estimates that annual assessment per parcel for the construction would be approximately $1,004.67. The assessment would appear on the tax statements for the properties. A property owner would have the option to prepay the construction assessment or pay the assessment over 7 years. Attached is an explanation of the calculation of the assessment for the construction costs (also EXHIBIT C).

District Duration:
Yellowstone County Rural Special Improvement District No. 858C shall exist for 7 years. The Yellowstone County Finance Department calculated it would take 7 years for the property owners to pay for the construction of the roads.

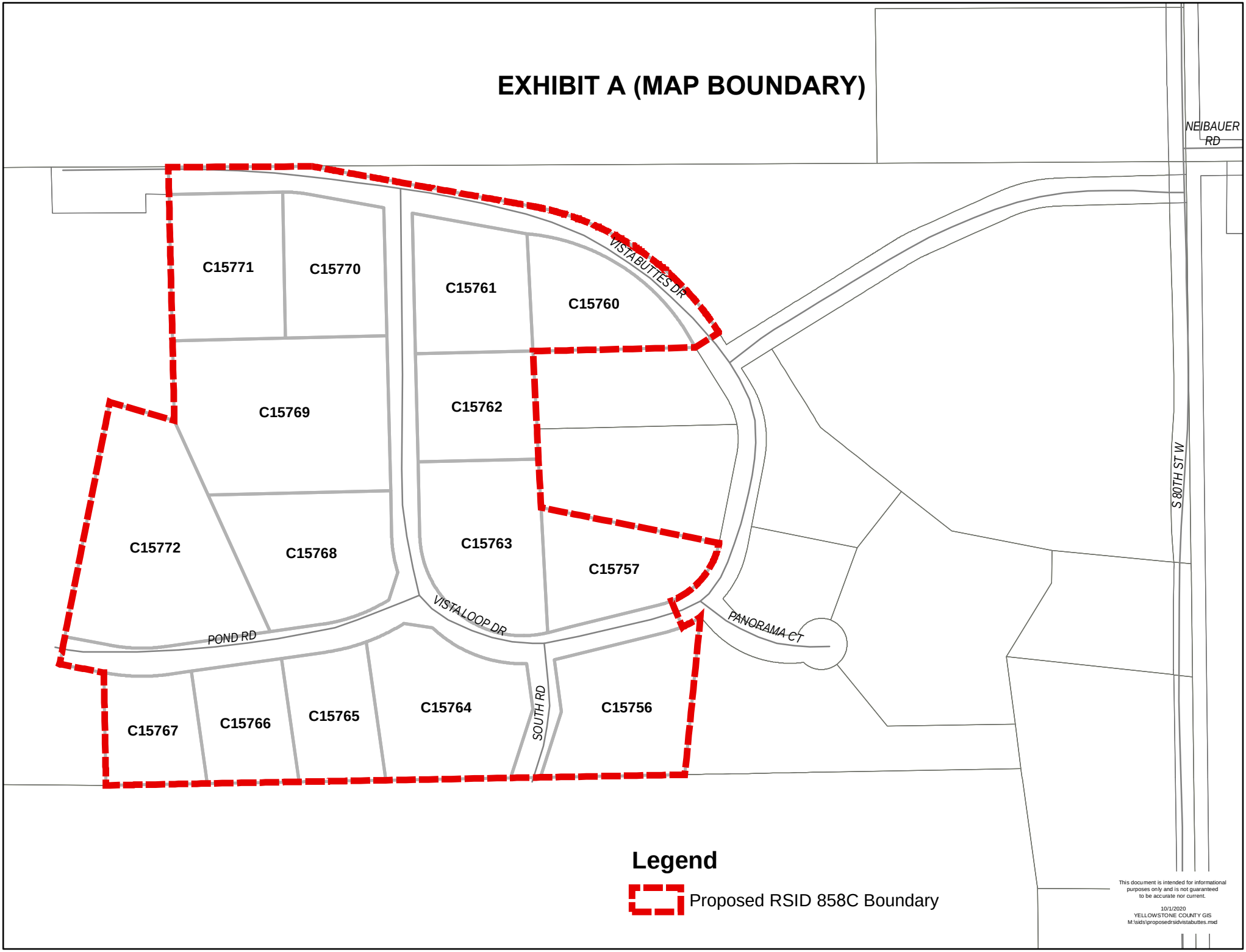
District Engineer:
Michael Black, PE, a civil engineer with the Yellowstone County Public Works Department, shall be the District Engineer for Yellowstone County Rural Special Improvement District No. 858C. As needed, the Yellowstone County Board of County Commissioner shall appoint a District Engineer. The District Engineer shall manage the construction and maintenance of the roads. The District Engineer shall keep the Board advised of construction and maintenance of the roads.

Yellowstone County Public Works Department
Attn: Michael Black, PE
P.O. Box 35024
Billings Montana, 59107-5024
(406) 256-2735
mblack@co.yellowstone.mt.gov

Attachments

- Map (EXHIBIT A)
- Properties and Property Owner Lists (EXHIBIT B)
- Construction and Maintenance Cost Estimate (EXHIBIT C)
- Assessment Estimate (EXHIBIT C)

EXHIBIT A (MAP BOUNDARY)



OBJECTID	SUBD	LOT_NUM	GEOCODE	TAX_ID
20528	VISTA BUTTES SUB 2ND FIL	20	3092526107100000	C15770
20529	VISTA BUTTES SUB 2ND FIL	21	3092526107150000	C15771
21672	VISTA BUTTES SUB 2ND FIL	11	3092526105200000	C15761
21675	VISTA BUTTES SUB 2ND FIL	10	3092526105150000	C15760
21678	VISTA BUTTES SUB 2ND FIL	19	3092526107050000	C15769
21681	VISTA BUTTES SUB 2ND FIL	12	3092526105250000	C15762
21682	VISTA BUTTES SUB 2ND FIL	22	3092526107200000	C15772
21684	VISTA BUTTES SUB 2ND FIL	13	3092526105300000	C15763
21685	VISTA BUTTES SUB 2ND FIL	18	3092526107010000	C15768
21687	VISTA BUTTES SUB 2ND FIL	7	3092526105010000	C15757
21691	VISTA BUTTES SUB 2ND FIL	6	3092526102250000	C15756
21693	VISTA BUTTES SUB 2ND FIL	14	3092526106010000	C15764
21694	VISTA BUTTES SUB 2ND FIL	15	3092526106050000	C15765
21696	VISTA BUTTES SUB 2ND FIL	16	3092526106100000	C15766
21697	VISTA BUTTES SUB 2ND FIL	17	3092526106150000	C15767

MAILADDRESS1	MAILADDRESS2	MAILADDRESS3	MAILCITY	MAILSTATE
2011 9TH AVE N			BILLINGS	MT
945 VENICE BEACH WAY UNIT 4			BILLINGS	MT
506 CARAVAN AVE			BILLINGS	MT
2011 9TH AVE N			BILLINGS	MT
2011 9TH AVE N			BILLINGS	MT
2011 9TH AVE N			BILLINGS	MT
8105 PANORAMA CT			BILLINGS	MT
1226 4TH AVE			LAUREL	MT
5550 WALTER HAGEN DR			BILLINGS	MT
2520 VISTA LOOP DR			BILLINGS	MT
2525 VISTA LOOP DR			BILLINGS	MT
8270 POND RD			BILLINGS	MT
8270 POND RD			BILLINGS	MT
2011 9TH AVE N			BILLINGS	MT
2011 9TH AVE N			BILLINGS	MT

MAILZIP	OWNER_NAME	TAXID
59101-0311	PELICAN, FRANK T	C15770
59106-2496	KNATTERUD, KOLTEN L & SPENCYR E	C15771
59105-2802	SMITH, ROBERT C & LINDA M	C15761
59101-0311	PELICAN, FRANK T	C15760
59101-0311	PELICAN, FRANK T	C15769
59101-0311	PELICAN, FRANK T	C15762
59106-3402	ANDERSON, DAVID J & JUNE A (UND 1/2) &	C15772
59044-9604	DEAN, JAMES RONALD & KIMMIE SUE	C15763
59106-1005	MARCIA A HURLBURT REVOCABLE TRUST &	C15768
59106-3403	LANDON FAMILY TRUST	C15757
59106-3403	WILCOX, RICHARD L JR & TINA D	C15756
59106-3055	BLACK, SCOTT L	C15764
59106-3055	BLACK, KYMBERLEE	C15765
59101-0311	PELICAN, FRANK T	C15766
59101-0311	PELICAN, FRANK T &	C15767

SHORTLEGAL	
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 20, ACRES 1.466, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 21, ACRES 1.741, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 11, ACRES 1.569, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 10, ACRES 1.307, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 19, ACRES 3.367, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 12, ACRES 1.348, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 22, ACRES 3.301, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 13, ACRES 2.037, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 18, 2.091 AC
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 7, ACRES 1.51, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 6, ACRES 1.941, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 14, ACRES 2.119, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 15, ACRES 1.183, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 16, ACRES 1.138, (07)
VISTA BUTTES SUB 2ND FIL	(07), S26, T01 S, R24 E, Lot 17, ACRES 1.09, (07)

EXHIBIT C

Engineer's Estimate of Probable Cost

Estimate for Proposed Construction RSID
Various Overlay for Vista Buttes Roads Construction Improvements

CONSTRUCTION

ITEM	Unit	Quantity	Price	Amount
Overlay	LS	1	$66,655.00	$66,655.00
S U B T O T A L				**$66,655.00**
Construction Testing	LS	1	$2,000.00	$2,000.00
Contingency (25%)	LS	1	$16,663.75	$16,663.75
Engineering Design, Surveying, & Construction Management (7.5%)				$0.00
Construction Staking (2.5%)				$0.00
Administration (3%)				$0.00
ESTIMATED TOTAL CONSTRUCTION COST				**$85,318.75**
NET TOTAL CONSTRUCTION, CONTINGENCY & ENGINEERING				**$85,318.75**

Admin Costs

Estimated Administrative Costs By Rural Special Improvement District	
Ownership Reports, Advertising, Printing, Offering Circular & Postage	$1,000.00
County Administration - Attorney - Finance - Commissioners	$1,000.00
SUBTOTAL	$2,000.00
SUBTOTAL CONSTRUCTION AND ADMINISTRATIVE	**$87,318.75**

EXHIBIT C

Engineer's Estimate of Probable Cost

Estimate for Proposed Construction RSID
Various Overlay for Vista Buttes Roads Construction Improvements

FINANCE COSTS

REVOLVING FUND BACKING OF DEBT - 5% of Loan Financing (Mandatory)		$4,694.56
RESERVE FUND BACKING OF DEBT - 5% of Loan Financing (Required)*	29% developed - reserve at 4%	$0.00
COUNTY ADMINISTRATION - Attorney - Finance - Commissioners (Flat Fee per Loan Issuance - above) 2% of Loan Financing		$1,877.82
LOAN ISSUANCE COSTS, LOAN ORIGINATION FEE - 1% of Loan Financing		$0.00
SUBTOTAL FINANCE COSTS		**$6,572.38**

TOTAL RSID COST	**$93,891.13**

COST BREAKDOWN PER UNIT / PARCEL

Number of Assessment Units	**15**
*** Number of Parcels Developed**	**5**
Percentage Developed	**33%**
Reserve Percentage (%) Required per Development Completed	**4%**
Alternate 1 - Financed Option (PAY OVER TIME WITH PROPERTY TAXES)	
Total Assessment per Property (Based on an Equal Basis)	**$6,259.41**
Estimated Interest Rate	**3.00%**
Estimated Annual Assessment for 7 Years (per property)	**$1,004.67**
Total Amount Paid Back (Financed) Over 7 Years With Interest	**$7,032.72**
Alternate 2 - Non-Financed Option (PAY UP FRONT)	
Total Estimated Cost Per Parcel	
This option is the "Pay Up Front" or Pay In Advance Alternative - (saves Loan Financing Costs of 7%)	**$5,821.25**
Savings of Non-Financed Option vs. Financed Option (tot. asmnt. alt. 2 - tot. asmnt. alt. 1)	**$1,211.47**

Maintenance Assessment Per Parcel Per Year

Road Maint. >> 5,455 ft of road X 24 ft wide x $0.05 / sq. ft (cost per year to maintain) = $6,545.00 **$400.00**
Snow Removal >> $1,855 per year

B.O.C.C. Regular Agenda Item 1.

Meeting Date: 10/06/2020

Title: Homestead Acres

Submitted For: Jeff Martin, Clerk And Recorder

Submitted By: Jeff Martin, Clerk And Recorder

TOPIC:

Homestead Acres Subdivision and S.I.A.

BACKGROUND:

Reviewed

RECOMMENDED ACTION:

Execute

Attachments

Homestead Acres SIA

11

SUBDIVISION IMPROVEMENTS AGREEMENT

Homestead Acres Subdivision

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- C. Access

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

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X. Soils/Geotechnical Study — Page 6

XI. Phasing of Improvements — Page 6

XII. Financial Guarantees — Page 6

XIII. Legal Provisions — Page 6

SUBDIVISION IMPROVEMENTS AGREEMENT

Homestead Acres Subdivision

This agreement is made and entered into this ____ day of _____, 20__, by and between Levi & Barbara Britton, whose address for the purpose of this agreement is **941 South 84th Street West, Billings, MT 59106**, hereinafter referred to as "Subdivider," and YELLOWSTONE COUNTY, Montana, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, at a regular meeting conducted on _____ day of _____, 20__, the Board of Planning recommended conditional approval of a preliminary plat of Homestead Acres Subdivision; and

WHEREAS, at a regular meeting conducted on _____ day of _____, 20__, the Yellowstone County Board of County Commissioners conditionally approved a preliminary plat of Homestead Acres Subdivision; and

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

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

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

I. VARIANCES

A. Subdivider has requested, and the County hereby grants, the following variances by the Board of County Commissioners from the strict interpretation of the County's Subdivision Regulations (Chapter 11, Yellowstone County Subdivision Regulations):

1. No variances have been requested for Homestead Acres Subdivision.

II. CONDITIONS THAT RUN WITH THE LAND

A. Lot owners should be aware that this subdivision is being built in close proximity to prime deer and antelope habitat and it is likely that homeowners will experience problems with damage to landscaped shrubs, flowers, and gardens. The Montana Fish, Wildlife, and Parks Department does not provide damage assistance unless there is damage to commercial crops and/or a threat to public health and safety.

B. Lot owners should be aware that soil characteristics within the area of this subdivision, as described in the 1972 Yellowstone County Soil Survey, indicate that there could be potential limitations for proposed construction on the lots, which may require a geotechnical survey prior to construction.

C. There are no existing water rights and thus no water rights have been transferred to the lot owners. The irrigation ditch that exists on and adjacent to this development is for the benefit of lots within this subdivision and other properties. The irrigation ditch shall remain in place and shall not be altered by the Subdivider or subsequent owners.

D. 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.

E. Culverts and associated drainage swales shall not be filled in or altered by the subdivider or subsequent lot owners.

F. When required by road improvements, all fences and irrigation ditches in the public right-of-way adjacent to this subdivision shall be removed or relocated outside of the public right-of-way and any relocation outside of the public right-of-way shall be subject to securing and recording easements.

G. Future maintenance of all public (or common) improvements shall be done through one (1) or more RSID(s) created as part of the SIA for this subdivision.

H. The lot owner has obtained three Access Permits from County Public Works prior to any construction on any lot within the subdivision. The Access Permit application included a site plan showing the desired location of the accesses and showing that they meet the requirements outlined by the DEQ storm water requirements for the subdivision.

III. TRANSPORTATION

A. Streets

The following roads exist surrounding the subdivsion:

- South 80th Street West is an existing road located adjacent to and east of the property.
- South 84th Street West is an existing road located adjacent to and west of the property.
- Fire Tank Street is an existing standard asphalt private road, located within a 60' private access easement that ends at the northern boundary of this property.

The Subdivision proposes the following roads:

- Standard asphalt 24-foot-wide private road maintained by the Property Owners Association and to be known as Wisner Avenue, located within a 60' private access easement through the center of the property. Wisner Avenue will culminate in a cul-de-sac.
- An extension of existing Fire Tank Street is proposed with this subdivision as a standard asphalt 24-foot-wide private road maintained by the Property Owners Association, located within a 60' private access easement to connect with Wisner Avenue.

B. Traffic Control Devices

- One stop sign will be installed at the intersection of proposed Wisner Avenue and South 80th Street West.

C. Access

- Fourteen of the homes are proposed to be accessed off of individual driveways accessing Wisner Avenue. Wisner Avenue will connect with South 80th Street West, providing access to these fourteen homes. Two homes are proposed to be accessed off of individual driveways from South 84th Street West. Access widths will be permitted and constructed in accordance with County Regulations.

IV. EMERGENCY SERVICE

Construction of buildings made of combustible materials shall have adequate fire apparatus access roads and water supply (Fire Suppression Tank) in place to allow for fire suppression requirements. Fire apparatus access roads and water supply requirements shall be provided in accordance with the Fire Protection Requirements as noted in the Yellowstone County Subdivision Regulations.

There is one existing dry hydrant located within the adjacent Shop World 1 Subdivision. This dry hydrant is located within a half mile of Lots 1-7 and Lots 10-16.

There are currently two dry hydrants located in the adjacent master planned development for Tanglewood Estates Subdivision that are utilized for water supply for fire suppression. One is located in the large lake and the other is located in the smaller lake. The Laurel Fire Department maintains an agreement with the Yellowstone Boys and Girls ranch to utilize the 40,000-gallon water tank for fire suppression for surrounding properties. Proposed Lots 8 and 9 are located within a half mile of this fire suppression system.

V. STORM DRAINAGE

All drainage improvements shall comply with the provisions of the Section 4.7, Yellowstone County Subdivision Regulations, and a stormwater management plan shall be submitted to and approved by MDEQ, or its designee.

- Stormwater detention facilities are proposed within Homestead Acres Subdivision. Increased stormwater will be mitigated with culverts, roadside ditches and drainage swales as well as the detention facilities proposed within the development.

VI. UTILITIES

A. Water

In accordance with Section 4.9 Yellowstone County Subdivision Regulations, the following has been proposed:

- One thousand five hundred (1,500) gallon water cisterns have been proposed for each lot.
- The Montana Department of Environmental Quality approval letter will be submitted with the final plat.

B. Septic System

In accordance with Section 4.8 Yellowstone County Subdivision Regulations, the following has been proposed:

- Individual subsurface wastewater treatment systems have been proposed for each lot.
- The Montana Department of Environmental Quality approval letter will be submitted with the final plat.

C. Power, Telephone, Gas, and Cable Television

A ten (10) foot wide utility easement on lots one through seven and lots ten through sixteen provides utility access to all lots. Lots eight and nine will utilize the existing South 84th Street right-of-way for utilities.

VII. PARKS/OPEN SPACE

In accordance with Section 10.2 Yellowstone County Subdivision Regulations, cash-in-lieu of parkland is proposed for approximately 1.56 acres. This number is equal to 5% of the area of the net land proposed to be subdivided into parcels larger than one acre but not larger than three acres (1 Lot), and 2.5% of the area of the net land proposed to be subdivided into parcels larger than three acres but not larger than five acres. The total amount of cash to be provided will be in accordance with Section 10.6 Yellowstone County Subdivision Regulations.

VIII. IRRIGATION

This subdivision is located within the High Ditch Company Irrigation District. There is no existing easement for the High Ditch located on this property; however, a 75' easement has been proposed along the irrigation ditch. No additional mitigation efforts have been proposed for the ditch.

Irrigation water will be supplied by the High Ditch located on this property. A single water share will be obtained from the High Ditch Company, and water from the ditch will be routed through an easement to a service for the fourteen lots located east of the High Ditch. A Homestead Acres irrigation water user district will be formed to utilize and allocate the maintenance costs to each lot. Individual pumping systems will be installed by property owners to boost the water pressure for different forms of sprinkler irrigation. No flood irrigation will be allowed. The two lots west of the High Ditch will obtain individual pumping contracts from the High Ditch Company for irrigation needs.

IX. WEED MANAGEMENT

Field bind weed was present during the inspection and Russian knapweed is to be monitored for. Lawns are to be reestablished and roadside ditches are to be seeded by the end of 2020. The Yellowstone County Weed District will monitor the site for three years.

Grazing shall be used as a method to control weeds in pasture area's. Hand pulling of weeds is required around homes and garden area's. Herbicides and sprays will be used as needed in both area's should previous methods prove unsuccessful. All associated cost for noxious weed control is the responsibility of the owner of record.

X. SOILS/GEOTECHNICAL STUDY

A soils/geotechnical study was not required but owners of the lots will be encouraged to perform a site-specific geotechnical investigation that is specific to the type of structure contemplated prior to construction.

XI. PHASING OF IMPROVEMENTS

Homestead Acres Subdivision proposes that all 16 lots will be developed in a single phase.

XII. FINANCIAL GUARANTEES

As all infrastructure will be private, no financial guarantee is proposed.

XIII. LEGAL PROVISIONS

A. Subdivider agrees to guarantee all public improvements for a period of one year from the date of final acceptance by Yellowstone County.

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 apply to and shall be binding on the heirs, personal representatives, successors and assigns 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.

G. Subdivider agrees to create any required (or expansion of existing) RSID(s) for future maintenance of all public (or common) constructed improvements prior to final plat approval.

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

"SUBDIVIDER"

Levi J. Britton

By:_____

Its:_____

STATE OF Montana)
: ss
County of Yellowstone)

On this 8th day of September, 2020, before me, a Notary Public in and for the State of Montana, personally appeared Levi J. Britton, known to me to be the Director of ~~Levi J. Britton~~ Las Palmas, LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

NICKI DEVOUS NOTARIAL SEAL STATE OF MONTANA
NICKI DEVOUS
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
April 12, 2022

Notary Public in and for the State of MT
Printed Name: Nicki Devous
Residing at: Billings
My commission expires: April 12, 2022

Barbara L. Britton

By: Barbara L Britton

Its:_____

STATE OF Montana)
: ss
County of Yellowstone)

On this 8th day of September, 2020, before me, a Notary Public in and for the State of Montana, personally appeared Barbara L. Britton, known to me to be the Owner of ~~Barbara L. Britton~~ Las Palmas, LLC, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

NICKI DEVOUS NOTARIAL SEAL STATE OF MONTANA
NICKI DEVOUS
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
April 12, 2022

Notary Public in and for the State of MT
Printed Name: Nicki Devous
Residing at: Billings
My commission expires: April 12, 2022

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

"COUNTY"

COUNTY OF YELLOWSTONE
MONTANA

County of Yellowstone
Board of County Commissioners

By: _____
Chairman

_____
Commissioner

_____
Commissioner

Attest:_____
County Clerk and Recorder

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 Board of County Commissioners and the County Clerk and Recorder, respectively, of Yellowstone County, Montana, whose names are subscribed to the foregoing instrument in such capacity and acknowledged to me that they executed the same on behalf of Yellowstone County, Montana.

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

Waiver of Right to Protest

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 Rural Special Improvement Districts (RSID's), which Yellowstone County 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:

Homestead Acres Subdivision

Signed and dated this 8th day of September, 2022.

Levi J. Britton

By: _____

Its: Developer

STATE OF Montana)
: ss
County of Yellowstone)

On this 8th day of September, 2022, before me, a Notary Public in and for the State of Montana, personally appeared Levi J. Britton, known to me to be the Developer of ~~Levi J. Britton~~ Homestead Acres, who executed the foregoing instrument and acknowledged to me that he/she executed the same.

NICKI DEVOUS NOTARIAL SEAL STATE OF MONTANA

NICKI DEVOUS
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
April 12, 2022

Notary Public in and for the State of MT
Printed Name: Nicki Devous
Residing at: Billings
My commission expires: April 12, 2022

Barbara L. Britton

By: Barbara L Britton

Its: owner

STATE OF Montana)
: ss
County of Yellowstone)

On this 8th day of September, 2022, before me, a Notary Public in and for the State of Montana, personally appeared Barbara L. Britton, known to me to be the owner of ~~Barbara L. Britton~~, who executed the foregoing instrument and acknowledged to me that he/she executed the same. Homestead Acres

NICKI DEVOUS NOTARIAL SEAL STATE OF MONTANA

NICKI DEVOUS
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
April 12, 2022

Notary Public in and for the State of MT
Printed Name: Nicki Devous
Residing at: Billings
My commission expires: April 12, 2022

B.O.C.C. Regular Agenda Item 2.

Meeting Date: 10/06/2020

Title: Addendum to Contract for Dental Services at YCDF

Submitted By: Jeana Lervick, Chief Deputy Attorney Civil Division

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TOPIC:

Addendum to Contract for Dental Services at Yellowstone County Detention Facility

BACKGROUND:

The Board of County Commissioners has entered into a contract to provide dental services at the Yellowstone County Detention Facility. There is a need for additional space for additional services for Department of Corrections inmates. This addendum allows for the provision of services, without any financial impact to the County.

RECOMMENDED ACTION:

Approve.

Attachments

Addendum to Contract

ADDENDUM to January 14, 2020 Professional Services Contract

This addendum is entered into this ___ day of _____, 2020, by and between the **BOARD OF COUNTY COMMISSIONERS**, Yellowstone County, Montana, hereinafter referred to as the "**COUNTY**," and **JIM HICKS DENTAL SERVICES, PC**, hereinafter referred to as "**CONTRACTOR**" collectively referred to as the "**PARTIES**." Contractor's address is 255 Cirque Drive, Bozeman, MT 59718.

1. Whereas, the PARTIES entered into a services agreement on January 14, 2020 for CONTRACTOR to perform regular general dental services to inmates of the Yellowstone County Detention Facility (YCDF).

2. The PARTIES desire to modify the agreement to provide CONTRACTOR with an additional day at Yellowstone County Detention Facility, "YCDF" to provide services to Department of Corrections DOC inmates.

3. Either party can terminate addendum with two (2) weeks' notice. The term of the addendum shall not exceed the term or any extension of the underlying contract.

IN WITNESS WHEREOF, the party set their hands and seals ___ day of _____, 2020.

JIM HICKS DENTAL SERVICES, PC

9-24-2020

Contractor

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

Denis Pitman, Chairman

John Ostlund, Member

Donald W. Jones, Member

///
///
///

B.O.C.C. Regular Agenda Item 3.

Meeting Date: 10/06/2020
Title: CTCL COVID-19 Repsonse Grant
Submitted For: Bret Rutherford, Election Administrator
Submitted By: Bret Rutherford, Election Administrator

TOPIC:

CTCL COVID-19 Response Grant

BACKGROUND:

The Yellowstone County Election Department has applied for and has been approved a grant award totaling up to $320,593.00 to be used for the public purpose of planning and operationalizing safe and secure elections in 2020.

RECOMMENDED ACTION:

Approve and sign grant agreement.

Attachments

CTCL Grant Agreement

CENTER FOR
TECH AND
CIVIC LIFE

September 29, 2020

Yellowstone County, Montana

Board of County Commissioners

PO Box 35002

Billings, MT 59107

Board of County Commissioners:

I am pleased to inform you that based on and in reliance upon the information and materials provided by Yellowstone County, and the special circumstances Yellowstone County faces administering elections in 2020, the Center for Tech and Civic Life ("CTCL"), a nonprofit organization tax-exempt under Internal Revenue Code ("IRC") section 501(c)(3), has decided to award a grant to support the work of Yellowstone County ("Grantee").

The following is a description of the grant:

AMOUNT OF GRANT: $320,593.00 USD

PURPOSE: The grant funds must be used exclusively for the public purpose of planning and operationalizing safe and secure election administration in Yellowstone County in 2020 ("Purpose").

Before CTCL transmits these funds to Grantee, CTCL requires that Grantee review and sign this agreement ("Grant Agreement") and agree to use the grant funds in compliance with the Grant Agreement and with United States tax laws and the laws and regulations of your state and jurisdiction ("Applicable Laws"). Specifically, by signing this letter Grantee certifies and agrees to the following:

1. Grantee is a local government unit or political subdivision within the meaning of IRC section 170(c)(1).

2. This grant shall be used only for the Purpose described above, and for no other purposes.
3. Grantee has indicated that the amount of the grant shall be expended on the following specific election administration needs: Ballot drop boxes, Drive-through voting, Non-partisan voter education, Personal protective equipment (PPE) for staff, poll workers, or voters, Poll worker recruitment funds, hazard pay, and/or training expenses, Polling place rental and cleaning expenses for early voting or Election Day, Temporary staffing, Vote-by-mail/Absentee voting equipment or supplies, and Election administration equipment. Grantee may allocate grant funds among those needs, or to other public purposes listed in the grant application, without further notice to or permission of CTCL.
4. Grantee shall not use any part of this grant to make a grant to another organization, except in the case where the organization is a local government unit or political subdivision within the meaning of IRC section 170(c)(1) or a nonprofit organization tax-exempt under IRC section 501(c)(3), and the subgrant is intended to accomplish the Purpose of this grant. Grantee shall take reasonable steps to ensure that any such subgrant is used in a manner consistent with the terms and conditions of this Grant Agreement, including requiring that subgrantee agrees in writing to comply with the terms and conditions of this Grant Agreement.
5. The grant project period of June 15, 2020 through December 31, 2020 represents the dates between which covered costs may be applied to the grant. The Grantee shall expend the amount of this grant for the Purpose by December 31, 2020.
6. Grantee is authorized to receive this grant from CTCL and certifies that (a) the receipt of these grant funds does not violate any Applicable Laws, and (b) Grantee has taken all required, reasonable and necessary steps to receive, accept and expend the grant in accordance with the Purpose and Applicable Law.
7. The Grantee shall produce a brief report explaining and documenting how grant funds have been expended in support of the activities described in paragraph 3. This report shall be sent to CTCL no later than January 31, 2021 in a format approved by CTCL and shall include with the report a signed certification by Grantee that it has complied with all terms and conditions of this Grant Agreement.
8. This grant may not supplant previously appropriated funds. The Grantee shall not reduce the budget of the Election Department ("the Election Department") or fail to appropriate or provide previously budgeted funds to the Election Department for the term of this grant. Any amount supplanted, reduced or not provided in contravention of this paragraph shall be repaid to CTCL up to the total amount of this grant.
9. CTCL may discontinue, modify, withhold part of, or ask for the return all or part of the grant funds if it determines, in its sole judgment, that (a) any of the above terms and conditions of this grant have not been met, or (b) CTCL is required to do so to comply with applicable laws or regulations.

10. The grant project period of June 15, 2020 through December 31, 2020 represents the dates between which covered costs for the Purpose may be applied to the grant.

Your acceptance of and agreement to these terms and conditions and this Grant Agreement is indicated by your signature below on behalf of Grantee. Please have an authorized representative of Grantee sign below, and return a scanned copy of this letter to us by email at grants@techandciviclife.org.

On behalf of CTCL, I extend my best wishes in your work.

Sincerely,

Tiana Epps Johnson
Executive Director
Center for Tech and Civic Life

GRANTEE

By: _____

Title: _____

Date:_____

B.O.C.C. Regular **Agenda Item 4. a.**

Meeting Date: 10/06/2020

Title: YCDF Contract with Alternative, Inc for SCRAM Services

Submitted For: James Matteson, Purchasing Agent

Submitted By: James Matteson, Purchasing Agent

TOPIC:

Yellowstone County Detention Facility Contract with Alternatives, Inc. for SCRAM Services

BACKGROUND:

On January 28th, 2020, a Request for Proposal was released for Alcohol & Drug Electronic Monitoring Services. Proposals were received until 5:00 p.m. on February 25th, 2020. Three proposals were received and referred to staff for recommendation. The selection committee met on Thursday March 5th, 2020 and made the recommendation of award to Beta Alternatives on March 10th, 2020. A contract has been completed and is submitted to the BOCC for approval.

RECOMMENDED ACTION:

Approve the request and return a copy to Finance & YCDF.

Attachments

YCSO-Alternatives SCRAM Contract

Standard Form of Agreement between Owner and Contractor on the Basis of A Stipulated Price

This agreement is dated as of 1st of October 2020 by and between Yellowstone County, Montana (hereinafter called County), and Alternatives, Inc. (hereinafter called Contractor).

Owner and Contractor, in consideration of the material covenants hereinafter set forth, agree as follows:

1. Scope of Work

   Contractor will provide SCRAM services, tasks and equipment for offenders as assigned at the discretion of individual Courts. Contractor will deliver and provide SCRAM equipment sets to Yellowstone County Sheriff's Office/ Detention Facility (YCSO) consisting of bracelets, base stations, all necessary accessories including batteries, tamper clips, removal tools, and cleaning supplies to meet YCSO desired usage levels. Contractor will have immediate customer service representatives available. Contractor will deliver all supplies the day of the order. Contractor shall respond and tend to all maintenance regarding the equipment within a reasonable time frame (1-2 business days). Contractor will supply SCRAM CAM equipment with the number of units and equipment determined by mutual agreement between the County and Contractor. Usage level will assist in determining the quantities for all times with no cap on the number of units needed by County as long as fiscal requirement of the contract are met.

   Contractor shall provide required online training for each type of equipment listed of approximately 12 hours total for SCRAM, Remote Breath, and GPS. This training shall be made available electronically by the Beta Program Assistant. After County staff complete online training, Contractor shall offer in-person training at our Beta/Compass location. In person training shall be hands-on training that accompanies the online training. Hands on training shall include but will not be limited to training to properly put on equipment, using SCRAMnets's website to enroll and track clients, and information on downloading equipment. Contractor shall provide as much training time as necessary to ensure County staff understand how to use the equipment and the website listed herein. Training of staff shall occur on an as needed basis.

2. Contract Times

   Contract will be effective 10/01/2020 through 09/31/2021 annually renewable for up to seven (7) years total.

3. Contract Price

SCRAM-CAM/SCRAM HOUSE ARREST
County shall pay the Contractor a flat rate of $5.80 per day including all supplies (tools, faceplate kits, straps, direct connects, magnets and batteries) of active service per unit, there will be no cost for unused units on County's premises. County will not be charged for replacement of the 1st lost SCRAM CAM and/or SCRAM-HA unit for each calendar year. Each lost unit thereafter will be $1,150.00. Each lost Base Station will be invoiced at $550.00 each. Ethernet switch kits will cost $25.00 except the initial two (2) provided at the start of the contract which will cost $60.00. One free SCRAM tool kit per year will be provided above and beyond the initial two (2) provided at the start of the contract. Additional Tool kits will cost $30.00 each.

ACTIVE GPS
County shall pay $5.75 per day including all supplies (tools, chargers, and backplates) of active service per unit, there will be no cost for unused units on County premises.

PASSIVE GPS

County shall pay $5.50 per day including all supplies (tools, chargers, and backplates) of active service per unit, there will be no cost for unused units on County premises. County will not be charged for replacement of the 1st lost GPS unit, passive or active, for each calendar year. Each lost unit, passive or active, thereafter will be $700.00.

SCRAM REMOTE BREATH
County shall pay the Contractor a flat rate of $4.50 per day including all supplies (carrying case, client reusable breather tube, charger) of active service per unit. There will be no cost for unused units on County premises. County will not be charged for replacement of first lost Remote Breath unit of each calendar year. Each lost unit thereafter will be $950.00. Remote Breath units need to be calibrated one time per year and this service is included in the daily use price.

UNIT	COST PER DAY	REPLACEMENT COST
SCRAM-CAM	$5.50	$1,150.00 (1 free per year)
Base Station	$0.00	$ 550.00 (1 free per year)
SCRAM-HA	$5.80	$1,150.00
GPS (Active)	$5.75	$ 700.00 (1 free per year)
GPS (Passive)	$5.50	$ 700.00
Remote Breath	$4.50	$ 950.00
Ethernet Switch Kit	$0.00	$ 25.00 (1 free per year)
Charger	$0.00	$ 25.00

Contractor shall not charge County for missing equipment until 180 days has passed. Should equipment be determined as permanently missing after 180 has elapsed, the County shall pay Contractor the cost of equipment. If missing equipment is located after 180 days but before 366 days, Contractor will reimburse the price paid for the equipment.

4. Contractors Representation

4.1 Contractor has examined and reviewed the Contract Documents and other related paperwork.

4.2 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

4.3 Contractor has given County written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between County and Contractor, consist of the following:

5.1 This Agreement.

5.2 Contractor's proposal - "RFP Electronic Monitoring" February 24th, 2020

5.3 Contractor's current Certificate of Insurance and Workers Compensation Coverage

6. Miscellaneous

6.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without written consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will discharge the assignor from any duty or responsibility under the Contract Documents.

6.2 Contractor shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County as an additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) for each claim and One Million Five Hundred Thousand Dollars , ($1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County's sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be a claims made policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County is named as an additional insured under the Contractors insurance policy.

Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

6.3 Contractor is required to maintain workers compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees of Yellowstone County. Workers Compensation insurance or the exemption from the workers compensation obligation must be valid for the entire period.

6.4 County and Contractor each binds itself, its partners, successors, assign and legal representative to the other party hereto, its partners, successors, assign and legal representative to respect to all covenants, agreements and obligations contained in the Contract Documents.

6.5 Contractor must give preference to the employment of bona fide residents of Montana in the performance of this work. Unless such preference would violate Section 6.9 of this contract.

6.6 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana

6.7 Contractor agrees to defend, indemnify, and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Contractors performance under the Agreement. County agrees to defend, indemnify, and hold harmless the Contractor against all claims for injuries to person or damages to property occurred from or in connection with the County's negligence, willful misconduct or breach of this Agreement.

6.8 In the event of litigation between Contractor and the County, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.

6.9 The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Contractor subjects contractors to the same provisions. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

7.0 It is understood that if any party fails to comply with the terms of this contract, the other party may terminate the Agreement by providing sixty (60) days written notice of its intent to terminate, and allowing a period of ninety (90) days for recovery of payment of all obligations already incurred by either party, prior to such termination.

7.1 This Agreement will automatically terminate at the expiration of the Fiscal Year of the County so long as 60 days' written notice is given by one party to the other that the party wants the Agreement to terminate at the end of the Fiscal Year. If the written notice to terminate the Agreement at the end of the Fiscal Year is not given prior to 60 days before the end of the Fiscal Year, any party may still give written notice to terminate, but the effective date of the termination of the Agreement will not be until 60 days after the written notice is given

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have signed this Agreement in duplicate. One counterpart each will be delivered to COUNTY and CONTRACTOR. All portions of the Contract Documents have been signed, initialed, or identified by COUNTY and CONTRACTOR.

This Agreement will be effective October 1st, 2020

OWNER:
Yellowstone County
Billings, MT 59101

CONTRACTOR:
Alternatives, Inc

David Q Armstrong

Denis Pitman, Chair

Authorized Signature
CEO, Alternatives, Inc
9/18/2020

Attest:

Jeff Martin, Clerk and Recorder

B.O.C.C. Regular **Agenda Item 4. b.**

Meeting Date: 10/06/2020

Title: Sheriff's Office - Request For Proposals-Dunn Mtn Communications Tower Replacement

Submitted For: James Matteson, Purchasing Agent

Submitted By: James Matteson, Purchasing Agent

TOPIC:

Sheriff's Office Request For Proposals for Dunn Mountain Communications Tower Replacement

BACKGROUND:

The Yellowstone County Sheriff's Office is requesting Commissioner approval to release a Request For Proposals from qualified firms to provide all services, labor, materials and equipment for the replacement of the communications tower at Dunn Mountain. Proposals submitted must have three (3) hard copies and one (1) electronic copy of the written response to this RFP clearly marked "**RFP DUNN MOUNTAIN TOWER REPLACEMENT"** and must be received no later than 5:00 P.M. MDT on October 26th, 2020. All proposals received will be time and date stamped. All timely proposals will be opened and acknowledged at 9:30 a.m. October 27th, 2020 in the Commissioners' Board Room, 3rd Floor – Room 3108, Stillwater Building, located at 316 North 26th Street, Billings, MT 59101. All proposals that are time and date stamped later than 5:00 p.m. October 26th, 2020 will not be considered.

RECOMMENDED ACTION:

Approve the request and return a copy to Finance

Attachments

S.O. Dunn Mtn Tower Replacement RFP

YELLOWSTONE COUNTY

REQUEST FOR PROPOSAL

FOR

DUNN MOUNTAIN COMMUNICATIONS TOWER REPLACEMENT

OCTOBER 2020

REQUEST FOR PROPOSALS FOR DUNN MOUNTAIN COMMUNICATIONS TOWER REPLACEMENT

The Yellowstone County Board of County Commissioners is requesting proposals from qualified firms to provide all services, labor, materials and equipment for dismantling and removal of the current 185 foot guy-wired antenna, construction of a new identical 185 foot guy-wired load bearing antenna with proper grounding, and moving antennas to new tower and provide new coax cables. Proposals submitted must have Three (3) hard copies and one (1) electronic copy of the written response to this RFP clearly marked **"RFP DUNN MOUNTAIN TOWER REPLACEMENT"** and is received no later than 5:00 P.M. MDT on October 26th, 2020. All Proposals received will be time and date stamped. All timely proposals will be opened and acknowledged at 9:30 a.m. October 27th, 2020 in the Commissioners Board Room, 3rd Floor – Room 3108, Stillwater Building, located at 316 North 26th Street, Billings, MT 59101. All proposals that are time and date stamped later than 5:00 p.m. October 26th, 2020 will not be considered.

Information concerning this request should be addressed to James Matteson, Yellowstone County Purchasing, *jmatteson@co.yellowstone.mt.gov.*

SELECTION PROCEDURE

The County intends to evaluate and award a contract for the project without conducting discussions. However, the County reserves the right to conduct discussions if determined by the County to be in the best interest of the County at any time leading up to contract award.

EVALUATION

The evaluation of Consultants' proposals may include, but is not limited to, the following criteria:

- Capability to meet time and project budget requirements
- Recent and current work for the County
- Present and projected workloads
- Qualifications of professional personnel to be assigned to the project
- Related experience on similar projects
- Location

EVALUATION CRITERIA

The proposals being requested will be scored on the following criteria:

Qualifications and Ability to Perform Requested Services (100 Points Total)

- Past Experience and Performance on County Projects – 40 Points
- Staff Qualifications – 40 Points
- Proposal Methodology and Approach – 20 Points

Total Points **100 points**

SUBMITTAL OF INFORMATION:

Three (3) hard copies and one (1) electronic copy of the written response to this RFP, following submittal instructions, clearly marked **RFP DUNN MOUNTAIN TOWER REPLACEMENT** and be received no later than 5:00PM MDT on October 26th, 2020.

Board of County Commissioners
Room 3101
316 North 26th Street
Billings, MT 59101

Project Requirements:

- Finalize design requirements
- Provide cost estimates throughout design – Schematic Design; Design Development; Construction Documents (SD:DD:CD)
- Responsible design practices that meet established budgets
- Detailed planning/design/phasing
- Permitting through all Authorities Having Jurisdiction (AHJ's)
- Construction Administration

The costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the County are entirely the responsibility of the offeror. The County is not liable for any expense incurred by the offeror in the preparation and presentation of their proposal or any other costs incurred by the offeror prior to execution of a contract. All materials submitted become the property of the County.

SCOPE OF WORK

DUNN MOUNTAIN TOWER REPLACEMENT

A. Dismantle and Removal of 185-foot guy-wire radio Tower

B. Removal of existing guy-wire pads, fill and level pad sites

C. Provide and construct new 185-foot guy wired load bearing tower, utilizing Motorola R-56 Requirements for grounding & lightning protection

With new guy-wire pads and new guy-wires.

D. Move existing antennas to the new tower

E. Provide and install new LMR 600 coax cables to new tower

ALTERNATIVE I

A1. Dismantle and Removal of 185-foot-guy-wire radio Tower

A2. Removal of existing guy-wire pads, fill and level pad sites

A3. Provide and install a new 185 foot Self-Supporting Tower, utilizing Motorola R-56 Requirements for grounding & lightning protection

A4. Provide & install Safety Climbing Ladder

A4. Move existing antennas to the new tower

A5. Provide and install new LMR 600 coax cables to new tower

INFORMATIONAL EXHIBITS

Exhibits are attached as part of this Request For Proposal to share information that may pertain to the responses.

Exhibit "A" – Geotechnical Information
Exhibit "B" - Existing Tower Load Criteria to antenna and dishes

The successful bidder (herein after Contractor),shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County, as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) for each claim and One Million Five Hundred Thousand Dollars , ($1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County, as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County, are named as an additional insured under the Contractors insurance policy. Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Contractor agrees to defend, indemnify and hold harmless Yellowstone County from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Contractors negligence. And for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of Contractor. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County, is liable for any damages by reason of a non-delegable duty.

Contractor is required to maintain workers compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees of Yellowstone County. Workers Compensation Insurance or the exemption from the workers compensation obligation must be valid for the entire period.

INSTRUCTIONS TO PROPOSERS

Proposals Must:

1. Be signed by an officer or principal of your firm.
2. Be contained in a document not to exceed eight (8) pages total (single or double-sided printing is acceptable) including whatever pictures, charts, graphs, tables, and text the firm deems appropriate to be part of the review of the firm's qualifications. A separate transmittal letter, cover page, cover sheets, sample schedules, and dividers are exempted from the page limit. The page size is limited to 8.5 x 11 inches, with basic text information reasonably legible.
3. Include a proposed project schedule, which does not count toward the limit.

All questions and contact regarding this RFP must be submitted in writing (Email is acceptable) to:

Yellowstone County Purchasing
Attention: James Matteson
216 North 27th Street
Billings, MT 59101
406-256-2717
jmatteson@co.yellowstone.mt.gov

-END OF THIS REQUEST FOR PROPOSALS-

EXHIBIT "A"

11 page Document

GEOSCIENCE, PLLP
3949 Pine Cove Rd, Billings, MT 59102
406.697.3817 or 406.697.8113
WWW.GEOSCIENCEINC.NET

December 2, 2008

Mr. Jason Black
Sabre Communications
2101 Murray Street
Sioux City, Iowa 51102

RE: GEOTECHNICAL DESIGN SUMMARY FOR THE PROPOSED DUNN MOUNTAIN COMMUNICATIONS TOWER, SOUTH OF ROUNDUP, MONTANA

Dear Jason:

The purpose of this letter is to provide foundation design parameters for the proposed Dunn Mountain communications tower to be constructed south of Roundup, Montana. A 150-foot high, self-supporting tower will be constructed. Additionally, an approximately 200 square foot, single level equipment building will be built adjacent to the tower.

It is our understanding that soil, rock, and groundwater parameters will be provided by this office to Sabre Communications. Sabre Communications will in turn design foundations for the proposed structures.

Investigation

Representatives of GEOSCIENCE were onsite November 24th and December 1st, 2008 to observe the site and conduct a field investigation. Soil and rock type, thickness, consistency, and relative moisture content were documented in the field by a Professional Engineer and Engineering Geologist. Location and Site Maps are included in Attachment 1, Figures 1 & 2.

The tower and associated building sites are underlain by clinker (sandstone bedrock baked by subsurface burning of underlying coal seams) presumably of the Tongue River member of the Fort Union Formation. A geologic map of the site is included as Figure 3, in Attachment 1. The clinker is reddish brown to reddish gray, fine to medium-grained, moderately to highly weathered, very weak to moderately strong, and thinly to medium bedded. In zones, the sandstone has been altered to the consistency of sandy gravel to gravelly sand. Degree of alternation of the clinker may be described as baked to moderately welded.

Based on our observations, it appears excavation with a medium to large track hoe equipped with rock teeth may be suitable for shallow excavations (less than about 7 feet). Excavations deeper than about 7 feet may require alternate methods such as a hydraulic hammer or concrete breaker.

The tower and associated building sites are underlain by clinker (baked sandstone bedrock) or a very thin layer of residual sediments overlying clinker. Subsurface conditions are further described below:

> Residual Soils consisting of silty to poorly graded sand overlying bedrock were observed from ground surface to depths ranging from about 0.5 to 2 feet. The soils are described as loose, dry, and brown with scattered organics and clinker fragments.
>
> Clinker was observed at ground surface and numerous other locations across the site. The clinker is reddish brown to reddish gray, fine to medium-grained, moderately weathered, very weak to moderately strong, and thinly to medium bedded. In zones, the sandstone has been altered to the consistency of sandy gravel to gravelly sand. Clinker is formed where subsurface coal seams burn, likely due to coal outcrops being exposed to range fires. The coal may burn below ground for long periods of time, and consequently burns or bakes the overlying bedrock. Depending on heat and available oxygen, the overlying bedrock may be slightly burned to highly welded.

Estimates of shear wave velocities were used to assess ripability of bedrock materials. Results indicate soil shear wave velocities are on the order of 500 to 1,200 feet per second and clinker shear velocities are on the order of 3,000 to 5,000 feet per second.

Seeps, springs or other indications of groundwater were not observed on November 24th or December 1st, 2008. It does not appear groundwater will influence construction. Moisture conditions are, however, expected to fluctuate in response to seasonal precipitation, runoff, and snowmelt. Soil moisture conditions may increase seasonally. Study of these influences is outside the scope of these services.

Photos of the site and exposed clinker/bedrock are included as Attachment 2.

Foundations

The proposed tower may be supported on a buried mat foundation. Depending on depth, difficulties may include clinker excavation. Allowable design parameters are included in Table 1. Strength parameters for clinker/bedrock material above a depth of 5 feet have been reduce to account for weathering, fracturing, and shallow overburden. The project Structural Engineer should design the mat foundation reinforcement and check lateral loading and over-turning moments. Shallow mat foundations shall be placed a minimum of 48-inches below finished ground surface for frost protection.

Table 1: Design Parameters			
Material Type	**Allowable Bearing (psf)**	**Allowable Passive Pressure (psf)**	**Unit Weight (pcf)**
Overburden 0 to 2'	Ignore	Ignore	90
In-place Clinker 2 to 5'	2,500	350	120
In-place Clinker Below 5'	3,500	600	135
Disturbed/Excavated Clinker used as Perimeter Backfill	Ignore	350	120

Mat foundations shall be placed directly on clean sound bedrock or undisturbed clinker. Soil, loose materials, and slaked debris should be removed from the excavation prior to placing concrete for foundations. Allowable passive pressures for clinker in Table 1 may be used provided concrete is poured directly against intact clinker. If the foundation is formed/poured and then the void between the clinker and concrete mat is backfilled, allowable passive pressures should be based on the backfill material (i.e. lower soil values should be used).

The proposed equipment building may be supported on standard shallow foundations or monolithic thickened-edge slabs. Frost-protected shallow foundations (i.e. thickened-edge-slabs) placed on clean bedrock surfaces or granular structural fill are appropriate if adequately designed and properly constructed in accordance with the American Society of Civil Engineers (ASCE) Standard SEI/ASCE 32-01 *Design and Construction of Frost-Protected Shallow Foundations*.

The thickened edge portion of the slab should be placed on clean bedrock or free-draining structural fill with less than 5% fines.

Excavation

Based on our observations, it appears excavation with a medium to large track hoe equipped with rock teeth may be suitable for shallow excavations (on the order of 7 feet deep). Excavation deeper than about 7 feet may require alternate methods such as using a hydraulic hammer or concrete breaker. A qualified observer should review the foundation excavation prior placement of concrete or fill.

All excavations must conform to OSHA *Standards for Excavations*, 29 CFR Part 1926.652 Appendix B to Subpart P. Based on field observations, the materials at the site are classified as *Type C* and *Stable Rock* using OSHA classification system. *Stable Rock* may be excavated vertically for excavations not exceeding 10 feet in height. Soil overburden above the bedrock should be sloped at an angle not to exceed 1.5 H: 1 V (horizontal to vertical). Depending on moisture conditions during the time of excavation and lateral variability of the soils and bedrock,

materials should be re-classified at the time of construction to help determine required slope angles.

Fill, Fill Placement, Compaction, Site Grading

It is not anticipated that structural fill will be need for this project. If required, structural fill should conform to the following requirements or be approved by the project Geotechnical Engineer. Excavated site materials may be used for perimeter backfill, provided compaction and density are verified.

Table 2 Granular Fill Recommendations	
Gradation	**Percent finer by weight**
3-inch	100
No. 4 Sieve	40–80
No. 200 Sieve	10 Maximum
LL & PI = Non-Plastic	

Structural and perimeter backfill should be placed in maximum 12-inch loose lifts, moisture-conditioned to near optimum moisture content, and compacted to at least 95% of maximum dry density as measured by ASTM D 698. If density tests taken in the fill indicate compaction is not being achieved, fill should be scarified or removed, moisture-conditioned to within ±2 percent of optimum moisture content, and re-compacted and re-tested. No fill should be placed over frozen ground or in a frozen condition.

Care should be taken adjacent to "green" foundation concrete. Over compaction adjacent to "green" concrete may lead to foundation damage and cracking. Under no circumstances shall fill be placed using "hydro"-compaction methods. Excessive water may damage foundation elements.

The recommended minimum slope within 10 feet of the tower foundation is 1 inch vertical for 1 foot horizontal. The sloped ground should be initially constructed at a greater slope to account for settlement/consolidation of exterior backfill.

Subgrade soils and fill should be protected against frost. No concrete or structural fill shall be placed against frozen ground or contain froze materials such as snow or ice. It is the contactor's responsibility to take adequate precautions to prevent damage from frost heave or frozen subgrade.

Seismicity

The project site and general vicinity of Dunn Mountain are in an area of relatively low seismic activity. Seismic design parameters are provided below:

GEOSCIENCE, PLLP
3949 PINE COVE RD, BILLINGS, MT 59102
406.697.3817 OR 406.697.8113
WWW.GEOSCIENCEINC.NET

2% Probability of Exceedence in 50 years:	PGA	0.2 sec SA	1.0 sec SA
	4.0%g	10.0%g	3.0%g

Limitations

The conclusions and recommendations presented in this report assume that site conditions are not substantially different than that observed during the field investigation. If subsurface conditions different from those discussed in this report are observed or appear to be present during construction, Geoscience, PLLP should be advised so that we can review those conditions and reconsider our recommendations where necessary. In addition, we shall review any foundation plans for the project to help determine if the recommendations presented have been followed.

These services have been performed in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in this area under similar conditions. Any conclusions by a contractor or bidder relating to construction means, methods, techniques, sequences or costs based on the information provided in this report are not the responsibility of the Owner, Geoscience, or Sabre Communications.

It is customary for the consultant that provides design recommendations to be retained to provide observation and related services during construction. Recommendations in this report are contingent assume this office will be retained to provide foundation observations, compaction testing and verification, and review of foundation plans.

If you have any questions, please do not hesitate to contact us. As recommended above, this office should review foundation plans to help determine if the recommendations in this report have been followed. We appreciate the opportunity to provide services for your project. We look forward to working with you in the future.

Sincerely,

GEOSCIENCE, PLLP

MONTANA
JORDAN L
GROVER
No. 14300 PE
LICENSED
PROFESSIONAL ENGINEER

Jordan L. Grover, P.E.
Attachments (2)

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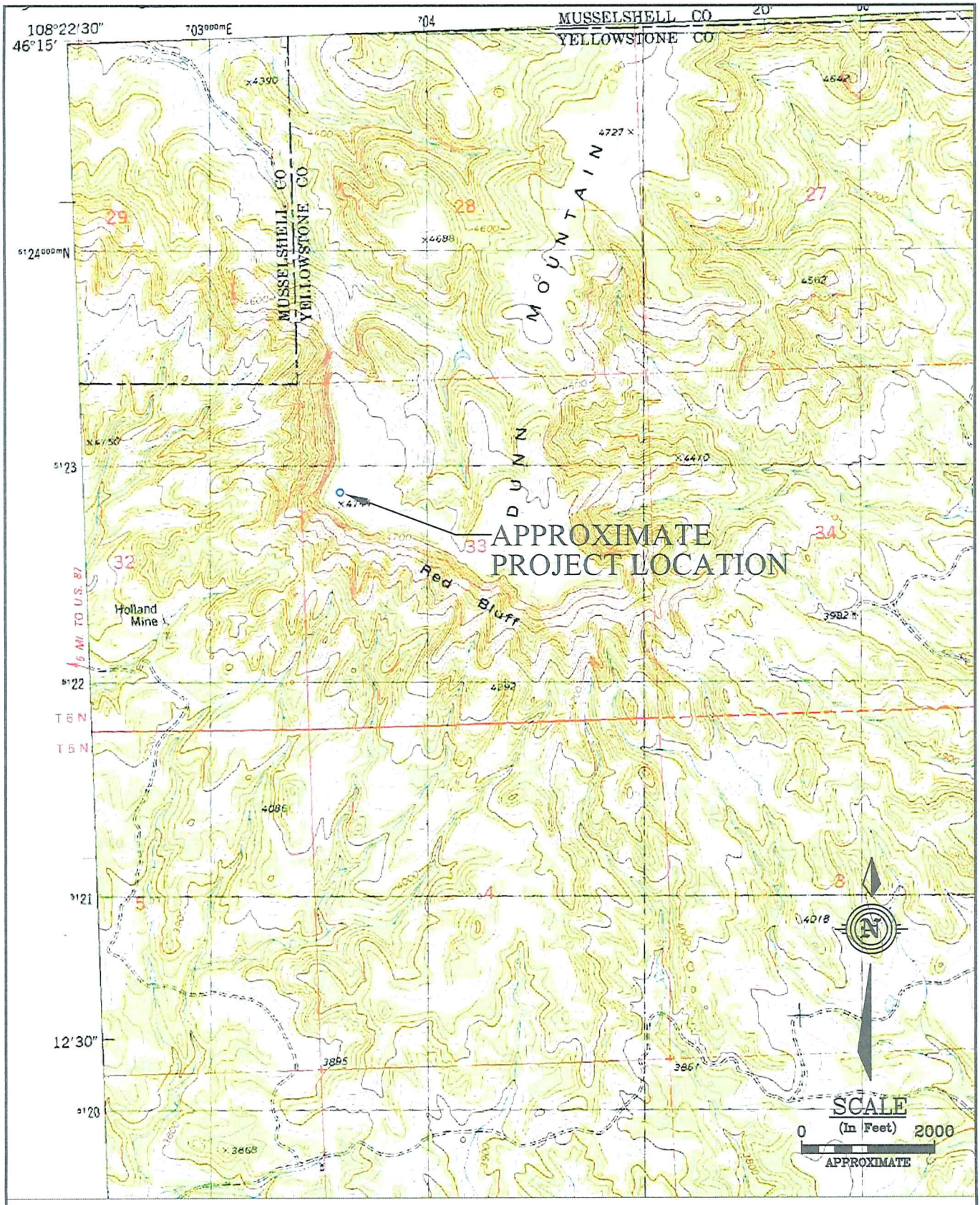
Attachment 1
Location, Site, & Geologic Maps



BASE TOPOGRAPHIC MAP FROM DUNN MOUNTAIN SOUTH 7.5 MINUTE QUADRANGLE, YELLOWSTONE COUNTY, MONTANA

Geotechnical Design Summary Proposed Dunn Mountain Tower NW 1/4 Sec. 33, T. 6 N., R. 27 E. Yellowstone County, Montana	PROJECT LOCATION MAP	FIGURE 1

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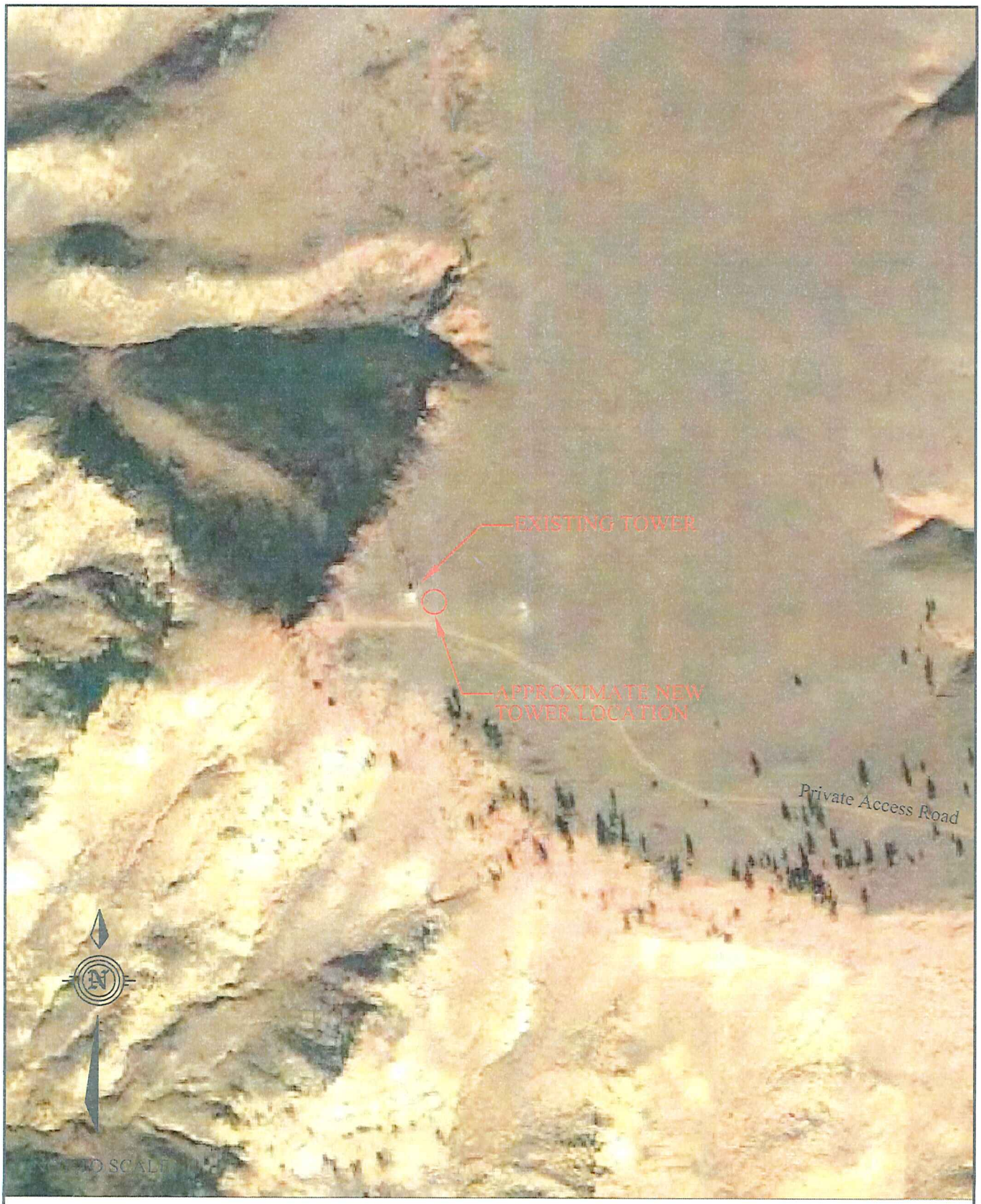
GEOSCIENCE, PLLP



BASE AERIAL MAP FROM GOOGLE EARTH, DUNN MOUNTAIN AREA, YELLOWSTONE COUNTY, MONTANA

Geotechnical Design Summary Proposed Dunn Mountain Tower NW 1/4 Sec. 33, T. 6 N., R. 27 E. Yellowstone County, Montana	SITE MAP	FIGURE 2

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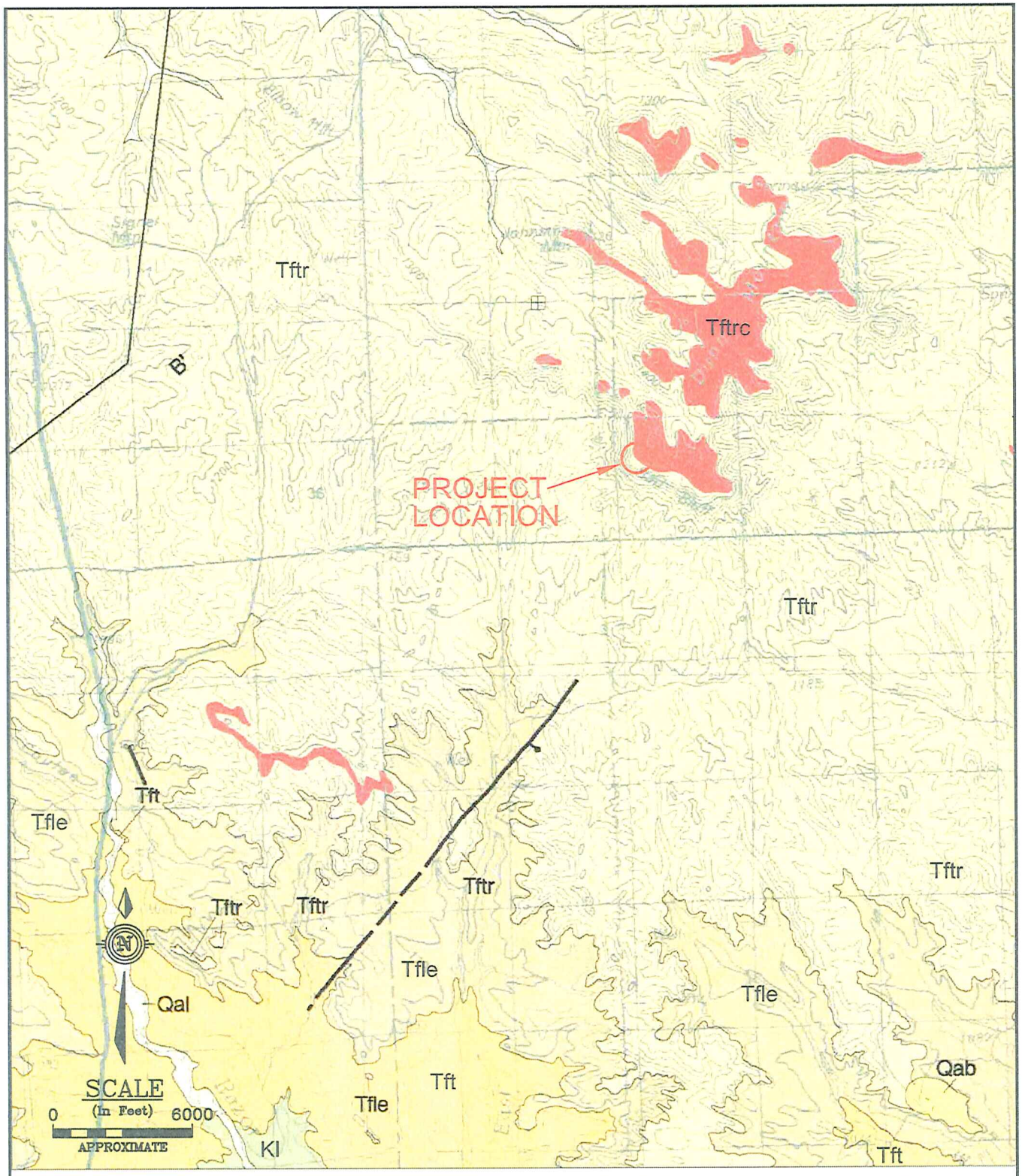
GEOSCIENCE, PLLP



GEOLOGIC MAP OF THE ROUNDUP 30'X60' QUADRANGLE, SOUTH-CENTRAL MONTANA (Wilde & Porter, 2000)

MAP UNITS:
Qal - Alluvium - Modern Stream Deposits
Qab - Alluvium of Braid Plains

Fort Union Formation:
Tftrc - Clinker
Tftr - Tongue River Member Sandstone
Tfle - Lebo Member Shale
Tft - Tullock Member Sandstone
Kl - Lance Formation - Shale & Sandstone

Geotechnical Design Summary Proposed Dunn Mountain Tower NW 1/4 Sec. 33, T. 6 N., R 27 E. Yellowstone County, Montana	GEOLOGIC MAP	FIGURE 3

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GEOSCIENCE, PLLP

Attachment 2
Site Photos

Photo 1 – View direction west. Proposed tower site in foreground, existing tower in background.

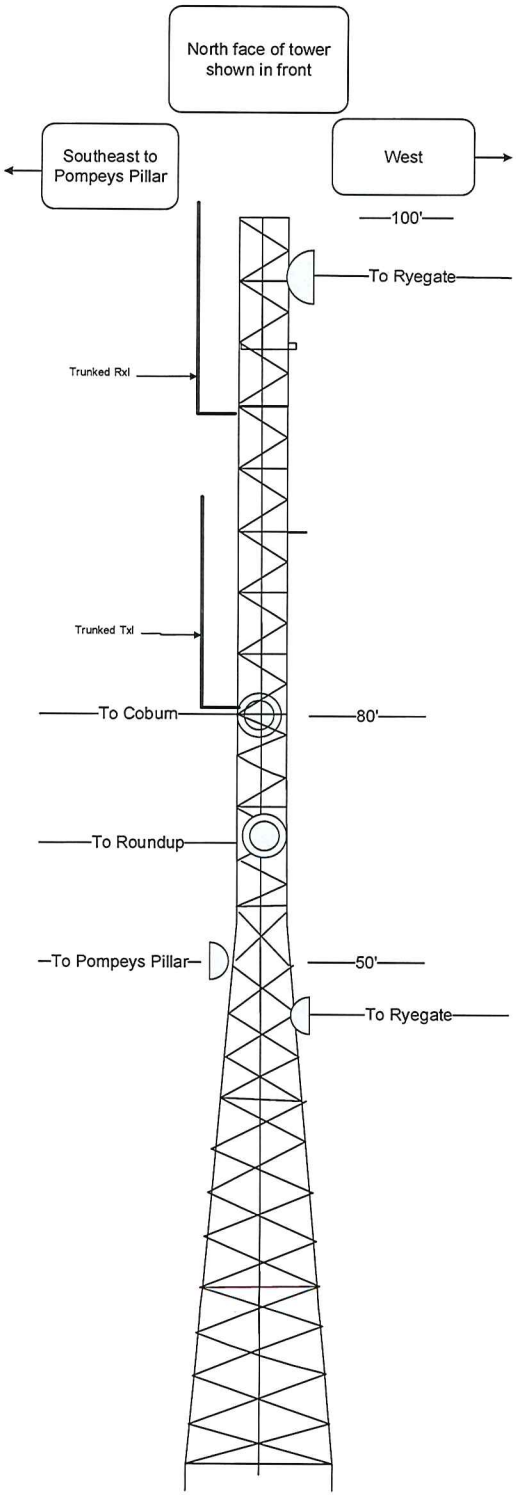
Photo 2 – Clinker (baked and fused sandstone) outcrop south of tower site.

EXHIBIT "B"

Existing Tower Structural Design Report

Dunn Mountain Radio Site

100 FT TOWER
46° 13' 50.9 "N
108° 21' 39.0 "W
NAD83 Datum



Microwave Dish Locations

To Cobum (32.3 mi)
- Direction – 188.63°
- 6 ft Dish at 80 ft.

To Pompeys Pillar (23.07 mi)
- Direction –126.66°
- 8 ft Dish at 50 ft.

Future path to Roundup Airport (`19 Miles)
- Direction –??°
- ? ft Dish at ? ft.

Future path to Ryegate (`44 Miles)

VHF Frequencies

Yellowstone County
Transmit ??? MHz
Receive ??? MHz

Musselshell County
Transmit ??? MHz
Receive ??? MHz

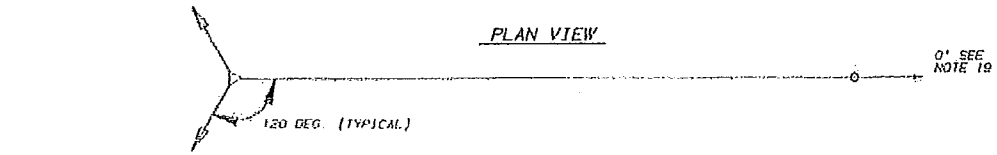
IMTC Standard Microwave Minimum Dish Loading Specification

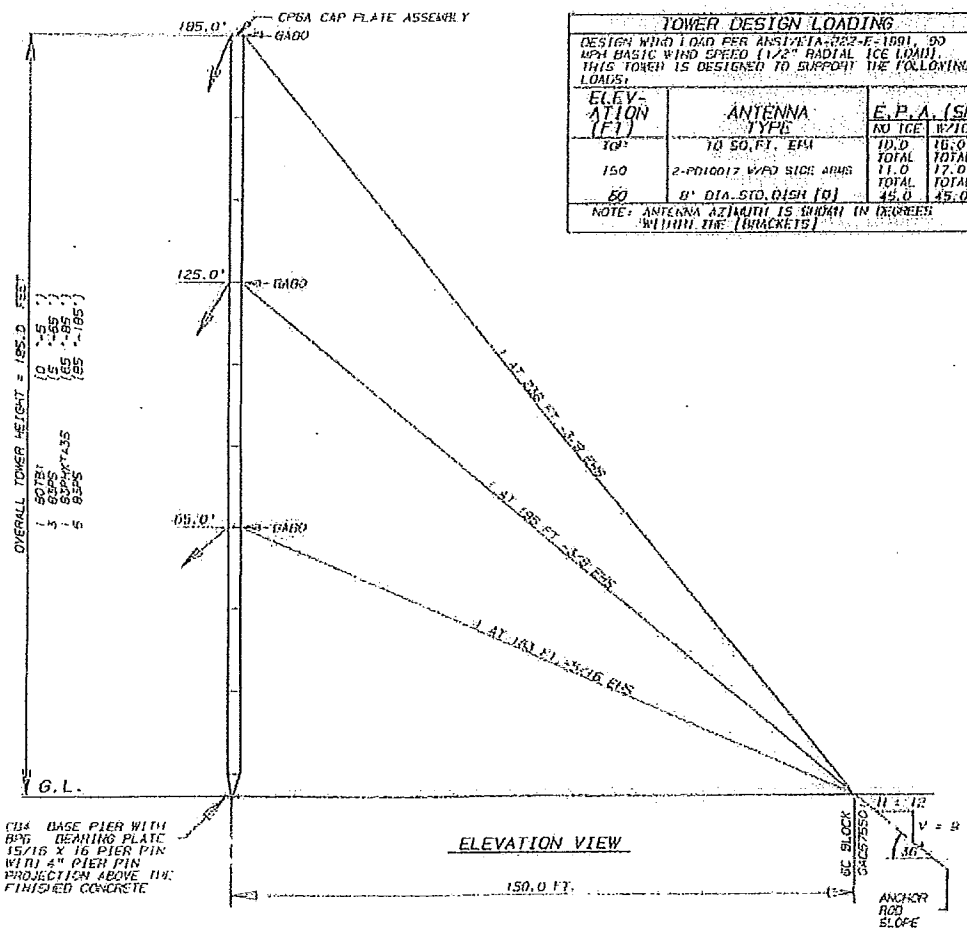
Six (6) ten (10) foot dish antennas with radomes at the following locations:
One on each of the three legs at the 90 ft level,
One on each leg at 40 feet
Primary frequency 6 gig

Eleven (11), twenty one (21) foot radio antennas (LMR 600) using 3' side arm mount @ the following locations:
Two (2) on top of tower,
Three (3), one on each leg, 30 ft. below the top of the tower
Three (3), one on each leg, at 60 ft.' level above the ground
Three (3), one on each leg, 30 ft. level above the ground

EXHIBIT "B"

1 page





TOWER DESIGN LOADING

DESIGN WIND LOAD PER ANSI/EIA-222-E-1991, 90 MPH BASIC WIND SPEED (1/2" RADIAL ICE LOAD). THIS TOWER IS DESIGNED TO SUPPORT THE FOLLOWING LOADS:

ELEVATION (FT)	ANTENNA TYPE	E.P.A. (SF) NO ICE	E.P.A. (SF) W/ICE
90'	10 SQ.FT. EPA	10.0 TOTAL	16.0 TOTAL
150	2-PD10017 WRD SIDE ARMS	11.0 TOTAL	17.0 TOTAL
60	8' DIA.STD.DISH (0)	45.0 TOTAL	45.0 TOTAL

NOTE: ANTENNA AZIMUTH IS SHOWN IN DEGREES WITHIN THE (BRACKETS)

BILL OF MATERIALS

ITEM	QTY.	UNIT	PART NO.	ITEM DESCRIPTION	DWG. NO.
1	1	EA.	6010J	5' WELDED TAPERED BASE	C911050
2	11	EA.	6H5	20' NO. 80 TOWER SECTION	T601258
3	1	EA.	6H20/17A35	20' NO. 80 TOWER SECTION	C000683
4	3	EA.	6A80	GUY ASSEMBLY (MACHINE W/TORQUE BARS)	L855391
5	1	EA.	CP6	BEARING PLATE	N/A
6	1	EA.	15/16X16P	PIER PIN FOR TAPERED BASE	N/A
7	550	LF.	5/16EHS	5/16" EHS GUY WIRE	N/A
8	1450	LF.	3/4EHS	3/4" EHS GUY WIRE	N/A
9	9	EA.	3/4TURN35	3/4" TURNBUCKLE - OPEN JAW	N/A
10	6	EA.	6G2146	5/16 DIA GRIP WEDGE(S)	1X00607
11	12	EA.	6G2147	3/4 DIA GRIP WEDGE(S)	1X00607
12	6	EA.	7/16THIMBLE	7/16 INX THIMBLE	N/A
13	12	EA.	1/2THIMBLE	1/2 INX THIMBLE	N/A
14	1	EA.	DET	FOUNDATION AND ANCHOR TOLERANCE	A010214
15	1	EA.	DET	ANCHOR ATTACHMENT DETAIL	D155511
16	3	EA.	TURNSAFETY	TURNBUCKLE SAFETY DEVICE	D980324
17	1	EA.	DET	DISH INSTALLATION ASSY	A780135
18	1	EA.	DET	STRUTBAR TO TAIL	D611564
19	1	EA.	CP6A	CAP PLATE ASSY	D700210
20	9	EA.	4X00.50	GUY WIRE GENERAL CLAMP (5/16-3/4)	C411105
21	1	EA.	DET	GENERAL SOIL INSTALLATION NOTES	D811590
22	2	EA.	6BK1	DARK PROPAGATION KIT	C411109
23	1	EA.	4BK1	ANCHOR GROUNDING KIT	C411105
24	3	EA.	6AC2/2H01	ANCHOR ROD	N900415
25	3.0	C.Y.	N/A	GC ANCHOR BLOCK-3 AT 1.0 C.Y. EA.	L658043
26	2.1	C.Y.	N/A	GC BASE PIER - 1 AT 2.1 C.Y.	C601527
27	5.1	C.Y.	N/A	TOTAL CONCRETE REQUIRED	N/A

GENERAL NOTES

1. ROHN COMMUNICATION TOWER DESIGNS CONFORM TO E.I.A.-222-E UNLESS OTHERWISE SPECIFIED UNDER TOWER DESIGN LOADING. TOWER DESIGN MAY OR MAY NOT CONFORM TO LOCAL, STATE, OR FEDERAL REQUIREMENTS.
2. THE DESIGN LOADING CRITERIA INDICATED HAS BEEN PROVIDED TO ROHN. THE DESIGN LOADING CRITERIA HAS BEEN ASSUMED TO BE BASED ON SITE-SPECIFIC DATA IN ACCORDANCE WITH ANSI/EIA-222-E AND MUST BE VERIFIED BY OTHERS PRIOR TO INSTALLATION.
3. 10 PERCENT WILL BE ADDED TO THE GUY LENGTH SHOWN FOR THE FINISHED CUT LENGTHS.
4. THE TURNBUCKLE SAFETY METHOD WILL BE USED. REFER TO THE LATEST REVISION OF DRAWING D980324 FOR INSTALLATION.
5. REFER TO THE LATEST REVISIONS OF THE DRAWINGS SHOWN IN THE BILL OF MATERIALS.
6. PAL NUTS ARE PROVIDED FOR ALL TOWER BOLTS (SEE DWG. A780135).
7. IT SHALL BE THE RESPONSIBILITY OF THE ERECTOR TO TEMPORARILY GUY THE STRUCTURE WHEN REQUIRED DURING ERECTION TO MAINTAIN THE STABILITY OF THE STRUCTURE AND TO PREVENT OVERLOADING ANY MEMBER OF THE STRUCTURE.
8. FABRICATION DRAWINGS IF REFERENCED, ARE FOR SHOP USE ONLY.
9. WORK SHALL BE IN ACCORDANCE WITH E.I.A.-222-E, "STRUCTURAL STANDARDS FOR STEEL ANTENNA TOWERS AND ANTENNA SUPPORTING STRUCTURES".
10. TOLERANCE ON TOWER STEEL HEIGHT IS EQUAL TO PLUS 1% OR MINUS 1/2%.
11. PURCHASER SHALL VERIFY THE INSTALLATION IS IN CONFORMANCE WITH LOCAL, STATE, AND FEDERAL REQUIREMENTS FOR OBSTRUCTION MARKING AND LIGHTING.
12. TOWER MEMBER DESIGN DOES NOT INCLUDE STRESSES DUE TO ERECTION SINCE ERECTION EQUIPMENT AND CONDITIONS ARE VARIANT. DESIGN ASSUMES COMPETENT AND QUALIFIED PERSONNEL WILL ERECT THE TOWER.
13. ROHN SHALL HAVE THE OPTION TO REVIEW FINAL DISH LOCATIONS, AZIMUTHS AND MOUNTS TO VERIFY THAT ASSUMED TORQUE VALUES, AND LOCAL STRESSES ARE NOT EXCEEDED.
14. TOWER ORIENTATION TO BE DETERMINED BY OTHERS.
15. DESIGN ASSUMES PD TYPE ANTENNAS ARE MOUNTED SYMMETRICALLY TO MINIMIZE TORQUE.
16. DISH MOUNTS ARE TO BE PROVIDED BY OTHERS.
17. SIDE ARMS ARE TO BE PROVIDED BY OTHERS.
18. DISH AZIMUTHS SHOWN ARE NOMINAL AZIMUTHS USED FOR DESIGN. ACTUAL AZIMUTHS (TO BE DETERMINED BY OTHERS) MAY NOT RESULT IN INCREASED DESIGN LOADS.
19. THE TOWER AZIMUTH SHOWN IS A RELATIVE AZIMUTH USED TO ESTABLISH THE RELATIVE POSITION OF ANTENNAS WITH RESPECT TO THE TOWER FOR DESIGN.
20. STEP BOLTS ARE PROVIDED FOR CLIMBING THE ENTIRE HEIGHT OF TOWER.
21. DESIGN ASSUMES LEVEL GRADE AT TOWER SITE.
22. INITIAL INSTALLATION OF THIS TOWER WILL NOT INCLUDE A TORQUE ARM AT THE 60' ELEVATION. A 5/16 EHS GUY WIRE WILL BE INSTALLED AT THE 65' ELEVATION. THE TORQUE ARM WILL BE ADDED IN THE FUTURE WHEN THE 8' DISH AT 50' ELEVATION IS ADDED TO THE TOWER.

GUY WIRE DATA

GUY ELEVATION	SIZE (IN)	TYPE	ULT. STR. (LBS)	IN. T. (LBS)		TURN-BUCKLE	SHACKLE (IN)	THIMBLE (IN)
65	5/16	1X6	11200.0	1120.0		3/4"	---	7/16 HVY
125, 185	3/4	1X6	15400.0	1540.0		3/4"	---	1/2 HVY

TOWER SITE: BILLINGS, MT.

REACTIONS

AT	VERT. (K)	HORIZ. (K)
BASE (0.0 FT)	35.0 KIPS	
150.0 FT	12.6 KIPS	17.5 KIPS

No.	Revision Description	Date	By	Rev. By	Eng. By	Appd. By

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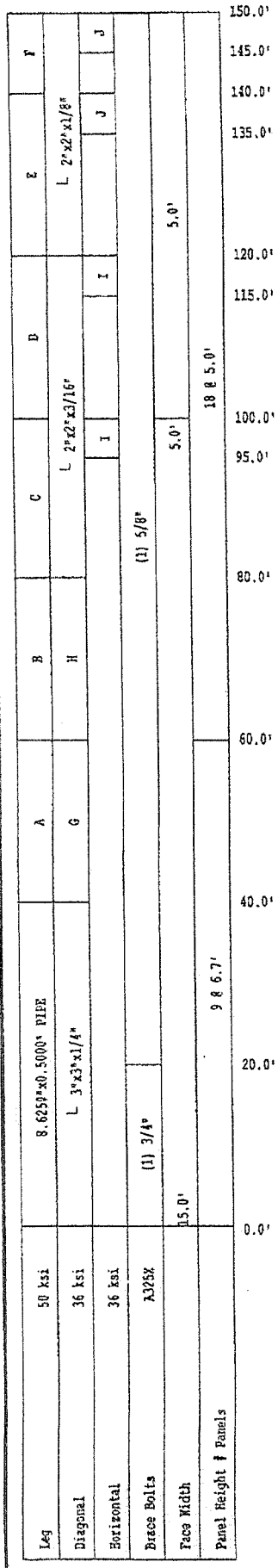
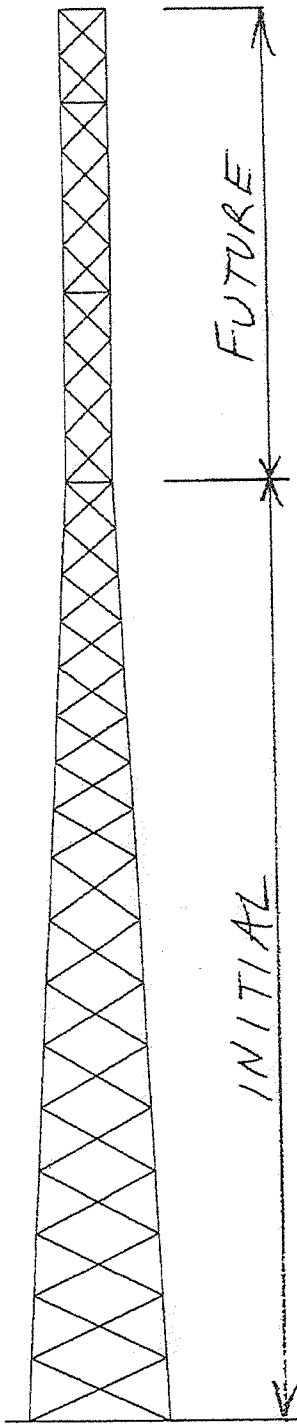
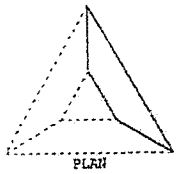
ROHN

Section NOE	By	Date	Title: 185' NO. 80 TOWER ASSEMBLY FOR CONOCO, INC.
Drawn:	CER	8/24/93	
Checked:	WDM	8-27-93	
App. Engr.:	JK	8-27-93	
App. Sales:	KHN	8-27-93	ENG. FILE: 30165AE DRAWING NO.: C931000







NOTES:
1. The tower model is S37L Series HD1.
2. Transmission lines are to be attached to standard 12 hole single rail waveguide ladders.
3. Azimuths are relative (not based on true north).
4. Foundation loads shown are maximums.
5. (6) 1 1/2" dia. F1554 grade 105 anchor bolts per leg. Minimum 58" embedment from top of concrete to top of nut.
6. All unequal angles are oriented with the short leg vertical.

ANTENNA LIST

NO	ELEV	ANTENNA	TX-LINE
1	160.5'	(3) 21' Omni	
2	150'	(3) 3ft Sidearms	(3) LMR 600
3	130.5'	(3) 21' Omni	
4	120'	(3) 3ft Sidearms	(3) LMR 600
5	110.5'	(2) 21' Omni	
6	100'	(2) 3ft Sidearms	(2) LMR 600
7	94'	(1) 6' Solid Dish W/ Radome	(1) EW63
8	90'	(3) 10' Solid Dish W/ Radome	(3) EW63
9	70'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600
10	60'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600
11	40'	(3) 10' Solid Dish W/ Radome	(3) EW63
12	30'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600

MATERIAL LIST

NO	TYPE
A	5.5625"x0.5000" PIPE
B	5.5625"x0.3750" PIPE
C	4.5000"x0.3370" PIPE
D	4.0000"x0.3180" PIPE
E	2.8750"x0.2030" PIPE
F	2.3750"x0.1540" PIPE
G	L 2-1/2"x2-1/2"x1/4"
H	L 2-1/2"x2-1/2"x3/16"
I	L 2"x2"x3/16"
J	L 2"x2"x1/8"

STATE OF MONTANA
KEITH J. TINDALL
No. 14026 PE
LICENSED PROFESSIONAL ENGINEER

9/14/09

TOTAL FOUNDATION LOADS

H=63.14k
V=43.21k
M=4652.27k-ft
T=5.33k-ft

INDIVIDUAL FOOTING LOADS

H=37.53k
V=372.53k
U=-310.37k

Sabre Towers And Poles
2101 Murray Street (P.O. Box 658), Sioux City, IA 51111
Phone: (712) 258-6690 Fax: (712) 258-8250

Client: INTEROPERABILITY MONTANA
Job No: 10-09020
Date: 3 sep 2009
Location: Dunn Mountain, MT
Total Height: 150.00'
Tower Height: 150.00'
Standard: EIA/TIA 222-F-1996
Design Wind & Ice: 100 mph + 1" ice (concurrent)

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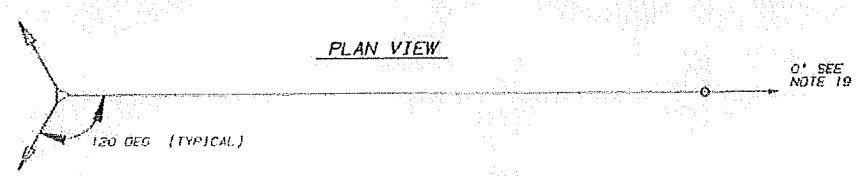
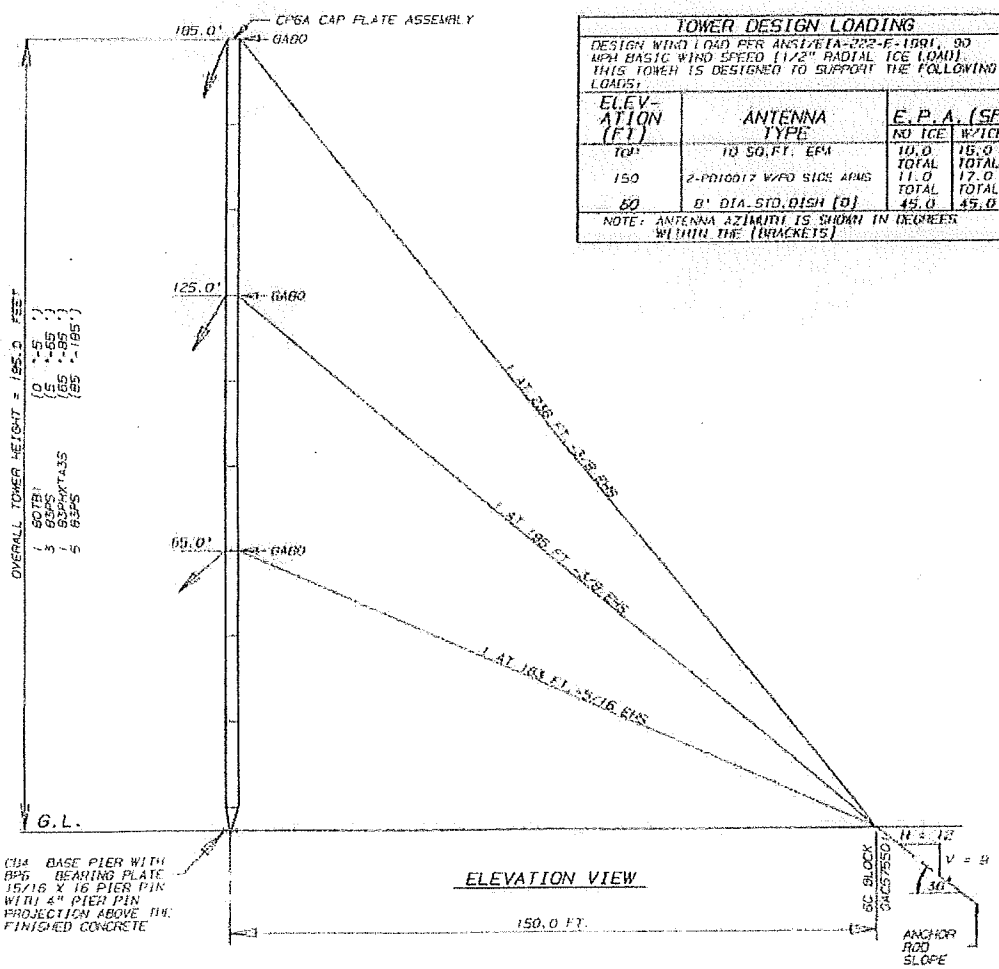
PLAN VIEW





TOWER DESIGN LOADING

DESIGN WIND LOAD PER ANSI/EIA-222-E-1991, 90 MPH BASIC WIND SPEED (1/2" RADIAL ICE LOAD). THIS TOWER IS DESIGNED TO SUPPORT THE FOLLOWING LOADS:

ELEVATION (FT)	ANTENNA TYPE	E.P.A. (SF) NO ICE	E.P.A. (SF) W/ICE
TOP	10 SQ.FT. EPA	10.0 TOTAL	15.0 TOTAL
150	2-PD10017 W/PD SIDE ARMS	11.0 TOTAL	17.0 TOTAL
80	8' DIA.STD.DISH (0)	45.0	45.0

NOTE: ANTENNA AZIMUTH IS SHOWN IN DEGREES WITHIN THE (BRACKETS)

BILL OF MATERIALS

ITEM	QTY.	UNIT	PART NO.	ITEM DESCRIPTION	DWG. NO.
1	1	EA.	BOTB1	5' BELLED TAPERED BASE	C911059
2	8	EA.	BSPS	20' NO. 80 TOWER SECTION	C911228
3	1	EA.	BSPHKT435	20' NO. 80 TOWER SECTION	C900482
4	3	EA.	GA60	GUY ASSEMBLY(BRACKET W/TORQUE DAMP)	C860481
5	1	EA.	BP6	BEARING PLATE	N/A
6	1	EA.	15/16X16"	PIER PIN FOR TAPERED BASE	N/A
7	550	LF.	5/16EHS	5/16" EHS GUY WIRE	N/A
8	1450	LF.	5/8EHS	5/8" EHS GUY WIRE	N/A
9	9	EA.	5/8TUR33	5/8" TURNBUCKLE - EYE & JAW	N/A
10	6	EA.	B65146	5/16 DIA GRIP W/KEEPER	B200807
11	12	EA.	B63147	5/8 DIA GRIP W/KEEPER	B200807
12	6	EA.	1/16THB1	1/16 HVY THIMBLE	N/A
13	12	EA.	1/2THB1	1/2 HVY THIMBLE	N/A
14	1	EA.	BLT	FOUNDATION AND ANCHOR TOLERANCE	B600314
15	1	EA.	BEF	ANCHOR ATTACHMENT DETAIL	B600311
16	3	EA.	TUSAFETY	TURNBUCKLE SAFETY DEVICE	B660324
17	1	EA.	BEF	BOLT INSTALLATION ASSY	A790135
18	1	EA.	BEF	STEP BOLT DETAIL	B651264
19	1	EA.	CPGA	CAP PLATE ASSY	B760230
20	9	EA.	S4000-0	GUY WIRE GENERAL CLAMP (5/16-5/8)	C711105
21	1	EA.	BEF	NORMAL SOIL FOUNDATION MINUS	D911260
22	2	EA.	BGK1	BASE GROUNDING KIT	C711105
23	1	EA.	AGK1	ANCHOR GROUNDING KIT	C711105
24	3	EA.	GAC5750T	ANCHOR ROD	B660415
25	3.0	C.Y.	N/A	60 ANCHOR BLOCK-3 AT 1.0 C.Y. EA.	C660413
26	2.1	C.Y.	N/A	CD4 BASE PIER - 1 AT 2.1 C.Y.	C611551
27	5.1	C.Y.	N/A	TOTAL CONCRETE REQUIRED	N/A

GENERAL NOTES

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3. 10 PERCENT WILL BE ADDED TO THE GUY LENGTH SHOWN FOR THE FINISHED CUT LENGTHS.
4. THE TURNBUCKLE SAFETY METHOD WILL BE USED. REFER TO THE LATEST REVISION OF DRAWING B660324 FOR INSTALLATION.
5. REFER TO THE LATEST REVISIONS OF THE DRAWINGS SHOWN IN THE BILL OF MATERIALS.
6. PAL NUTS ARE PROVIDED FOR ALL TOWER BOLTS(SEE DWG. A790135).
7. IT SHALL BE THE RESPONSIBILITY OF THE ERECTOR TO TEMPORARILY GUY THE STRUCTURE WHEN REQUIRED DURING ERECTION TO MAINTAIN THE STABILITY OF THE STRUCTURE AND TO PREVENT OVERLOADING ANY MEMBER OF THE STRUCTURE.
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12. TOWER MEMBER DESIGN DOES NOT INCLUDE STRESSES DUE TO ERECTION SINCE ERECTION EQUIPMENT AND CONDITIONS ARE UNKNOWN. DESIGN ASSUMES COMPETENT AND QUALIFIED PERSONNEL WILL ERECT THE TOWER.
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20. STEP BOLTS ARE PROVIDED FOR CLIMBING THE ENTIRE HEIGHT OF TOWER.
21. DESIGN ASSUMES LEVEL GRADE AT TOWER SITE.
22. INITIAL INSTALLATION OF THIS TOWER WILL NOT INCLUDE A TORQUE ARM AT THE 68' ELEVATION. A 5/16 EHS GUY WIRE WILL BE INSTALLED AT THE 65' ELEVATION. THE TORQUE ARM WILL BE ADDED IN THE FUTURE WHEN THE 8' DISH AT 50' ELEVATION IS ADDED TO THE TOWER.

GUY WIRE DATA

GUY ELEVATION	SIZE (IN)	TYPE	ULT. STR. (LBS)	IN. T. (LBS)	TURNBUCKLE	SHACKLE (IN)	THIMBLE (IN)
68	5/16	1x19	11200.0	1120.0	3/4"	---	1/16 HVY
125, 105	5/8	1x19	15400.0	1540.0	3/4"	---	1/2 HVY

TOWER SITE: BILLINGS, MT.

REACTIONS

AT	VERT. (K)	HORIZ. (K)
BASE (0.0 FT)	33.0 KIPS	
150.0 FT	12.8 KIPS	17.5 KIPS

No. & Revision Description	& Date & Rev By & Chk By & Appd By

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ROHN

Geotech NOTE	By	Date
Drawn:	CSR	8/24/93
Checked:	WDM	8-27-93
App. Eng.:	TS	8-27-93
App. Sales:	BAN	8-27-93

Title: 185' NO. 80 TOWER ASSEMBLY FOR CONOCO, INC.

ENG. FILE: 30165AE | DRAWING NO.: C931000

Sabre™
Towers & Poles

Structural Design Report

100' Extendible to 150' S3TL Series HD1 Self-Supporting Tower
located at: Dunn Mountain, MT

prepared for: INTEROPERABILITY MONTANA
by: Sabre Towers & Poles ™

Job Number: 10-09020

September 14, 2009

Tower Profile 1

Maximum Leg Loads 2

Maximum Diagonal Loads 3

Maximum Foundation Loads 4

Calculations A1-A8

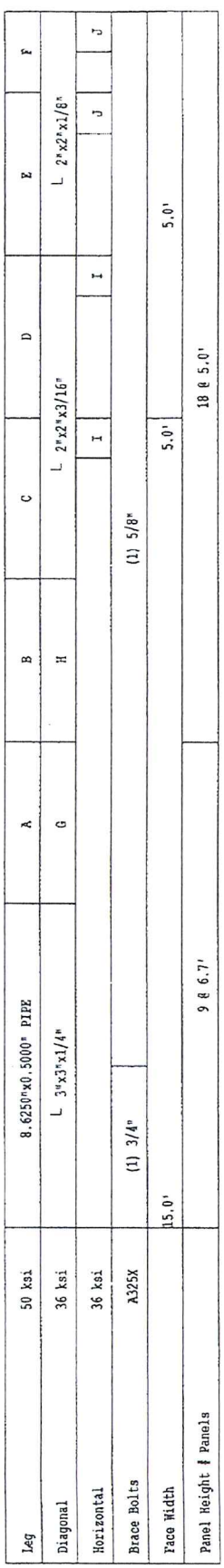
STATE OF MONTANA
KEITH J. TINDALL
No. 14026 PE
LICENSED PROFESSIONAL ENGINEER

9/14/09

Tower by TRJ

Foundation by NJS

Approved by KJT



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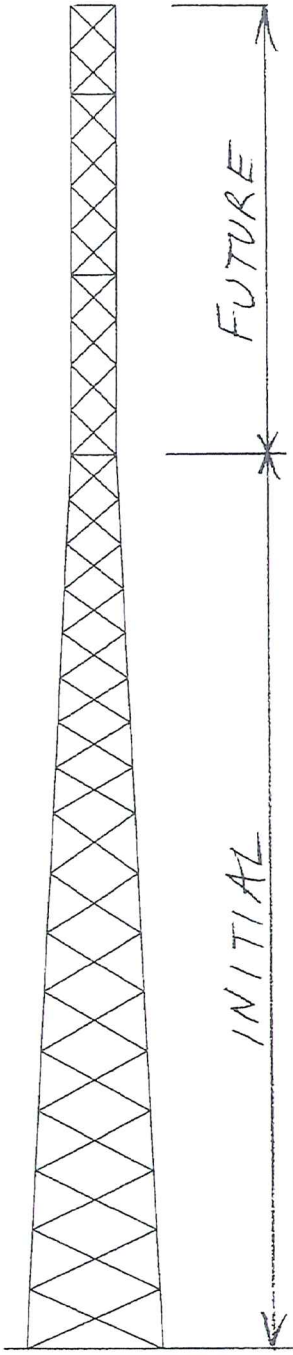
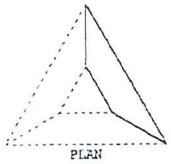




NOTES:
1. The tower model is S3TL Series HD1.
2. Transmission lines are to be attached to standard 12 hole single rail waveguide ladders.
3. Azimuths are relative (not based on true north).
4. Foundation loads shown are maximums.
5. (6) 1 1/2" dia. F1554 grade 105 anchor bolts per leg. Minimum 58" embedment from top of concrete to top of nut.
6. All unequal angles are oriented with the short leg vertical.

ANTENNA LIST

NO	ELEV	ANTENNA	TX-LINE
1	160.5'	(3) 21' Omni	
2	150'	(3) 3ft Sidearms	(3) LMR 600
3	130.5'	(3) 21' Omni	
4	120'	(3) 3ft Sidearms	(3) LMR 600
5	110.5'	(2) 21' Omni	
6	100'	(2) 3ft Sidearms	(2) LMR 600
7	94'	(1) 6' Solid Dish W/ Radome	(1) EW63
8	90'	(3) 10' Solid Dish W/ Radome	(3) EW63
9	70'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600
10	60'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600
11	40'	(3) 10' Solid Dish W/ Radome	(3) EW63
12	30'	(3) 21' Omni + (3) 3ft Sidearms	(3) LMR 600

MATERIAL LIST

NO	TYPE
A	5.5625"x0.5000" PIPE
B	5.5625"x0.3750" PIPE
C	4.5000"x0.3370" PIPE
D	4.0000"x0.3180" PIPE
E	2.8750"x0.2030" PIPE
F	2.3750"x0.1540" PIPE
G	L 2-1/2"x2-1/2"x1/4"
H	L 2-1/2"x2-1/2"x3/16"
I	L 2"x2"x3/16"
J	L 2"x2"x1/8"

STATE OF MONTANA
KEITH J. TINDALL
No. 14026 PE
LICENSED PROFESSIONAL ENGINEER

9/14/09

TOTAL FOUNDATION LOADS

H=63.14k
V=43.21k
M=4652.27k-ft
T=5.33k-ft

INDIVIDUAL FOOTING LOADS

H=37.53k
V=372.53k
U=-310.37k

Sabre Towers & Poles

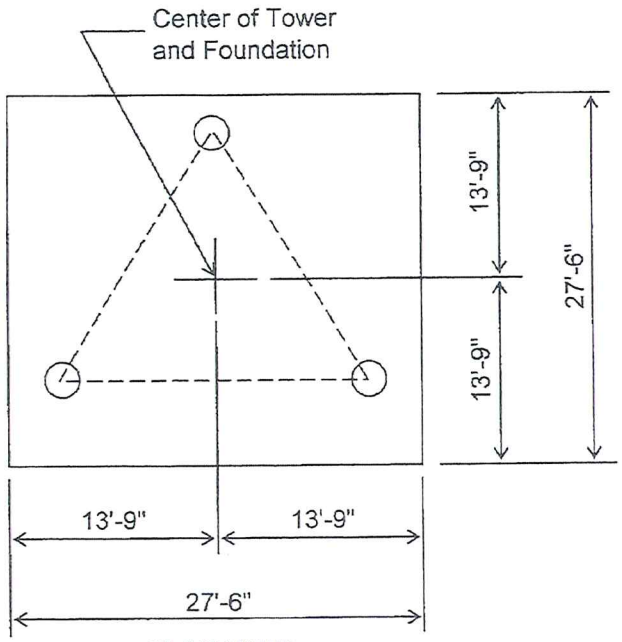
Sabre Towers And Poles
2101 Murray Street (P.O. Box 658), Sioux City, IA 51111
Phone: (712) 258-6690 Fax: (712) 258-8250

Client: INTEROPERABILITY MONTANA Job No: 10-09020 Date: 3 sep 2009
Location: Dunn Mountain, MT Total Height: 150.00' Tower Height: 150.00'
Standard: EIA/TIA 222-F-1996 Design Wind & Ice: 100 mph + 1" ice (concurrent)

No.: 10-09020
2
Date: 9/14/09
By: NJS

Customer: INTEROPERABILITY MONTANA
Site: Dunn Mountain, MT

100 ft. Ext. to 150 ft. Model S3TL Series HD1 Self Supporting Tower At
100 mph Wind + 1 in. Ice (concurrent) per ANSI/TIA/EIA-222-F-1996.
Antenna Loading per Page 1



PLAN VIEW

Notes:

1). Concrete shall have a minimum 28-day compressive strength of 3000 PSI, in accordance with ACI 318-05.

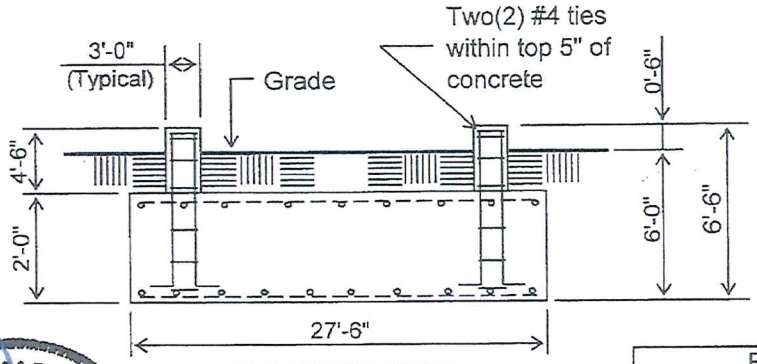
2). Rebar to conform to ASTM specification A615 Grade 60.

3). All rebar to have a minimum of 3" concrete cover.

4). All exposed concrete corners to be chamfered 3/4".

5). The foundation design is based on the geotechnical report by Geoscience; Dated 12/02/08.

6). See the geotechnical report for compaction requirements, if specified.



ELEVATION VIEW

(59.55 Cu. Yds.)
(1 REQUIRED; NOT TO SCALE)

Rebar Schedule per Mat and per Pier	
Pier	(14) #8 vertical rebar w/hooks at bottom w/#4 Rebar ties, two (2) within top 5" of pier then 12" C/C
Mat	(44) #8 horizontal rebar evenly spaced each way top and bottom. (176 total)

STATE OF MONTANA
KEITH J. TINDALL
No. 14026 PE
LICENSED
PROFESSIONAL ENGINEER

9/14/09

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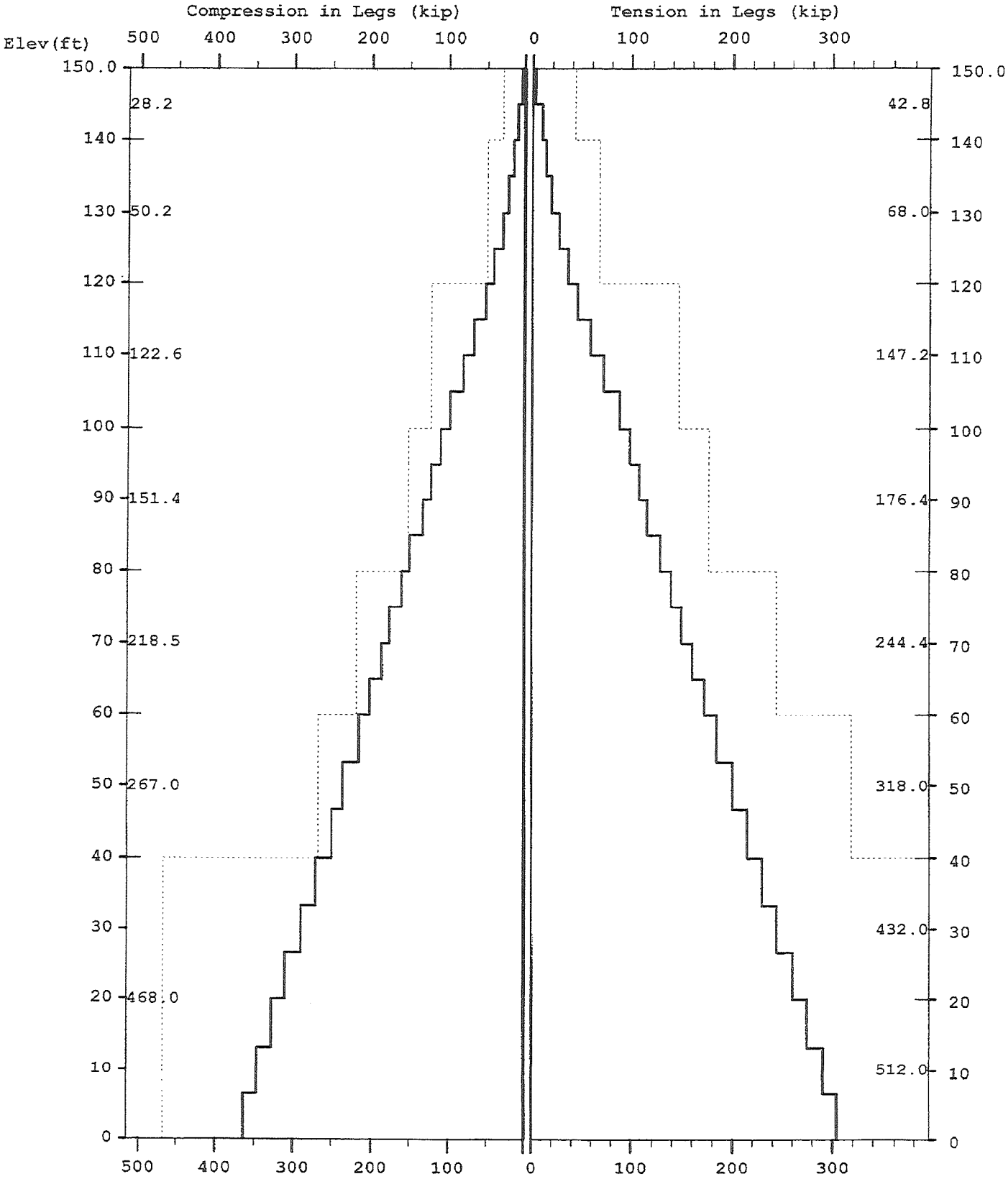
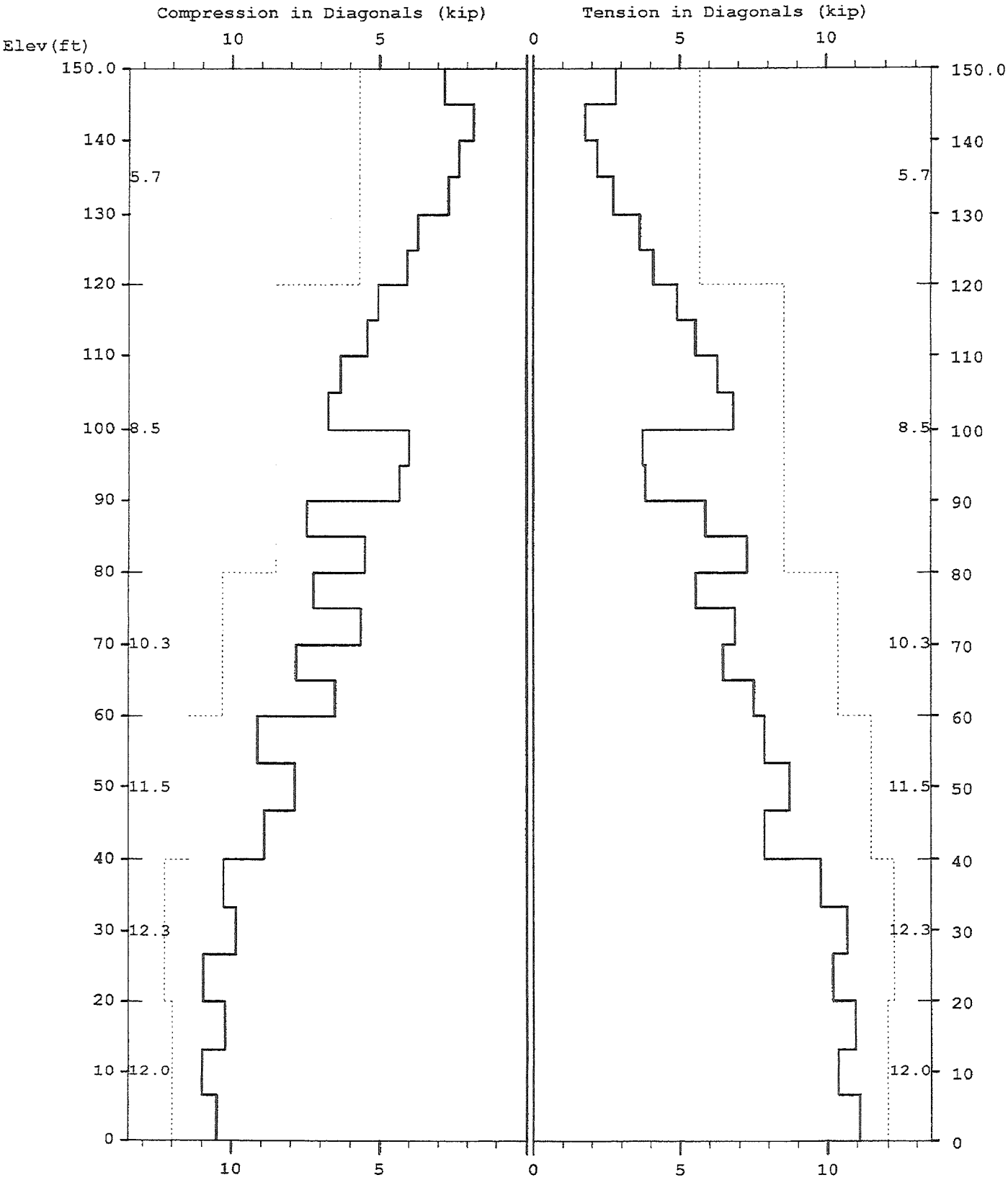
2101 Murray St - P.O.Box 658 - Sioux City, IA 51102-0658 - Phone 712.258.6690 - Fax 712.258.8250

100' ext. to 150' S3TL INTEROPERABILITY MONTANA Dunn Mountain MT (10-09020)
Maximum

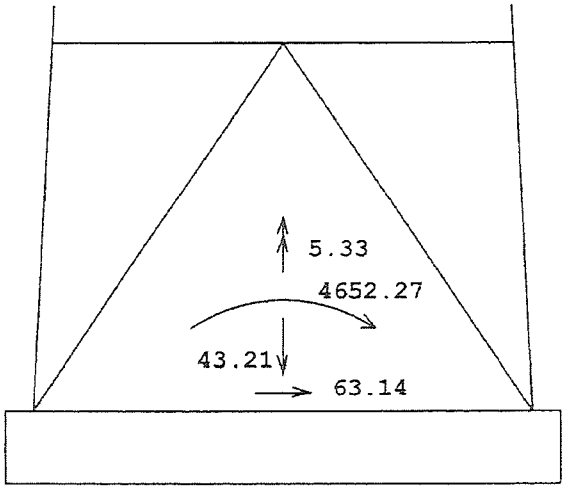


100' ext. to 150' S3TL INTEROPERABILITY MONTANA Dunn Mountain MT (10-09020)
Maximum

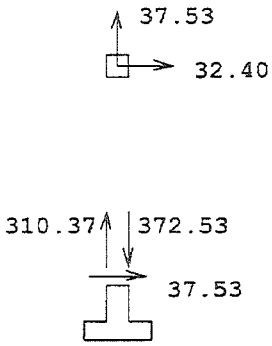


100' ext. to 150' S3TL INTEROPERABILITY MONTANA Dunn Mountain MT (10-09020)
Maximum

TOTAL FOUNDATION LOADS (kip, ft-kip)



INDIVIDUAL FOOTING LOADS (kip)



MAST - Latticed Tower Analysis (Unguyed) (c)1997 Guymast Inc. 416-736-7453
Processed under license at:

Sabre Towers And Poles on: 3 sep 2009 at: 11:30:26

100' ext. to 150' S3TL INTEROPERABILITY MONTANA Dunn Mountain MT (10-09020) T

MAST GEOMETRY (ft)

PANEL TYPE	NO.OF LEGS	ELEV.AT BOTTOM	ELEV.AT TOP	F.W..AT BOTTOM	F.W..AT TOP	TYPICAL PANEL HEIGHT
X	3	145.00	150.00	5.00	5.00	5.00
X	3	140.00	145.00	5.00	5.00	5.00
X	3	135.00	140.00	5.00	5.00	5.00
X	3	120.00	135.00	5.00	5.00	5.00
X	3	115.00	120.00	5.00	5.00	5.00
X	3	100.00	115.00	5.00	5.00	5.00
X	3	95.00	100.00	5.50	5.00	5.00
X	3	80.00	95.00	7.00	5.50	5.00
X	3	60.00	80.00	9.00	7.00	5.00
X	3	40.00	60.00	11.00	9.00	6.67
X	3	20.00	40.00	13.00	11.00	6.67
X	3	0.00	20.00	15.00	13.00	6.67

MEMBER PROPERTIES

MEMBER TYPE	BOTTOM ELEV ft	TOP ELEV ft	X-SECTN AREA in.sq	RADIUS OF GYRAT in	ELASTIC MODULUS ksi	THERMAL EXPANSN /deg
LE	140.00	150.00	1.075	0.000	29000.	0.0000000
LE	120.00	140.00	1.704	0.000	29000.	0.0000000
LE	100.00	120.00	3.678	0.000	29000.	0.0000000
LE	80.00	100.00	4.407	0.000	29000.	0.0000000
LE	60.00	80.00	6.111	0.000	29000.	0.0000000
LE	40.00	60.00	7.952	0.000	29000.	0.0000000
LE	0.00	40.00	12.763	0.000	29000.	0.0000000
DI	120.00	150.00	0.484	0.000	29000.	0.0000000
DI	80.00	120.00	0.715	0.000	29000.	0.0000000
DI	60.00	80.00	0.902	0.000	29000.	0.0000000
DI	40.00	60.00	1.187	0.000	29000.	0.0000000
DI	0.00	40.00	1.437	0.000	29000.	0.0000000
HO	145.00	150.00	0.484	0.000	29000.	0.0000000
HO	135.00	140.00	0.484	0.000	29000.	0.0000000
HO	115.00	120.00	0.715	0.000	29000.	0.0000000
HO	95.00	100.00	0.715	0.000	29000.	0.0000000

* 12 wind directions were analyzed. Only one condition is shown in full.

LOADING CONDITION A

100 MPH + 1 ICE WIND AZ 0 DEGREES

MAST LOADING
==========

LOAD TYPE	ELEV ft	APPLY..LOAD..AT RADIUS ft	AZI	LOAD AZI	.....FORCES..... HORIZ kip	DOWN kip	.....MOMENTS..... VERTICAL ft-kip	TORSNAL ft-kip
C	160.5	0.00	0.0	0.0	1.46	0.19	0.00	0.00
C	150.0	0.00	0.0	0.0	0.98	0.75	0.00	0.00
C	130.5	0.00	0.0	0.0	1.38	0.19	0.00	0.00
C	120.0	0.00	0.0	0.0	0.92	0.75	0.00	0.00
C	110.5	0.00	0.0	0.0	0.86	0.13	0.00	0.00
C	100.0	0.00	0.0	0.0	0.80	0.50	0.00	0.00
C	70.0	0.00	0.0	0.0	1.91	0.94	0.00	0.00
C	60.0	0.00	0.0	0.0	1.82	0.94	0.00	0.00
C	30.0	0.00	0.0	0.0	1.54	0.94	0.00	0.00
D	150.0	0.00	0.0	0.0	0.18	0.10	0.00	0.00
D	145.0	0.00	0.0	0.0	0.18	0.10	0.00	0.00
D	145.0	0.00	0.0	0.0	0.16	0.08	0.00	0.00
D	140.0	0.00	0.0	0.0	0.16	0.08	0.00	0.00
D	140.0	0.00	0.0	0.0	0.18	0.11	0.00	0.00
D	135.0	0.00	0.0	0.0	0.18	0.11	0.00	0.00
D	135.0	0.00	0.0	0.0	0.16	0.09	0.00	0.00
D	120.0	0.00	0.0	0.0	0.16	0.09	0.00	0.00
D	120.0	0.00	0.0	0.0	0.21	0.14	0.00	0.00
D	115.0	0.00	0.0	0.0	0.21	0.14	0.00	0.00
D	115.0	0.00	0.0	0.0	0.19	0.12	0.00	0.00
D	100.0	0.00	0.0	0.0	0.19	0.12	0.00	0.00
D	100.0	0.00	0.0	0.0	0.22	0.15	0.00	0.00
D	95.0	0.00	0.0	0.0	0.22	0.15	0.00	0.00
D	95.0	0.00	0.0	0.0	0.22	0.13	0.00	0.00
D	90.0	0.00	0.0	0.0	0.22	0.13	0.00	0.00
D	90.0	0.00	0.0	0.0	0.25	0.14	0.00	0.00
D	80.0	0.00	0.0	0.0	0.25	0.14	0.00	0.00
D	80.0	0.00	0.0	0.0	0.26	0.18	0.00	0.00
D	70.0	0.00	0.0	0.0	0.26	0.18	0.00	0.00
D	70.0	0.00	0.0	0.0	0.26	0.19	0.00	0.00
D	60.0	0.00	0.0	0.0	0.26	0.19	0.00	0.00
D	60.0	0.00	0.0	0.0	0.25	0.21	0.00	0.00
D	40.0	0.00	0.0	0.0	0.25	0.22	0.00	0.00
D	40.0	0.00	0.0	0.0	0.26	0.30	0.00	0.00
D	20.0	0.00	0.0	0.0	0.26	0.31	0.00	0.00
D	20.0	0.00	0.0	0.0	0.27	0.32	0.00	0.00
D	0.0	0.00	0.0	0.0	0.28	0.33	0.00	0.00

ANTENNA LOADING
==========

.....ANTENNA..... TYPE	ELEV ft	AZI	ATTACHMENT RAD ft	AZI	.....ANTENNA FORCES..... AXIAL kip	SHEAR kip	GRAVITY kip	TORSION ft-kip
STD+R	94.0	0.0	4.7	0.0	1.01	0.00	0.52	0.00
STD+R	90.0	240.0	5.0	240.0	-0.51	1.09	1.47	4.95
STD+R	90.0	0.0	5.0	0.0	2.71	0.00	1.47	0.00
STD+R	90.0	120.0	5.0	120.0	-0.51	-1.09	1.47	-4.95
STD+R	40.0	240.0	7.8	240.0	-0.41	0.87	1.47	3.93
STD+R	40.0	0.0	7.8	0.0	2.15	0.00	1.47	0.00
STD+R	40.0	120.0	7.8	120.0	-0.41	-0.87	1.47	-3.93

MAXIMUM MAST DISPLACEMENTS:
==========

ELEV ft	------DEFLECTIONS (ft)----- NORTH	EAST	DOWN	--TILTS (DEG)--- NORTH	EAST	TWIST DEG
150.0	1.875 G	1.767 J	0.019 G	1.488 G	1.413 J	0.065 D
145.0	1.743 G	1.642 J	0.018 G	1.477 G	1.402 J	0.065 D
140.0	1.615 G	1.520 J	0.016 G	1.447 G	1.372 J	0.065 D
135.0	1.488 G	1.400 J	0.014 G	1.419 G	1.345 J	0.065 D
130.0	1.366 G	1.285 J	0.013 G	1.377 G	1.305 J	0.065 D
125.0	1.244 G	1.169 J	0.011 G	1.321 G	1.250 J	0.065 D
120.0	1.131 G	1.061 J	0.010 G	1.243 G	1.174 J	0.065 D
115.0	1.021 G	0.958 J	0.009 G	1.197 G	1.130 J	0.065 D
110.0	0.919 G	0.862 J	0.008 G	1.137 G	1.073 J	0.065 D
105.0	0.818 G	0.766 J	0.007 G	1.065 G	1.004 J	0.065 D
100.0	0.727 G	0.680 J	0.006 G	0.975 G	0.918 J	0.065 D
95.0	0.643 G	0.601 J	0.005 G	0.896 G	0.842 J	0.065 D
90.0	0.569 G	0.532 J	0.005 G	0.821 G	0.771 J	0.059 D
85.0	0.496 G	0.463 J	0.004 G	0.742 G	0.696 J	0.049 D
80.0	0.434 G	0.406 J	0.004 G	0.664 G	0.623 J	0.040 D
75.0	0.375 G	0.350 J	0.003 G	0.605 G	0.567 J	0.034 D
70.0	0.325 G	0.303 J	0.003 G	0.548 G	0.513 J	0.029 D
65.0	0.276 G	0.257 J	0.003 G	0.488 G	0.456 J	0.024 D
60.0	0.235 G	0.219 J	0.002 G	0.429 G	0.401 J	0.020 D
53.3	0.185 G	0.172 J	0.002 C	0.366 G	0.342 J	0.016 D
46.7	0.143 G	0.134 J	0.002 G	0.304 G	0.284 J	0.013 D
40.0	0.108 G	0.101 J	0.001 C	0.240 G	0.224 J	0.010 D
33.3	0.080 G	0.074 J	0.001 G	0.201 G	0.188 J	0.008 D
26.7	0.055 G	0.051 J	0.001 A	0.162 G	0.151 J	0.006 D
20.0	0.035 G	0.032 J	0.001 G	0.122 G	0.114 J	0.004 D
13.3	0.019 G	-0.018 D	0.001 A	0.082 G	0.076 J	0.003 D
6.7	0.007 G	-0.006 D	0.000 G	0.041 G	0.038 J	0.001 D
0.0	0.000 A	0.000 A	0.000 A	0.000 A	0.000 A	0.000 A

MAXIMUM ANTENNA AND REFLECTOR ROTATIONS:
==========

ELEV ft	AZI deg	TYPE *	.....BEAM DEFLECTIONS (deg)..... ROLL	YAW	PITCH	TOTAL
94.0	0.0	STD+R	-0.828 J	0.064 D	-0.881 G	0.831 J
90.0	240.0	STD+R	-0.779 B	0.061 J	-0.819 K	0.779 B
90.0	0.0	STD+R	-0.771 J	0.059 D	-0.821 G	0.773 J
90.0	120.0	STD+R	0.779 L	0.061 D	-0.819 C	0.779 L
40.0	240.0	STD+R	-0.227 B	0.010 J	-0.240 K	0.227 B
40.0	0.0	STD+R	-0.224 J	0.010 D	-0.240 G	0.225 J
40.0	120.0	STD+R	0.227 L	0.010 D	-0.240 C	0.227 L

MAXIMUM TENSION IN MAST MEMBERS (kip)
==========

ELEV ft	LEGS	DIAG	HORIZ	BRACE
150.0	----------		1.41 K	0.00 A
	3.30 A	2.82 J		
145.0	----------		0.03 I	0.00 A
	8.65 I	1.78 J		
140.0	----------		0.07 I	0.00 A

	12.89 A	2.17 H			
135.0	----------		0.07 A	0.00 A	
	18.95 A	2.72 D			
130.0	----------		0.03 K	0.00 A	
	25.97 A	3.65 H			
125.0	----------		0.07 I	0.00 A	
	35.76 A	4.08 D			
120.0	----------		0.15 I	0.00 A	
	45.34 A	4.89 J			
115.0	----------		0.12 E	0.00 A	
	58.62 I	5.52 D			
110.0	----------		0.04 G	0.00 A	
	71.61 I	6.26 J			
105.0	----------		0.11 A	0.00 A	
	88.07 I	6.80 B			
100.0	----------		1.32 G	0.00 A	
	98.77 A	3.71 E			
95.0	----------		0.16 A	0.00 A	
	107.85 A	3.82 F			
90.0	----------		0.02 K	0.00 A	
	115.09 A	5.85 L			
85.0	----------		0.15 A	0.00 A	
	128.13 A	7.24 K			
80.0	----------		0.00 A	0.00 A	
	139.26 A	5.55 L			
75.0	----------		0.13 A	0.00 A	
	150.41 A	6.86 K			
70.0	----------		0.00 A	0.00 A	
	160.76 A	6.43 B			
65.0	----------		0.11 A	0.00 A	
	172.61 A	7.51 K			
60.0	----------		0.00 A	0.00 A	
	184.75 A	7.83 B			
53.3	----------		0.10 A	0.00 A	
	200.82 A	8.71 C			
46.7	----------		0.03 E	0.00 A	
	214.41 A	7.87 B			
40.0	----------		0.05 A	0.00 A	
	228.84 A	9.74 H			
33.3	----------		0.04 I	0.00 A	
	243.38 A	10.67 B			
26.7	----------		0.04 A	0.00 A	
	260.11 A	10.15 H			
20.0	----------		0.04 E	0.00 A	
	274.36 A	10.92 B			
13.3	----------		0.00 A	0.00 A	
	289.95 A	10.33 H			
6.7	----------		0.04 A	0.00 A	
	303.40 A	11.06 B			
0.0	----------		0.00 A	0.00 A	

MAXIMUM COMPRESSION IN MAST MEMBERS (kip)

ELEV ft	LEGS	DIAG	HORIZ	BRACE
150.0	----------		-1.42 I	0.00 A

	-4.13 C	-2.81 J		
145.0	----------		-0.02 K	0.00 A
	-9.85 C	-1.80 J		
140.0	----------		-0.02 C	0.00 A
	-14.57 K	-2.28 C		
135.0	----------		-0.06 K	0.00 A
	-21.53 K	-2.66 H		
130.0	----------		-0.03 I	0.00 A
	-29.27 K	-3.70 D		
125.0	----------		-0.06 K	0.00 A
	-40.08 K	-4.04 H		
120.0	----------		-0.13 K	0.00 A
	-51.02 K	-5.08 C		
115.0	----------		-0.12 K	0.00 A
	-65.93 K	-5.43 J		
110.0	----------		-0.05 E	0.00 A
	-80.12 C	-6.34 D		
105.0	----------		-0.11 G	0.00 A
	-98.38 C	-6.73 F		
100.0	----------		-1.62 A	0.00 A
	-110.71 G	-4.03 K		
95.0	----------		-0.12 G	0.00 A
	-121.25 G	-4.34 L		
90.0	----------		-0.07 A	0.00 A
	-132.15 G	-7.46 K		
85.0	----------		-0.09 K	0.00 A
	-149.87 G	-5.52 L		
80.0	----------		-0.04 A	0.00 A
	-160.00 G	-7.22 C		
75.0	----------		-0.09 K	0.00 A
	-175.59 G	-5.64 L		
70.0	----------		-0.02 A	0.00 A
	-186.44 G	-7.83 C		
65.0	----------		-0.08 K	0.00 A
	-202.04 G	-6.51 B		
60.0	----------		-0.02 A	0.00 A
	-215.28 G	-9.15 C		
53.3	----------		-0.08 K	0.00 A
	-235.75 G	-7.86 B		
46.7	----------		-0.03 G	0.00 A
	-250.40 G	-8.91 C		
40.0	----------		-0.06 C	0.00 A
	-271.22 G	-10.27 B		
33.3	----------		-0.02 G	0.00 A
	-290.61 G	-9.86 H		
26.7	----------		-0.06 K	0.00 A
	-309.82 G	-10.95 B		
20.0	----------		-0.02 G	0.00 A
	-328.62 G	-10.24 H		
13.3	----------		-0.01 B	0.00 A
	-346.64 G	-11.00 B		
6.7	----------		-0.03 G	0.00 A
	-364.35 G	-10.50 H		
0.0	----------		0.00 A	0.00 A

MAXIMUM INDIVIDUAL FOUNDATION LOADS: (kip)
==========

----------LOAD---COMPONENTS----------				TOTAL
NORTH	EAST	DOWN	UPLIFT	SHEAR
37.53 G	32.40 K	372.53 G	-310.37 A	37.53 G

MAXIMUM TOTAL LOADS ON FOUNDATION : (kip & kip-ft)
==========

------HORIZONTAL-----			DOWN	---------OVERTURNING---------			TORSION
NORTH	EAST	TOTAL @ 0.0		NORTH	EAST	TOTAL @ 0.0	
63.1 G	58.5 J	63.1 G	43.2 C	4652.3 G	4336.4 J	4652.3 G	5.3 D

==========

MAT FOUNDATION DESIGN BY SABRE TOWERS & POLES

Tower Description	150' S3TL Series HD1
Customer	INTEROPERABILITY MONTANA
Project Number	10-09020
Date	9/14/2009
Engineer	NJS

Overall Loads:			
Moment (ft-kips)	4652.3	Anchor Bolt Count (per leg)	6
Axial (kips)	43.20		
Shear (kips)	63.1		
Individual Leg Loads:			
Uplift (kips)	310.37		
Download (kips)	372.53		
Shear (kips)	37.53		
Width of Tower (ft)	15		
Allowable Bearing Pressure (ksf)	3.5	Maximum Net Bearing Pressure (ksf)	2.21
Water Table Below Grade (ft)	999		
Width of Mat (ft)	27.5	Minimum Mat Width (ft)	22.99
Thickness of Mat (ft)	2		
Depth to Bottom of Slab (ft)	6		
Bolt Circle Diameter (in)	13.25		
Top of Concrete to Top of Bottom Threads (in)	58		
Diameter of Pier (ft)	3	Minimum Pier Diameter (ft)	2.60
Ht. of Pier Above Ground (ft)	0.5	Equivalent Square b (ft)	2.66
Ht. of Pier Below Ground (ft)	4		
Quantity of Bars in Mat	44		
Bar Diameter in Mat (in)	1		
Area of Bars in Mat (in^2)	34.56		
Spacing of Bars in Mat (in)	7.51	Recommended Spacing (in)	6 to 12
Quantity of Bars Pier	14		
Bar Diameter in Pier (in)	1		
Tie Bar Diameter in Pier (in)	0.5		
Spacing of Ties (in)	12		
Area of Bars in Pier (in^2)	11.00	Minimum Pier A_s (in^2)	5.09
Spacing of Bars in Pier (in)	6.28	Recommended Spacing (in)	6 to 12
f'c (ksi)	3		
fy (ksi)	60		
Unit Wt. of Soil (kcf)	0.1		
Unit Wt. of Concrete (kcf)	0.15		
Load Factor	1.3		
Volume of Concrete (yd^3)	59.55		
Two-Way Shear:			
Average d (in)	20		
ϕV_c (kips)	578.2	V_u (kips)	484.3
$\phi V_c = \phi(2 + 4/\beta_c)f'_c{}^{1/2}b_o d$	867.2		
$\phi V_c = \phi(\alpha_s d/b_o + 2)f'_c{}^{1/2}b_o d$	946.3		
$\phi V_c = \phi 4 f'_c{}^{1/2}b_o d$	578.2		

MAT FOUNDATION DESIGN BY SABRE COMMUNICATIONS CORP. (CONTINUED)

Shear perimeter, b_o (in)	175.93		
β_c	1		
Stability:			
(Resisting M)/1.5 (ft-k)	5248.6	Total Applied M (ft-k)	5062.5
One-Way Shear:			
ϕV_c (kips)	542.2	V_u (kips)	506.3
Pier Design:			
Design Tensile Strength (kips)	593.8	Ultimate Tensile Load (kips)	403.5
ϕV_n (kips)	60.1	V_u (kips)	48.8
$\phi V_c=\phi 2(1+N_u/(500A_g))f'_c{}^{1/2}b_wd$	17.7		
V_s (kips)	56.5	*** V_s max = 4 $f'_c{}^{1/2}b_wd$ (kips)	227.2
Maximum Spacing (in)	13.09	(Only if Shear Ties are Required)	
Actual Hook Development (in)	19.00	Req'd Hook Development l_{dh} (in)	15.34
		*** Ref. To Spacing Requirements ACI 11.5.4.3	
Anchor Bolt Pull-Out:			
$\phi P_c=\phi\lambda(2/3)f'_c{}^{1/2}(2.8A_{SLOPE}+4A_{FLAT})$	125.3	P_u (kips)	403.5
Pier Rebar Development Length (in)	47.63	Required Length of Development (in)	37.22
Flexure in Slab:			
ϕM_n (ft-kips)	2918.6	M_u (ft-kips)	2889.5
a (in)	2.46		
Steel Ratio	0.00524		
β_1	0.85		
Maximum Steel Ratio (.75p_b)	0.0160		
Minimum Steel Ratio	0.0018		
Rebar Development in Pad (in)	162.00	Required Development in Pad (in)	81.78

Condition	1 is OK, 0 Fails
Minimum Mat Width	1
Maximum Soil Bearing Pressure	1
Pier Area of Steel	1
Pier Shear	1
Two-Way Shear Action	1
Stability (Safety Factor = 1.5)	1
Anchor Bolt Pull-Out	1
Flexure	1
Steel Ratio	1
Length of Development in Pad	1
Interaction Diagram Visual Check	1
One-Way Shear	1
Hook Development	1
Minimum Mat Depth	1

B.O.C.C. Regular **Agenda Item 4. c.**

Meeting Date: 10/06/2020

Title: Bond for Lost Warrant

Submitted By: Anna Ullom, Accountant

TOPIC:

Bond for Lost Warrant

BACKGROUND:

BFLW completed for lost/stale dated check

RECOMMENDED ACTION:

Approve Reissue.

Attachments

BFLW

BOND FOR LOST WARRANT

On March 7, 2014 Yellowstone County issued a warrant numbered 830694 to Grant, Allison M (Principal) in the amount of $150.48. The warrant was drawn in payment of a payroll check. Principal now attests that the warrant has been lost or destroyed, and it has undertaken a diligent search but has been unable to recover the warrant. Moreover, Principal has not received payment on the claim. Therefore, Principal has requested that Yellowstone County issue a duplicate warrant in the same sum of $150.48 to replace the lost or destroyed warrant.

WHEREFORE, Principal agrees to indemnify and hold harmless Yellowstone County and its officers from all loss, costs, or damages incurred as a result of issuing the duplicate warrant, should Yellowstone County issue a duplicate warrant, and agrees to release any and all claims that principal may have against Yellowstone County now or in the future as related to payment of the above stated claim. Principal also agrees to pay to any person entitled to receive payment under the original warrant, as the lawful holder of the original warrant, all monies received upon the duplicate warrant.

Further, Principal agrees to bind itself, its heirs, assigns, executors, administrators, successors and assigns, jointly and severally, for twice the amount of the original warrant as required by M.C.A. 7-7-2104 (2), which is $300.96 and may be enforced in the event the Principal cashes both the original warrant and the replacement warrant. In addition, Principal agrees to pay reasonable attorney's fees, and to cover all losses, damages, and other costs incurred by Yellowstone County in enforcing its rights under this bond.

Signed this April 21st day of April, 2020.

Allison Grant
Principal

Principal

2607 Carl St Billings MT 59102
Mailing Address for replacement check

SUBSCRIBED AND SWORN to before me this 21st day of April, 20___.

(NOTARIAL SEAL)
EMILY ZITTERKOPF
NOTARY PUBLIC for the State of Montana
Residing at Billings, Montana
My Commission Expires August 24, 2020

Emily Zitterkopf
Notary public for the State of _____
Residing at _____
My commission expires_____

APPROVED:

Chair, Board of County Commissioners

Date

Replaced with warrant #_____(completed by County)

12/18/19

B.O.C.C. Regular **Agenda Item 4. d.**

Meeting Date: 10/06/2020

Title: MOU MT Wool Growers Assoc

Submitted For: Jennifer Jones **Submitted By:** Charis Krank, Accounting Assistant

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TOPIC:

Annual MOU with MT Wool Growers Association

BACKGROUND:

Annual MOU with MT Wool Growers Association.

RECOMMENDED ACTION:

Approve.

Attachments

MT Wool Growers

MONTANA WOOL GROWERS ASSOCIATION
PREDATOR CONTROL FUND
P.O. Box 1938
Billings, MT 59103
(406) 657-6464

MEMORANDUM OF UNDERSTANDING

For the period: **JULY 1, 2020 TO JUNE 30, 2021**

In accordance with the terms of a Cooperative Service Agreement between the USDA APHIS Wildlife Services program and the Montana Wool Growers Association, **YELLOWSTONE COUNTY** agrees to allocate up to amount collected, not to exceed $883.20 for the protection of sheep from destructive animals. Payment will be made to the extent that funds are available from the collection of associated assessments.

Funds under this agreement will be expended to carry out a mutually-agreed-upon program to minimize economic depredations. The county will be billed semiannually on **DECEMBER 1** and **JUNE 1**. Funds will be made payable to and deposited in the Predator Control Fund, Montana Wool Growers Association.

The program is agreed upon as follows:

(1) Wildlife Services Specialist will conduct Wildlife Services in Yellowstone, and Musselshell Counties. Fixed-wing and rotor-wing aircraft will be used where feasible and where funds are available.

CHAIRMAN, BOARD OF COUNTY COMMISSIONERS DATE

For the MONTANA WOOL GROWERS ASSOCIATION DATE

Stock Sheep On Tax Rolls : 1,472

Sheep License Fee/Head : $0.60

(A signed copy will be returned for your files.)

B.O.C.C. Regular **Agenda Item 4. e.**

Meeting Date: 10/06/2020

Title: Anderson Zurmuhlen Letter of Engagement for Audit Services

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Anderson Zurmuehlen Letter of Engagement for Audit Services

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Approve.

Attachments

Anderson Zurmuhlen Audit Engagement Agreement

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anderson ZURMUEHLEN

ANDERSON ZURMUEHLEN & CO., P.C. • CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS
MEMBER: AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

402 NORTH BROADWAY, 4th FLOOR • P.O. BOX 20435 • BILLINGS, MONTANA 59104-0435
TEL: 406.245.5136 • FAX: 406.245.6056 • WEB: www.azworld.com

September 21, 2020

Kevan Bryan, Finance Director
Yellowstone County
Courthouse 4th Floor
217 N. 27th St.
Billings, MT 59101

Dear Kevan and the Board of County Commissioners: #133798

We are pleased to confirm our understanding of the services we are to provide Yellowstone County (the County) for the year ending June 30, 2020. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements, of Yellowstone County as of and for the year ended June 30, 2020. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement Yellowstone County's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to Yellowstone County's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1) Management's Discussion and Analysis.

2) Employee Group Benefits Plan – Other Post-Employment Benefits (OPEB).

3) Schedule of Proportionate Share of the Net Pension Liability & Schedule of Contributions.

We have also been engaged to report on supplementary information other than RSI that accompanies Yellowstone County's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

1) Schedule of Expenditures of Federal Awards.

The following other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that other information.

1) Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual – Major Governmental Debt Service and Capital Projects Funds.
2) Statement of Revenues, Expenditures, and Changes in Fund Balance – Budget and Actual – Nonmajor Governmental Funds.
3) Combining Fund Statements – Nonmajor Governmental and Internal Service Funds.
4) Introductory Section and Statistical Section of the Financial Statement.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on—

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the County's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the County's internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions.

We will issue written reports upon completion of our Single Audit. Our reports will be addressed to the Board of County Commissioners of Yellowstone County. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the County or to acts by management or employees acting on behalf of the County. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, an unavoidable risk exists that some material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or on major programs. However, we will inform the appropriate level of management of any material errors, any fraudulent financial reporting, or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the County and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of Yellowstone County's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the OMB *Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of Yellowstone County's major programs. For federal programs that are included in the Compliance Supplement, our compliance and internal control procedures will relate to the compliance requirements that the Compliance Supplement identifies as being subject to audit. The purpose of these procedures will be to express an opinion on Yellowstone County's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Other Services

We will also assist in preparing the financial statements, Data Collection Form, schedule of expenditures of federal awards, and related notes of Yellowstone County in conformity with U.S. generally accepted accounting principles and the Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statements, Data Collection Form, schedule of expenditures of federal awards, and related notes services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Management Responsibilities

Management is responsible for (1) designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles, and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, including identification of all related parties and all related-party relationships and transactions, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3) additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the County from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the County involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the County received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the County complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan. The summary schedule of prior audit findings should be available for our review at the beginning of the audit.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

You agree to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, and related notes, and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period.We will provide copies of our reports to Yellowstone County; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Anderson ZurMuehlen & Co., P.C. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the cognizant or oversight agency for audit or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Anderson ZurMuehlen personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the cognizant or oversight agency for audit. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit on approximately September 21, 2020. Stefeni S. Freese, Shareholder is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them.

Our fees for this engagement will not exceed $43,500 for the year ended June 30, 2020, as documented in the State Contract.

Our proposed fees are based on the following assumptions:

1. Anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit.
2. There are no major changes in your organizational structure. Examples of major changes include significant mergers, new business units, and new lines of businesses.
3. There are no unanticipated changes in the scope of our work and/or the incomplete or untimely receipt by us of the information on the client request list.
4. There are no new audit standards that require significant audit resources.
5. The accounting records are maintained in a reasonable manner, with appropriate supporting documentation provided as requested.

Fees for our services will be billed as our work progresses and are due upon presentation. If either party elects to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report(s). You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the engagement. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

In the event Anderson ZurMuehlen is required to respond to a subpoena, summons, court order, or other legal process for the production of documents and/or testimony relative to information we obtained and/or prepared during the course of this engagement, you agree to compensate the Firm at its hourly rates for the time it expends in connection with such response, and to reimburse us for all out-of-pocket expenses incurred.

The parties to this engagement agree that any dispute that may arise regarding the meaning, performance or enforcement of this engagement (except actions by us to enforce payment of our professional invoices), will, prior to resorting to litigation, be submitted to mediation, upon a written request to mediate given by either party. Any mediation initiated as a result of this engagement shall be administered within the county of Lewis and Clark, Montana. The costs of any mediation proceeding shall be shared equally by the parties. The results of any such mediation shall be binding only upon agreement of each party to be so bound. Should mediation be unsuccessful, the parties reserve the right to pursue litigation in a court of competent jurisdiction in Lewis and Clark County.

In connection with this engagement, we may communicate with you or others via email transmission, and by signing this letter you authorize us to do so. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that emails from us will be properly delivered and read only by the addressee. You agree that we shall have no liability for any loss or damage resulting from the use of email transmissions. If requested, we'll provide a secure portal for the transmission of confidential information.

Our Firm's record retention policy follows guidelines provided by the American Institute of Certified Public Accountants. Original client documents and files are returned to you for safekeeping. Anderson ZurMuehlen generally retains copies of client files and documents for seven (7) years in support of the work completed. Beyond the 7-year retention period, files will be destroyed unless a written request is provided to us by you. This letter constitutes the terms and mutual understanding of our arrangement, superseding all proposals oral and written and all other communications.

Government Auditing Standards require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of contract. Our 2017 peer review report accompanies this letter.

We appreciate the opportunity to be of service to Yellowstone County and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign and return a copy to us.

Very truly yours,

ANDERSON ZURMUEHLEN & CO., P.C.

By: Stefeni S. Freese, Shareholder

RESPONSE:
This letter correctly sets forth the understanding of Yellowstone County.

_____
Management Signature

_____ _____
Title Date

_____
Governance Signature

_____ _____
Title Date

BRADY MARTZ
CERTIFIED PUBLIC ACCOUNTANTS
AND CONSULTANTS

REPORT ON THE FIRM'S SYSTEM OF QUALITY CONTROL

August 10, 2017

To the Shareholders of
Anderson ZurMuehlen & Co., P.C.
and the Peer Review Committee of the Montana Society
of Certified Public Accountants

We have reviewed the system of quality control for the accounting and auditing practice of Anderson ZurMuehlen & Co., P.C. (the firm) in effect for the year ended May 31, 2017. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act; audits of employee benefit plans, an audit performed under FDICIA, and an examination of a SOC 1 service organization.

As a part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Anderson ZurMuehlen & Co., P.C. in effect for the year ended May 31, 2017, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Anderson ZurMuehlen & Co., P.C. has received a peer review rating of *pass*.

Brady Martz

Brady Martz and Associates, P.C.

B.O.C.C. Regular **Agenda Item 4. f.**

Meeting Date: 10/06/2020

Title: Earth First Aid Agreement

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Earth First Aid Agreement Addendum

BACKGROUND:

This agreement is for recycling bin pick up at the Stillwater Building @ 316 N. 26th Street

RECOMMENDED ACTION:

Approve.

Attachments

Earth First Aid Agreement

Earth First Aid
P.O. Box 81032
Billings, MT. 59108
(406) 698-0903
www.earthfirstaid.com

Name Yellowstone County Finance
Address ~~PO Box 35003~~ 316 N 26th, Rm 3401
Mailing Address PO Box 35003, Bigs MT 59107
Phone # 406-256-2831 Alt. Phone #

E-Mail Address CKrank@co.yellowstone.mt.gov
(If you would like Earth First Aid to e-mail your invoice)

Garbage Pick-Up Day

Service will be twice monthly in conjunction with your current garbage pick-up day.

Rate: **$35.00 set up fee includes 3 Bins and all information needed.**
~~$24.00~~ a month with bi weekly pick-up service.
35.00

Invoices will be sent quarterly for three months in advance. Bill is to be paid within 30 days after receipt. A late fee of $5.00 will be applied each month until bill is paid in full. (Rates are subject to change)

I have read Earth First Aid's policies and guidelines on how to prepare recyclables for collection. I understand I am subscribing to a continuous, monthly service and will be billed in advance on a quarterly basis. I agree to notify the Earth First Aid office in advance should I wish to discontinue service. Only recyclables generated at this address will be accepted. **Bins are the property of Earth First Aid.**

Signature

Date

Start up Month

Please call with any questions or to make an appointment.
Earth First Aid
406-698-0903
www.earthfirstaid.com

B.O.C.C. Regular **Agenda Item 4. g.**

Meeting Date: 10/06/2020

Title: LGE Certification Form

Submitted By: Anna Ullom, Accountant

TOPIC:

LGE (Local Government Entity) Certification Form

BACKGROUND:

LGE Certification Form

RECOMMENDED ACTION:

Sign.

Attachments

LGE Cert Form

MONTANA
DEPARTMENT OF
ADMINISTRATION

State Financial Services Division
Steve Bullock, Governor
John Lewis, Director

Local Government Entity (LGE) Certification Form

For reimbursement provided to local governments by the Governor's Coronavirus Relief Fund (the Fund) contained in the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") and assistance through the Federal Emergency Management (FEMA) Public Assistance (PA) grant program.

REIMBURSEMENT REQUEST FOR COSTS INCURRED FROM MARCH 1, 2020 THROUGH AUGUST 31, 2020

ALL FIELDS ARE REQUIRED

Local Government Entity (LGE) Information			
Name			
Address	City	State	Zip
Federal Employer Identification Number (FEIN)			

Contact Information for Reimbursement Request			
Last Name	First Name		
Address	City	State	Zip
Phone	Email		

Certification

☐ I/we hereby certify that to my/our knowledge the LGE named above has not received reimbursement for the attached incurred costs from any federal funding source. (We recognize this application may include FEMA-eligible costs.)

☐ I/we hereby certify that the attached information is true, complete, and accurate to the best of my/our knowledge and belief.

THIS FORM REQUIRES SIGNATURES FROM ONE OR MORE MEMBERS OF THE GOVERNING BODY.

_____	_____	_____
Signature	Signature	Signature
_____	_____	_____
Name	Name	Name
_____	_____	_____
Title	Title	Title
_____	_____	_____
Date	Date	Date

B.O.C.C. Regular **Agenda Item 4. h.**

Meeting Date: 10/06/2020

Title: Facilities;Recommendation of Award & Contract with Empire Roofing for YCDF Kitchen Area Roofing Replacement

Submitted For: James Matteson, Purchasing Agent

Submitted By: James Matteson, Purchasing Agent

TOPIC:

Facilities Recommendation of Award and Contract with Empire Roofing for Yellowstone County Detention Facility Kitchen Area Roofing Replacement

BACKGROUND:

On September 1st, 2020 bids were released for Roofing Replacement for the Yellowstone County Detention Facility Kitchen Area.
Bids were due on September 21st, 2020, and were opened and read aloud at the September 22nd, 2020 Board of County Commissioners' regular board meeting. Empire Roofing submitted the base bid of $65,656.00. Additional alternatives were submitted for $2,477.00 for a stone protection mat and $1,146.00 for a 20 year manufacturer's warranty. The bid was reviewed and a recommendation was made to accept the bid including the options, as the bid was within budget and provides a cost effective superior roof.

RECOMMENDED ACTION:

Approve the recommendation and sign the contract for the project.

Attachments

Recommendation to Award - Empire Roofing - YCDF Kitchen Area Roofing Replacement

YCDF Kitchen Area Roofing Replacement Empire Roofing

James Matteson

From: Tim Kaczmarek
Sent: Wednesday, September 23, 2020 4:31 PM
To: James Matteson
Subject: Bid award for Y.C.D.F. reroof

James,
After reviewing the bid for reroofing of the kitchen area at Y.C.D.F. I would recommend Empire roofing be awarded the bid.
The project is far below the budgeted amount of $140,000 and they presented excellent options to extend the life of the roof.
I would recommend that the award include these options to help extend the life of the roof for a total cost to the county of $69,275.00.

Tim Kaczmarek
Facilities Superintendent
Yellowstone County
217 North 27th street
Billings, MT 59101
(406) 894-0352

Standard Form of Agreement between Owner and Contractor on the Basis of A Stipulated Price

This agreement is dated as of the 6th day of October 2020, by and between Yellowstone County, Montana (hereinafter called Owner), and Empire Roofing, Inc, Billings, Montana (hereinafter called Contractor).

Owner and Contractor, in consideration of the material covenants hereinafter set forth, agree as follows:

1. **Scope of Work**

Contractor shall provide all labor, materials and equipment necessary for Yellowstone County Detention Facility Kitchen Area Roofing Replacement

a. Remove, save, and reuse existing ballast
b. Remove and Dispose of existing EPDM roofing
c. Inspect all insulation surface area
d. Furnish and install protective stone protection to entire roof surface
e. Furnish and install .060 Poly Reinforced EPDM material
f. Furnish and install all new termination bars.
g. Provide a minimum of 20 year manufacturer warranty.
h. Contractor to submit EPDM Technical Data Sheet for Insulation, membrane; Primers; adhesives & cleaning agents; pipe flashing; fasteners and accessories associated with this project.
i. Verify all site measurements, materials and conditions
j. Provide all management, labor, materials and equipment to complete project

Should any additional work need to be performed, both parties prior to the work being completed must sign a written change order.

E.M. 2. **Contract Term**

Project completion on or before November ~~1st~~ 30th, 2020 is desired

2. **Contract Price**

Owner shall pay the Contractor a total of $65,656.00 for the base bid, $2,477.00 for the option for stone protection mat, and $1,146.00 for the option of the 20 year manufacturers roof warranty for a total of $69,276.00. Material and progress payments may be submitted with payment subject to 5% withholding. Upon project

completion and acceptance by the Owner, any withholding and final balance will be paid on receipt of Contactors invoice. Any change orders for the project must be approved in writing by the County prior to the work being started. 1% Montana Gross Receipt Tax will be withheld and submitted to the State of Montana Dept. of Revenue on all construction projects over $5,000.00.

4. Contractors Representation

4.1 Contractor has examined and reviewed the Contract Documents and other related paperwork.

4.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

4.3 Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

4.4 Contractor has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between Owner and Contractor, consist of the following:

5.1 This Agreement.

5.2 Contractor's proposal

5.3 Contractor's current Certificate of Insurance and Workers Compensation coverage.

6. Miscellaneous

6.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without written consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no

assignment will discharge the assignor from any duty or responsibility under the Contract Documents.

6.2 Contractor, shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) for each claim and One Million Five Hundred Thousand Dollars , ($1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County, sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County/ MetraPark, as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County/MetraPark, are named as an additional insured under the Contractors insurance policy.

Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Contractor agrees to defend, indemnify and hold harmless Yellowstone County/MetraPark from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Contractors negligence. And for which Yellowstone County/MetraPark, sole basis of liability is vicarious liability for the acts or omissions of Contractor. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County/MetraPark, is liable for any damages by reason of a non-delegable duty.

6.3 Contractor is required to maintain workers compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees

of Yellowstone County/MetraPark. Workers Compensation insurance or the exemption from the workers compensation obligation must be valid for the entire period.

6.4 Owner and Contractor each binds itself, its partners, successors, assign and legal representative to the other party hereto, its partners, successors, assign and legal representative to respect to all covenants, agreements and obligations contained in the Contract Documents.

6.5 Contractor must give preference to the employment of bona fide residents of Montana in the performance of this work.

6.6 All work and materials must be warranted for a period of one year from date of installation.

6.7 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana

6.8 Contractor agrees to defend, indemnify and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Contractors performance under the Agreement.

6.9 In the event of litigation between Contractor and the County, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.

7.0 The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Contractor subjects contractors to the same provisions. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each will be delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective October 6th, 2020

OWNER:
Yellowstone County
Billings, MT 59101

_____
Denis Pitman, Chair

CONTRACTOR:
Empire Roofing, Inc
Billings, Mt 59106

Everett Martin

Everett Martin

Attest:

_____
Jeff Martin, Clerk and Recorder

Yellowstone County
YCDF KITCHEN AREA ROOFING Replacement
Quote Sheet

The County reserves the right to reject any bids that are incomplete, conditional, have omissions, or have irregularities.

By submitting the bid, the contractor acknowledges that he is familiar with the bid documents, the facilities, and the sites.

1. Lump sum cost $ 65,656.00

2. Replacement of any Damaged Insulation (Prior Authorization Required) $ 4.63 sq. ft.

2. Date that work will begin 30 days after Notice to proceed

3. Days needed for completion 30 days

4. Provide Specification Sheets for materials to be used.

Empire Roofing Inc.
Company Name

Everett Martin
Authorized Representative

7338 Chavolais
Mailing Address

Billings, MT 59106
City, State and Zip Code

406-656-4613
Telephone Number

9/21/2020
Date

I acknowledge receiving the following addenda, if applicable:

#1_____
Initials Date

#2_____
Initials Date

EMPIRE ROOFING INC

Yellowstone County Detention Facility

Re: Optional added costs.

1. Install a layer of protective stone protection matt to entire roof surface. Add $2,477.00
2. Added cost to do a 20 yr. manufactures roof warranty in place the 10 yr. warranty. Add $1,146.00

Regards,

Everett Martin

OFFICE 5623 STORY ROAD, BILLINGS MT 59101 PHONE 406.656.4613 FAX 406.896.9496 WEBSITE EMPIREROOFINGMT.COM EMAIL INFO@EMPIREROOFINGMT.COM

B.O.C.C. Regular Agenda Item 5.

Meeting Date: 10/06/2020

Title: Final Resolution for Zone Change #702

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Final Resolution 20-73 For Zone Change #702 - A Zone Change Request from Agricultural Suburban (A-S) to Residential - 15,000 (R-150) on Certificate of Survey 1884 Tract 1A2, of Amended Tract 1, a 22.2 Acre Parcel of Land

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Approve.

Attachments

Final Resolution for Zone Change 702

RESOLUTION NO. 20-73

Final Resolution Approving Zone Change #702

WHEREAS, pursuant to Title 76, Chapter 2, Montana Code Annotated, and the regulations of the Yellowstone County Jurisdictional Area Zoning Plan, the Board of County Commissioners of Yellowstone County, Montana, held a public hearing on the 25th of August, 2020 on Zone Change Request No. 702 described as follows:

A zone change request from Agricultural Suburban (A-S) to Residential-15,000 (R-150), on Certificate of Survey 1884 Tract 1A2, of Amended Tract 1, a 22.2 acre parcel of land.

WHEREAS, the Board of County Commissioners adopted a Resolution of Intent on the 25th day of August, 2020, to amend the Yellowstone County Jurisdictional Area Zoning Plan by APPROVING Zone Change #702; and

WHEREAS, that for thirty (30) days the Board of County Commissioners received no written protests.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the above described zone change be **approved** for the reasons stated in **Resolution of Intent #20-64** on file in the Clerk and Recorder's Office.

DATED this 6th day of October, 2020.

BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA

_____
Denis Pitman, Chairman

_____
Donald W. Jones, Member

_____
John Ostlund, Member

B.O.C.C. Regular **Agenda Item 6.**

Meeting Date: 10/06/2020

Title: Contract with Great West Eng for Bridge 28-02 and Alkali Cr Rd Realignment

Submitted For: Tim Miller, Public Works Director

Submitted By: Tim Miller, Public Works Director

TOPIC:

Contract with Great West Engineering for the Replacement of Bridge 28-02 and the Realignment of Alkali Creek Road

BACKGROUND:

Engineering services for the replacement of an outdated bridge and road reailgment improving safety.

RECOMMENDED ACTION:

Approve contract

Attachments

contracts

CONSULTANT AGREEMENT FOR PROFESSIONAL SERVICES

This *Consultant Agreement for Professional Services ("Agreement")* is entered into as of October 6, 2020 between Great West Engineering, Inc., located at 2501 Belt View, Helena, MT 59601 ("Great West"), and Yellowstone County, located at 316 North 26th/Rm 3101, Billings, MT 59101.("Client"). The parties agree as follows:

I. **Project.** Client desires to engage Great West to perform certain consulting, design, advisory, and/or surveying services for Bridge 28-02 Replacement and Alkali Creek Road Realignment ("Project").

II. **Scope of Services.** Great West shall perform the following services for the Project ("Services") as described in the *Scope of Services* attached to this *Agreement as Exhibit "A".*

III. **Payment.** Client shall pay Great West as compensation for the Services the following at hourly rates according to the *Schedule of Billing Rates* attached to this *Agreement* as *Exhibit "B"*, plus expenses, for an estimated total amount of $102,950.

IV. **Standard Provisions.** The standard provisions for this *Agreement* are stated on page 2.

V. **Additional Provisions.** The following additional provisions shall apply to this *Agreement*: None

VI. **Authorization.** Persons executing this *Agreement* represent that they have the requisite authority and power to execute this *Agreement* on behalf of their respective employers.

GREAT WEST ENGINEERING, INC.	YELLOWSTONE COUNTY
William B. Lloyd, PE	
President	Denis Pitman, Chairman
	[Print Name & Title]

1. Payments.

1.1 Monthly Invoices. Monthly invoices shall be issued for all Services performed under this *Agreement*.

1.1.1 Lump Sum. Invoices for a lump sum contract are based on percentage of work completed; and the contract amount may be increased for any unanticipated event, which is beyond Great West's control and which increases the level of Services required to complete Project.

1.1.2 Time and Materials. Invoices for a time and materials contract are based on the hourly rates set forth in Great West's prevailing *Schedule of Billing Rates,* which may be amended from time to time, plus expenses.

1.1.3 Retainers. Retainers are applied toward final invoice.

1.2 Expenses. Expenses include all out-of-pocket costs for technical, professional and clerical services and for transportation, meals and lodging, laboratory tests and analyses, telephone, printing, copying, and binding. Expenses are billed at 1.10 times invoice amount, and Client shall pay all governmental fees, permits and charges.

1.3 Payment Date. Invoices are due and payable within thirty (30) days after date of invoice.

1.4 Past Due Accounts. Any invoice not paid within thirty (30) days after date of invoice shall bear interest at 10%.

1.5 Stop Work. Great West may stop work on Project and withhold delivery of all Services until Client's obligations then due and owing to Great West are paid in full.

1.6 Disputes. Invoices shall outline Services performed and all related charges and expenses. Disputes regarding an invoice shall be forwarded in writing to Great West within twenty (20) days of date of invoice. If Client does not dispute an invoice within the prescribed time, the invoice is deemed accurate and due and payable.

1.7 Estimates. Estimated amounts for Services performed on an hourly or cost plus fee bases are only estimates and may not accurately reflect the ultimate charges to Client.

2. Notice to Proceed. This *Agreement* constitutes Client's notice to proceed with Services once it is signed by Client and Consultant.

3. Subconsultants. With Client's approval, Great West may retain subconsultants to perform Services for Project.

4. Extra Work. If Client desires work to be performed beyond the Services described in this *Agreement* ("*Extra Work*"), Client must authorize the *Extra Work* by signing a written amendment, signed and agreed upon by Consultant. If written amendment is impracticable, then a written or electronic statement authorizing the *Extra Work* is required.

5. Delay of Project. If Project is delayed by circumstances beyond Great West's control for thirty (30) days or more, Client shall pay Great West a remobilization fee equal to ten percent (10%) of contract amount or Ten Thousand Dollars ($10,000), whichever is less.

6. Safety and Construction. Great West is not responsible for construction means, methods, techniques, sequences of procedures, or safety precautions and programs related to work performed by contractors, subcontractors, or anyone else associated with Project.

7. Cost Estimates. Great West does not warrant construction cost estimates.

8. Use of Documents. Great West retains ownership of all documents and work product under this *Agreement*, and Client may only use such documents and work product in connection with the Project.

9. Professional Standards. Great West shall perform Services according to the standard of care ordinarily exercised under similar conditions by similarly qualified professionals who are currently practicing in the area where Great West is located. Great West makes no express or implied warranties.

10. Indemnity. Great West and Client shall indemnify and hold each other harmless from and against all claims, liabilities, actions, damages and expensesmade by third parties to the extent caused by or resulting from negligent acts, wrongful acts, errors, or omissions related to or arising out of their respective performances in connection with the Project.

11. Limitation of Liability. Great West's liability for its acts, errors or omissions is limited to the total fee for Services performed under this *Agreement*. Client waives all other damages.

12. Alternative Dispute Resolution. Unresolved disputes, controversies and claims relating to performance of Services shall be initially referred to mediation prior to initiating any other adjudicatory option.

13. Termination. This *Agreement* may be terminated upon thirty (30) days written notice to the other party. In such event, Client shall pay Great West for all Services performed and for all expenses incurred to and including date of termination. In addition, Client shall pay Great West to archive the project files.

14. Dates. All time periods refer to calendar days unless otherwise stated.

15. Montana Law Governs; Venue. This Agreement is to be performed in the State of Montana and is made and entered into under the laws of the State of Montana and shall, in all respects, be interpreted, enforced, and governed under the internal laws (and not the conflicts of laws rules) of the State of Montana. In the event legal proceedings are commenced with regard to, arising out of or related to any provision of this Agreement, Client and Great West Engineering, Inc. agree that venue shall be the First Judicial District Court of Montana, located in Helena, Montana.

16. Survival. The provisions of this *Agreement* shall survive its termination and completion of Services.

17. Complete Agreement. This *Agreement* constitutes the complete and final understanding between the parties and may only be amended by written agreement between the parties.

EXHIBIT "A" - SCOPE OF SERVICES
Bridge 28-02 Replacement and Alkali Creek Road Realignment
DESIGN & CONSTRUCTION ADMINISTRATION SERVICES
September 17, 2020

GENERAL

This project consists of the design and construction administration for the replacement of Bridge 28-02 over Alkali Creek and the Realignment of Alkali Creek Road adjacent to the bridge in Yellowstone County.

Task 1 – Field Survey, Mapping, and Geotechnical

- Task 1A: A topographic field survey will be conducted to locate physical features within the impacted areas of the project site. The survey will incorporate property monuments that are readily available, as well as overhead and underground utility information based on locates called in prior to the survey. The survey data will be used to create a topographic site plan of the proposed bridge improvement area. A legal land survey will also be completed along the extents of the road realignment, this work will be completed by a sub-consultant. The PLS has also included time to complete one map/application for any easement documents or boundary line adjustments necessary for completion of the work.

- Task 1B: The survey will complete hydraulic cross sections of Alkali Creek upstream and downstream of the proposed new structure to assist with hydraulic modeling and permitting of the bridge.

- Task 1C: Great West will subcontract with a geotechnical consultant to conduct an investigation and evaluation of existing soil conditions at the project site. Two 50-ft deep boreholes are anticipated, one at each proposed abutment, and one shallower borehole aling the new road alignment. The final geotechnical report will provide recommendations for bearing pressure, lateral earth pressures, pile type and size, estimated pile length, recommended furnished pile length, if applicable, and road section recommendations. Recommendations will meet requirements of the AASHTO LRFD Bridge Design Specifications.

Task 2 – Project Design

- Task 2A: Preliminary design and calculations for the proposed project will be conducted in accordance with the Yellowstone County Bridge Standards and applicable AASHTO LRFD design standards for bridges. The Engineer will provide preliminary plans to the County for review and concurrence prior to proceeding with final design. Comments provided by the County will be incorporated into the final design.

- Task 2B: USGS flow records will be researched to predict 25, 50, and 100-year return period flood events based on either USGS regression equations or gaged information. Peak flows from the 2013 Yellowstone County Flood Insurance Study will be the likely source for design peak flows, since the bridge is located in a regulated Special Flood Hazard Area (SFHA). Hydraulic calculations will be conducted utilizing HEC-RAS modeling software to establish the waterway opening based upon the design flows and Yellowstone County Floodplain Regulations.

- Task 2C: Design information will be incorporated into drawings and specifications utilizing the approved preliminary conceptual design. Great West will prepare design drawings and technical specifications in accordance with Yellowstone County Bridge Standards and in conformance with other applicable County, state, and federal requirements. The plans and specifications will outline the work to be conducted by the contractor, along with the parties' legal responsibilities. The drawings will include existing road easements and utility information, plans of new structure and roadway geometry, foundation, substructure and superstructure plans, and detail sheets with typical connection details. The plans and specifications will be incorporated into a construction bid package, which will include the drawings and details, technical specifications, general conditions, and bid documents.

- Task 2D: Copies of the plans and specifications will be submitted to Yellowstone County for review at the 90-percent completion level. Based upon comments received, Great West will make the necessary modifications to the plans and specifications and work with the appropriate officials to obtain approval and prepare the final documents.

- Task 2E: A detailed final cost estimate for the proposed project will be prepared.

Task 3 – Permitting

- Task 3A: A Joint Application Permit will be prepared and submitted to the Montana Department of Fish, Wildlife & Parks (FWP), Montana Department of Environmental Quality (DEQ), U.S. Army Corps of Engineers (ACOE) and the Yellowstone County Floodplain Administrator. Great West will coordinate with county, state, and federal officials during the permitting process. Up to one round of revisions will be made to the Joint Application Permit based on comments received from the permitting agencies. One on-site visit for permitting is included in this scope to discuss site specific issues with the permitting agencies. The project is located in Zone AE of a FEMA flood study area, thereby requiring a Floodplain Development Permit (FDP), no-rise analysis, technical narrative, and LOMR. Refer to Tasks 6 & 7.

- Task 3B: Wetland delineations in accordance with the Corps of Engineers 1987 Wetlands Delineation Manual and regional supplements will be conducted. Wetlands

data will be forwarded to the Corps of Engineers for inclusion in the Joint Permit Applications.

- Task 3C: Great West will subcontract with a certified asbestos inspector to complete asbestos inspections. The asbestos inspections are required for the DEQ demolition permit to be obtained by the Contractor.

Task 4 – Bidding Procedures

- Task 4A: Great West will prepare the bid advertisement and assist Client in advertising for and obtaining competitive bids. Great West will prepare and distribute up to 10 copies of plans and specifications to qualified bidders and arrange and attend a prebid conference to answer specific project questions from contractors. Great West will review and tabulate all bids and make a recommendation to Client regarding the project award. Upon award of the bids, Great West will prepare the necessary Notice of Award, Agreement, and Notice to Proceed forms for use in awarding the contract.

Task 5 – Construction Administration and Observation

- Task 5A: Great West will coordinate among Yellowstone County, the contractor, utilities, and local landowners. Regular meetings, bi-weekly, will be scheduled with the contractor, engineer, and County; and status reports will be provided to the County. Great West will conduct a preconstruction conference at the site to discuss appropriate details concerning construction of the improvements with the Client, contractor, utilities, and landowners.

- Task 5B: Great West will provide control points such that the contractor may construction stake the bridge portion of the project. 3 trips are also scheduled to provide construction staking for the road realignment.

- Task 5C: Great West will review shop drawings and submittals by the contractor for conformance with specifications.

- Task 5D: Great West will provide onsite construction observation during key periods of the construction, including pile driving, concrete cap pours, beam placement and backfilling. Up to ten (10) construction observation trips are anticipated for the project. The Engineer will provide quality assurance that the contractor is meeting the requirements of the plans and specifications. The Engineer will also maintain a construction log of work performed.

- Task 5E: Great West will review each payment request submitted by the contractor. Following our approval of each request, Great West will submit the pay application to Client for processing. In addition, Great West will prepare, and process change orders and/or work change directives as required.

- Task 5F: Great West will review certified payrolls submitted by the Contractor and any Subcontractors.

- Task 5G: Upon completion of all construction work at the project site, Great West will conduct a final inspection of the project for conformance with plans and specifications. Great West will write a letter of acceptance to Client and assist with processing final applications. Great West will also prepare "as-constructed" drawings and submit to Yellowstone County and MDT.

Task 6 – Hydraulic Design & Floodplain Development Permit

The project is located in Zone AE of a FEMA flood study area, thereby requiring a Floodplain Development Permit (FDP) and no-rise analysis.

- Task 6A: Peak flows from the 2013 Yellowstone County Flood Insurance Study will be used as the basis for the hydraulic design and FDP.

- Task 6B: The duplicate effective model for this reach of Alkali Creek (cross sections AB through AF) will be created in HEC-RAS.

- Task 6C: Electronic mapping will be utilized to cut cross sections along the channel for approximately ¼ mile above and below the bridge crossing. Standard engineering hydraulics practices, in accordance with FEMA's guidelines, will be utilized to develop a current conditions hydraulic model. An encroachment analysis for the current conditions model will also be completed.

- Task 6D: A proposed conditions hydraulic model will be developed that will be based on the proposed new bridge opening geometry. An encroachment analysis for the proposed conditions model will also be completed.

- Task 6E: The current conditions model will be compared to the proposed conditions model to assess the effect of the proposed bridge replacement project on base flood elevations and velocities. If it is determined that the proposed improvements will cause greater than a 0.00' increase in the base flood elevation at any cross section or that velocities are significantly increased, Great West will notify Yellowstone County.

- Task 6F: If Yellowstone County elects to modify the proposed design to achieve a No-Rise / No-Impact condition, Great West will update the proposed condition hydraulic model up to two times. Additional revisions are not included in this Task Order. The Task Order will be amended accordingly and as necessary in cooperation with the Owner to incorporate additional services.

- Task 6G: Prepare a No-Rise Analysis report. Submit report along with the Joint Application (prepared under Task 3) to the county and city Floodplain Administrators to apply for Floodplain Development Permits.

PHASE 7 – Floodplain Letter of Map Revision (LOMR) Application

- Task 7A: A complete Letter of Map Revision (LOMR) application and supporting data will be prepared and submitted to FEMA using the latest version of the MT-2 forms. The LOMR application will be submitted online. Hard copies will not be produced.

- Task 7B: The LOMR application will include a technical narrative which will cover: hydrology, hydraulics, historical information, modeling assumptions and results.

- Task 7C: Great West will respond to one Additional Data Request from FEMA and the MT DNRC. Any additional requests or model revisions are not included in this scope.

SERVICES EXCLUDED

- Great West Engineering will not be responsible for remittance of any application fees for any necessary permits. The estimate fee, payable to FEMA, is $8,000 for the LOMR application.
- Compiling names, addresses, and parcel information for those landowners who are affected by the proposed floodplain revision is not included in this scope. Sending notices to landowners who are affected is a requirement of the Montana Code Annotated. Yellowstone County will be responsible for identifying landowners and sending the notices.
- Cultural resource investigations and Biological Assessments (BA) are not included in this scope.

COMPENSATION

This cost ceiling will not be exceeded without prior authorization from the Owner. Actual costs are determined by the Schedule of Rates attached to the Engineering Contract. The estimated cost for each task is as indicated below.

TASK	ESTIMATED MAXIMUM COST
Task 1: Field Survey, Mapping, Geotechnical Investigation	$20,150
Task 1a: PLS for Easement/Boundary Line Adjustment	$5,500
Task 2: Project Design & Specifications	$24,150
Task 3: Permitting	$5,500
Task 4: Bidding Procedures	$3,500
Task 5: Construction Administration & Observation	$24,000
Task 6: Hydraulic Design, Floodplain Development Permit, and No-Rise Analysis	$12,650
Task 7: LOMR Application (if required)	$7,500
TOTAL	$102,950

GreatWest engineering

EXHIBIT B
2020 SCHEDULE OF BILLING RATES

	Hourly Rate
Clerical Support	$65
Project Assistant	77
Project Coordinator	88
Project Administrator	125
Ecologist	98
GIS Specialist	88
Resident Project Representative 1	114
Resident Project Representative 2	125
Designer	107
Senior Designer	120
Senior Technician/Planner	130
Senior Hydrogeologist	156
Engineering Tech	79
Engineer 1	113
Engineer 2	120
Engineer 3	125
Engineer 4	140-152
Engineer 5	174-185
Engineer 6.	179

Reimbursable Expenses include but are not limited to:

Auto Mileage	$.65/mile
Outside Consultants, Fees, Shipping, Supplies, Travel and Per Diem	1.10xcost

*These rates are effective **January 1, 2020**. They are subject to update in January 2021.

B.O.C.C. Regular **Agenda Item 7.**

Meeting Date: 10/06/2020

Title: PARS

Submitted By: Teri Reitz, Board Clerk

TOPIC:

PERSONNEL ACTION REPORT - Sheriff's Office - 1 Appointment, 1 Salary & Other; **Detention Facility** - 3 Salary & Other; **Clerk of District Court** - 1 Termination

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Approve.

Attachments

PARS

Yellowstone County Commissioners
RECEIVED
SEP 17 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

Name: SCHMIDT, ALLEN D

Effective Date: 10/05/2020

Current Title: DEPUTY SHERIFF

Gr. ____ Salary $ 25.93/HR

Title Change: _____

Gr. ____ Salary $ _____

Check as Applicable:

Regular Full Time:	XX	New Hire:	XX
Regular Part Time:	___	Rehire:	___
Temp Full Time:	___		
Temp Part Time:	___	Termination:	___
Seasonal Hire:	___	Promotion:	___
Replaces position Name LUNDBERG	XX	Transfer:	___
New Budgeted Position	___	Demotion:	___
Other:	___	Reclassification:	___

Funding: 2300 - 132 - 420150 - 111 Percent 100 New Account ___

___ - ___ - ___ - ___ Percent ___ Split Account ___

3-15

Elected Official/Department Head

9/17/2020

Date

Section 2

Human Resources:

Note: ELIGIBILITY POOL TJK

9-17-20

Director Date

H.R. Comments:

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

9.17.2020

Director Date

Commissioner's Action

	Approve	Disapprove
Chair	___	___
Member	☒	___
Member	___	___

revised 02/13

Yellowstone County Commissioners
RECEIVED
SEP 17 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

---

Name: NEWELL, SCOTT L

Effective Date: 10/01/2020

Current Title: DEPUTY SHERIFF

Gr. ____ Salary $ 25.93/HR

Title Change: DEPUTY SHERIFF/DIFF

Gr. ____ Salary $ 26.71/HR

Check as Applicable:

Regular Full Time: X
Regular Part Time: ___

Temp Full Time: ___
Temp Part Time: ___

Seasonal Hire: ___

Replaces position ___
Name_____
New Budgeted Position ___

Other: Add Differential X

New Hire

Rehire:

Terminati

finance gets $ 26.69 w/ shift diff

Promotion: ___

Transfer: ___

Demotion: ___

Reclassification: ___

Funding: 2300 - 132 - 420150 - 111 Percent 100 New Account ___
____ - ____ - _____ - _____ Percent ____ Split Account ___

Elected Official/Department Head

9/17/2020
Date

Section 2

Human Resources:

Note: _____

Director Date 9-17-20

H.R. Comments:

_____

_____

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

Director Date 9.17.2020

Commissioner's Action

	Approve	Disapprove
Chair	____	____
Member	____	____
Member	____	____

revised 02/13

Yellowstone County Commissioners
RECEIVED
SEP 24 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

---

Name: CAINE, NICHOLAS R

Effective Date: XXXX 10/01/2020

Current Title: Detention Officer

Gr. ____ Salary $ 20.65/HR

Title Change: Detention Officer/Diff

Gr. ____ Salary $ 21.35/HR

Check as Applicable:

Regular Full Time:	XX	New Hire:	___
Regular Part Time:	___	Rehire:	___
Temp Full Time:	___		
Temp Part Time:	___	Termination:	___
Seasonal Hire:	___	Promotion:	___
Replaces position Name_____	___	Transfer:	___
New Budgeted Position	___	Demotion:	___
Other: Add Differential	X	Reclassification:	X

Funding: 2300 - 136 - 420200 - 111 Percent 100 New Account ___

____ - ____ - _____ - _____ Percent ____ Split Account ___

Elected Official/Department Head

9/23/2020
Date

Section 2

Human Resources:

Note: _____

Director Date 9-24-20

H.R. Comments:

_____

_____

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

Director Date 9.24.2020

Commissioner's Action

	Approve	Disapprove
Chair	___	___
Member	___	___
Member	___	___

revised 02/13

Yellowstone County Commissioners
RECEIVED
SEP 24 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

---

Name: DONALDSON, TYSON J

Effective Date: 10/01/2020

Current Title: Detention Officer

Gr. ____ Salary $ 20.45/HR

Title Change: Detention Officer/Diff

Gr. ____ Salary $ 21.15/HR

Check as Applicable:

Regular Full Time:	XX	New Hire:	___
Regular Part Time:	___	Rehire:	___
Temp Full Time:	___		
Temp Part Time:	___	Termination:	___
Seasonal Hire:	___	Promotion:	___
Replaces position Name_____	___	Transfer:	___
New Budgeted Position	___	Demotion:	___
Other: Add Differential	XX	Reclassification:	XX

Funding: 2300 - 136 - 420200 - 111 Percent 100 New Account ___

___ - ___ - ___ - ___ Percent ___ Split Account ___

Elected Official/Department Head

9/23/2020
Date

Section 2

Human Resources:

Note: _____

Director — Date 9-24-20

H.R. Comments:

_____

_____

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

Director — Date 9.24.2020

Commissioner's Action

	Approve	Disapprove
Chair	___	___
Member	___	___
Member	___	___

revised 02/13

Yellowstone County Commissioners
RECEIVED
SEP 24 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

---

Name: ANDERSON, GARRETH

Effective Date: 10/1/2020

Current Title: Detention Officer

Gr. ____ Salary $ 20.45/HR

Title Change: Detention Officer/Diff

Gr. ____ Salary $ 21.15/HR

Check as Applicable:

Regular Full Time:	XX	New Hire:	___
Regular Part Time:	___	Rehire:	___
Temp Full Time:	___		
Temp Part Time:	___	Termination:	___
Seasonal Hire:	___	Promotion:	___
Replaces position Name_____	___	Transfer:	___
New Budgeted Position	___	Demotion:	___
Other: Add Differential	X	Reclassification:	X

Funding: 2300 - 136 - 420200 - 111 Percent 100 New Account ___

___ - ___ - ___ - ___ Percent ___ Split Account ___

Elected Official/Department Head

9/23/2020
Date

Section 2

Human Resources:

Note: _____

Director — Date 9-24-20

H.R. Comments:

_____

_____

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

Director — Date 9.24.2020

Commissioner's Action

	Approve	Disapprove
Chair	___	___
Member	___	___
Member	___	___

revised 02/13

Yellowstone County Commissioners
RECEIVED
SEP 17 2020

YELLOWSTONE COUNTY
PERSONNEL ACTION REPORT
Section 1

Section 1 is to be completed by the initiating department for recommended personnel changes

---

Name: Tuesday Arthur | Effective Date: 9/15/2020

Current Title: Deputy Clerk | Gr. C | Salary $ _____

Title Change: _____ | Gr. ____ | Salary $ 13.65

Check as Applicable:

Regular Full Time:	___	New Hire:	___
Regular Part Time:	___	Rehire:	___
Temp Full Time:	___		
Temp Part Time:	___	Termination:	✓
Seasonal Hire:	___	Promotion:	___
Replaces position Name_____	___	Transfer:	___
New Budgeted Position	___	Demotion:	___
Other:	___	Reclassification:	___

Funding: 1000 - 221 - 410330 - 111 Percent 100 New Account ___

_____ - _____ - _____ - _____ Percent ____ Split Account ___

Elected Official/Department Head | Date 9/17/2020

Section 2

Human Resources:

Note: _____

Director 9-17-20 Date

H.R. Comments:

_____

_____

Date entered in payroll _____

Clerk & Recorder - original
Human Resources – canary
Auditor – pink
Department - goldenrod

Finance:

Note: _____

Director Jennifer Jones 9-17-2020 Date

Commissioner's Action

	Approve	Disapprove
Chair	____	____
Member	____	____
Member	____	____

revised 02/13

B.O.C.C. Regular **Agenda Item 1.**

Meeting Date: 10/06/2020

Title: Payroll Audit

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Payroll Audit September 1, 2020 to September 15, 2020

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Place to file.

Attachments

Payroll Audit

RECEIVED
SEP 21 2020
YELLOWSTONE COUNTY
CLERK AND RECORDER

PAYROLL AUDIT
September 1 to September 15, 2020

Date: 9/21/2020

To: Board of County Commissioners

From: Scott Turner, County Auditor ST

From my office's review of the above referenced payroll, the findings are noted below:

Date	Employee Name	Department	Finding
9/18/20	Harris, Melody	Extension ✓	Rate s/b 16.50 @ 27 hrs per PAR 9/1/20, payroll journal printing out with Metra department. ✓
9/18/20	Bettise, Sandy	Metra ✓	No payroll journal for 15.50 hrs worked (5810.553.460442.112)
9/18/20	James, Kyle	Metra ✓	OT rate s/b 20.69 @.75 hrs ✓

B.O.C.C. Regular **Agenda Item 2.**

Meeting Date: 10/06/2020

Title: Board Minutes

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Board Minutes - Lockwood Water and Sewer District

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Approve.

Attachments

Lockwood Water and Sewer 2019 Minutes

Lockwood Water and Sewer 2020 Minutes

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

July 10, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on July 10, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Nancy Belk, Carlotta Hecker, Merrill Walker and Stuart Deans. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, Jill Cook, P.E., of Morrison-Maierle, Inc., and Evelyn Pyburn, *Yellowstone County, News.*

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES:

The minutes of the June 12, 2019 Board meeting were presented for approval. One correction was noted on Page 5, Task **Oder** No. 11 should be Task **Order** No. 11.

I. Stuart Deans moved to approve the minutes of the June 12, 2019 Board meeting as corrected. Carlotta Hecker seconded the motion. Motion carried.

NEW BUSINESS:

* **Superior Builders, Inc., petition for inclusion into Water District Boundary, Fraction of the North ½ Section 28, less the NW 1/4 of the SW 1/4 of the NE 1/4, Section 28, Emerald Hills 2nd Filing, Emerald Hills 3rd Filing, Emerald Hills Westgate 2nd Filing, Certificate of Survey 2674 Amended, and Emerald Hills Acreage Tracts Subdivision 5th Filing (Tax ID Do6545).**

Manager Ariztia presented a map of the property petitioned for inclusion by Superior Builders, Inc., blue representing property previously included in the District, designated as Phase I. Phase II, requested for inclusion in this petition, will encompass 16 lots, and is designated in yellow. Phase I currently has all the water mains installed. They have been chlorinated and pressure tested and are in place.

The petition requests that all the property set forth in the above description (pink and yellow) be brought into the District boundary. There are elevation level problems that will have to be addressed. At present, Lots 14, 15 and Lot 4 are questionable due to elevation height limit and the District's ability to adequately provide water to the property.

The Board's consensus was to allow Phase II properties (designated yellow) in at this time. Manager Ariztia will present an ordinance at the August meeting with verbiage to the effect if the sewer boundary ever extends to the other properties, they will automatically be included.

Copy of Petition and map attached to minutes

* **Approval of Task Order No. 12 to the Water Master Agreement with Morrison-Maierle, to perform design and Bidding Phase services for the 2020 Water Treatment Plant Improvements Project.**

Jill Cook of Morrison-Maierle presented for approval Task Order No. 12 covering the design and bidding for treatment train Nos. 3 and 4, Lockwood 2020 Water Treatment Plant improvements Project , described as follows:

Preliminary and Final Design Phase Services including survey, engineering, geotechnical investigations and permitting for the 2020 Water Treatment Plant improvements Project as described in the 2018 Water Master Plan Update. The project also includes addition of UV disinfection as described in the June 8, 2019 Long Term 2 Surface Water Treatment Rule Compliance memo.

At the present time, the District plans on funding the project with an SRF loan, TSEP grant, RRGL grant, and the Army Corps of Engineers grant. An environmental review will be conducted for the Army Corps under a separate task order, so that is excluded from this task order. Total cost for these services are estimated to be $491,000.00.

Preliminary design will commence in July carrying through September. Final design completion is contemplated for May, 2020 in anticipation of going out for bid in June of 2020.

II. Merrill Walker moved to approve Task Order No. 12 to the Water Master Agreement with Morrison-Maierle for design and bidding for the 2020 Water Treatment Plant Improvements Project in the amount of $491,000. Nancy Belk seconded the motion. Motion carried.

Task Order No. 12 with Attachment A attached to minutes

* **Approval of Amendment #1 to the Water Master Agreement with Morrison-**

Maierle, to add Exhibit 1.

Jill Cook advised that Task Order No. 12 is an order stemming off of the base agreement between the District and Morrison-Maierle dated October 8, 2014. Amendment No. 1 to the Owner-Engineer Agreement was omitted from the original agreement, set forth in Exhibit I, Allocation of Risks. Jill advised that unless a funding agency would not allow it, this exhibit is always included in their master agreement.

The modifications cover Limitations of Engineer's Liability; Conditions Beyond the Control of the Engineer; Statute of Limitations; and, Betterment. Jill explained each segment of the Amendment to the Board. Questions arose over the "Betterment" portion of the Amendment. Jill explained the concept of betterment is if you're going to pay what you would have paid had it all been included originally, that you don't penalize the engineer for leaving that out. This provision was included in Phase 1 sewer contract; Phase II it did not because of the RD funding. After much further discussion, the Amendment was approved.

III. Stuart Deans moved to approve Amendment No. 1 to Owner-Engineer Agreement between Lockwood Water and Sewer District and Morrison-Maierle. Nancy Belk seconded the motion. Motion carried.

Amendment No. 1 attached to minutes

* **Discussion and Possible direction on the function and design of the Prairie Drive Bulk Water Station.**

Manager Ariztia started off with a discussion on how the District was going to take payments. He provided pictures to the Board of the Blue Creek Fill station, which he had visited earlier. Their method of payment is a prepaid water card that you can purchase with a debit or credit card, and it is done onsite. There is no cash involved, and the machine keeps track of your water purchases. Manager Ariztia will contact the Blue Creek manager when he returns for more details. The machine is built by Wash Card Systems, which is primarily car wash technology, but they have customized to accommodate a water station.

Jill advised she has been focusing on Flow Point as the supplier of the station. The Flow Point system uses a pin number, and each account or each person has a pin number, resulting in no cash transactions. The pin number system can either be pre-loaded or paid for by a monthly bill. It is not mandatory that you use accounts and a pin number. A credit card acceptor can be added to the system, so people would just use their credit card to purchase water.

Some of the decisions involved are who does the District want to serve, i.e., what size tanks, pickups with trailers, larger trucks, etc., how many fill points, which at this point are two. Flow rate requirements, 125 gallons per minute. Flow Point recommends a minimum flow rate of 265 gallons per minute, which will fill a larger truck in 15 minutes.

Manager Ariztia advised he would prefer having a fill station that does not have pumps in it to increase the flow or the pressure; that it would operate so that whatever the system pressure is and whatever the diameter of the pipe is, would determine what the flow is because he does not want to get into maintenance issues with pumps that increase the pressure.

One option that was felt to be necessary was radiant heaters under the concrete flooring on both sides for each fill to prevent ice buildup. Overhead and bottom fills were discussed and options will be looked at further. Most likely there would be a cellular connection for communication with the station unless there was access to a regular land line. There will have to be some form of communication to enable the credit card processing machine to work.

For power requirements, there is overhead power that can be utilized. Site lighting is a consideration. The size of the building needs to be decided upon, and the consensus is the building only has to accommodate the controls, some piping and valves, one fill point on each side and the internal components to include whatever type of boiler or pump system for the radiant floor heat. Manager Ariztia prefers a concrete block building, and the Board agreed. Graffiti sealant will be put on the building. More discussion will be held at next month's meeting.

OLD BUSINESS:

None.

FINANCIAL REPORTS

Current trial balance from Yellowstone County not received.

Financial reports attached to the minutes are: Check/Claim Detail for the Accounting Period June, 2019; Trial Balance with Revenue and Expenditures for the Accounting Period June, 2019; Statement of Revenue Budget vs. Actual for the Accounting Period Statement, June, 2019; Statement of Expenditures - Budget vs. Actual Report for the Accounting Period June, 2019.

APPROVAL OF BILLS DUE FOR SIGNATURE:

IV. Merrill Walker moved to approve payment of the bills submitted on the Check/Claim Detail List. Nancy Belk seconded the motion.

Motion carried.

OTHER BUSINESS:

* **Johnson Lane Highway 87 waterline update**

Manager Ariztia reported that the plans have been completed. An advertisement for bids was submitted to run the next three weeks in the *Yellowstone County News,* After the three weeks, there will be a bid opening August 1st. As it is structured now, schedule 1 extends all the way to Highway 87, and has the extension down Prairie which will feed the bulk water station. Schedule 2 is Highway 87 East. The total footage is 4300 feet.

MANAGER REPORTS:

The water pumping record is as follows:

June, 2018		25,780,700
June, 2019		31,018,700

Wastewater record:

May, 2018		5,342,964
May, 2019		2,538,712
May, 2019	Exxon Wastewater	61,002,000

With regard to the Army Corps of Engineers grant, a fully executed agreement was received in the mail this week, and the funds in the amount of $212,000 have been allocated.

There are two high service pumps that pump water out to the system, one of them had a failed motor. The motor was pulled and inspected, and it was rebuilt in less than two weeks. It was installed and both pumps are now running. This could have been a very serious situation, therefore, Manager Ariztia ordered a new motor to keep at the plant as a backup.

There was another meeting of the TEDD consisting of the City Manager, Manager Ariztia, Woody Woods, chairman for the TEDD, Big Sky Economic Development, along with some property owners in that area just to get a feel for what's going on and whether they would be open to some different options as far as how they felt on annexation and other options available. Presently it is stagnant until the City and County resolve who has jurisdiction over the TEDD.

There has been some settling of the streets due to excessive wet weather and irrigation ditches being back on in Phase II. Milling and patching was done on Becraft to repair a large dip in the street that had formed.

ADJOURNMENT:

V. Nancy Belk moved to adjourn the meeting. Merrill Walker seconded the motion. Motion carried.

There being no further business to come before the Board, the meeting was adjourned at 8:45 p.m.

The next Board meeting will be held on August 14, 2019.

Attest

Attest

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

August 14, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on August 14, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Nancy Belk, Carlotta Hecker, Merrill Walker and Stuart Deans. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, and Jill Cook, P.E., of Morrison-Maierle, Inc.

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES:

The minutes of the July 10, 2019 Board meeting were presented for approval. One correction was noted on Page 4, third paragraph, after the word "valves", omit "the two fill stations", and change to "**one fill point on each side**".

I. Merrill Walker moved to approve the minutes of the July 10, 2019 Board meeting as corrected. Stuart Deans seconded the motion. Motion carried.

A brief discussion was held regarding the basic design of the new bulk station, including radiant floor (slab) heating, size and structure of the building, and method of payment. President Peters inquired as to how important the flow rate is. Manager Ariztia reiterated his desire that the flow rate be determined by the diameter of the pipe and the system pressure. He does not want to deal with pumps to increase the flow or the pressure. Assistant Manager Reed advised they have a valve that regulates the flow rate at 125 gallons a minute.

NEW BUSINESS:

* **Award of construction contract for the Johnson Lane Water Main Extension Project to KLE Construction**

At bid opening on August 1, 2019, KLE Construction submitted the low bid for the construction contract in the amount of $658,495.00, and presented the required qualifications.

Merrill Walker seconded the motion. Motion carried.

Ordinance 2019-1 was read into the record by Carlotta Hecker as follows:

CERTIFICATE AS TO ORDINANCE AND ADOPTING VOTE

I, the undesigned, being the duly qualified and acting recording officer of the Lockwood Area/Yellowstone County Water and Sewer District, Montana (the "District") hereby certify that the attached Ordinance is a true copy of an Ordinance entitled: "AN ORDINANCE OF THE LOCKWOOD AREA/YELLOWSTONE COUNTY WATER AND SEWER DISTRICT, MONTANA, GRANTING THE PETITION OF SUPERIOR BUILDERS LLP, TO INCLUDE LANDS INTO THE WATER DISTRICT BOUNDARY AND INTO WATER DISTRICT #1 (the Ordinance), on file in the original records of the District in my legal custody; that the Ordinance was duly adopted by the Board of Directors of the District at a regular meeting on August 14, 2019, and that the meeting was duly held by the Board of Directors and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Ordinance has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Ordinance at said meeting, the following Directors voted in favor thereof: Carl Peters, Merrill Walker, Carlotta Hecker, Nancy Belk and Stu Deans; voted against the same: None; abstained from voting thereon: None; or were absent: None.

WITNESS my hand and seal officially this 14th day of August, 2019.

Secretary/Treasurer LWSD

Manager Ariztia confirmed to President Peters that the Ordinance covers 16 residential lots. The subdivision is going to put in 15 residential lots, but there is going to be a 16th lot which is the remainder of the property after the subdivision, which is why "not to include the remaining larger portion . . ." was set forth in the Ordinance.

Copy of Ordinance attached to minutes

* **Discussion and possible motion regarding annual wage increases for fiscal year 2020**

After discussion and comparison of wages at various entities in Montana, the Board agreed that a 3% raise in wages for all employees was appropriate.

V. Nancy Belk moved to approve a 3% employee wage increase for fiscal year 2020. Carlotta Hecker seconded the motion. Motion carried.

Wastewater record:

June, 2018		5,512,012
June, 2019		4,404,224
June, 2019	Exxon Wastewater	58,577,000

As far as the TEDD, the District is still dealing with the City. Manager Ariztia will keep the Board apprised of any new developments.

Manager Ariztia advised he is exploring alternatives for obtaining water rights. He has been working with Matt Williams, the water rights attorney, and Jill Cook and her office, in an attempt to find a solution.

Manager Ariztia will not be available the next Board meeting date, September 11. The Board agreed to an earlier meeting date of September 4th.

August 22nd, the Optimist Club will be holding a dedication for the bench they did based on ten items that were accomplished during a specific time frame. One of them is the Phase II sewer project, so Manager Ariztia was asked to be there to explain the Phase II project, what it accomplished, etc. It will be held at the Lions Lair at Lockwood school at 6 p.m.

ADJOURNMENT:

VIII. Carlotta Hecker moved to adjourn the meeting. Stuart Deans seconded the motion. Motion carried.

There being no further business to come before the Board, the meeting was adjourned at 8:20 p.m.

The next Board meeting will be held on September 4, 2019.

Attest

Attest

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

September 4, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on September 4, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Nancy Belk, Carlotta Hecker, Merrill Walker and Stuart Deans. Also present was Manager Mike Ariztia and Assistant Manager Tony Reed.

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

Nancy Belk questioned if the new bulk station will have higher dispenser capabilities than the current station. Manager Ariztia responded they have discussed having one side about the same as the present bulk station, and then having the other side a little bit higher to accommodate some of the taller trucks, so the small ones can still come in one side, and the other side can serve medium to tall trucks.

APPROVAL OF MINUTES:

The minutes of the August 14, 2019 Board meeting were presented for approval.

Corrections were as follows: Page 1, third paragraph from bottom, change "regulates that pressure" to read "regulates the **flow rate** at 125 gallons a minute."

Page 2, clarify hourly rate language to read, "at a **project total not to exceed $105,900.00**", omitting "hourly rate".

Page 5, clarify LWSD water rights attorney as **Matt Williams.**

Page 5, modify statement on the TEDD.

I. Merrill Walker moved to approve the minutes of the August 14, 2019 Board meeting with the corrections as noted. Carlotta Hecker seconded the motion. Motion carried.

NEW BUSINESS:

* **Approval of 2019 Mill Levy for Phase I Sewer G.O. Bond**

Manager Ariztia explained the calculation of the GO Bond payment for the 2019 Mill Levy. The Phase 1 real property taxable valuation for 2019 is $4,002,665; the 2017 real property taxable valuation was $5,177,944, resulting in a 2018 Mill Levy of 112. The GO Bond Mill Levy for 2019 is 145. There appears to be some question in regard to centrally assessed properties, and whether they are part of the assessments because they are dealt with at a different division of the Department of Revenue. Manager Ariztia provided the DOR with a copy of the Resolution creating the Phase 1 District , all the information on what's been done and the legal description of the Phase 1 boundary. Robin at the DOR is verifying parcels and sending the information to Helena to try and correct the assessments. For this tax year, the 145 Mill Levy will not change.

II. Nancy Belk moved to raise the Phase 1 2019 Mill Levy to 145 mills. Carlotta Hecker seconded the motion. Motion carried.

Copy of Mill Levy calculations attached to minutes

OLD BUSINESS:

None.

FINANCIAL REPORTS

Current trial balance from Yellowstone County not received.

Financial reports attached to the minutes are: Check/Claim Detail for the Accounting Period August, 2019; Trial Balance with Revenue and Expenditures for the Accounting Period August, 2019; Statement of Revenue Budget vs. Actual for the Accounting Period Statement, August, 2019; Statement of Expenditures - Budget vs. Actual Report for the Accounting Period August, 2019.

APPROVAL OF BILLS DUE FOR SIGNATURE:

III. Nancy Belk moved to approve payment of the bills submitted on the Check/Claim Detail List. Carlotta Hecker seconded the motion. Motion carried.

OTHER BUSINESS:

* **2020 Water Treatment Plant Upgrade Project design update**

There is nothing significant happening on the treatment plant upgrade. Morrison-Maierle is continuing to work on providing the Basis of Design Report for review in October.

* **2019 Johnson Lane Highway 87 Water Main Project Update**

The preconstruction meeting was held on September 4. Construction is tentatively scheduled to start on September 16. Letters have been sent advising LWSD is putting a main line in. Locations will be marked on where LWSD is stubbing out service to properties. Anyone wanting to connect to water will have to request to be brought into the service boundary. Original estimate for completion of construction is 70 days.

MANAGER REPORTS:

The water pumping record is as follows:

August, 2018	44.071.000
August, 2019	49,297,700

Wastewater record:

July, 2018		4,900,896
July, 2019		4,244,152
July, 2019	Exxon Wastewater	73,171,000

Manager Ariztia reported that the yearly audit is being done this week, and so far everything is going smoothly with the audit.

President Peters suggested Manager Ariztia look into the possibility of the District purchasing water rights from the Irrigation District. Manager Ariztia advised he would research the matter to find out if it could be done.

ADJOURNMENT:

IV. Nancy Belk moved to adjourn the meeting. Carlotta Hecker seconded the motion. Motion carried.

There being no further business to come before the Board, the meeting was adjourned at 7:45 p.m.

The next Board meeting will be held on October 9, 2019.

Attest

Attest

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

October 9, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on October 9, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Carlotta Hecker, Merrill Walker and Stuart Deans. Board member Nancy Belk was absent. Also present was Manager Mike Ariztia. Assistant Manager Tony Reed was in Bozeman, MT for training update classes.

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES:

The minutes of the September 4, 2019 Board meeting were presented for approval. One correction was noted on Page 3, under Johnson Lane Update, fourth sentence, change "Anyone wanting to connect to sewer" to "Anyone wanting to connect to **water"**. . .

I. Stuart Deans moved to approve the minutes of the September 4, 2019 Board meeting with the correction as noted. Carlotta Hecker seconded the motion. Motion carried.

NEW BUSINESS:

* **Discussion of the possibility to offer assistance to the Worden Ballantine Water and Sewer District.**

Merrill Walker shared that when Lockwood Water District was formed, it had a similar problem with nitrates in the groundwater wells, as Worden Ballantine is having now, and that problem was part of the reason Lockwood obtained funding to upgrade its plant. He believes that it would be good will to help the neighboring Worden Ballantine District. Manager Ariztia will contact their District Board to find out what would be the best way to provide aid.

* **Discussion to look into the possibility of acquiring additional water rights from the Lockwood Irrigation District.**

Manager Ariztia again raised the possibility of acquiring Lockwood Irrigation District water rights. Per Manager Ariztia, the Irrigation District is willing to entertain the idea, but they would like LWSD to participate in a study of the Irrigation District water rights to see what rights it has, what it is currently using, and what the forecast is as far as irrigation use in the future. Manager Ariztia will contact the Irrigation Board and request the matter be placed on the next Irrigation Board meeting agenda for formal discussion.

OLD BUSINESS:

None.

FINANCIAL REPORTS

Current trial balance from Yellowstone County not received.

Financial reports attached to the minutes are: Check/Claim Detail for the Accounting Period September, 2019; Trial Balance with Revenue and Expenditures for the Accounting Period September, 2019; Statement of Revenue Budget vs. Actual for the Accounting Period Statement, September, 2019; Statement of Expenditures - Budget vs. Actual Report for the Accounting Period September, 2019.

APPROVAL OF BILLS DUE FOR SIGNATURE:

II. Stuart Deans moved to approve payment of the bills submitted on the Check/Claim Detail List. Merrill Walker seconded the motion. Motion carried.

OTHER BUSINESS:

* **2020 Water Treatment Plant Upgrade Project design update**

This is still in the beginning phases. Manager Ariztia has received five technical memos from Morrison-Maierle for review. He also met with two engineers from MMI to go through the plant and discuss plan designs. The design phase had not been completed as of yet.

* **2019 Johnson Lane Highway 87 Water Main Project Update**

KLE Construction has started construction on the update. They cut off the flush-out assembly, tied into that, and put in a new 12" valve along with about 20 feet of pipe. The bore underneath Johnson Lane has been completed at Prairie drive. The connections were completed and the 6" stub for the bulk water station and fire hydrant assembly have been installed.

They are hoping now to get started on digging down Johnson Lane and installing pipe. They will have to tie in at Prairie Drive, tie across Johnson Lane at 87. Once they get that

finished, they're going to move up to the mobile park home on 87 and start working their way back towards Johnson Lane.

Manager Ariztia signed Change Order No. 1 for the Johnson Lane project in the amount of $3,000, to increase the size of the water services from 3/4" to 1".

MANAGER REPORTS:

The water pumping record is as follows:

September, 2018	32,193,800
September, 2019	38,520,000

Wastewater record:

August, 2018	3,946,448
August, 2019	4,468,552
August, 2019 Exxon Wastewater	90,411,508

The lifting coating was removed and cleaned from the top of the clear well at the plant.

ADJOURNMENT:

III. Merrill Walker moved to adjourn the meeting. Carlotta Hecker seconded the motion. Motion carried.

There being no further business to come before the Board, the meeting was adjourned at 7:35 p.m.

The next Board meeting will be held on November 13, 2019.

Attest

Attest

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

November 13, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on November 13, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Carlotta Hecker, Nancy Belk, and Stuart Deans. Board member Merrill Walker was absent. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, Jill Cook, of Morrison-Maierle, and Evelyn Pyburn of *Yellowstone County News.*

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES:

The minutes of the October 9, 2019 Board meeting were presented for approval. One correction was noted on Page 2, under Johnson Lane Update, first sentence, "KE" Construction should be "**KLE**" Construction.

I. Stuart Deans moved to approve the minutes of the October 9, 2019 Board meeting with the correction as noted. Nancy Belk seconded the motion. Motion carried.

NEW BUSINESS:

* **Approval of Pay Application #1 to KLE Construction for the Johnson Lane Hwy 87 East water main extension**

KLE presented Pay Application #1 for the Johnson Lane Main Line extension in the amount of $477,412.05.

II. Nancy Belk moved to approve payment of Pay Application #1 from KLE Construction in the amount of $477,412.05. Carlotta Hecker seconded the motion. Motion carried.

building, and the parameters set out in Table 2. Jill will present a task order for design at the December Board meeting. The structural design of the building will be done by the precast supplier.

Copy of Technical Memorandum attached to minutes

OLD BUSINESS:

None.

FINANCIAL REPORTS

Trial balance from Yellowstone County as of 10/31/19 is $5,528.55.

Financial reports attached to the minutes are: Check/Claim Detail for the Accounting Period October, 2019; Trial Balance with Revenue and Expenditures for the Accounting Period October, 2019; Statement of Revenue Budget vs. Actual for the Accounting Period Statement, October, 2019; Statement of Expenditures - Budget vs. Actual Report for the Accounting Period October, 2019.

APPROVAL OF BILLS DUE FOR SIGNATURE:

IV. Nancy Belk moved to approve payment of the bills submitted on the Check/Claim Detail List. Stuart Deans seconded the motion. Motion carried.

OTHER BUSINESS:

* **2020 Water Treatment Plant Upgrade Project design update**

Jill Cook reported that they are currently still in preliminary design. They are working on a basis of design report where they develop all of the design criteria for the improvement. They have developed draft tech memos for most of the basis of design report. The tech memos have been sent to Manager Ariztia, reviewed by Assistant Manager Reed and Nick Baker. A meeting was held between the parties to talk through the tech memos that have been completed to date. Parties from Suez met with the group to clarify they had a clear understanding of what the existing system is. Suez is the manufacturer of the super pulsators, which are plate settlers for the clarifiers. They will be sole-sourced from Suez.

Geotech is scheduled to have the building design in December, and will shortly be transitioned from preliminary design into final design with the goal to get the project out to bid and in construction by early summer 2020.

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

December 11, 2019

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on December 11, 2019. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Carlotta Hecker, Nancy Belk, Merrill Walker and Stuart Deans. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, Jill Cook, of Morrison-Maierle, and guests, Evelyn Pyburn of *Yellowstone County News,* and Dan Belk.

Attendance and Voting Record attached to minutes

PUBLIC COMMENT:

Merrill Walker advised he had occasion to talk to Jim Sannon who lives on Quinella. Mr. Sannon's mother owns property between Quinella and Noblewood. Mr. Sannon is open to the idea of conveying an easement through her property for Phase 3 of the sewer project, which runs all the way from Noblewood to Quinella. He advised he could not convey it for free, but did not give sales figure. Merrill thought it would be advantageous to have the engineers take a look at the possibility of savings to the District if an easement could be obtained between Noblewood and Quinella.

APPROVAL OF MINUTES:

The minutes of the November 13, 2019 Board meeting were presented for approval. Two corrections were noted: on Page 3 under 2020 Water Treatment Plant Upgrade, fourth sentence "Nick" should be **"Nick Baker"**. In that same paragraph, "in-plate settlers" should read **"plate settlers"**.

I. Merrill Walker moved to approve the minutes of the November 13, 2019 Board meeting with the corrections as noted. Nancy Belk seconded the motion. Motion carried.

NEW BUSINESS:

* **Approval of Pay Application No. 2 to KLE Construction for the Johnson Lane Highway 87E water main extension**

KLE Construction presented Pay Application No. 2 for the Johnson Lane Highway 87E

A task order amendment will be presented more than likely in January which will be to finish the PER. The original task order that was done was for the entire PER. However, the cost was reduced because MMI did not complete that portion. The next task order will resume where the first one ended to do public meetings, public outreach, and do the implementation chapter that lines out timing and proposed funding options. It is anticipated Nittany Grantworks will be contacted to prepare the grant applications.

FINANCIAL REPORTS

Trial balance from Yellowstone County as of 11/30/19 is $56,294.73.

Financial reports attached to the minutes are: Check/Claim Detail for the Accounting Period November, 2019; Trial Balance with Revenue and Expenditures for the Accounting Period November, 2019; Statement of Revenue Budget vs. Actual for the Accounting Period Statement, November, 2019; Statement of Expenditures - Budget vs. Actual Report for the Accounting Period November, 2019.

APPROVAL OF BILLS DUE FOR SIGNATURE:

IV. Nancy Belk moved to approve payment of the bills submitted on the Check/Claim Detail List. Stuart Deans seconded the motion. Motion carried.

OTHER BUSINESS:

* **2020 Water Treatment Plant Upgrade Project design update**

Jill Cook advised they are still in preliminary design, and are working to finish the basis of design report. There are two additional memos that will be sent to Manager Ariztia and staff. Comments have been returned on memos one through seven. The updates will be compiled and a final basis of design report will be submitted.

Geotech work has been completed, and Jill is waiting on a report from SK Geotechnical who did the work. Survey is scheduled to be done soon. They then will be in final design with the goal of being in construction by summer 2020.

Manager Ariztia advised there will be phone conference this week with the funding agencies to talk about the funding package for the treatment plant upgrades.

* **2019 Johnson Lane Highway 87 Water Main Project Update**

The next Board meeting will be held on January 8, 2020..

Carlotta Hecker
Attest

W Stuart Deans
Attest

MINUTES OF PUBLIC MEETING
FOR PHASE 3 SEWER PROJECT
OF LOCKWOOD WATER AND SEWER DISTRICT

July 9, 2020

A public meeting of the Lockwood Water and Sewer District Board of Directors was held on July 9, 2020, to gather public input regarding the Phase 3 Sewer Project. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Fire Station, 501 Johnson Lane, Billings, Montana 59101.

Present at the meeting were Board members' Carl Peters, Merrill Walker, Nancy Belk, Carlotta Hecker, and Stuart Deans. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, Jill Cook of Morrison-Maierle, and Evelyn Pyburn of the *Yellowstone County News.*

There were 15 members of the public in attendance.

Public Attendance record attached to minutes

PUBLIC MEETING PRESENTATION BY JILL COOK OF MORRISON-MAIERLE

Ms. Cook thanked everyone for coming. This is the second public meeting. The first public meeting was held in 2018. The project was then put on hold for the funding applications' review and award in 2020.

What are the objectives of the public meeting; Ms. Cook advised she will go over recent sewer progress and successes, give an overview of the Phase 3 project and costs, discuss funding and implementation schedule, review the environmental reports, and gather public input on the proposed project and the environmental reviews.

When a community wants to plan a project and they want to apply for funding from state or federal agencies, a report called a Preliminary Engineering Report (PER) is prepared. The intent of that report is to analyze system needs, look at priorities, timelines, projected costs, and apply for state and federal grants and low interest loans. These steps for Phase 3 have been completed, and the funding applications have been submitted.

In the PER, the entire existing wastewater collection system is examined. They look at the planning area, the remaining unserved area in Lockwood, the demographics and population projections, and wastewater flow forecasts from all the remaining areas. Then they look at alternatives. Alternatives may be options that will make the project more affordable or more effective. They also complete an environmental review, which in this case has been completed. The required public notice was given, along with a public comment period. .

The next step is to develop an implementation plan consisting of preliminary layout of the

included a GO Bond based on property value or a special assessment based on an equal amount per each tax code parcel. People tended to like the special assessment with an equal amount charged per parcel better; (one house, one connection).

We refined the service area reducing it from 1020 properties to 640 properties encompassing some of the smaller lots in Lockwood, Hemlock, Greenwood over here on to Rosebud, Starlight area. Lockwood had $2.7 million in grants for Phase 2 and approximately $6 million in loans. In addition to that, Yellowstone County contributed just under $800,000 for restoring and upgrading the roads.

Phase 2 was to be paid by special assessment in equal amount per the tax code, not per the lot. The assessment is updated annually and the idea is as new subdivisions are brought in within the boundary, the assessments per parcel go down. Population projections were rechecked assuming that some large lots would subdivide into smaller lots based on new zoning regulations.

Future sewer service areas begin with a service area delineation. All the rest of Lockwood was looked at that wasn't included in Phase 1 or 2. (Referring to maps. Areas currently without sewer were evaluated as part of the future sewer planning area, and each area was analyzed to develop a preliminary cost estimate.

Areas were prioritized as "basins" in terms of project affordability looking at cost per lot, constructability, efficient phasing. If a basin is right next to the Phase 2 sewer and then there's another basin farther down the line, they can't get to the farther out basin until you're connected into the adjacent basin. Reports are provided by the county on drainfield conditions and soil suitability, and also growth potential and economic cost effectiveness is looked at.

The areas that were ranked highest were identified and prioritized as the Phase 3 planning area. Lower ranked areas were identified as a future Phase 4. A Phase 3 planning area boundary was established for cost estimating and they did an alternative analysis regarding whether they would build it all as one big project or split it into two separate projects, 3A and 3B. The final boundary will need to be established through a legal process where the boundary is established, legal notice is published, a public meeting is held. There will be an opportunity to petition in and out of that boundary, the Board will consider those petitions, and at that time a final boundary would be established.

Other alternatives will be looked at including cost effectiveness, things like optimizing the number of lift stations. There are two areas that are lower than Old Hardin Road that will require pumping back up to the trunk main at Old Hardin Road, and it has been looked at to see if those two can be combined into one. Alternative sewers have been analyzed, which can include vacuum systems, and low pressure pumping systems. Opportunities have been looked at to take advantage of alley construction where there are alleys. Another alternative looked at was moving the trunk main for some distance out of Old Hardin Road to Driftwood.

I'm a realtor. If the sewer is within a close enough distance to the property being sold, the lenders are going to require that it be connected. So, one way or the other, at some point everybody is going to get hooked to the sewer to satisfy the needs of the lender that is loaning the money on the sale of the property.

MS. COOK: Okay. And I would also say, the other thing about doing special assessments is you can pay off in advance if you choose to. So, a GO Bond on the property for the duration of the loan, there's no way to prepay it, but the assessment, if you want to pay it off early, like in a house sale, something the buyer might say I'm going to pay the assessment.

FROSTY ERBEN: But nine times out of ten they do ask for any SIDs that you can pay off to be paid off, but it is negotiable.

MANAGER ARIZTIA: Every year that payoff amount is recalculated based on how much was paid toward principal the year prior. Before the new list goes out to the tax rolls for the coming year payoff is recalculated based on your portion of the current principal amount. Once the assessment is paid off, the property is removed from the tax list.

Now, if you pay off that property somewhere during that tax year, once the list has been submitted to the County and DOR, and the property tax bills have gone out, then that property tax has to be paid throughout that year because it's already been calculated in the total payoff. Then it would be removed from the tax list for the upcoming year.

ROBIN RUDE: And did you say when it's recalculated they look again in the additional properties and subdivide in – the denominator in the calculation changes if there are more properties that year than the previous year?

MANAGER ARIZTIA: Yes.

ROBIN RUDE: So the sewer assessment, though, doesn't get charged until the bonds are sold.

MANAGER ARIZTIA: Correct.

MS. COOK: Right. That would be a project construction fee.

DICK HOKE: So, under 3B sewer assessment, is that a monthly cost? Is that added into the annual cost of your taxes?

MANAGER ARIZTIA: Yes.

DICK HOKE: So, it would be $1400 additional --

MANAGER ARIZTIA: A year on your property tax, yes.

probable grants that we know of right now, and we're assuming Lockwood will get in are RRGL and TSEP . Lockwood would be eligible for $125,000 from RRGL. There's the TSEP program, and there's the SRF loan program, and that's a low interest loan from the State of Montana. We will continue to monitor for other infrastructure funding that may become available.

CARL PETERS: Jill, what's the amount on TSEP, is it $750,000?

MS. COOK: For TSEP, I believe we're at $500,000 --

MANAGER ARIZTIA: $625,000.

MS. COOK: $625,000. It's based on median household income in the area.

We're hopeful that with the current situation with the economy, that there could be additional infrastructure stimulus money. We'll be looking for that. Phase 1 happened to go at a very fortunate time when all that other stimulus money was coming out in 2008-2009, and so if there's any option to take advantage of any other funding we'll certainly be alert to that. If additional funding came in, these costs would go down.

So, there is help for low income households. There can be help paying for the actual construction costs on your property. When you go to connect in, you're going to need to hire a contractor to come in and install your sewer service from your home to your stub-out which will be left at the property line. There are grants for low income households, and especially for seniors.

DICK HOKE: Can you do that yourself or does it have to be done by a contractor?

MS. COOK: You can do it yourself but plumbing code requires the connection be made by a plumber. You can run it all the way up to five feet away from the connection, with the caveat being that Lockwood also needs to be notified when the connection is made to come out and perform an inspection of your service.

We have an preliminary implementation schedule. The recommended alternative right now is breaking it into two projects. The reason that's the recommended alternative is that allows both projects to go out and apply for funding. So the Phase 3A project will go first, we will start the design on that. Meanwhile we would then apply for the next funding cycle, which is another two years out, for Phase 3B.

The preliminary schedule shows we completed the facilities plan approval and adoption. Lockwood submitted TSEP and RRGL grant applications this spring. Lockwood has notified SRF of the possibility of taking out a loan if the bond passes so that process is complete. Because Montana Legislature only meets every other year, you turn in your funding applications in even years; the Legislature meets in odd years, and so Lockwood won't know about the final word from the Legislature until 2020/2021.

inflation.

ROBIN RUDE: Just to clarify, the grant applications, then, would be dependent upon total cost of the project, so if it was $20 million versus $10 million, you would double the amount that you may be awarded if it was 20 million?

MS. COOK: No, the grants available don't vary based on the size of your project. If there were some future stimulus money, it could vary based on the cost of the project. We saw Phase 1 got $6.7 million. That was because Lockwood worked with their representatives in D.C. to say we have this extremely important project, that's why they got 6.7 million.

CARL PETERS: Those grants today are almost unheard of.

MS. COOK: So those are what people talk about when they talk about earmarked, the federal earmarks that people get their senators to arrange. Lockwood was the proud beneficiary of one of those earmarks.

CARL PETERS: So, it's not such a bad word, is it?

MS. COOK: When you're the one that's getting it, it's pretty nice.

So that's the preliminary implementation schedule. Like I said, there was a environmental report completed. Most of the sewer lines will be placed in existing roads, areas that have previously been disturbed. We do go out when we do an environmental review to give notice to all the agencies, Army Corps of Engineers, Natural Resources Conservation Service, U.S. Fish & Wildlife, DEQ, the DNRC, Fish, Wildlife & Parks and State Historic Preservation Office. We send them a figure from our projected sewer layout and say if you have any concerns regarding construction in these areas, please let us know. We also have to do a report that analyzes land use, for example, are we taking any prime farmland out with this project.

Biological resources, are we impacting any native species or habitats. Floodplains, are we crossing any wetlands; are we worrying about any culture or historical resources, and then socio economic and environmental justice would be would be are we serving only a section of the community that has a lot of money and we're leaving out a certain racial group or whatever the case may be. The environmental report didn't find any significant environmental impact. There will be short-term impacts from construction that the contractor will have to mitigate.

So the next steps, TSEP application is already submitted. Normally we would have had this public meeting prior to that, but we couldn't. The fact that we had a public meeting has to get to TSEP by August. We will continue to monitor for other sources of funding. When the Board chooses, the process can be started to legally establish the Phase 3 boundary with the goal of project implementation, starting the design in 2021, and starting construction in 2022.

BOB RIEHL: If something were to come up with say, based on the past history

I don't know if the Board has any other comments on that area.

NANCY BELK: This is the Pine Hills area, it's not that it couldn't be served, and it could possibly be its own special area, it's just not part of Phase 3. It could be in a future Phase 4 because it's not included in planned Phase 3.

DICK HOKE: So it will be another five years before they take care of restrictions.

NANCY BELK: Yeah, if we can get Phase 3 going. We have to get Phase 3 going before we do Phase 4.

TROY UNREIN: Jill, I have a question on that. If they apply for a special grant because of the Covid-19, would that change the construction timeline?

MS. COOK: Not necessarily. The Board can tell us to start designing any time they want to, but assuming that we are waiting for the state grants and the legislative cycle to happen next year, I'm assuming we would still be starting design in 2021. There have been circumstances even for the Lockwood Water and Sewer District where some grants has already been obtained or some funding has already been obtained and we have started design prior to the grants being finalized, particularly when we talked with staff at the state agencies and we know that it's being ranked very high.

MANAGER ARIZTIA: I would think, too, that if sometime during the design process, say that everything goes through, we're going for a Phase 3A with that 3A boundary, and if additional infrastructure funding money becomes available in large dollar amounts, I think that we would re-look at 3A and 3B together to kind of spread that additional grant money.

MS. COOK: And we'd have to work with your attorney on the special assessment election that it was done and the boundary setting process is done.

TROY UNREIN: You said there might be two lift stations, where would the other one be?

MS. COOK: So, a lift station here, and it's way down at the north end here. It all falls to the north, so we would pick it up on the north end and pump it back. The other one is for this whole area, this is Tillamack. This entire area will also be pulled up to the north. Preliminarily it had its own lift station right about here. So one of the alternatives to reduce costs will be Alternative 3. We don't ever design around getting easements because that's a property owner's decision. We assume initially that everybody's got to serve themselves in the public right-of-way and if we happen to be able to get an easement, then we can combine and reduce costs.

TROY UNREIN: Okay, that easement you were just talking about, later, if somebody does get that easement, if somebody gets an easement on that other property for the lift station,

MS. COOK: Everything on the south side of Old Hardin Road is running by gravity. These areas slope off significantly towards the Interstate as you head north, and to bring those in by gravity, the whole system, that 30-foot in Old Hardin Road would have been 40 feet, and so we always planned from the very beginning that we were going to have to pump the area north of Old Hardin Road back up to Old Hardin Road. It's not a long distance, it's not a huge lift. But the way the ground slopes to the north, it's really not reasonable to dig something that deep to serve those areas by gravity.

These areas will run by gravity to their lift stations, and then the lift station will pump back to Old Hardin Road. Everything south of Old Hardin Road flows by gravity.

TROY UNREIN: So, I know that Johnson Lane Interchange is coming up, are there any considerations of bringing the sewer lines that they cross Johnson Lane and those somewhere past the highway there?

MS. COOK: So, these areas are served in Phase 1, we've got that sewer main at Johnson Lane here, it comes from Wade currently over to Reynolds and then crosses the Interstate. So all of this was already served by a lift station, so the Town Pump over here and all of these commercial properties all run to a lift station, Johnson on Firth and it comes across Old Hardin Road and then pulls by gravity.

TROY UNREIN: And there will be no changes to that scenario.

MS. COOK: No. Nothing to change because it's all in the ground.

FROSTY ERBEN: I don't know if this is the time to talk about this, but here is another consideration. Those of us that have lived out here for a while and have lived through the different construction phases of the Interstate and the sewer, if they combine this with the rebuilding of the Interstate intersection, it's going to be hell getting out of these neighborhoods to get anywhere west of here. I'm thinking that after you get this done, if you get this done before they start construction on that, it would be a whole lot less trouble trying to get out of that area.

MS. COOK: I guess last I heard, it sounded like MDT was planning on this intersection rebuilding coming around 2023/2025. I'm betting on 2025.

FROSTY ERBEN: Is that what they saw, 2023 to 2025 for the Interchange?

MS. COOK: Yes, that's a good point, in one way or the other, we will have to deal with in and out so provision will be made one way or the other, and we won't have any construction.

FROSTY ERBEN: So you wouldn't go all the way up Becraft to Westgate in one shot?

DICK HOKE: That's going to jam everybody up for a while.

go back out for bid?

MS. COOK: No, it will always go to bid. Each project goes out for bid. So the Phase 1 project was done in five different construction projects. I believe COP did three and Western Municipal did two, and then on Phase 2, COP did Phase 2, and Western Municipal did intake.

What else?

DICK HOKE: Just here again, see if they can do better compaction on their – I mean Phase 2, I've still got, in the subdivision where I live, there are dips, they should be fixed. It's just like Old Hardin Road is Phase 1, hey, I worked for the City for 20 years and I know what the road is like. COP Construction used to be number one in the City area or Yellowstone County, I think they could be number 10 now, we might as well hire Hong Kong to get someone to do our work.

Old Hardin Road don't – I know the County's got a lot to say what's done on the road, but let's make it feasible. When you drive down Old Hardin Road, you're hitting traffic, it's like riding on a roller coaster, you know. There should be better compaction. There is no need for it not to be.

AUDIENCE: Who inspected – who was doing the inspection when the manhole covers were this much too high on Old Hardin Road?

MS. COOK: So, I think that happens over time. It certainly wasn't that way on the last day of the construction project. I personally walked it with the contractor as well as representatives from the District and representatives from the County. If it's more than, I can't remember what the County standard is, they have a standard for how high that rim can stick up and they had a measuring stick measuring each one. In defense of the contractor, which I shouldn't do, I'm not the contractor, it can be hard to get compaction right next to a manhole, you can't take your machines in there.

AUDIENCE: I worked on the sewer for Lloyd Lockrem and other ones, and when they got done, if it wasn't done right, if that stuff happened within a year or two years, they'd come back and fix it.

MS. COOK: Right. And that's the situation here. Lockwood required a Phase 2 warranty, COP came back several times during that Phase 2 warranty. At some point, after the Phase 2 warranty is over, they are no longer obligated. But, I mean, it's a point well taken and it's something Mike and I have talked about, you know, these three areas that have to be watched. In an ideal world, there wouldn't be any problem.

ASSISTANT MANAGER REED: We're aware of what's going on out there because we get calls all the time.

decide to take things into their own hands and extend the sewer and run their own distribution system. Small areas can get together and form an RSID or a rural special improvement district and say we're going to do it ourselves and build our little section. We've worked with some subdivisions that have come to us and said we think we want to do this, all my neighbors are interested but at the end of the day, when we've put together the project costs, they're not eligible for the same grants and loans that the District is eligible for, and so none of those areas chose to go with an RSID, but it's an option. And that's a resident led initiative.

ROBIN RUDE: So is there any reason for public approval, whether it's 3A or 3B or Phase 3 all together?

MS. COOK: So, the Board would decide if we're doing 3A and 3B or doing them combined, and so we've already talked to the Board about it. We went through the PER with them, made the recommendations. The direction that the Board chose was to put them in two projects, and that's why when we applied for funding we told all these state agencies we're doing them as two projects and we applied for funding for 3A with a plan to go back and apply for 3B funding in two years.

ROBIN RUDE: So in the event there's infrastructure availability from the feds due to Covid, would that be re-looked at and maybe if more is available, to then combine them again, or is it a done deal?

MS. COOK: So it could be, and that would be a Board decision, and it depends where we are in the process. So if there have been boundary setting hearings already, and if the assessment had been passed, I'm not a lawyer, but that's going to become a lot more complicated because a specific boundary already agreed to assess themselves, and the rest of the folks haven't even been involved, so we'd have to back up.

MANAGER ARIZTIA: Or that you could then, if infrastructure funding came about, you could choose to do 3A and 3B as separate projects, but still apply for that additional funding.

MS. COOK: You could ask for 3A separate funding and 3B separate funding. And you can see where we are in the process here. I mean, we're looking at around this time next year before the legal process for the special assessment will occur. That gives us a year for some of the funding to come about before we get locked in with that special assessment.

MANAGER ARIZTIA: Just so the public knows, and I think we've demonstrated through here, but we look at every possible opportunity we can, not only to decrease the cost of the project by doing some of the things that Jill said. There are several things we can look at, eliminate lift stations, realignments on the sewer main so we put in less footage of sewer pipe, and then also we are constantly looking at funding because we know that regardless of how bad people want sewer, the cost is what's going to matter to a lot of people and whether they can afford it or not.

and I'm not sure they would.

FROSTY ERBEN: Could you put that map back up there, just ask a quick question from a builder/developer's standpoint.

This subdivision right here is platted, it's Blueberry Flats, it's the rest of Emerald Eagle. I'm talking to a contractor that wants to buy this. Is it to his advantage to put the sewer in the subdivision and then wait for the sewer to come in, or should they just go ahead and do the infrastructure, water, gas, electric and forget about the sewer until it comes in over there. We all know the more Lockwood we have to spread this over, the less cost it's going to be for individuals.

MS. COOK: Sure.

FROSTY ERBEN: Well, that's number one, and this one is for sale right now at too high of a price to even be able to sell it.

MS. COOK: This property?

FROSTY ERBEN: This one right here exactly. If they could get the price down to where it was economically feasible that would be probably one that would go 30,000. And I don't know what Mortensen is going to do with his, but he's got that one, 40 acres right there that is likely to be looked at pretty hard by people wanting to move out here. And then there's also this piece right here that is part of Wentner's Eagle Cliffs Subdivision.

MANAGER ARIZTIA: That's getting ready to develop, at least a portion of it.

FROSTY ERBEN: I mean, there's stuff happening, but the question is, is it to the developer's advantage to put some of this stuff in.

MANAGER ARIZTIA: So, I would say that there's a couple trains of thoughts. As a developer you're incurring the cost of putting a completely separate system from what you're required. You're required to put in the water and run it through there. There's a pretty big cost for the developer to run the sewer system in a property that doesn't have sewer available to it and make that pencil out on the lots.

The second portion is to design a system not knowing what the City or the municipal system depths are going to be, sizes are going to be, it would be kind of difficult to be able to design something that would tie into a line of sight and bury it.

MS. COOK: There would have to be some planning to make sure that they've established a reasonable entry plan and then there would be some calculation to determine appropriate system development fees to tie into the system.

MANAGER ARIZTIA: That, and then if the District sewer system doesn't get out there

build.

MS. COOK: Yes, if developers planned for future sewer by keeping the water in a specific corridor and leaving space for future sewer installation, which would be ideal.

That's been the challenge with these projects, you work along in areas that are fully developed with all the other utilities, there's irrigation water running everywhere. It's not ideal.

CARL PETERS: It's tough to be the last utility.

TROY UNREIN: I just have a comment here real quick. You know with Jill being a resident of Lockwood, she's got game here. I trust her that she's going to make good business decisions, you know, on my behalf and goes after loans and things like that. She's got to be on top of her game.

MS. COOK: I am a resident and I'm in 3B. I care for this community. I've lived here for all these construction projects and I'm drinking the water and I've got a septic tank that I'm hoping that it lasts until the sewer gets to me.

Thank you all for coming.

There being no further questions to come before the Engineer or Board, the second Public Meeting on the Phase 3 Sewer Project was adjourned at 8:35 p.m.

Attest

Attest

MINUTES OF REGULAR MEETING
OF BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

July 9, 2020

The regular meeting of the Lockwood Water and Sewer District Board of Directors was held on July 9, 2020. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Fire Station, 501 Johnson Lane, Billings, Montana 59101.

Present at the meeting were Board members' Carl Peters, Merrill Walker, Nancy Belk, Carlotta Hecker, and Stuart Deans. Also present was Manager Mike Ariztia, Assistant Manager Tony Reed, Jill Cook of Morrison-Maierle, Evelyn Pyburn of the *Yellowstone County News,* and Steve Arveschoug and Thom Maclean of Big Sky Economic Development.

Attendance and voting record attached to minutes

PUBLIC COMMENT:

None.

APPROVAL OF MINUTES:

The minutes of the June 10, 2020, Board meeting were presented for approval. There were no corrections noted.

I. Carlotta Hecker moved to approve the minutes of the June 10, 2020 Board meeting as written. Stuart Deans seconded the motion. Motion carried.

NEW BUSINESS:

* **Lockwood Targeted Economic Development District (TEDD) Update**

Steve Arveschoug and Thom Maclean of Big Sky Economic Development reported on the TEDD progress.

Mr. Arveschoug stated they want to compliment Manager Ariztia for his patience and consistent participation in the TEDD development. In April of 2019, Manager Ariztia and BSED went before the Billings City Council requesting the City's consideration and cooperation in entering into an agreement between LWSD and the City to expand LWSD's service area.

budgeted in 2020 but not purchased

These additions will be reflected as follows:

Water Expense Budget Line Item 510 (Insurance) increase from $45,000 to $60,000.
Sewer Expense Budget Line Item 510 (Insurance) increase from $40,000 to $42,000
Water Capital Budget add new truck for $27,000
Sewer Capital Budget add new truck for $10,000

III. Merrill Walker moved to accept the Amendment to the 2021 Water and Sewer Operations Budget, approved June 10, 2020 by Resolutions 160 and 161. Stuart Deans seconded the motion. Motion carried.

Copy of Memo attached to minutes

* **Resolution No. 162 to Accept the Determination that an Environmental Assessment is Appropriate for the Lockwood Water and Sewer District Phase 3 Sewer**

Resolution No. 162 was presented to accept the determination that an environmental assessment is appropriate for LWSD Phase 3 sewer.

Resolution to Accept the Determination that an Environmental Assessment is appropriate for the Lockwood Water and Sewer District Phase 3 Sewer Subdistrict Project 3A

WHEREAS, the Lockwood Area/Yellowstone County Water and Sewer District has completed an assessment to identify potential environmental impacts of the Phase 3 Sewer Subdistrict Project 3A;

WHEREAS, the draft Environmental Assessment was made available for public comment and the findings were presented and reviewed at a public meeting;

WHEREAS, no substantive public comment was received;

WHEREAS, the Lockwood Area/Yellowstone County Water and Sewer District has determined that the Phase 3 Sewer Subdistrict Project 3A will not significantly affect the quality of the human environment and accordingly the Lockwood Area/Yellowstone County Water and Sewer District has determined an Environmental Impact Statement is not necessary;

NOW, THEREFORE, BE IT RESOLVED by the Lockwood Area/Yellowstone County Water and Sewer District Board as follows:

That Lockwood Area/Yellowstone County Water and Sewer District, Montana, adopts the final Environmental Assessment for the Phase 3 Subdistrict Project.

construction by July 29th, to be competed by September 18th. Jill advised they actually have 45 calendar days to final completion and 15 days after that for cleanup and miscellaneous items that may arise.

* **Water Treatment Plant Upgrade Project update**

Originally bids were planned to be opened Thursday, July 2, 2020, and potentially to make an award week of July 6, 2020. However, there have been delays with DEQ getting the project reviewed due to some of their staff working from home because of the pandemic. They have 50 days to review the project and this has not been possible. There is one particular design item that is in contention. Additional documentation has been provided, and Morrison-Maierle has filed a deviation request and is waiting for a response.

MANAGER REPORTS:

Pumping Record - Water:

June, 2019	31,018,700
June, 2020	35,963,900

Wastewater record:

May, 2019	2,538,712
May, 2020	4,905,384

Exxon Wastewater:

May 2019	61,001,644
May, 2020	64,967,540

Manager Ariztia advised he talked to Chief Staley of the Lockwood Fire Department and brought up fire service to non-Lockwood customers. It may not be a per hydrant fee, but it could be that if somebody who lives outside the District has a fire and if the Fire Department responds to that fire, that at least LWSD would be covered for the water usage. This would also include water used for wildfires.

The search for water rights continues. Manager Ariztia will discuss with the water rights attorney what water rights are presently worth and how much should be offered to obtain the rights. The Board would then be in a position to give Manager Ariztia a not to exceed number. There will be further discussion at the next Board meeting.

ADJOURNMENT:

V.. Merrill Walker moved to adjourn the meeting. Carlotta Hecker seconded the motion. Motion carried.

SPECIAL MEETING MINUTES OF
BOARD OF DIRECTORS
OF LOCKWOOD WATER AND SEWER DISTRICT

July 27, 2020

A special meeting of the Lockwood Water and Sewer District Board of Directors was held on July 27, 2020. President Peters called the meeting to order at 7:00 p.m. in the conference room of the Lockwood Water and Sewer District Office, 1644 Old Hardin Road, Billings, Montana.

Present at the meeting were Board members' Carl Peters, Nancy Belk (by telephone), and Stuart Deans. Also present was Manager Mike Ariztia and recorder, Marilyn Niezwaag. The meeting was convened for the specific purpose of approving the Public Meeting minutes.

APPROVAL OF MINUTES:

The minutes of the July 9, 2020, Public Meeting were presented for approval. Discussion followed and corrections and additions were made by Jill Cook, Nancy Belk and Manager Ariztia for finalizing the minutes.

I. Nancy Belk moved to approve the minutes of the July 9, 2020 Public Meeting with the corrections provided by Jill Cook, Nancy Belk and Manager Ariztia. Stuart Deans seconded the motion. Motion carried.

Copy of Public Meeting Minutes attached to minutes

ADJOURNMENT:

II. Nancy Belk moved to adjourn the meeting. Stuart Deans seconded the motion. Motion carried.

There being no further business to come before the Board, the meeting was adjourned at 7:25 p.m.

Nancy Belk
Attest

Stuart Deans
Attest

B.O.C.C. Regular **Agenda Item 3. a.**

Meeting Date: 10/06/2020

Title: Air Force Notice of Availability - Environmental Impact Statement

Submitted By: Erica Wiley

TOPIC:

Air Force Notice of Availability - Environmental Impact Statement

BACKGROUND:

See attached

RECOMMENDED ACTION:

File

Attachments

Air Force Notice

DEPARTMENT OF THE AIR FORCE
AIR FORCE CIVIL ENGINEER CENTER
JOINT BASE SAN ANTONIO LACKLAND TEXAS

Yellowstone County Commissioners
RECEIVED
SEP 18 2020

4 September 2020

AFCEC/CZN
2261 Hughes Ave., Ste. 133
JBSA Lackland, TX 78236-9853

SUBJECT: Environmental Impact Statement Public Review; B-21 Main Operating Base 1 (MOB 1) Beddown at Dyess Air Force Base (AFB), Texas or Ellsworth AFB, South Dakota

To Whom It May Concern,

The Air Force is publishing a Notice of Availability (NOA) in the Federal Register that announces the availability of the *Draft Environmental Impact Statement (EIS) for the B-21 MOB 1 Beddown at Dyess AFB, Texas or Ellsworth AFB, South Dakota*. The publication of the NOA on September 25, 2020, begins a 46-day public comment period. The Draft EIS and supporting documents are available on the project website at www.B21EIS.com. A printed copy of the Draft EIS has also been provided to the following libraries and repositories:

Rapid City Public Library
610 Quincy Street
Rapid City, SD 57701

Devereaux Library
South Dakota School of Mines & Technology
501 East Saint Joseph Street
Rapid City, SD 57701

Sturgis Public Library
1040 Harley-Davidson Way, Suite 101
Sturgis, SD 57785

Big Horn County Library
419 North Custer Avenue
Hardin, MT 59034

Miles City Public Library
1 South 10th Street
Miles City, MT 59301

Dickinson Area Public Library
139 3rd Street West
Dickinson, ND 58601

Abilene Public Library – Main Library
202 Cedar Street
Abilene, TX 79601

Howard County Library
500 Main Street
Big Spring, TX 79720

Brownwood Public Library
600 Carnegie Street
Brownwood, TX 76801

Fort Sumner Public Library
235 W. Sumner Avenue
Fort Sumner, NM 88119

The Air Force plans to hold virtual public hearings on the dates and times listed below. Please visit the project website (www.B21EIS.com) for details on registering to participate in the virtual public hearings and to make verbal comments during the hearings.

- Tuesday, October 13, 2020 – 5:30 p.m. to 7:30 p.m. Central Standard Time (CST)
- Thursday, October 15, 2020 – 5:30 p.m. to 7:30 p.m. CST

- Tuesday, October 20, 2020 – 5:30 p.m. to 7:30 p.m. Mountain Standard Time (MST)
- Thursday, October 22, 2020 – 5:30 p.m. to 7:30 p.m. MST

The project website can be used to submit comments on the Draft EIS. Comments may also be submitted by mail to Leidos, ATTN: B-21 EIS, 1456 Woodlawn Way, Gulf Breeze, Florida, 32563. Comments will be accepted at any time during the environmental impact analysis process. However, to ensure that the Air Force has sufficient time to consider public input in the preparation of the Final EIS, comments must be submitted to the website or mailed to the address listed above by November 9, 2020.

Please direct any requests for information or other inquiries to the Dyess AFB Public Affairs, (325) 696-4820, or after hours (325) 268-6554, 7bwpa@us.af.mil; or Ellsworth AFB Public Affairs, (605) 385-5056, or after hours (605) 391-7436, 28bw.public.affairs@us.af.mil.

Sincerely

Julianne Turko

Julianne Turko, Program Manager
NEPA Division (AFCEC/CZN)

B.O.C.C. Regular **Agenda Item 3. b.**

Meeting Date: 10/06/2020

Title: MT Non-Metropolitan Local Official Participation Process

Submitted By: Erica Wiley

TOPIC:

Montana's Non-Metropolitan Local Official Participation Process

BACKGROUND:

See attached

RECOMMENDED ACTION:

File

Attachments

Participation Process

Montana Department of Transportation

2701 Prospect
PO Box 201001
Helena MT 59620-1001

Steve Bullock, Governor
Michael T. Tooley, Director

VISION ZERO
zero deaths
zero serious injuries

Yellowstone County Commissioners
RECEIVED
SEP 16 2020

September 9, 2020

Subject: Montana's Non-Metropolitan Local Official Participation Process

Montana's process for providing non-metropolitan local official participation in the statewide transportation planning process can be found by following the link provided below. The Rail, Transit and Planning Division of the Montana Department of Transportation is requesting comments or any proposed modifications to the non-metropolitan local official participation process.

In accordance with 23 CFR 450.210 (b), non-metropolitan city and county officials are asked to participate in the statewide transportation planning process. MDT initially implemented the process in 2004 and continues to review and solicit comments every five years in regard to the effectiveness of the process; this was last done in 2015. The processes described in the document were proposed and approved by all 56 counties during MACO quarterly meetings in 2003.

In addition to this letter, comments will also be solicited through the Newsline, MDT's quarterly newsletter; the biennial *TranPlanMT* stakeholder survey; and at the annual STIP meetings with County Commissioners. MDT will continue to consider local official input through our documented process and alter the process as new opportunities arise.

The document can be viewed at the following webpage mdt.mt.gov/publications/docs/manuals/consultation_process.pdf. We ask that you provide input and comments by **November 13, 2020**. If you would prefer a hard copy of the document, please contact Mitch Buthod at mbuthod@mt.gov.

We appreciate your assistance in this effort. Comments can be sent to the following address:

Montana Department of Transportation
Rail, Transit, and Planning
Attn: Katie Potts
2960 Prospect Avenue
Helena MT 59620-1001

Or by e-mail: kpotts@mt.gov

Katie Potts
Statewide & Urban Planning Supervisor

copies: Lynn Zanto, Rail, Transit, & Planning Division Administrator
Carol Strizich, Multimodal Planning Bureau Chief

B.O.C.C. Regular Agenda Item 3. c.

Meeting Date: 10/06/2020

Title: COB Proposed Lighting District #328

Submitted By: Erica Wiley

TOPIC:

City of Billings Proposed Street Lighting District #328

BACKGROUND:

see attached

RECOMMENDED ACTION:

File

Attachments

COB Proposed Lighting District #328

Yellowstone County Commissioners
RECEIVED
SEP 21 2020

CITY OF BILLINGS
PUBLIC WORKS
EXCELLENCE · INNOVATION · INTEGRITY

City of Billings

PUBLIC WORKS DEPARTMENT
ENGINEERING DIVISION
2224 Montana Avenue
Billings, MT 59101
Office (406) 657-8231
Fax (406) 237-6291

September 18, 2020

PUBLIC WORKS

SUBJECT: Proposed Street Lighting District #328

Dear Property Owner:
This letter provides information on a proposed Special Improvement Lighting Maintenance District (SILMD) along 27th Street in which your property is to be included. New street lighting is currently being installed along 27th Street as part of a planned street improvement project by the State of Montana. The proposed district will pay only the energy cost of the new lights. The cost of installing the lights and the ongoing maintenance will be paid for by the State of Montana.

Included with this letter is a formal notice that the intention to create SILMD 328 involving your property was passed by City Council on September 14th. The City Council will conduct a public hearing and take formal action on the proposed district at their October 12th, 2020 meeting. The assessment method was reviewed and it was felt to be most equitable to base assessments on the lineal frontage along 27th Street.

If you wish to protest the creation of this district, please follow the steps outlined at the bottom of this letter. ***The written protest period will end on Monday, October 5th at 5:00 pm.***

A boundary map showing the properties to be included within this district is shown on the back of this letter. The newly proposed district will be assessed based on your 27th Street frontage within the district boundary. The estimated cost of the District per year for property owners is on the basis of approximately $ 0.580343 per lineal foot of property within the district boundary. Yearly assessments are subject to change with adjustments in energy rates as set by the Montana Public Service Commission.

Several commonly asked questions about the district are addressed in a question and answer format below:

Q. How are Special Improvement Light Maintenance Districts paid for?

A. Virtually all street lighting in Billings is paid for by special assessment against the adjacent properties. The assessment will appear on your yearly property tax statement.

Q. Who pays for installing the lights?

A. Usually property owners within the district are assessed for the installation, ongoing maintenance and electricity of the streetlights. However, in this case, the State funded street improvement project is paying for the poles, wiring, light fixtures and ongoing maintenance. Therefore, the property owners within the district will only be assessed for the associated energy costs.

Q. What if I want to protest the light district?

A. Protests must be delivered to Attn: Sean Sheridan, Engineering Division, 2224 Montana Avenue, Billings, Montana, 59101, or by email at sheridans@billingsmt.gov **no later than 5:00 P.M. on October 5th, 2020**. According to State law, only written protests are considered valid. Written protests must carry the signatures of the actual property owner(s) of the property being assessed. State law mandates that if valid protests representing over 50% of the assessable frontage in the district are received, the Council cannot create the proposed district and no additional action may be taken on the District for six months. For protests under 50%, creation of the District is subject to majority vote of the City Council.

As noted in the enclosed legal notice, you also have the opportunity to appear before the City Council at the October 12th, 2020, public hearing and make comments for or against the district. The public hearing will be held at 5:30 pm via **virtual meeting** method. A protest at the October 12th Council meeting does not count against the district as a legally valid protest. Only protests received in writing by October 5th are considered legally valid protests. However, as the Council meeting includes a public hearing on the proposed district, you will have the opportunity to make your opinion heard. The City Council will be voting that night whether or not to create the light district. Public comment will be taken during the Public Hearing via telephone at **406.237.6196**.

Please feel free to contact me with any questions or concerns (657-8329 or sheridans@billingsmt.gov).

Sincerely,

Sean Sheridan

Encl. District Boundary Map
Legal Notice

A01221
YELLOWSTONE COUNTY
217 N 27TH ST
BILLINGS, MT 59101-1939

SILMD cost estimate per lineal foot: $ 0.580343
Assessed lineal feet: 50
Annual assessment estimate: $29.02

Dept: Engineering
Published: 9/18 and 9/25/20

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Billings City Council passed Resolution No. 20-10899, a RESOLUTION OF INTENTION TO CREATE SILMD 328 in the CITY OF BILLINGS:

The purpose of the SPECIAL IMPROVEMENT LIGHT MAINTENANCE DISTRICT shall be to provide energy for the lights in the district to include:

Certain lots, parcels and pieces of land along 27th Street between State Avenue and Rimrock Road in Billings, Montana, as described in the Resolution of Intention.

The estimated cost for operating the proposed District per year is $12,500. The estimated annual cost of the District to property owners is on the basis of approximately $0.580343 per lineal foot of property within the District boundary per year.

Notice is further given that on Monday, October 12, 2020, at 5:30 p.m., a public hearing will be held via **virtual meeting** method due to COVID-19 safety precautions. 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.

All meetings are open to the public, with the exception of closed Executive Sessions.

The City Council shall meet, virtually, for the purpose of acting upon said REQUEST and any interested person may provide their public comment and show cause, if any, why said REQUEST should not be granted. Public comment will be taken during the Public Hearing via telephone at **406.237.6196.**

Or comments may be sent to Council via email before 3:00 PM on the day of the scheduled meeting at: https://ci.billings.mt.us/1538/City-Council-E-mail-Messages.

The Public may view meetings on the 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 Spectrum Cable, Channel 8. The Public may also view online at www.comm7tv.com and click on the "Watch Live" icon. Community 7 TV also has links to their Facebook page in which to view the meeting.

For additional information, please contact Sean Sheridan, Engineering Data Specialist, City of Billings, 2224 Montana Avenue, Billings, MT. Phone: 657-8329.

Published on September 18 and September 25, 2020.

Denise R. Bohlman
Billings City Clerk
P.O. Box 1178
Billings, MT 59103

09/18, 09/25 2020
MNAXLP

B.O.C.C. Regular **Agenda Item 3. d.**

Meeting Date: 10/06/2020

Title: Rick Tweden Letter

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Letter from Mr. Rick Tweden Regarding Grandstand Demolition

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Place to file.

Attachments

Letter from Rick Tweden

Erica Wiley

From: Rick Tweden <rickt221@gmail.com>
Sent: Wednesday, September 16, 2020 10:24 AM
To: Commissioners
Subject: Grandstand destruction

It is apparent that the concerns of the county residents have zero impact on your decisions. The Grandstands are not yours to destroy, merely because you want to see something else in its place. Your lies, concerning the cost to repair what we now have, should be criminal. Your constant reliance on the extremely over-inflated tag is very deceiving, and you all know it. Making decisions based on the assumption that taxpayers are not savvy enough to see reality is folly. To say that you are making a financially sound decision is laughable, as you don't even know the value of what you destroy. To make this even more ridiculous, you destroy valuable and much-loved property without knowing whether this is what the public wants, or if they will even vote to pay for your wreckless waste. Hubris does not begin to describe your actions. To make yourselves even more tone-deaf, you three will not even be bothered to answer emails from concerned citizens . . . not even a form letter. Because of your pompous disregard for the public, disdain for the Commission is growing daily, and thousands of residents are disgusted by you, and despise the sight of you. So go fuck yourself. Enjoy the ride on your temporary high horse. Sit on the saddle horn.

If you don't like my words, tough shit.
Rick Tweden
Billings, Mt

B.O.C.C. Regular **Agenda Item 3. e.**

Meeting Date: 10/06/2020

Title: Nomination Letter from NACo

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Nomination Letter from NACo

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Place to file.

Attachments

Letter from NACo

NATIONAL ASSOCIATION of COUNTIES NACo®

Yellowstone County Commissioners
RECEIVED
SEP 21 2020

Hon. Denis Pitman
PO BOX 35000
BILLINGS, MT 59107-5000

Dear Hon. Denis Pitman,

As president of the National Association of Counties (NACo), it is my pleasure to confirm your nomination as a member of the Environment, Energy and Land Use Policy Steering Committee and offer my congratulations!

National Committee membership is a serious responsibility that takes commitment, but it is also a rewarding experience. NACo's strength is in our committees, and your active participation will add to that strength. The expertise and engagement of our steering committee members like you is a major reason why Congress and federal agencies often look to NACo for feedback on legislative policy decisions being made in Washington D.C. This nomination to a NACo steering committee also presents a great opportunity to share with and learn from your county colleagues.

As a member of the Environment, Energy and Land Use Policy Steering Committee, it is important to stay informed of legislative and regulatory action relevant to your committee. Your NACo committee liaison is Adam Pugh (apugh@naco.org). Adam will send regular email correspondence to committee members, and you are responsible for reviewing the information supplied and responding accordingly.

As a member of a NACo steering committee, you are expected to participate in our monthly conference calls and attend both NACo's Legislative Conference and Annual Conference. Monthly conference calls are a great way to stay up to date on developments from Capitol Hill and provide a platform to discuss county issues with your colleagues across the nation. Please note the following dates and locations for the upcoming conferences:

NACo's 2021 Legislative Conference, February 20 – 24, 2021 in Washington, DC
NACo's 2021 Annual Conference, July 16-19 in Travis County/Austin, Texas

Again, congratulations on your nomination to the Environment, Energy and Land Use Policy Steering Committee. This promises to be an exciting year and I look forward to working closely with you to further the goals of our nation's counties.

Sincerely,

Gary W. Moore

B.O.C.C. Regular Agenda Item 4.

Meeting Date: 10/06/2020

Title: Election Returns

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Election Returns - Certification of the Municipal Special Election Held September 15, 2020

BACKGROUND:

See attached.

RECOMMENDED ACTION:

Place to file.

Attachments

Election Returns

ELECTION RETURNS

CERTIFICATION OF THE MUNICIPAL SPECIAL ELECTION HELD SEPTEMBER 15, 2020

The undersigned hereby certify that the contents within constitutes a full, true and complete Abstract of votes cast in Yellowstone County.

Attest our hands this 22nd day of September, 2020.

Board of Canvassers

STATE OF MONTANA)
)ss
COUNTY OF YELLOWSTONE)

I, BRET RUTHERFORD, Election Administrator in and for the County of Yellowstone, do hereby certify that the contents within constitutes a full, true and complete abstract of the name of each individual or issue receiving votes and the office for which the votes were cast and/or the question put before the voters, and the votes cast for or against said question by county precinct or polling place.

Attest my hand and seal of said County, hereto affixed this 22nd day of Septmeber 2020.

Election Administrator
Yellowstone County

YELLOWSTONE COUNTY ELECTION SEAL ADMINISTRATOR MONTANA

STATISTICS

	Registered Voters - Total	Ballots Cast - Total	Ballots Cast - Blank	Voter Turnout - Total
01 43.2	27	16	0	59.26%
02 43.3	4,695	1,936	1	41.24%
03 44.1	1,293	530	0	40.99%
04 44.2	2,887	1,181	1	40.91%
05 44.3	2,050	1,030	0	50.24%
06 45.2	5,621	2,654	3	47.22%
07 46.2	6,846	3,989	6	58.27%
08 47.1	2,575	710	1	27.57%
09 47.2	3,259	1,751	3	53.73%
10 48.1	3,540	1,539	2	43.47%
11 48.2	2,719	1,413	0	51.97%
12 49.1	2,710	738	1	27.23%
13 49.2	2,610	1,024	1	39.23%
14 50.1	2,668	927	1	34.75%
15 50.2	2,740	1,260	1	45.99%
16 51.1	1,200	391	1	32.58%
17 51.2	1,594	707	0	44.35%
18 51.3	2,538	995	2	39.2%
19 52.1	2,439	915	1	37.52%
20 52.2	2,847	1,363	1	47.87%
21 53.1	5,662	3,094	2	54.65%
22 54.1	6,255	2,769	3	44.27%
23 54.2	2	2	0	100%
24 56.3	826	431	0	52.18%
Totals	**69,603**	**31,365**	**31**	

Report generated with Electionware Copyright © 2007-2019

Billings Mill Levy

VOTE FOR 1

	FOR	AGAINST	Total Votes Cast
01 43.2	10	6	16
02 43.3	1,179	756	1,935
03 44.1	324	206	530
04 44.2	778	402	1,180
05 44.3	677	353	1,030
06 45.2	1,788	862	2,650
07 46.2	2,852	1,131	3,983
08 47.1	469	240	709
09 47.2	1,348	400	1,748
10 48.1	1,110	426	1,536
11 48.2	998	414	1,412
12 49.1	509	228	737
13 49.2	694	329	1,023
14 50.1	556	370	926
15 50.2	780	479	1,259
16 51.1	204	186	390
17 51.2	522	185	707
18 51.3	653	340	993
19 52.1	457	457	914
20 52.2	890	472	1,362
21 53.1	2,204	887	3,091
22 54.1	1,927	839	2,766
23 54.2	2	0	2
24 56.3	293	138	431
Totals	**21,224**	**10,106**	**31,330**

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B.O.C.C. Regular **Agenda Item 5.**

Meeting Date: 10/06/2020

Title: Application to Use Courthouse Lawn

Submitted For: Kenneth Williams **Submitted By:** Linda Oberg

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TOPIC:

Application to Use Courthouse Lawn

BACKGROUND:

Raph Graybill Announcement

RECOMMENDED ACTION:

File Item

Attachments

Raphy Graybill Lawn app

YELLOWSTONE COUNTY

APPLICATION FOR THE USE OF THE COURTHOUSE PARK

NAME OF ORGANIZATION Raph Graybill for Attorney General

ADDRESS PO Box 2728, Great Falls, MT 59403.

PHONE NUMBER 847 858 9380

NAME OF CONTACT PERSON Ben Wilcox

NAME OF EVENT Raph Graybill Announcement

PURPOSE OF EVENT Announce a plan to combat substance use disorders in Montana

DATE(S) OF EVENT Wednesday October 7th, 2020

TIME OF EVENT(include setup and tear down time) 11am am/pm to 12pm am/pm

APPROXIMATE NUMBER OF PEOPLE EXPECTED TO ATTEND 15

DESCRIPTION OF ANY EQUIPMENT THAT MAY BE PLACED ON LAWN OR SIDEWALKS (TABLES, TENTS, TRAILERS, PODIUM, ANIMALS, ETC.).

We will have one Raph Graybill banner that will stand behind the speaker

IF YOU HAVE ANY EXAMPLES OF FLIERS OR INFORMATIONAL PACKETS YOU WILL BE HANDING OUT, PLEASE INCLUDE WITH THIS APPLICATION.

PLEASE SUBMIT THIS APPLICATION TO ROOM 3201 OF THE STILLWATER BUILDING AT 316 NORTH 26TH STREET OR MAIL TO:

YELLOWSTONE COUNTY GENERAL SERVICES
PO BOX 35004
BILLINGS, MT 59107
PHONE: 256-2775
FAX: 256-6947

RULES FOR THE USE OF THE COURTHOUSE PARK

The Courthouse Park is a public park to be enjoyed by all citizens and visitors of Yellowstone County. To keep the park in the best possible condition, the following rules have been adopted by Yellowstone County.

1. All equipment and supplies needed for the event shall be provided by the applicant. Refuse shall be disposed of in the appropriate containers and/or removed from the park.

2. Any heavy objects such as trailers, equipment, animals, cooking equipment, garbage containers, ice chests, coolers, tents, etc., are not to be placed on the grass. Such items may be placed on the cemented areas only. The County reserves the right to review placement of all items on the Courthouse lawn and sidewalks to insure the adequate safety of the users and the public and to insure the best protection of the lawn, shrubs, trees, sidewalks, etc.

3. No vehicles of any kind shall be allowed in the park area.

4. Any damage to flowers, shrubs, sidewalks, trees, or any other County property in the Courthouse lawn area shall be itemized by the Facilities office and charged to the user within one week of the event.

5. No alcoholic beverages are allowed unless a permit is received from the Billings Police Department and provided to the County.

6. The Facilities Office (phone-256-2715) shall coordinate power usage, equipment placement, etc. All power cords, lights, and accessories shall be provided by the user.

I, **Ben Wilcox**
(Print Name)

FROM **Raph Graybill for Attorney General**
(Organization)

hereby agree to the above rules for use of the Courthouse lawn on the date(s) of the event.

Signature

September 30, 2020 - 11:45am
Date/Time

Approved by Yellowstone County on 30th day of September 2020

Signature

B.O.C.C. Regular Agenda Item 6.

Meeting Date: 10/06/2020

Title: I.T. Maintenace Agreement with Vertiv for Courthouse UPS Battery Service

Submitted By: James Matteson, Purchasing Agent

TOPIC:

Information Technology Maintenance Agreement with Vertiv Services

BACKGROUND:

Information Technology Department Maintenance Agreement with Vertiv Services for testing and maintenance for the backup power batteries for the Yellowstone County Courthouse. The total cost of the one year agreement is $6,878.14. The purchase was anticipated and included on the Approved FY21 budget under the Technology fund 6060.000.608.500800.360 - Repair & Maintenance budget line.

RECOMMENDED ACTION:

Place Maintenance Agreement to File

Attachments

I.T. VERTIV contract UPS Maint. FY21

Purchase Requisition INFORMATION TECHNOLOGY No. 277817

Vendor Information

VERTIV CORPORATION
1050 DEARBORN DR

COLUMBUS OH 43085
Contact Person:
Phone: Fax:

Requisition Information

SHIP TO: Information Technology
REQUESTER: Slavick, Jeff
PROJECT: Undesignated
REQUISITION TYPE: Purchase Order
ORDER METHOD: Mail
REQUISITION DATE: 9/16/2020 DATE REQUIRED: 10/1/2020
REFERENCE:
BUYER: AWARD NUMBER:

Line	Qty	Unit	Part#	Description	Account Number	Unit Price	Extended	Tax	Freight
1	1	EA		ANNUAL SERVICE CONTRACT FOR LIEBERT UPS IN COURTHOUSE	6060.000.608.500800.360 TECHNOLOGY- REPAIR & MAINT SERVICES	6,878.14	6,878.14	0.00	0.00

APPROVAL SIGNATURES: _____

_____

Sub-Total:	6,878.14
Freight:	0.00
Tax:	0.00
Total Amount:	6,878.14

NOTES:

FILE COPY

Proposal for Service

Vertiv Corporation

Sep 11, 2020

Yellowstone County Court
217 N. 27Th Street
Billings, MT, 59101

Dear Jeff Slavick,

Thank you for your interest in Vertiv Corporation. We are pleased to submit the following proposal for your review and consideration.

As the rate of change and complexity in your data center increases, Vertiv is the dedicated partner that you need to help you achieve your goals.

Please complete all required fields on the signature page and attach your Purchase Order to assist timely order processing. Should you have any questions regarding the proposal, feel free to contact me directly at (406) 248-8373. I look forward to your response and the opportunity to work together to improve your data center investment.

Sincerely,

TOM WRIGHT

Box 129
Shipping: 2016 2nd Avenue N, 59101
Billings, MT 59103

PHONE (406) 248-8373
FAX (406) 248-8396
EMAIL tomw@vemcoinc.com

Order Q03150478

Liebert UPS / Power / Battery Services:

- We are the Original Equipment Manufacturer and the experts on Liebert equipment with access to updates and changes, knowledge of engineering specifications, current issues and how to fix them correctly.
- Our factory trained service force is twice the size of the next largest competitor with over 650 customer engineers and field technicians in the United States alone: everywhere in the US the most knowledgeable engineers and technicians available, will cover you.
- With the most advanced tooling and instrumentation available, each CE has over $10,000 in gear with him at all times, so any issue can be resolved in the least amount of time possible.
- To make sure we get the right part to the right place at the right time, we have the industry's most sophisticated parts logistics system. No matter where you are in the US we also have a parts warehouse close to serve you.
- We maintain and follow all safety and compliance regulations necessary to keep CE's from harm and protect you, our customers from liability. We care about your safety.

Standard Maintenance Contracts :

Site #: 101697, Yellowstone County Court

Tag #	Description	Model #	Annual PM Qty.	Coverage Type (Coverage Dates)	Coverage Amount
1359728	NX 20-30 INTBAT	38SA030C0CHJ	1	PREFERRED (9/20/2020) - (9/19/2021)	$3,656.79
1359729	SEALED BATTERY	38BP030RWJ1BNR	2	PREFERRED (9/20/2020) - (9/19/2021)	$3,221.35

Total price not including tax: USD $6,878.14

any tax required must be included in customer purchase order

Payment Terms: Net 30 Days

STATIONARY BATTERY SYSTEMS
VRLA (SEALED) BATTERY
PREFERRED SERVICE - 2 PM

Feature	Detail
On-Site Service	Includes 1 Annual and 1 Semi-Annual Preventive Maintenance Services, scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Vertiv's Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Internal Battery Coverage	Includes parts, labor, disposal and battery jars as required - up to 10% of the battery jars per year, not accumulated over contract term (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Vertiv factory-trained and authorized technician equipped with Vertiv Proprietary tools and software. Vertiv CEs and Vertiv Partners are the only approved OEM service providers for Vertiv products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.

During the initial PM visit, an Annual Service PM must be performed.

Semi-Annual Service

1. Inspect the appearance and cleanliness of the battery and the battery room. Clean normal jar top dirt accumulation (to be done only with battery off line).
2. Measure and record the total battery float voltage and charging current.
3. Measure and record the overall AC ripple voltage
4. Measure and record the overall AC ripple current.
5. Visually inspect the jars and covers for cracks and leakage.
6. Visually inspect for evidence of corrosion.
7. Measure and record the ambient temperature.
8. Verify the integrity of the battery rack/cabinet.
9. Measure and record 100% of the jar temperatures.
10. Measure and record the float voltage of all cells.
11. Measure and record all internal ohmic readings.
12. Provide a detailed written report noting any deficiencies and corrective action needed, taken and/or planned.

13 Verify approval for Battery Life program.

Annual Service (includes the above, plus)

1. Re-tighten all battery connections to the battery manufacturer's specifications, if required. Refer to the manufacturer's literature to determine if re-tightening is required.
2. Measure and record all battery connection resistances in micro-ohms, when applicable.

Corrective Maintenance Performed as Required

1. Refurbish cell connections as deemed necessary by the detailed inspection report.

Conditions for Single Jar Replacement Service for Lead Acid Batteries

1. The Customer is covered by an Essential or Preferred Contract.
2. The battery string is in overall good health as determined by Vertiv; the battery string is not beyond expected service years or has had excessive single jar replacements that would make the string unstable.
3. Up to 10% of defective battery jars may be replaced within a 12-month period as exclusively determined by Vertiv.
4. Contracts have no cash value for future years or full string battery replacements. Single jar replacement is limited to batteries in the original string.

Does not include labor for full-string replacement.

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Customer Resolution Center at 1-800-543-2378.
- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

Subject to all Terms & Conditions as noted in the Vertiv Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

UNINTERRUPTIBLE POWER SYSTEMS
NX MODELS WITH INTERNAL BATTERIES
PREFERRED SERVICE - 1 PM

Feature	Detail
On-Site Service	Includes 1 Preventive Maintenance Service on Vertiv UPS and Vertiv internal batteries scheduled by the customer at the customer's convenience (excluding national holidays).
Response Time	Guaranteed 4-hour on-site emergency response, 7 days/week, 24 hours/day, within 150 miles of a Vertiv Services' Service City.
Customer Support	Includes access to the Customer Resolution Center (1-800-543-2378) and the Vertiv Customer Services Network Online Internet portal.
Parts	Includes parts coverage (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Internal Battery Coverage	Includes parts, labor, disposal and battery jars as required - up to 10% of the battery jars per year, not accumulated over contract term (limits may apply; see Assumptions and Clarifications, as applicable, for more details).
Labor & Travel	Includes 100% labor and travel coverage 7 days/week, 24 hours/day, within the 48 contiguous states and Hawaii.
Service Professional	Performed by Vertiv factory trained and authorized technician. Vertiv Services is the OEM service provider for Liebert products.
Battery Recycling	Includes battery recycling as required, with documentation meeting EPA requirements.

UPS Full Preventive Maintenance Service

1. Perform a temperature check on all breakers, connections, and associated controls. Repair and/or report all high temperature areas.
2. Perform a complete visual inspection of the equipment including subassemblies, wiring harnesses, contacts, cables, and major components.
3. Check air filters for cleanliness. (if applicable)
4. Check rectifier and inverter snubber boards for discoloration.
5. Record all voltage and current meter readings on the module control cabinet or the system control cabinet.
6. Check the inverter and rectifier snubbers for burned or broken wires.
7. Check all nuts, bolts, screws, and connectors for tightness and heat discoloration.
8. Check fuses on the DC capacitor deck for continuity (if applicable).
9. With customer approval, perform operational test of the system including unit transfer and battery discharge.
10. Calibrate and record all electronics to system specifications.
11. Check or perform Engineering Field Change Notices (FCN) as necessary.

12. Measure and record all low-voltage power supply levels.
13. Record phase-to-phase input voltage and currents.
14. Review system performance with customer to address any questions and to schedule any repairs.
15. Check power capacitors for swelling or leaking oil (if applicable).
16. Check for DC capacitor vent caps that have extruded more than 1/8" (if applicable).
17. Measure and record harmonic trap filter currents (if applicable).

Battery Full Preventive Maintenance Service

1. Inspect the appearance and cleanliness of the battery and the battery room. Clean normal cell top dirt accumulation (to be done only with battery off line).
2. Measure and record the total battery float voltage and charging current.
3. Measure and record overall AC ripple current.
4. Measure and record overall AC ripple voltage.
5. Visually inspect the jars and covers for cracks and leakage
6. Visually inspect for evidence of corrosion.
7. Measure and record the ambient temperature.
8. Verify the condition of the ventilation equipment if applicable.
9. Verify the integrity of the battery rack/cabinet.
10. Measure and record 100% of the cell temperatures.
11. Measure and record the float voltage of all cells.
12. Measure and record all internal impedance readings.
13. Provide a detailed written report noting any deficiencies and corrective action needed, taken and/or planned.
14. Re-tighten all battery connections to the battery manufacturer's specifications, offline only.

Corrective Maintenance Performed as Required

1. Refurbish cell connections as deemed necessary by the detailed inspection report.

Parts coverage excludes air filters, proactive full bank capacitor replacement and fan replacement.

Customer should check air filters monthly for cleanliness and replace as necessary.

Maintenance does not include System Control Cabinet, Power Tie, Breaker Cabinets, Load Bus Sync or Maintenance Bypass Cabinets.

All battery checks are recorded through the LDI reporting system. Only visual battery inspection and total battery voltages are to be recorded on the UPS E-form. The full battery maintenance inspection will be conducted through LDI.

In order to provide timely, accurate and thorough execution of the services described herein, Vertiv requests the following:

- Point of Contact: Provide an authorized point of contact(s), specific for the scope of work, for scheduling and coordination purposes.
- Scheduling: Make dates available for scheduling service. All visits must be requested 10 business days in advance of need by contacting the Vertiv Services Customer Resolution Center at 1-800-543-2378.

- Site Access: Prior to time of scheduled work, provide site access including any customer required escort, security clearance, safety training and badging for Vertiv service personnel.
- Equipment Access: Convenient access to the equipment covered by the Scope of Work. Prior to scheduled time of work, notify Vertiv service personnel of any special requirements for equipment access including lifts, ladders, etc.
- Shutdown: Service may require shutdown of load to ensure electrical connection integrity.
- Notification: If for any reason the work cannot be performed during scheduled time, notify Vertiv service personnel 24-hours prior to scheduled event.

Subject to all Terms & Conditions as noted in the Vertiv Services Terms & Conditions or the terms of a Master Agreement between the parties, if any, shall apply.

Order Number: Q03150478

Purchase Order must be assigned to:
Vertiv Corporation
1050 Dearborn Dr.
Columbus, OH 43085

Payment remittance address:
Vertiv Corporation
PO Box 70474
Chicago, IL 60673

FID# 31-0715256

EXCITING NEWS: On Sept. 1, 2018, we transitioned to Vertiv Corporation as our legal entity. Visit http://vertivco.com/legalentityinfo for changes you may need to make.

PO should be e-mailed or faxed with signed proposal to:
Vertiv Corporation c/o TOM WRIGHT
Attn: TOM WRIGHT
Email: tomw@vemcoinc.com
Fax: (406) 248-8396

Please complete the following information (All fields are required):

Purchase Order Number: R-277817 Purchase Order attached: ☒ Yes ☐ No

If PO ***NOT*** attached, please specify reason: _____

Invoice Delivery Method: ☒ Web Billing (Attach Instructions) ☐ Mail ☐ Other _____

☒ Accounts Payable Email ckrank@co.yellowstone.mt.gov

Billing Contact Person: JAMES MATTESON Phone: (406) 256-2717

Email: JMATTESON@CO.YELLOWSTONE.MT.GOV Fax #: _____

Bill-To Company Name: Yellowstone County I.T. Bill-To Address: P.O. Box 35043

Federal Tax ID # 81-6001449 Bill-To City, ST Zip: Billings, MT 59107

Tax Exempt: ☒ Yes (Attach tax exempt certificate) No Sales Tax in Montana & Government Entity ☐ No

Site Services/IT Contact Person: PAUL CHRISTOPHER Phone: 406-208-5202

* * COVERAGE DETAILS * *

For equipment not currently under a Service Agreement or for equipment for which the warranty has expired in excess of thirty (30) days, parts required to bring equipment back to manufacturers specifications are the responsibility of the Buyer and billable at the time of the first preventive maintenance visit or Service call. All pricing is valid only for Service coverage stated and is subject to change if this Proposal is modified in any way. This Proposal is valid for 30 days from the date of this Proposal unless otherwise noted. INFORMATION TO BUYER: This order between the Buyer and Seller is limited to Seller's Terms and Conditions located at termsconditions.vertivco.com unless a formal agreement governing this Purchase Order/transaction has been executed by the parties, in which case the Terms and Conditions of the signed agreement shall govern. Seller hereby objects to all Buyer's terms and conditions received by Seller and/or issued by Buyer.
Signature of this agreement authorizes Seller to invoice for Services mentioned herein and to utilize the provided purchase order number. If a purchase order number is not used, then the Buyer authorizes and guarantees Seller the payment of such invoices by authority of the signature below.

Thank you for your business.

Proposed By:

TOM WRIGHT Date

Accepted By:

Jeff Slavick 9/16/2020

Buyer Signature Required Date

JEFF SLAVICK I.T. DIRECTOR 406-254-7918

Printed Name Title Phone

Vertiv Corporation
TERMS AND CONDITIONS OF SALE

Vertiv Corporation is herein referred to as the "Seller" and the customer or person or entity purchasing goods and/or services ("Goods") and/or parts required for services ("Parts") or licensing software and/or firmware, which are preloaded, or to be used with Goods ("Software") from Seller is referred to as the "Buyer." These Terms and Conditions, any price list or schedule, quotation, acknowledgment, Seller's scope or statement of work, or invoice from Seller relevant to the sale of the Goods, Parts and licensing of Software by Seller, and all associated terms, conditions and documents incorporated by specific reference herein or therein, constitute the complete and exclusive statement of the terms of the agreement ("Agreement") governing the sale of Goods, Parts, and/or license of Software by Seller to Buyer. Any discrepancies between the terms of the above referenced documents shall be resolved by Seller. Seller's acceptance of Buyer's purchase order is expressly conditional on Buyer's assent to all of Seller's terms and conditions of sale, including terms and conditions that are different from or additional to the terms and conditions of Buyer's purchase order. Buyer's acceptance of the Goods, Parts, and/or Software will manifest Buyer's assent to the terms of this Agreement. Seller reserves the right in its sole discretion to refuse orders.

1. PRICES: Unless otherwise specified in writing by Seller, the price quoted or specified by Seller for the Goods, Parts and/or Software shall remain in effect for thirty (30) days after the date of Seller's quotation, Seller's scope of work or acknowledgment of Buyer's order for the Goods, whichever occurs first, provided an unconditional authorization from Buyer for the shipment or performance of the Goods and/or Parts, and/or Software is received and accepted by Seller within such time period. If such authorization is not received by Seller within such thirty (30) day period, Seller shall have the right to change the price for the Goods, Parts and/or Software to Seller's price for the Goods, Parts, and/or Software at the time of Seller's shipment or performance thereof. All prices and licensee fees are exclusive of taxes, transportation and insurance, which are to be borne by Buyer. Seller reserves the right to correct any obvious errors in specifications or prices. Unless otherwise specified by Seller, Parts, that are required for the performance of services will be furnished at Seller's then prevailing prices. A service charge of $19.99 will be added to all orders which, excluding shipping charges, taxes, and insurance, do not meet the minimum order value of $750.00. The service charge amount and/or minimum order value may be changed by Seller at any time, without notice.

2. TAXES: Any current or future tax, duty, tariff or governmental charge (or increase in same) affecting Seller's costs of production, sale, services or delivery or shipment of Goods, Parts, and/or Software, or which Seller is otherwise required to pay or collect in connection with the sale, purchase, delivery, performance, storage, processing, use or consumption of Goods, Parts, and/or Software, shall be for Buyer's account and shall be added to the price or billed to Buyer separately, at Seller's election.

3. TERMS OF PAYMENT: Unless otherwise specified by Seller, terms are net thirty (30) days from date of Seller's invoice in U.S. currency. Seller shall have the right, among other remedies, either to terminate this Agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due, which other agreements Buyer and Seller hereby amend accordingly. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Seller may preserve its interests in payment by enforcing any applicable mechanic's, labor, construction or similar lien rights. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries or performance of Goods, Parts, and/or Software. If such cash payment or security is not provided, in addition to Seller's other rights and remedies, Seller may discontinue deliveries or performance. Buyer hereby grants Seller a security interest in all Goods, Parts, and/or Software sold to Buyer by Seller, which security interest shall continue until all such Goods, Parts, and/or Software are fully paid for, and Buyer, upon Seller's demand, will execute and deliver to Seller such instruments as Seller requests to protect and perfect such security interest.

4. SHIPMENT AND DELIVERY: While Seller will use all reasonable commercial efforts to maintain the delivery date(s) and/or performance dates acknowledged or quoted by Seller, all shipping dates and/or performance dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Goods, Parts, and/or Software for which Buyer has not provided shipping instructions and other required information. If the shipment or performance of the Goods, Parts, and/or Software is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. For sales in which the end destination of the Goods, Parts, and/or Software is outside of the United States (except for those international sales to Seller's affiliated companies), risk of loss and legal title to the Goods, Parts, and/or Software shall transfer to Buyer immediately after the Goods, Parts, and/or Software have passed beyond the territorial limits of the United States. For international sales to Seller's affiliated companies, all shipments of Goods, Parts, and/or Software are made on a Delivered at Terminal (DAT) basis, per Incoterms 2010, with freight charges from Seller's facility to destination terminal invoiced to buyer either on a Prepaid or PPD/Add basis, as agreed to by Seller and Buyer. All other shipments of Goods, Parts, and/or Software are made on an Ex Works (EXW) Seller's Shipping Point basis, per Incoterms 2010, with Seller responsible to load goods on Buyer's nominated vehicle. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Notwithstanding the above, risk of loss and legal title to Parts shall transfer to Buyer (i) upon delivery by the Seller, or (ii) at the time Parts are placed in storage due to Buyer's delay or postponement. Shortages or damages must be identified and signed for at the time of delivery. Requests for changes in quoted transportation modes will not be made or accepted on orders already processed unless otherwise mutually agreed upon by Seller and Buyer. Requests for changes in quoted transportation modes to orders already accepted by Seller will be subject to new freight terms and billed at the price in effect at the time of the request for change. Any request for changes to quoted transportation modes must be submitted in writing to Seller and are subject to Seller's acceptance and adjustment in freight price. The transportation costs quoted by Seller may be changed by Seller without notice in order to reflect Seller's prices at the time of shipment and will reflect any market increase in transportation costs. If a price for delivery has been quoted, any changes at the destination for transportation modes, spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by the customer, and any related increase in transportation charges shall be added to the quoted price.

5. LIMITED WARRANTY: Subject to the limitations of Section 6, Seller's standard warranty that is applicable to the Goods and/or Software at the time of purchase is the only warranty applicable to the sale of Seller's Goods and/or Software and its terms, conditions and limitations are incorporated by reference herein and Seller warrants that it will perform the services as described in these terms and conditions and will exercise all reasonable skill, care and due diligence in the performance of the services. Seller warrants that all services performed shall be free from faulty workmanship for a period of thirty (30) days from completion of services. Thermal Solution Components, including but not limited to, fans, air-to-air heat exchangers, air conditioners, emergency DC vent systems and filtered thermal vent systems are warranted to be free from defects in material and workmanship for a period of twelve (12) months from date of shipment, or manufacturer's pass through warranty, whichever is longer, provided the following conditions are met: (i) Semi-annual preventive maintenance logs are maintained by Buyer and such logs are available to Seller upon request, and (ii) Input voltage to the air conditioner unit does not vary by greater than +/-10%, and (iii) In the event of accidental or intentional shut-off, a Thermal Solution Component will not be restarted for at least five (5) minutes, and (iv) The refrigerant specified on the unit nameplate label will be the only refrigerant utilized in the air conditioner unit, and, (v) Buyer complies with all installation, operations and maintenance instructions provided by Seller. Goods, Parts and/or Software purchased by Seller from a third party for resale or license to Buyer ("Resale Products") shall carry only the warranty extended by the original manufacturer. To the extent assignable, Seller assigns to Buyer any warranties that are made by manufacturers and suppliers of such Resale Products. EXCEPT AS SPECIFIED ABOVE, RESALE PRODUCTS FURNISHED HEREUNDER ARE FURNISHED AS-IS, WHERE-IS, WITH NO WARRANTY WHATSOEVER. **THE WARRANTY SET FORTH IN THIS SECTION 5 AND THE WARRANTY SET FORTH IN SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES GIVEN BY SELLER WITH RESPECT TO THE GOODS AND/OR SOFTWARE AND ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO SELLER IN SPECIFICATIONS, DRAWINGS OR OTHERWISE, AND WHETHER OR NOT SELLER'S PRODUCTS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED BY SELLER FOR BUYER'S USE OR PURPOSE.**

SELLER'S WARRANTY EXTENDS ONLY TO PURCHASERS WHO BUY FOR INDUSTRIAL OR COMMERCIAL USE. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, normal wear and tear, negligence (other than Seller's), unauthorized modification or alteration, use beyond rated capacity, unsuitable power sources or environmental conditions, improper installation, repair, handling, maintenance or application or any other cause not the fault of Seller. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Seller in the selection or design of the Goods and/or Software and the preparation of Seller's quotation, and/or scope of work, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein that are affected by such conditions shall be null and void. Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, Parts, and/or Software, either alone or in combination with other products/components.

6. LIMITATION OF REMEDY AND LIABILITY: **THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER (OTHER THAN THE WARRANTY PROVIDED UNDER SECTION 8) SHALL BE LIMITED TO REPAIR, CORRECTION OR REPLACEMENT, OR REFUND OF THE PURCHASE PRICE UNDER SECTION 5. SELLER SHALL NOT BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND THE REMEDIES OF BUYER SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS, PARTS, AND/OR SOFTWARE PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.**

BUYER AGREES THAT SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS SHALL NOT EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, business interruption, loss of use, revenue, reputation and data, costs incurred, including without limitation, for capital, fuel, power and loss or damage to property or equipment. It is expressly understood that any technical advice furnished by Seller with respect to the use of the Goods, Parts and/or Software is given without charge, and Seller assumes no obligation or liability for the advice given, or results obtained, all such advice being given and accepted at Buyer's risk.

7. INSURANCE: Seller shall maintain the following insurance or self-insurance coverage. **Worker's Compensation** in accordance with the statutory requirements of the state in which the work is performed. **Employer's Liability** with a limit of liability of $2,000,000 per occurrence for bodily injury by accident or bodily injury by disease. **Commercial General Liability (CGL)** for bodily injury and property damage with a limit of $2,000,000 per occurrence and per location aggregate. **Automobile Liability** insurance that covers usage of all owned, non-owned and leased vehicles and which is subject to a combined single limit per occurrence of $2,000,000. Automobile Liability insurance includes Contractual Liability, but no special endorsements. **Buyer expressly acknowledges and agrees that Seller has set its prices and entered into this Agreement in reliance upon the limitations of liability, insurance coverage, and other terms and conditions specified herein, which allocate the risk between Seller and Buyer and form a basis of this bargain between the parties.**

8. PATENTS AND COPYRIGHTS: Subject to the limitations of the second paragraph of Section 6 and any and all associated terms, conditions and documents incorporated by specific reference by Seller, Seller warrants that the Goods and/or Software sold, except as are made specifically for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent or copyright in existence as of

the date of shipment. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and cooperate fully with Seller and permit Seller to control completely the defense, settlement or compromise of any such allegation of infringement. Seller's warranty as to utility patents only applies to infringement arising solely out of Buyer's operation according to Seller's specifications and instructions of such Goods and/or Software. In the event (i) such Goods and/or Software are held to infringe such a U.S. patent or copyright in such suit, and the use of such Goods and/or Software is enjoined, or (ii) a compromise or settlement is made by Seller, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Goods and/or Software, or replace them with non-infringing Goods and/or Software, or modify same to become non-infringing, or grant Buyer a credit for the depreciated value of such Goods and/or Software and accept return of them. In the event of the foregoing, Seller may also, at its option, cancel the agreement as to future deliveries of such Goods and/or Software, without liability. Except as otherwise provided herein, Seller or applicable third party licensor to Seller maintains all right, title and interest in and to the intellectual property in the Goods, Parts, and/or Software.

9. EXCUSE OF PERFORMANCE: Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer, war, epidemic; fire; flood; weather; sabotage, strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation, default of suppliers, or unforeseen circumstances, acts or omissions of Buyer, or any events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the balance of this Agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Goods, Parts, and/or Software, or to obtain material used directly or indirectly in the manufacture of the Goods, Parts, and/or Software, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Seller may delay performance and/or allocate its available supply of the Goods, Parts, Software, and/or such material (without obligation to acquire other supplies of any such Goods, Parts, Software, or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

10. CANCELLATION: Buyer may cancel orders only upon reasonable advance written notice and upon payment to Seller of Seller's cancellation charges which include, among other things, all costs and expenses incurred, and, to cover commitments made, by the Seller and a reasonable profit thereon. Seller's determination of such cancellation charges shall be conclusive.

11. CHANGES: Buyer may request changes or additions to the Goods, Parts, and/or Software consistent with Seller's specifications and criteria. In the event such changes or additions are accepted by Seller, Seller may revise the price, license fees, and dates of delivery and/or performance dates. Seller reserves the right to change designs and specifications for the Goods, Parts, and/or Software without prior notice to Buyer, except with respect to Goods, Parts, and/or Software being made-to-order for Buyer. Seller shall have no obligation to install or make such change in any Goods, Parts, and/or Software manufactured prior to the date of such change.

12. NUCLEAR/MEDICAL: GOODS, PARTS, AND SOFTWARE SOLD HEREUNDER ARE NOT FOR USE IN CONNECTION WITH ANY NUCLEAR, MEDICAL, LIFE-SUPPORT AND RELATED APPLICATIONS. Buyer accepts Goods, Parts, and Software with the foregoing understanding, agrees to communicate the same in writing to any subsequent purchasers or users and to defend, indemnify and hold harmless Seller from any claims, losses, suits, judgments and damages, including incidental and consequential damages, arising from such use, whether the cause of action be based in tort, contract or otherwise, including allegations that the Seller's liability is based on negligence or strict liability.

13. ASSIGNMENT: Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

14. SOFTWARE: Notwithstanding any other provision herein to the contrary, Seller or applicable third party licensor to Seller shall retain all rights of ownership and title in its respective Software, including without limitation all rights of ownership and title in its respective copies of such Software. Except as otherwise provided herein, Buyer is hereby granted a nonexclusive, non-transferable royalty free license to use the Software incorporated into the Goods solely for purposes of Buyer properly utilizing such Goods purchased from Seller. All other Software shall be furnished to, and used by, Buyer only after execution of Seller's (or the licensor's) applicable standard license agreement, the terms of which are incorporated herein by reference.

15. TOOLING: Tool, die, and pattern charges, if any, are in addition to the price of the Goods and are due and payable upon completion of the tooling. All such tools, dies and patterns shall be and remain the property of Seller. Charges for tools, dies, and patterns do not convey to Buyer, title, ownership interest in, or rights to possession or removal, or prevent their use by Seller for other purchasers, except as otherwise expressly provided by Seller and Buyer in writing with reference to this provision.

16. DOCUMENTATION: Seller shall provide Buyer with that data/documentation which is specifically identified in Seller's quotation. If additional copies of data/documentation are to be provided by Seller, it shall be provided to Buyer at Seller's applicable prices then in effect.

17. INSPECTION/TESTING: Buyer, at its option and expense, may observe the inspection and testing by Seller of the Goods and/or Software for compliance with Seller's standard test procedures prior to shipment, which inspection and testing shall be conducted at Seller's plant at such reasonable time as is specified by Seller. Any rejection of the Goods and/or Software must be made promptly by Buyer before shipment. Tests shall be deemed to be satisfactorily completed and the test fully met when the Goods and/or Software meet Seller's criteria for such procedures. If Buyer does not inspect the Goods and/or Software at Seller's plant as provided herein, Buyer shall have ten (10) days from (i) the date of delivery of Goods, Parts, and/or Software and (ii) from the date of completion of each portion of the services to inspect the Goods, Parts, and/or Software, and in the event of any non-conformity, Buyer must give written notice to Seller within said period stating why the Goods, Parts, and/or Software are not conforming. Failure by Buyer to give such notice constitutes unqualified acceptance of the Goods, Parts, and/or Software. Buyer's sole remedy for non-conforming services shall be correct performance of services incorrectly performed by Seller.

18. RETURNED GOODS: Advance written permission to return Goods, Parts, and/or Software must be obtained from Seller in accordance with Seller's then current Return Material Authorization (RMA) procedures and a return authorization number issued. Such Goods, Parts, and/or Software must be (i) current, unused, catalogued Goods, Parts, and/or Software, still in original packaging (ii) free of all liens, encumbrances, or other claims, and (iii) shipped, transportation prepaid, to Seller's specified location. Returns made without proper written permission will not be accepted by Seller. Seller reserves the right to inspect Goods, Parts, and/or Software prior to authorizing return.

19. BILLABLE SERVICES: Additional charges will be billed to Buyer at Seller's then prevailing labor rates and Parts prices for any of the following: a) any services not specified in Seller's quotation, Seller's order acknowledgement, Seller's scope of work, or other documents referenced herein and therein; b) any services performed at times other than Seller's normal service hours; c) if timely and reasonable site and/or equipment access is denied the Seller service representative; d) if it is necessary, due to local circumstances, to use union labor or hire an outside contractor, Seller service personnel will provide supervision only and the cost of such union or contract labor will be charged to Buyer; (e) if Service or repair is necessary to return equipment to proper operating condition as a result of other than Seller (i) maintenance, repair, or modification (including, without limitation, changes in specifications or incorporation of attachments or other features), (ii) misuse or neglect, (including, without limitation, failure to maintain facilities and equipment in a reasonable manner), (iii) failure to operate equipment in accordance with applicable specifications, and (iv) catastrophe, accident, or other causes external to equipment; (f) Seller's performance is made more burdensome or costly as a result of Buyer's failure to comply with its obligations herein, or (g) any additional obligations or requirements, including but not limited to those related to insurance requirements, service delivery, building entry or technical training.

20. DRAWINGS: Seller's documentation, prints and drawings (including without limitation, the underlying technology) furnished by Seller to Buyer in connection with this Agreement are the property of Seller and Seller retains all rights, including without limitation, exclusive rights of use, licensing and sale. Possession of such prints or drawings does not convey to Buyer any rights or license, and Buyer shall return all copies (in whatever medium) of such prints or drawings to Seller immediately upon request therefor. Notwithstanding the foregoing, Buyer may use the documentation, prints and drawings in connection with the use of the Goods, Parts, and/or Software.

21. BUYER SUPPLIED DATA: To the extent that Seller has been provided by, or on behalf of, Buyer any specifications, description of operating conditions or other data and information in connection with the selection or design of the Goods, Parts, and/or Software, and/or the provision of services, and the actual operating conditions or other circumstances differ from those provided by Buyer and relied upon by Seller, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

22. EXPORT/IMPORT: Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the European Union, and the jurisdictions in which the Seller and Buyer are established or from which Goods, Parts, Software, and services may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, import, export, Goods, Parts, or Software in violation of such applicable laws, regulations, orders or requirements.

23. NON-SOLICITATION: Buyer shall not solicit, directly or indirectly, or employ any employee of Seller during the period any Goods are being provided to Buyer and for a period of one (1) year after the last provision of Goods.

24. GENERAL PROVISIONS: These terms and conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of this Agreement. No change, modification, rescission, discharge, abandonment, or waiver of these terms and conditions shall be binding upon the Seller unless made in writing and signed on its behalf by a duly authorized representative of Seller. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to this Agreement by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. Any such modifications or additional terms are specifically rejected and deemed a material alteration hereof. If this document shall be deemed an acceptance of a prior offer by Buyer, such acceptance is expressly conditional upon Buyer's assent to any additional or different terms set forth herein. Seller reserves the right to subcontract Services to others. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction.

The validity, performance, and all other matters relating to the interpretation and effect of this Agreement shall be governed by the law of the state of Ohio without regard to its conflict of laws principles. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Ohio and the parties agree to submit to such jurisdiction. No action, regardless of form, arising out of transactions relating to this contract, may be brought by either party more than two (2) years after the cause of action has accrued. The U.N. Convention on Contracts for the International Sales of Goods shall not apply to this agreement.

25. DATA COLLECTION AND USE: By using the Goods, Parts and/or Software, Buyer grants Seller, its affiliates, subsidiaries, and service providers, a non-exclusive, irrevocable, royalty free, worldwide right and license to collect, compile, retain, use, reproduce, and create derivative works of, your non-personal information and data, which includes without limitation, all data, materials, reports, text, sound, video, image files, software or any other information ("Service Data") that is provided by, or on behalf of, Buyer, or collected or compiled by Seller, its affiliates, subsidiaries, or service providers through the Goods, Parts, and/or Software. Seller, its affiliates, subsidiaries, and service providers may collect, compile, retain, use, reproduce, and create derivative works of Service Data (i) to provide services, support, and maintenance; (ii) to develop and improve products, software, and services, and (iii) for scientific and technical research and marketing purposes. Buyer is solely responsible for the Service Data, and Buyer will secure and maintain all rights necessary for Seller, its affiliates, subsidiaries, and service providers to process and use Service Data as described in this paragraph without violating the rights of any third party or otherwise obligating Seller, its affiliates, subsidiaries, and service providers to Buyer or any third party. The Service Data will be aggregated with other information, materials, or data collected or compiled by, or provided to, Seller, its affiliates, subsidiaries, or service providers and anonymized, such that the Service Data will not intentionally reveal Buyer's identity. In accordance with applicable law, Service Data may be transferred,

transmitted, or distributed to, stored, and processed in, cloud computing environments in the United States or any other country in which Seller, its affiliates, subsidiaries, or service providers maintain operations. By using the Goods, Parts, and/or Software, Buyer agrees to such use, transfer, transmission, distribution, storage, and processing of the Service Data. Seller, its affiliates, subsidiaries, and service providers will retain Service Data for as long as is necessary for Seller and its affiliates and subsidiaries business purposes in accordance with applicable law. The rights and licenses granted herein to Seller's service providers shall only be granted to the extent service providers are providing goods and services on Seller's and its affiliates and subsidiaries behalf.

26. **PRIVACY:** Seller will collect and process personal data of those employed by or otherwise affiliated with Buyer in accordance with Seller's "Privacy Notice for Customers and Suppliers - California" available here www.vertiv.com/ca-privacy (the "Notice"), which Notice the Buyer hereby acknowledges having received, read, and understood. In the event of any queries or concerns with its contents, Buyer must contact Seller at the contact details provided in the Notice prior to entering into this Agreement or the commencement of performance hereunder, in failure of which, the terms of the Notice will be deemed accepted and consented to in their entirety.

27. **ADDITIONAL SERVICE CONDITIONS:** The Buyer shall furnish to Seller, at no cost, suitable working space, storage space, adequate heat, telephone, light, ventilation, regulated electric power and outlets for testing purposes. The facilities shall be within a reasonable distance from where the Goods are to be provided. Seller and its representatives shall have full and free access to the equipment in order to provide the necessary Goods. Buyer authorizes Seller to send a service technician or an authorized agent to access any site requested by Buyer to perform services, including services on different scopes of work and equipment as requested by Buyer. Buyer shall provide the means to shut-off and secure electric power to the equipment and provide safe working conditions. Seller is under no obligation to remove or dispose of Parts or equipment unless specifically agreed upon in Seller's scope of work. Buyer shall immediately inform Seller, in writing, at the time of order placement and thereafter, of any unsafe or hazardous substance or condition at the site, including, but not limited to, the presence of asbestos or asbestos-containing materials, and shall provide Seller with any applicable Material Data Safety Sheets regarding the same. Any losses, costs, damages, claims and expenses incurred by Seller as a result of Buyer's failure to so advise Seller shall be borne by Buyer. Seller, in its sole discretion and without cost or penalty, reserves the right to cancel its performance under this Agreement or any order immediately upon written notice to Buyer following Seller discovery of unsafe or hazardous site substance or condition or any other circumstance altering Seller's performance hereunder. Buyer shall appoint a representative familiar with the site and the nature of Seller's performance to be accessible at all times that Seller personnel are at the site. Seller shall not be liable for any expenses incurred by Buyer in removing, replacing or refurbishing any Buyer equipment or any part of Buyer's building structure that restricts Seller access. Buyer personnel shall cooperate with and provide all necessary assistance to Seller. Seller shall not be liable or responsible for any work performed by Buyer.

28. **INDEMNITY:** Each party shall indemnify and hold the other party harmless from loss, damage, liability or expense resulting from damage to personal property of a third party, or injuries, including death, to third parties to the extent caused by a negligent act or omission of the party providing indemnification or a party's subcontractors, agents or employees during performance of services hereunder. Such indemnification shall be reduced to the extent damage or injuries are attributable to others and in no event shall the indemnifying party be obligated to indemnify or insure the other party for the indemnitee's own fault or negligence. The indemnifying party shall defend the other party in accordance with and to the extent of the above indemnification, provided that the indemnifying party is i) promptly notified by the other party, in writing, of any claims, demands or suits for such damages or injuries, ii) given all reasonable information and assistance by the other party, iii) given full control over any resulting negotiation, arbitration or litigation, including the right to choose counsel and settle claims, or the indemnifying party's obligations herein shall be deemed waived.

B.O.C.C. Regular **Agenda Item 7.**

Meeting Date: 10/06/2020

Title: Response to Audit Findings - September 22, 2020

Submitted By: Charri Victory

TOPIC:

September 1 through September 15 Payroll Audit

BACKGROUND:

na

RECOMMENDED ACTION:

na

Attachments

Response to Audit Findings - September 22, 2020

PAYROLL AUDIT
September 1 to September 15, 2020

Date: 9/18/2020

To: Board of County Commissioners

From: Scott Turner, County Auditor

Checked items indicate changes made by payroll.

From my office's review of the above referenced payroll, the findings are noted below:

Date	Employee Name	Department	Finding	
9/18/20	Harris, Melody	Extension	Rate s/b 16.50 @ 27 hrs per PAR 9/1/20, payroll journal printing out with Metra department.	✓
9/18/20	Bettise, Sandy	Metra	No payroll journal for 15.50 hrs worked (5810.553.460442.112)	✓
9/18/20	James, Kyle	Metra	OT rate s/b 20.69 @.75 hrs	✓

B.O.C.C. Regular Agenda Item 8.

Meeting Date: 10/06/2020

Title: Subgrant Application for Montana's First Domestic Violence Court Implementation Program

Submitted By: Teri Reitz, Board Clerk

TOPIC:

Subgrant Application Montana Board of Crime Control - Montana's First Domestic Violence Court Implementation Program

BACKGROUND:

This is a nine month grant that was awarded to Yellowstone County to explore the viability of a Domestic Violence Court in the State of Montana.

RECOMMENDED ACTION:

Place to file.

Attachments

Montana's First Domestic Violence Court Implementation Program

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SUBGRANT APPLICATION

Montana Board of Crime Control

5 S Last Chance Gulch
P.O. Box 201408
Helena, MT 59620-1408
(406) 444-3604 TTY:(406) 444-7099

PLEASE FILL OUT THIS FORM COMPLETELY TO AVOID DELAYS IN PROCESSING THIS APPLICATION

Section 1. Face Page **RFP Number per Justice Bulletin: #20-11**

Application Agency: Yellowstone County Justice Court			
Address: PO Box 35032			
City: Billings	**State:** MT	**Zip:** 591075032	**Phone:** 406-256-2895
County: Yellowstone	**E-mail:**		
Federal Employer or Payee Identification Number (FEIN): 816001449			
DUNS Number: 071404941			
Agency Type: County			

Project Director Name: David Carter		**Title:** Justice of the Peace	
Address: 217 N 27th St			
City: Billings	**State:** MT	**Zip:** 59101	**Phone:** 406-869-3595
County:		**E-mail:** dacarter@co.yellowstone.mt.gov	

Project Title: Montana's First Domestic Violence Court Implementation Program		
Project Duration:	**Start Date:** 10/1/2020	**End Date:** 6/30/2021
If previously funded, total number of months of federal support: 21		

Section 2. Project Budget
Subgrant Application for Montana Board of Crime Control

A. Personnel	Type	MBCC/Fed.	Local Match	Total
DV Court Judge	Benefits	$0.00	$12,698.40	$12,698.40
TOTAL:		**$0.00**	**$12,698.40**	**$12,698.40**

B. Contracted Services	MBCC/Fed.	Local Match	Total
Director of Development Salary and Benefits	$0.00	$4,933.63	$4,933.63
DV Coordinator Salary and Beneftis	$29,870.00	$0.00	$29,870.00
TOTAL:	**$29,870.00**	**$4,933.63**	**$34,803.63**

C. Travel / Per Diem	MBCC/Fed.	Local Match	Total
TOTAL:	**$0.00**	**$0.00**	**$0.00**

D. Equipment	MBCC/Fed.	Local Match	Total
TOTAL:	**$0.00**	**$0.00**	**$0.00**

E. Operating Expenses	MBCC/Fed.	Local Match	Total
TOTAL:	**$0.00**	**$0.00**	**$0.00**

Total Project Budget - *Combined totals for all columns*	**$29,870.00**	**$17,632.03**	**$47,502.03**
MBCC Share of Project Budget: 62.88 %	**62.88 %**	**37.12 %**	**100.00 %**

Section 3. Budget Narrative
Subgrant Application for Montana Board of Crime Control

Budget Narrative details continue on the following pages.

Budget Narrative:

Yellowstone County Justice Court
Yellowstone County Domestic Violence Court Program

Summary: A nine-month grant opportunity was awarded to Yellowstone County to explore the viability of a Domestic Violence Court (DVC) in the state of Montana. Similar to the last grant request, Yellowstone County has agreed to contract with Alternatives, Inc., a local non-profit organization currently providing probation, supervision, and treatment services to the local courts. Alternatives will be able to leverage existing administrative support needed to implement the first DVC in Montana. As a result, all program costs requested for reimbursement will be listed under Contracted Services. Since this is the initial steps in creating a DV Court in Montana, it is unknown what the overall volunteer and match will be from the community. There is significant collaboration and commitment between public and private entities who will be volunteering their time specifically for the DV Court, however, without running the court for the first year, it is challenging to monetize the actual volunteer hours. As a result, the actual program match for the program is estimated through the salary of the Justice of the Peace and the Director of Development. However, additional hours in-kind will be provided through accounting, administration, the Beta Program Assistant, the Beta Jail Alternatives Supervisor, and all DV Court team members including prosecution, defense, victim witness coordinators, and law enforcement. This grant proposal offers the anticipated salary and benefits of three staff members who are integral members of the team for success; however, it is anticipated that an additional $20,000+ in in-kind hours will be spent through the collaborating partners. Hours will be kept and logged by all volunteers to better track matching capabilities in the future. Additionally, office space, utilities, etc. for the DV Coordinator and the Director of Development is provided in-kind through Alternatives and the Justice Court as a department of Yellowstone County.

All of the funds requested for reimbursement will be used for personnel of a Domestic Violence Coordinator.

A. Personnel Costs

A judge is needed for the court to operate. The judge must review cases, issue opinions, and manage the weekly court sessions. Best practices indicate that specialty courts host a weekly court session with the offenders which is approximately 3 hours per week. The judge must also prepare for the weekly court session which will take approximately 2 hours a week. It is anticipated that the judge will spend 195 hours over the course of the 9 months working directly with the Domestic Violence Court. His salary and benefits total $135,450 including benefits. As the judge is an elected official and paid for by Yellowstone County, no funds will be requested for reimbursement through the grant but will be used for the required match calculation. $135,450/40/52 = $65.12/hour x 195 hours = $12,698.40. This will be paid for 100% by Yellowstone County.

Total Personnel = $12,698.40
Yellowstone County Share = $12,698.40 or 100%
MBCC Share = 0%

B. Contracted Services:

Personnel:
Alternatives will continue to employ one FTE whose position is titled "Domestic Violence Coordinator" (currently occupied- Jeff Snell). It is hourly at $20/hour for to 40 hours/week for 27 weeks for $21,600. The 27 weeks is determined based on the length of time of this grant request running from October 1 – June 30, 2020. Yellowstone County and Alternatives currently have a grant extension for the VAWA 2020 grant cycle until December. Those funds will pay the DV Coordinator until they run out and the funds requested as part of this grant will allow his continued employment. It is anticipated that the position will be filled for 40 out of 40 weeks of the grant period for $29,870.00.

The DV Coordinator will be responsible for managing all aspects of the grant project operations. He will be responsible for data collection, reporting, and achieving all grant objectives including submitting all reports and summary documents.

Fringe Benefits

Position Title "Domestic Violence Coordinator"

Benefits are based on current payroll costs for a FT (40 hours/week) position and for the entire 27 weeks of employment under this grant.

Wages	$20/hr x 40 hrs/wk x 31 weeks	$24,800.00
FICA	Total Wages x .0765	$1,897.20
Work Comp	Wages x .031	$768.80
FUTA	Wages x .06 on first $7000.00	$420.00
SUI	Wages x .08	$1,984.00
Total Fringe Benefits		$ 5,070.00
Total		**$29,870.00**

The Domestic Violence Coordinator is supervised by the Alternatives Director of Development. It is anticipated that 5 hours a month of supervision will be required with an additional 15 hours of direct program supervision for a total of 75 hours over the 9-month period. The Director of Development's salary is $102,619.50 including benefits. The hourly rate is $102,619.50/40/52 $49.34/hour. No funds are requested for reimbursement through the grant but will be used for purposes of the required match calculation. $49.34/hour x 100 hours = $4,933.63. This will be paid for 100% by Alternatives.

Personnel Total = DV Coordinator $29,870+ Director of Development $4,933.63 = $34,803.63
Alternatives' Share = $2,838 = $5,529 or 14%
MBCC Share = $296,870 or 86%

Personnel Total $12,698.40 + Contracted Services Total $34,803.63 = $47,502.03
Yellowstone County Share = $12,698.40 or 27%
Alternatives' Share = $4,933.63 or 10%
MBCC Share = $29,870 or 63%
There are no indirect costs being requested as part of this grant.

Section 4a. Project Narrative
Subgrant Application for Montana Board of Crime Control

Project Narrative details continue on the following pages.

Executive Summary:

Who We Are: This grant application is submitted on behalf of Yellowstone County Justice Court (YCJC) in conjunction with local partners such as Alternatives, Inc., a non-profit agency, and several other community partners. The attached letter represents additional support from the Office of Court Administration in the execution and implementation of the first Domestic Violence (DV) Court in Montana.

Responding to the need to provide better and more comprehensive coordination between courts that oversee DV cases, last year Yellowstone County Justice Court obtained funding for the purpose of exploring the need for and support of implementing a DV Specialty Court in Yellowstone County. Since the award of the current grant, the Domestic Violence Coordinator (DVC) has done extensive research, establishing tracking measures, and maintained a daily log of actions. An Advisory Board has been formed to oversee outcomes and analyze objectives, and an Advisory Committee that represents community partners in criminal and civil law and local politicians is developing. The DVC is actively working to secure all 12-members of the committee through commitment agreements. Initial meetings with the 5-member Advisory Board and current members of the Advisory Committee present a unilateral approval of the implementation of the DV Specialty Court. The DVC has been working directly with the Center for Court Innovation (CCI) to explore impacts of similar courts in other communities, and nine courts who deal with both the criminal and civil aspects have been identified. Court manuals and handbooks have been received and the DVC is developing implementation steps including viability data which supports moving forward with the specialty court.

Initial support and impact data are providing promising confirmation that this specialty court will have positive effects after the implementation of the DV Court. As a result, Yellowstone County Justice Court is now requesting funding for the initial implementation of Montana's first DV specialty court. The research supports a comprehensive approach tackling the long-term challenges associated with DV cases including treatment, supervision, and victim stability, and the next logical step in creating a comprehensive and collaborative approach is the DV Court. YCJC has agreed to continue to contract with Alternatives to manage the day-to-day operations of the grant reducing the impact to the county and the challenges associated with obtaining full time employees within the county budget. The presiding Justices of the Peace will provide weekly oversight and will maintain full authority over the project.

Due to Alternatives having a significant background in the implementation and execution of current county programs, it will be a main stakeholder in the execution of the grant leveraging current staff, protocols, policies, research resources, and space. Alternatives, along with Justice Court, has brought on a new DV Coordinator, who started working on September 9, 2020, during the grant award 19-W06-92519. The DV Coordinator will conduct research, provide public information, develop the implementation of the DV Court, and maintain the multi-disciplinary 12-member Advisory Committee and the five-member Advisory Board. The tangible products of the grant will include a written assessment of the steps needed to implement a DV Court, and include details on local support, required legislation changes identified, and funding sources.

Community Relations: The intent of the project is to leverage and combine the resources of Yellowstone County with community partners in the criminal justice and civil law departments to create Montana's first Domestic Violence Specialty Court. The agencies with which the DVC

has already garnered to participate support from include the Yellowstone County Justice Court, the Billings City Attorney's Office, Victim Witness Advocates, private attorneys, and the Billings Police Department DV Detective.

Need and What We Intend to Do: Evidence-based research indicate that DV Courts tend to expedite processing of criminal cases, increase the use of intervention programs (batterers programs, substance abuse treatment, etc.), and can increase conviction rates. In addition, when cases are heard in a DV Court, victims are more satisfied and more likely to access services, as opposed to victims whose cases were heard in a traditional court. It is the intent of the grant to plan and implement a DV Specialty Court in Yellowstone County. The measurables of the project include:

- In conjunction with what has already occurred, continue to work with established advisory committee lead by DV Coordinator Jeff Snell. Jeff is a retired 21-year MT State Probation and Parole Officer.
- Enact the implementation plan, policies and procedures, and referral mechanism for the court as created through collaboration with the Center for Court Innovation, advisory committee, and community partners. Handouts and other materials will be created explaining the court to educate the judges, prosecution, and defense on the court opportunities.
- Begin the acceptance of referrals to the DV Court by the end of November 2020 and enroll at least 75 offenders by June 30, 2021, while tracking referrals and enrollments.
- Find a data management software to use for tracking and reporting data, train staff on software use, and implement software across all programs involved in the court.

- Apply for long term funding for the court to continue after the end of the grant.

<u>Needs Statement:</u>

On average nearly 20 people per minute are physically abused by an intimate partner in the United States, according to the National Coalition Against Domestic Violence. This equates to more than 10 million women and men and accounts for 15% of all violent crime. Intimate partner violence costs the US economy between $5.8 billion and $12.6 billion per year. According to the Training Institute on Strangulation Prevention (2019), one in four women will experience intimate partner violence in their lifetime and of those women, 68% will experience near-fatal strangulation. Odds for homicide increase by 750% for victims of strangulation.

In Montana, one in three women and one in four men have experienced some form of physical violence by an intimate partner. In the 2015-2016 biennium there were 43 intimate partner homicide (IPH) deaths, an increase of 139% (150% for Native Americans) from the previous biennium, according to a report by the Montana Domestic Violence Fatality Review Commissions (Dale, 2017). Fortunately, the most recent biennium (2017-2018) showed a decrease by almost 50%, both statewide and in our Native American communities, with 25 IPH deaths (Eliel, 2019). Despite there being an increase in IPH deaths from 2017 (11 deaths) to 2018 (14 IPH deaths), the Montana Domestic Violence Fatality Review Commission believe the passage of a felony strangulation statute in Montana has proven to be useful in preventing potential intimate partner homicides. Between May 19, 2017 and May 17, 2018, at least 197 alleged offenders had been charged with strangulation (Eliel, 2019).

According to the Montana Board of Crime Control data (MBCC), the number of violation of orders of protection (VOOP) and misdemeanor partner family member assault (PFMA) offenses decreased from 4,511 (2017) to 4,278 (2018), about 5%. As may be expected by the population size of the city of Billings, Yellowstone County had the largest number of offenses in 2018 at 716 (17%), followed by Missoula County at 461 offenses (11%) and Flathead County at 424 offenses (10%). Yellowstone County accounted for approximately 22% of the state of Montana's total offenses in 2018 despite having only 11% of the population (MBCC, 2019). Additional statistical analysis of misdemeanor PFMA and VOOP offenses can be found in attachments (2015-2018 PFMA.VOOP State Stats).

Although a decrease in the number of offenses from 2017 to 2018 is represented, data from the Domestic Violence Unit at the Billings City Attorney's Office reports an increase for 2019 *(Figure 1)*. The DV Billings Municipal Court prosecutor stated, "I experienced a drop off in 2018 because it was the first full year that the strangulation statute was in effect. Since then, things have unfortunately rebounded and then some", (personal communication, January 9, 2020). As for the Yellowstone County Justice Court, cases seemed to increase from 2017 (202 cases) to 2018 (220 cases) but drop in 2019 (176 cases). Despite the decrease in misdemeanor PFMA and VOOP offenses in the Justice

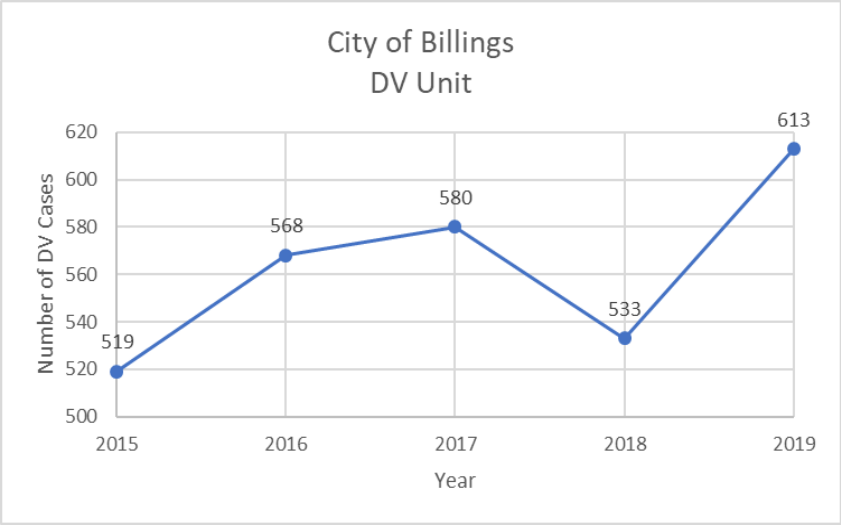

Figure 1: The number of DV Cases filed with the City Attorney's Office.

Court in 2019, the two courts combined show an overall increase in cases filed in 2019 *(Figure 2)*. It is also worth noting that there was a 44% increase in strangulation cases filed with the Yellowstone County Justice Court from 2018 (41) to 2019 (73). The breakdown of this data can be found in the attachments (DV 911 Calls Data).

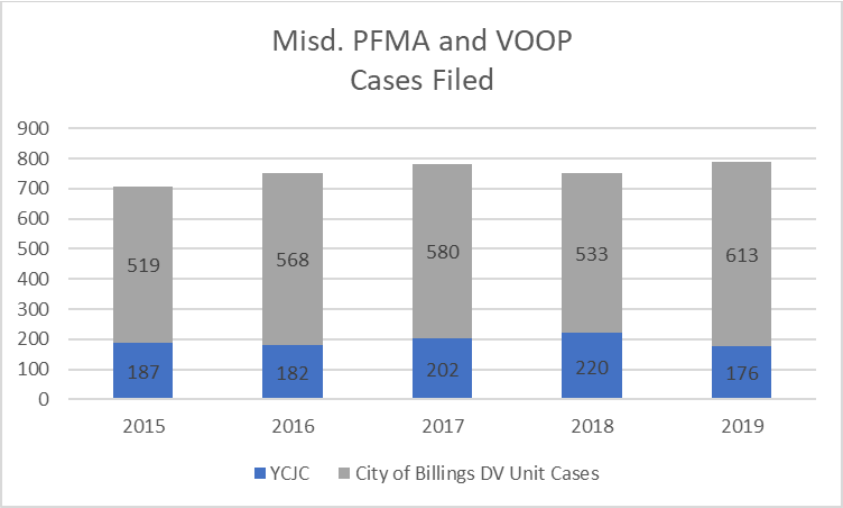

Figure 2: Billings DV Unit and Yellowstone County Justice Court misdemeanor PFMA and VOOP cases combined.

Although one court saw an increase in cases and the other saw a decrease, 911 call records report an increase in domestic violence reports in 2019 across Yellowstone county. The Yellowstone County Sheriff's Office (YCSO) experienced an increase in domestic violence related calls over the last 4 years, after a slight decrease from 2015 to 2016 *(Figure 3)*. The Billings Police Department experienced a decrease in calls from 2017 to 2018, but a significant increase in 2019

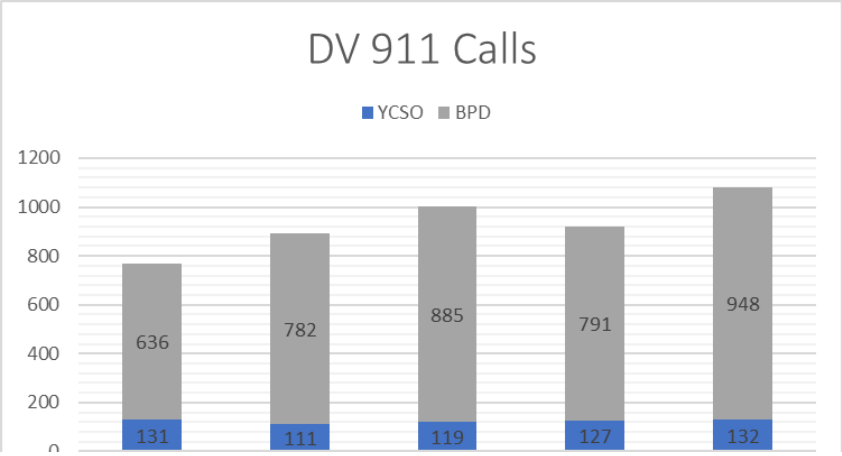

Figure 3: 911 Calls with an incident type related to domestic violence.

(Figure 3). There was also an overall increase in 911 calls related to domestic violence in 2019. Additional information can be found in attachments *(911 Calls Provided by BPD)*.

These statistics indicate the need for further action. Montana has made significant strides in addressing the problem of domestic violence, including the implementation of the strangulation statute, but even the Montana Domestic Violence Fatality Review Commission (2019) notes we need to do better. Over the years the commissions goals have included a comprehensive response to reduce the number of domestic violence fatalities. One suggestion made this past year stated, "Education specific to those working in the court system (clerks, judges, prosecutors, defense attorneys, guardian ad litem, CASA) would be most beneficial", (Eliel, 2019). The creation of a domestic violence court would do just that, as training is crucial to the success of a DV Court.

In the research for the current grant, the results of DV Courts are reassuring. Gutierrez, Blais, and Bourgon state, "The results indicated that DV Courts are having a positive impact on general recidivism, as well as domestic violence recidivism, compared to domestic violence offenders processed through the traditional court system" (2017). Additionally, the benefits of Domestic Violence Courts appear to outweigh the obstacles. Some benefits are: enhanced coordination of cases and consistent orders; more comprehensive relief for victims; advocacy services that encourage the victims to establish abuse free lives; greater understanding by judges of how domestic violence affects victims and their children; and greater system accountability. Some obstacles/concerns are: how to identify appropriate cases for the DV Court; staff turnover and modification in staff roles; coordination of the courts; proper training of the judges and staff; and the integrity of each case. With over 300 DV Courts Nationwide, attempts to implement the

successful components with plans to avoid the pitfalls can be accomplished while focusing on the specific geographical and cultural specifications to the area.

The DVC under the current grant has been able to obtain operation guides to follow to ensure some of the concerns listed previously can be prevented. This includes a checklist on accounting for risk and danger, a checklist for victim safety, a DV Court planning toolkit, and lessons learned in implementing an integrated domestic violence court.; among others. A virtual visit to Ada County DV Court this past spring allowed project and court personnel to observe hands-on operations of a DV Court and build necessary connections needed to sustain support the court. With the assistance of the Center for Court Innovation, which focuses on victim safety and court responses to domestic violence, the five-member Advisory Board will be well prepared to implement the DV Court efficiently.

In order to operate the day-to-day responsibilities of the specialty court, it is necessary to employ a dedicated Domestic Violence Coordinator (DVC) for the court to be successful. The DVC is needed for the planning, implementation, and enhancement of the court. The DVC must collaborate with the advisory board and advisory committee to decide specific policies and procedures to follow and will be tasked with coordination of all the aspects for the operation of the court, addressing concerns from both court team members and offenders enrolled ensuring successful outcomes for offenders and victims. The operations of the court include the caseload, case identification and transfer, judicial monitoring, ensuring victim safety in the courthouse, staffing, and technology. With so many moving parts, the DVC must work collaboratively with

staff and criminal justice personnel, as well as facilitate linkages with community service providers.

In the interest of public safety, this grant application will include COVID-19 protocols in anticipation that the pandemic will continue throughout 2021. The DV Court will take steps to implement with specific COVID-19 protocols. Alternatives will use remote appearances for monitoring and supervised misdemeanor innovative probation or pre-trial supervision. The Justice Court utilizes social distancing, requirements of masks, and remote appearances for court as necessary. All public health guidelines provided to Yellowstone County and Alternatives will be strictly enforced as recommended by the Local Public Health Authority and RiverStone Health. While the pandemic continues, al advisory meetings and stakeholder meetings will occur via, web based, password-protected ZOOM conferencing as it has done since the March meetings.

In summary, domestic violence is an ongoing problem in Yellowstone and surrounding counties, and steps need to be taken to protect the victims and enhance offender accountability. According to Spencer, "research supports the idea that a coordinated community response offers an effective way to address domestic violence. Cooperation between criminal justice, social service, and victim advocates has proven to be more productive than acting separately to address the problem" (2015). This grant application provides that recommended coordinated effort by researching and identifying specific measures from which Yellowstone County could benefit. It allows for the creation of a DV Court and will also provide necessary training and provide coordination between the criminal justice system and civil courts.

Goal:

To develop, implement, and execute Montana's first Domestic Violence Specialty Court in Yellowstone County with the assistance of a multidisciplinary team aimed at holding offenders accountable and creating victim stability and independence. The DV Court will begin receiving referrals in November 2020 and be operational to serve up to 75 offenders by June 30, 2021.

Objectives:

Objective #1- To continue the previous grant work and identify, define, and implement all necessary steps in running the DV Court. This will begin immediately and will be completed by month two.

Objective #2- To create and print all documentation pertaining to the court and its operations. This will be completed by month 2, when the DV Court begins accepting referrals.

Objective #3- To start the DV Court operations by the end of November 2020 and have at least 75 offenders referred to the court by June 30, 2021. This will begin the end of month two and will continue beyond the grant period.

Objective #4- To track and report data of the court which includes referrals, enrollments, offender contacts, offender groups, offender sentencing requirements, non-compliance issues, interventions used, successful completions, and victim services referred. This will begin in month two and will continue beyond the grant period.

Implementation Plan:

The ongoing work of the current grant projects bodes well to a successful implementation and execution of Montana's first Domestic Violence Specialty Court. Many of the necessary steps to take are laid out in research and provided by other DV Specialty Courts and the Center for Court Innovations. Funding is the biggest barrier at this point in the successful implementation which

is being discussed and reviewed by a multidisciplinary team. Through the use of evidence-informed steps, the Yellowstone County Justice Court, Alternatives, and other community partners have received overwhelming support in the execution, which leaves only the necessary steps to begin the process of educating stakeholders and receiving referrals. The objectives and necessary steps to complete those objectives and the overall goal are listed below including time, resources, and costs.

Goal	To develop, implement, and execute Montana's first Domestic Violence Specialty Court in Yellowstone County with the assistance of a multidisciplinary team aimed at holding offenders accountable and creating victim stability and independence. The DV Court will begin receiving referrals in November 2020 and be operational to serve up to 75 offenders by June 30, 2021.			
Activity/ Action Step	**Responsible Person(s)**	**Timeline**	**Resources Needed**	**Projected Costs**
Objective #1	To continue the previous grant work and identify, define, and implement all necessary steps in running the DV Court. This will begin immediately and will be completed by month two.			
Work with the Center for Court Innovation to complete the implementation plan	DV Coordinator (DVC)	Month 1-3	Time	DVC salary $30,000.00
Supervise DV Coordinator and complete reports as needed	Director of Development	Mont 1 – Month 9	Time/ Computer	Dir of Dev. Salary
Judge work on all necessary steps for incorporating DV in court schedule, train staff, implement procedures	Judge Carter	Month 1 – Month 9	Time/ Computer/ Training	DV Court Judge Salary $12,698.40
Coordinate budget with county officials	DVC, BJAS, JP	Month 1	Time/ Computer	None
Recruit members for the DV court team	DV Coordinator	Month 1	Time/ Computer	None
Create MOU for DV court team	DVC	Month 2	Time/ Computer	None
Sign MOUs for project participation	DVC/JP	Month 2	Time/ Computer	None

Research and apply for future funding	DVC	Month 1-9	Time/ Computer	None
Develop Victim Resource list	DVC	Month 2-3	Time/ Computer	Non
Objective #2	To create and print all documentation pertaining to the court and its operations By November 15, 2020.			
Develop case eligibility guidelines	Advisory Board	Month 2	Time/ Supplies/ Computer	None
Create referral and tracking forms for victim services	DVC and AA	Month 2	Time/ Computer/ Supplies	None
Create plan for judicial monitoring of offenders	DVC and Admin Assistant (AA)	Month 2	Time/ Supplies/ Computer	None
Develop MOUs with agencies to provide probation, supervision, and treatment services for offenders	DVC and AA	Month 3	Time/ Supplies/ Computer	None
Create referral mechanism for judges	DVC, AA, BJAS	Month 3	Time/ Computer	None
Create referral and tracking forms for victim services	DVC and AA	Month 2	Time/ Computer	None
Objective #3	To start the DV Court operations by the end of November 2020 and have at least 75 offenders referred to the court by June 30, 2021. This will begin the end of month two and will continue beyond the grant period.			
Develop handouts and materials explaining the court	AA with DVC and JP	Month 2-3	Time/ Supplies/ Computer	None
Educate judges, prosecution, and defense on the court opportunism	Advisory Board	Month 2-3	Public Space/ Handouts	None
Track offender referrals, enrollments, compliance, completions, and victim referrals to services	DVC and AA	Month 2-9	Time/ Computer/ Excel/ Database	None
Objective #4	To track and report data of the court which includes referrals, enrollments, offender contacts, offender groups, offender sentencing requirements, non-compliance issues, interventions used, successful completions, and victim services referred. This will begin in month two and will continue beyond the grant period.			
Track and report data	DVC and JP	Month 1- 9	Time/ Computer	None

Evaluation Plan: Yellowstone County Justice Court (YCJC) and Alternatives, Inc. are committed to collecting and reporting the required performance measures data on a quarterly basis to the Montana Board of Crime Control as well as county and city officials, and community partners. The Beta Jail Alternatives Supervisor at Alternatives will oversee the data collection and reporting procedures submitted for review and submission by the YCJC.

The Advisory Committee comprised of twelve (12) project members is currently being formed with multi-disciplinary representatives. The committee members already established include Victim/Witness Advocates, Law Enforcement, Attorneys, state legislators, and court personnel. Additional members will be comprised from the following institutions: The Department of Health and Human Services, Child and Family Services Division (DPHHS CFS); the Public Defender's Office; Medical Personnel. Advisory Committee meetings with be held at least quarterly to monitor objectives and to ensure goals are being met within the timeframes indicated in the implementation plan. To address challenges and concerns, the committee will help develop action plans to ensure changes are made where needed. Minutes of the meetings and those in attendance will be kept and submitted at reporting times.

Additionally, the a five-member Advisory Board established during the current grant comprised of the YCJC Justice of the Peace, Alternatives Director of Development, the Domestic Violence Coordinator, a Domestic Violence Prosecutor, and a Defense Attorney. The board members are responsible for making final recommendations and carrying forward the implementation plan. The Advisory Board will also attend the monthly meetings in which minutes will be kept.

When the DV Court is in operation, the following numbers will be evaluated and analyzed:

1) Referrals to the DV Court, with a goal of 75;
2) Enrollments in the DV Court, with a goal up to the 75 but a minimum of 60;
3) Successful completions;
4) Noncompliance and interventions; and
5) Victim contacts.

Collaboration Plan:

The project's success structure is built on the collaboration and participation of community partners working towards the same goals: to enhance victim safety and increase offender accountability which directly represents the standards adopted in December 2018 for Offender Intervention Programs by the Montana Board of Crime Control. The Yellowstone County Justice Court in participation with Alternatives takes a collaborative multidisciplinary approach to all programs it facilitates, and this grant would be an example of working with partners and developing new relationships to fill gaps in the current criminal justice system. Alternatives is committed to providing necessary staff, resources, and space to execute the effective implementation of the DV Court. The Justice Court believes that the time and effort to work with the court team will directly impact its ability to hold offenders accountable and keep victims safe thus reducing the long-term burden on the judicial system. Employing a dedicated coordinator allows partners in criminal justice and social services to participate in the development of a long-term goal without burdening already high caseloads. This burden has been expressed by those wishing to research and implement the first DV Court in Montana in the past.

The DVC has established partners, including the five-member advisory board and the twelve-person advisory committee. These members are prepared to continue participation in the project through the implementation of a domestic violence court and will sign Memorandum of Understandings (MOUs) for participation in the DV Court team whom will meet weekly for court sessions and review progress of each offender with input on the safety of the victim(s).

Additional partners will be sought out by the DVC which include probation, treatment, and victim services including the establishment of pro bono attorneys willing to provide civil case services to include setting up any necessary parenting plans, dissolution of marriages, matters dealing with orders of protection, and or working through financial issues which often tie a victim to his or her perpetrator. Organizations such as Gateway and the YWCA have been contacted to participate and Child and Family Services will participate in cases involving dangerous and neglect cases. As additional partners are identified, MOUs will be executed to establish roles and responsibilities. Without the help of community partners and all aspects of the criminal justice system, the DV Court cannot operate. Each partner provides a necessary service needed to successfully implement a DV Court and ensure victims are taken care of while offenders are held accountable.

Sustainability Plan:

This grant will provide the implementation of the DV Court. The sustainment of the court will rely heavily on the availability of other funding sources, including grant funds through foundations or federal appropriations and an establishment of court fees for clients. In the current

grant, researching funding sources is under objective #3, in months 7-9, in which funding support will also be sought through local government units. The DVC has already started compiling a list of possible funding sources to apply for financial support, such as through the Center for Court Innovation, Office of Violence Against Woman, Administration for Children and Families, and Justice for Families. Due to the overwhelming support of the DV Court in Yellowstone County, the DV Court Team is committed to finding funding to continue the operations of the court and many members are providing in-kind or pro bono services which were established through the collaboration plan. Many of the court team members would have been working directly on the cases that will be resolved in the court, and with successful implementation of the specialty court model should result in a decrease in work load for many of the members as the number of violations, revocations, and repeat offenses decline. In order to assist in the sustainability, the DV Court will be establishing a client fee schedule for services of the offender (treatment, monitoring, court fees, etc.). This will be defined further during this next grant period as the court team works to establish direct costs.

The largest expense to the grant which will need to determine long term funding is the staff and personnel needed to coordinate and operate the grant which include the Domestic Violence Coordinator. Once the DV Court is established and has been operating for at least a year, it is anticipated that the DVC position would become full-time members of the Court team and employed directly under the guise of the court rather than contracted employees through Alternatives. This will likely adjust the salary and benefits of the position as they would fall under county classifications. The court would also need to find space for the position and a location to meet with offenders and victims. At this time, the space and operational utilities

including internet and IT support is being provided by Alternatives as an in-kind service as well as the support roles in the administration department and the supervision. In the long term these items will be self-sufficient through other funding sources; however, it is expected that self-sufficiency and the award of grants may take up to two years to be fully established. The equipment purchased for the DVC will follow those positions and be used for several years to come. The association, conference fees, database, and general office supplies will need to be included in the overall operation budget for the court moving forward which will be included in requests for grants from the already identified funding opportunities as well as client fees.

Section 4b. Objectives
Subgrant Application for Montana Board of Crime Control

Objective #1:
To continue the previous grant work and identify, define, and implement all necessary steps in running the DV Court. This will begin immediately and will be completed by month two.

Objective #2:
To create and print all documentation pertaining to the court and its operations By November 15, 2020.

Objective #3:
To start the DV Court operations by the end of November 2020 and have at least 75 offenders referred to the court by June 30, 2021. This will begin the end of month two and will continue beyond the grant period.

Objective #4:
To track and report data of the court which includes referrals, enrollments, offender contacts, offender groups, offender sentencing requirements, non-compliance issues, interventions used, successful completions, and victim services referred. This will begin in month two and will continue beyond the grant period.

Objective #5:

Section 5. Special Assurances and Conditions
Subgrant Application for Montana Board of Crime Control

Assurances of Compliance with Civil Rights Act of 1964:

Applicant will comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C.Â§ 3789d); the Victims of Crime Act (42 U.S.C. Â§ 10604(e); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. Â§ 5672(b); the Civil Rights Act of 1964 (42 U.S.C. Â§ 2000d); the Rehabilitation Act of 1973 (29 U.S.C. Â§ 794); the Americans with Disabilities Act of 1990 (42 U.S.C. Â§Â§ 12131-34); the Education Amendments of 1972 (20 U.S.C. Â§Â§ 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. Â§Â§ 6101-07); 28 C.F.R. pt 31 (U.S. Department of Justice Regulations â€“ OJJDP Grant Programs); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations â€“ Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations â€“ Equal Treatment for Faith-Based Organizations).

In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, sex, or disability against a recipient of funds, then recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the MBCC. In accordance with federal civil rights laws, the applicant shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws Applicants are required to take reasonable steps to ensure meaningful access to their services to persons who, as a result of their national origin, are LEP. To help applicants understand and meet this obligation, the DOJ published â€œGuidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Personsâ€? , which can be found at 67 Fed. Reg. 41455 (June 18, 2002) or at www.lep.gov (LEP Guidance).

Non-supplanting Requirements:

Funds or other resources of the applicant normally devoted to programs and activities designed to meet the needs of criminal justice will not be diminished in any way as a result of a grant award of federal funds.

The project for which assistance is being requested will be in addition to, and not a substitute for, criminal justice services previously provided without federal assistance.

Audit Requirement:

Acceptance of this grant award requires the subgrantee organization or governmental entity to include this subgrant in the scope of their regularly scheduled annual or biennial audit. The audit must be conducted in accordance with the appropriate OMB Circular (A-128, A-133, A-102/Common Rule).

Applicants Agreement:

It is understood and agreed by the applicant: that any grant received as a result of this application shall be subject to the Grant Conditions and other policies, regulations, and rules issued by the Department of Justice for the administration of grant projects under (P.L. 100-690) including, but not limited to, the following:

1. Competitive bids must be obtained for all equipment, construction and contracted services applications, as required by applicable local, state, or federal law or regulations. Accepting other than the lowest bid requires prior approval of the Board of Crime Control;
2. The grant may be terminated in whole, or in part, by the Board of Crime Control at any time;
3. Appropriate grant records and accounts will be maintained and made available to the Montana Board of Crime Control, Office of the Legislative Auditor, or the Legislative Fiscal Analyst upon request;
4. The grantee shall assume the costs of improvements funded after a reasonable period of federal assistance;
5. If any agency other than the applicant is to contribute matching funds, that agency must document their contribution;
6. Any funds awarded under one subgrant cannot be used in another;
7. Expenditures for items not listed on the original budget are subject to refund and/or penalty. Variances from the approved subgrant will require an amendment approved in advance by the Board of Crime Control;
8. All applicants are subject to federal, state, and local laws and regulations;
9. The subgrantee shall not obligate any funds until subgrant is formally awarded by the Board of Crime Control; and
10. Draw down of funds is contingent upon submission of quarterly financial reports and quarterly progress reports.
11. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds shall clearly state: 1) the percentage of the total cost of the program or project which will be financed with federal money, and 2) the dollar amount of federal funds for the project or program.
12. Rules 23.14.101 et seq. of the Administrative Rules of Montana.
13. The subgrantee agrees to comply with the National Environmental Policy Act (NEPA) and other related federal environmental impact requirements in the use of these grant funds either directly or indirectly by subcontractors.

The Official Budget Representative signature in Section 6 certifies agreement with these Special Assurances and Conditions.

Section 7a.

Signed Signature Page Follows

Section 6. Signature Page
Print this document and have all sections signed. Scan and upload the signed signature page into Section 7.
Subgrant Application for Montana Board of Crime Control

The officials who certify this document to include Section 5: Special Assurances and Conditions, agree to adhere to all terms and conditions relating to this application. Duplication of responsibilities by one individual for any position listed below is NOT acceptable. (Please refer to the Application Guidelines regarding signatures.)

Original Signatures are Required

A. Official Budget Representative (City/County Commissioner, Mayor, Department Head, or President of Board of Directors)

Name:	Kevan Bryan	Title:	Finance Director
Address:	217 N 27th St	City:	Billings
Zip:	59101	Phone:	406-256-~~2973~~ 2793
E-mail:	kbryan@co.yellowstone.mt.gov	Fax:	4062562898
Signature:	Kevan Bryan	Date:	9/21/20

B. Project Director

Name:	David Carter	Title:	Justice of the Peace
Address:	217 N 27th St	City:	Billings
Zip:	59101	Phone:	406-869-3595
E-mail:	dacarter@co.yellowstone.mt.gov	Fax:	406-256-2898
Signature:		Date:	9/21/2020

C. Financial Officer

Name:	Jennifer Jones	Title:	Assistant Finance Director
Address:	316 N 26th St #3401	City:	Billings
Zip:	59101	Phone:	406-256-2816
E-mail:	jjones@co.yellowstone.mt.gov	Fax:	
Signature:	Jennifer Jones	Date:	9.21.2020

Signature Page for OSAS Application #:2655

Section 7b.

System for Award Management (SAM) Verification Follows

Amanda Green

From: Jennifer Jones <jjones@co.yellowstone.mt.gov>
Sent: Monday, September 21, 2020 1:07 PM
To: Amanda Green
Subject: FW: Registration Activated for COUNTY OF YELLOWSTONE / 071404941 / 1UDK2 in the U.S. Government's System for Award Management (SAM)

-----Original Message-----
From: samadmin@sam.gov <samadmin@sam.gov>
Sent: Monday, February 24, 2020 3:46 PM
To: Jennifer Jones <jjones@co.yellowstone.mt.gov>
Cc: Jennifer Jones <jjones@co.yellowstone.mt.gov>
Subject: Registration Activated for COUNTY OF YELLOWSTONE / 071404941 / 1UDK2 in the U.S. Government's System for Award Management (SAM)

This email was sent by an automated administrator. Please do not reply to this message.

Dear Jennifer Jones,

The registration for COUNTY OF YELLOWSTONE / 071404941 / 1UDK2 is now active in the U.S. Government's System for Award Management (SAM). If you did not provide a Commercial and Government Entity (CAGE) Code during the registration process, one has been assigned to you by the Defense Logistics Agency (DLA) CAGE Program.

In order to remain eligible to do business with the Federal government, you must renew your entity's registration in SAM every year.The annual renewal date for the registration is 2021-02-23 17:28:32.001.

You may invite additional users to manage or review your entity registration by following these steps:

1. Go to www.sam.gov and log in.
2. Select Entity Users from the sub-navigation menu on the My SAM page.
3. Select Invite User from the Entity Users menu.
4. Select the desired entity from the Level List.
5. Provide invitee's email address.
6. Assign role(s) to be associated with the user account.
7. Select Submit.

All invitees will receive an email message from SAM with instructions on how to complete the process.

Remember, this process is entirely FREE to you. It is FREE to register and maintain your registration in SAM. It is FREE to get help with your registration. Contact our supporting Federal Service Desk at www.fsd.gov, or by telephone at 866-606-8220 (toll free) or 334-206-7828 (internationally), for FREE help.

In addition, if you are located in the U.S. and its outlying areas, you can also get FREE support from your local Procurement Technical Assistance Center (PTAC), an official resource for government contracting assistance. Go to http://www.aptac-us.org/ to find your closest PTAC.

Thank you,

The System for Award Management (SAM) Administrator https://www.sam.gov

Section 7c.

Accounting System & Financial Capability Questionnaire Follows

MONTANA BOARD OF CRIME CONTROL

ACCOUNTING SYSTEM AND FINANCIAL CAPABILITY QUESTIONNAIRE

Section A: Purpose

In compliance with the office of Justice Programs (OJP) Financial Guide, adequate accounting systems shall meet the following criteria:

(1) Accounting records need to provide information needed to adequately identify the receipt of funds under each grant awarded and the expenditure of funds for each grant.

(2) Entries in accounting records shall refer to subsidiary records and/or documentation which support the entry and which can be readily located.

(3) The accounting system shall provide accurate and current financial reporting information.

(4) The accounting system shall be integrated with an adequate system of internal controls to safeguard the funds and assets covered, check the accuracy and reliability of accounting data, promote operational efficiency, and ensure adherence to prescribed management policies.

Section B: General

1. Complete the following items:

a. When was the entity founded/incorporated *(month, day, year)*

b. Employer Identification Number:

81-6001449

c. Board of Directors:

Denis Pitman - Chairman

Chair

Donald W Jones - Member

Vice Chair

John Ostlund - Member

Treasurer

2. Fiscal year (date range): 07/01/18-06/30/19

3. Total Revenues in last fiscal year: $ 102,913,980

Section C: Accounting System / Funds Control

1. Which of the following best describes the accounting system: ☐ Manual ☐ Automated ☑ Combination

2. Does the accounting system identify the receipt and expenditure of program funds separately for each funding source? ☑ Yes ☐ No ☐ Not Sure

3. Does the accounting/financial system include budgetary controls to preclude incurring obligations in excess of:
   a. Total funds available for a grant? ☑ Yes ☐ No ☐ Not Sure
   b. Total funds available for a budget cost category (e.g. Personnel, Travel, etc)? ☑ Yes ☐ No ☐ Not Sure

4. Are time distribution records maintained for each employee to encompass his or her total activities and be specifically identified to a particular cost objective? ☑ Yes ☐ No ☐ Not Sure

5. Is the entity generally familiar with the existing regulation and guidelines containing the cost principles and procedures for the determination and allowance of costs in connection with Federal grants? ☑ Yes ☐ No ☐ Not Sure

6. If grants funds are commingled with entity's funds, can the grant funds and related costs and expenses be readily identified? ☑ Yes ☐ No ☐ Not Sure

Section D: Applicant Certification

I certify that the above information is complete and correct to the best of my knowledge.

Signature:

Title: Assistant Finance Director

Entity Name, Address, and Telephone Number

Yellowstone County
PO Box 35003
Billings, MT 59107

Section 7

Other Required Documents Follow

STOP VAWA Sexual Assault Program Response

Agency Name: Yellowstone County Justice Court Project Director:David Carter

Sexual Assault Set-Aside

The Reauthorization of VAWA 2013 requires "not less than 20 percent of the total amount granted to a state under this subchapter shall be allocated to programs or projects in 2 or more allocations [victim services, courts, law enforcement, or prosecution] that meaningfully address sexual assault, including stranger rape, acquaintance rape, alcohol or drug-facilitated rape, and rape within the context of an intimate partner relationship." The 20 percent is counted on the total amount granted to the state, but is not a separate allocation. Examples of programs are sexual assault nurse examiners (SANEs), sexual assault response teams (SARTs), or trainings.

In order to meet the OVW provision, information formerly contained in the STOP VAWA addendum is now required as a separate document. Complete the boxes below and upload as part of the Required Documents.

What percentage of your STOP Program was directed to each of the following areas? Report the area[s] addressed by your STOP Program during the current reporting period and estimate both the approximate percentage of funds [or resources] and the dollar amount used to address each area [consider training, victim services, etc.]. You may choose how to make this determination.

	Percentage of funds used	Dollar amount of fund used
Sexual Assault		
Domestic violence/dating violence	100%	
Stalking		
TOTAL: *(must equal 100%)*	100%	

Describe how your STOP program meaningfully addresses sexual assault, including stranger rape, acquaintance rape, alcohol or drug-facilitated rape, and rape within the context of an intimate partner relationship.

The Domestic Violence Court Project does not anticipate addressing sexual assault or rape cases during its first year of the program. Additional research and implementation would be required to address these specific cases. It is anticipated that most of the cases involved in the project will be misdemeanor cases initially. Should sexual assault or sexual violence be identified as part of a case, it would be referred to law enforcement and/or victim witness response teams already established in Yellowstone County as appropriate.

ALTERNATIVES, INC.
POLICY AND PROCEDURAL STATEMENT

SOP: H6, JD34	Subject: Job Description Domestic Violence Coordinator
Section: Personnel	Page 1 of 4
Related ACA Standards: None	Revision Date: September 18, 2020
Signature:	Effective Date:

DOMESTIC VIOLENCE COORDINATOR

QUALIFICATIONS

REQUIRED:

1. A Bachelor's degree in Behavioral Sciences or related field. Experience may be considered in lieu of education.
2. Direct public relations experience.
3. Good writing and verbal skills, as well as experience in reporting and development of Standard Operating Procedures.
4. Technical writing experience.
5. Basic computer skills and knowledge of MS Office Programs.
6. A current, valid driver's license.
7. Experience working with multidisciplinary teams.

PREFERRED:

1. Experience working with offenders.
2. Experience working with the criminal justice system.
3. Understanding of orders of protection.

WORKSITE AND CONDITIONS

Alternatives, Inc. is a non-profit corporation based in Billings, Montana. Since opening in 1980, the organization has provided both residential and non-residential supervision and treatment programs for state and federal inmates in Yellowstone, Carbon, and Stillwater Counties. We promote public safety and challenge offenders to become responsible, productive citizens through firm, fair, consistent supervision, treatment, and education.

SALARY AND BENEFITS

The current starting salary for the position is $20.00/hour and is a temporary position from October 1,2020 – June 30, 2021.

Permanent full-time employees of Alternatives, Inc. are entitled to sick leave, vacation leave, individual health insurance, and retirement benefits. Alternatives, Inc. participates in the State Workers Compensation and Unemployment Insurance plans. Specific detail regarding benefits will be provided upon request at the time of interview or at the time of hire.

DUTIES AND RESPONSIBILITIES

General Overview:

The Domestic Violence Coordinator is directly accountable to the Beta Jail Alternatives Supervisor and the Yellowstone County Justice of the Peace.

The Domestic Violence Coordinator is responsible for grants, management, and operation of Yellowstone County Domestic Violence Project. They are responsible for research, coordination, implementation, statistical collection and reporting for all items outlined in the Domestic Violence grant proposal and are responsible for coordination with the Yellowstone County Justice Court.

General Requirements:

1. All employees of Alternatives, Inc. are responsible for reading and complying with standards and procedures in the following documents:
   a. Employee Handbook
   b. Standard Operating Procedures

Essential Functions:

1. Coordinate Domestic Violence Grant & ensure that Alternatives is adhering to the proposal.
2. Research and identify best practices of domestic violence Treatment Court.
3. Research rural community needs and available services for Domestic Violence treatment.
4. Identify and Contact Criminal Justice Stake Holders for Domestic Violence Treatment.
5. Research and identify how to coordinate with Child protective services for potential Dangerous and Neglect (DN) Cases.
6. Be available as requested for public relations duties necessary to educate the public regarding services provided as well as perform public relations duties with Criminal Justice Stake Holders, interested parties, and the community.
7. Identify and develop grant Advisory Committee and Core Advisory Group.
8. Create a proposal with specific action and timelines to implement a Domestic Violence Treatment Court.
9. Coordinate and develop Memorandums of Understanding (MOUs), action plans, and implementation steps.
10. Coordinate and develop MOUs with Criminal Justice stakeholders to provide research data and statistics.
11. Develop and revise Standard Operating Procedures, grants, and Requests for Proposals, and ensure that grant reporting requirements are met as directed.
12. Attend meetings as assigned.
13. Travel out of Town and overnight will be required per the request of Beta Jail Alternatives Supervisor.
14. All other duties as assigned.

Other:

1. The Domestic Violence Coordinator is responsible for informing their supervisor of significant developments related to Alternatives, Inc. Such issues are to be reported expediently, based on his/her assessment of the importance of the issue. Examples include:
   a. Any resident/client involvement in the legal system or in violation of program rules and regulations.
   b. Threats of legal action.
   c. Public Relations problems.
   d. Resident/client complaints.
   e. Fraternization issues.
   f. Medical incidents/accidents.
   g. Repair requirements on van or facility.
   h. Schedule changes, leave requests, reporting in sick and any unauthorized departures from the office.
   i. Any suspected or confirmed violation of agency rules by clients.
2. The Domestic Violence Coordinator is expected to report to his/her supervisor in an expedient fashion all areas of noncompliance with program procedures, along with suggested remedial plans or interventions.
3. The Domestic Violence Coordinator is expected to be flexible in assuming new duties and schedule changes. He/she is to be creative in establishing or modifying program operation procedures, and obtaining approval of the appropriate authority previous to implementation.
4. Assume all other duties as assigned.

Work Environment and Physical Demands:

1. This job operates in a professional office environment. This role routinely uses standard office equipment such as computers, phones, photocopiers, filing cabinets and fax machines.
2. It is common to encounter potential hazards in the corrections environment. Some of these hazards could include, but are not limited to: bodily fluids, heat, cold, noise, dust and stress. Alternatives Inc. has a Safety Management program in place addressing these issues.
3. The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.
   a. While performing the duties of this job, the employee is regularly required to talk or hear. The employee frequently is required to stand; walk; use hands to finger, handle or feel; and reach with hands and arms.
4. This is a largely sedentary role; however, some filing is required. This would require the ability to lift files, open filing cabinets and bend or stand on a stool as necessary.
5. This job requires the ability to:
   a. Resolve problems using critical thinking skills.
   b. Communicate clearly, timely and effectively.
   c. Develop and maintain an engaged workgroup.
   d. Read, write and speak English.
   e. Ensure a quality work product is produced in the departments assigned.
   f. Come to work promptly and routinely.
   g. Work under stress and to deadlines.

h. Manage and direct work of staff.
i. Manage expenses to budget.
j. Ensure service standards are met in the departments assigned.

Please note this job description is not designed to cover or contain a comprehensive listing of activities, duties or responsibilities that are required of the employee for this job. Duties, responsibilities and activities may change at any time with or without notice. I have read and understand the content of this Job Description and agree to comply with the terms and conditions of my employment as described herein.

_____

Employee Signature Date

_____

Employee Printed Name Date

_____

Supervisor Date

STOP VIOLENCE AGAINST WOMEN ACT
INFORMATION SHEET

Agency Name: Yellowstone County Justice Court

Project Director: Judge David A Carter

Check the appropriate box reflecting the primary use of the funds.
☐Expand services into a new geographic area
x Offer new services
☐Serve additional victim populations
☐Continue existing services to crime victims
☐Other Click or tap here to enter text.

Check the appropriate box reflecting the purpose of the application.
☐Start up a new victim services project
x Continuation of a STOP VAWA project previously funded
☐Expand or enhance an existing project not funded by STOP VAWA in the previous year
☐Start up a new Native American violence against women services project
☐Expand or enhance an existing Native American project

Type of funded organization. *(Check the one answer that best describes the organization receiving the STOP Program subgrant.)*
☐Community-based organization
x Court
☐Domestic Violence program
☐Dual program (sexual assault and domestic violence)
☐Tribal sexual assault and/or domestic violence program
☐Law enforcement
☐Probation, parole, or other correctional agency
☐Government agency (Department of Human Services, Bureau of Health)
☐Prosecution
☐Sexual assault program
☐Tribal Coalition
☐Tribal government
☐University/school
☐Unit of local government

Is this a faith-based organization?
☐Yes x No

Is this a culturally-specific community-based organization?
☐Yes x No

Does this project specifically address tribal populations? *(Check yes if your STOP Program focuses on tribal populations and indicate the tribes or nations you serve or intend to serve.)*
☐Yes ☒No
Tribes served: Click or tap here to enter text.

Are STOP Program grant funds being used to fund staff positions during the current reporting period? *(Check yes if STOP Program funds were used to pay staff, including part time and contractors.)*

x Yes ☐No

STOP Statutory purpose areas. *(Check all purpose areas that apply to activities supported with STOP Program funds during the current reporting period.)*

☐*Training law enforcement officers, judges, other court personnel, and prosecutors to more effectively identify and respond to violent crimes against women, including the crimes of sexual assault, domestic violence, stalking, and dating violence, including the use of nonimmigrant status under subparagraphs (U) and (T) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a));

x Developing, training, or expanding units of law enforcement officers, judges, other court personnel, and prosecutors specifically targeting violent crimes against women, including the crimes of sexual assault, dating violence, stalking, and domestic violence;

x Developing and implementing more effective police, court, and prosecution policies, protocols, orders, and services specifically devoted to preventing, identifying, and responding to violent crimes against women, including the crimes of sexual assault, dating violence, stalking, and domestic violence, as well as the appropriate treatment of victims;

☐*Developing, installing, or expanding data collection and communication systems, including computerized systems, linking police, prosecutors, and courts or for the purpose of identifying, classifying, and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions for violent crimes against women, including the crimes of sexual assault, dating violence, stalking, and domestic violence;

x *Developing, enlarging, or strengthening victim services and legal assistance programs, including sexual assault, domestic violence, stalking, and dating violence programs, developing or improving delivery of victim services to underserved populations, providing specialized domestic violence court advocates in courts where a significant number of protection orders are granted, and increasing reporting and reducing attrition rates for cases involving violent crimes against women, including crimes of sexual assault, dating violence, stalking, and domestic violence;

☐*Developing, enlarging, or strengthening programs addressing the needs and circumstances of Indian tribes in dealing with violent crimes against women, including the crimes of sexual assault, dating violence, stalking, and domestic violence;

x Supporting formal and informal statewide, multidisciplinary efforts, to the extent not supported by State funds, to coordinate the response of state law enforcement agencies, prosecutors, courts, victim services agencies, and other state agencies and departments, to violent crimes against women, including the crimes of sexual assault, domestic violence, stalking, and dating violence;

☐Training of sexual assault forensic medical personnel examiners in the collection and preservation of evidence, analysis, prevention, and providing expert testimony and treatment of trauma related to sexual assault;

☐*Developing, enlarging, or strengthening programs to assist law enforcement, prosecutors, courts, and others to address the needs and circumstances of older and disabled women who are victims of domestic violence, dating violence, stalking, or sexual assault, including recognizing,

investigating, and prosecuting instances of such violence or assault and targeting outreach and support, counseling, and other victim services to such older and disabled individuals;
☐Providing assistance to victims of domestic violence and sexual assault in immigration matters;
x Maintaining core victim services and criminal justice initiatives, while supporting complementary new initiatives and emergency services for victims and their families;
☐Supporting the placement of special victim assistants (to be known as "Jessica Gonzales Victim Assistants") in local law enforcement agencies to serve as liaisons between victims of domestic violence, dating violence, sexual assault, and stalking and personnel in local law enforcement agencies in order to improve the enforcement of protection orders. Jessica Gonzales Victim Assistants shall have expertise in domestic violence, dating violence, sexual assault, or stalking and may undertake the following activities:

A. Developing, in collaboration with prosecutors, courts, and victim service providers, standardized response policies for local law enforcement agencies, including the use of evidence-based indicators to assess the risk of domestic and dating violence homicide and prioritize dangerous or potentially lethal cases;
B. Notifying persons seeking enforcement of protection orders as to what responses will be provided by the relevant law enforcement agency;
C. Referring persons seeking enforcement of protection orders to supplementary services (such as emergency shelter programs, hotlines, or legal assistance services); and
D. Taking other appropriate action to assist or secure the safety of the person seeking enforcement of a protection order.

☐Providing funding to law enforcement agencies, victim services providers, and state, tribal, territorial, and local governments (which funding stream shall be known as the Crystal Judson Domestic Violence Protocol Program) to promote:

A. The development and implementation of training for local victim domestic violence service providers, and to fund victim services personnel, to be known as "Crystal Judson Victim Advocates," to provide supportive services and advocacy for victims of domestic violence committed by law enforcement personnel;
B. The implementation of protocols within law enforcement agencies to ensure consistent and effective responses to the commission of domestic violence by personnel within such agencies such as the model policy promulgated by the International Association of Chiefs of Police ("Domestic Violence by Police Officers: A Policy of the IACP, Police Response to Violence Against Women Project" July 2003); and
C. The development of such protocols in collaboration with State, tribal, territorial and local victim services providers and domestic violence coalitions.

☐Developing and promoting State, local or tribal legislation and policies that enhance best practices for responding to domestic violence, dating violence, sexual assault, and stalking.
☐Developing, implementing, or enhancing Sexual Assault Response Teams, or other similar coordinated community responses to sexual assault.
☐Developing and strengthening policies, protocols, best practices, and training for law enforcement agencies and prosecutors relating to the investigation and prosecution of sexual assault cases and the appropriate treatment of victims.
☐*Developing, enlarging or strengthening programs addressing sexual assault against men, women, and youth in correctional or detention settings.

☐Identifying and conducting inventories of backlogs of sexual assault evidence collection kits and developing protocols and policies for responding to and addressing such backlogs, including protocols and policies for notifying and involving victims.
☐Developing, enlarging, or strengthening programs and projects to provide services and responses to male and female victims of domestic violence, dating violence, sexual assault, or stalking, whose ability to access traditional services and responses is affected by their sexual orientation or gender identity, as defined in section 249(c) of title 18, United States Code.
☐Developing, enhancing, or strengthening prevention and educational programming to address domestic violence, dating violence, sexual assault, or stalking, with not more than 5 percent of the amount allocated to a State to be used for this purpose.

List the cities and counties that your program will serve.
Yellowstone, Stillwater, Sweet Grass, Carbon, Mussleshell, Big Horn, and Custer are anticipated though a court in another jurisdiction may refer an offender to the court if they live within 100 miles of Billings.

Identify the services to be provided by this STOP VAWA funded project.

☐ Crisis Counseling
☒ Follow-up Contact
☐ Therapy
☒ Group Treatment
☐ Crisis Hotline Counseling
☐ Shelter/Safe House
☒ Criminal Justice Support/Advocacy
☐ Emergency Financial Assistance
☐ Emergency Legal Advocacy
☐ Assistance in Filing Compensation Claims
☐ Personal Advocacy
☐ Telephone Contacts (Information/Referral)
☒ Information and Referral (In person)
☒ Other Wrap around Court services for both offender and victims

Identify the number of full-time equivalent staff and volunteers who will be assigned to the proposed STOP VAWA project. 2,080 hours = 1 FTE (Full Time Equivalent)
Number of paid staff: 1.5 FTE
Number of volunteers: The team will be comprised of a judge, prosecutor, treatment staff, administrators, civil and criminal defense attorneys, child protection staff, victim witness coordinators, law enfrocement, and others identified to assist with the specialty court. None of these staff will be compensated through the grant funds and their hours will be tracked. Other volunteers may be identified through the implementation process.

JUSTICE COURT OF RECORD
YELLOWSTONE COUNTY

P.O. Box 35032

Billings, MT 59107-5032

(406) 869-3595

(406) 256-2898 (FAX)

2019 Consultation with Victim Services

STOP VAWA Grant Application

RE: Letter Demonstrating Consultation with victim services

I Judge David Carter certify that the Yellowstone County Justice Court has complied with the Requirements of the Violence Against Women and Department of Department of Justice Reauthorization act of 2005, during the course of developing an application for grant funds by consulting the tribal, territorial, state, or local victim services programs to ensure that the proposed services and activities are designed to promote the safety, confidentiality and economic independence of victims of domestic violence, sexual assault, stalking, and dating violence.

Authorized Official's Signature of applying agency Date: 9/21/2020

Please list below the name(s) of the local victim service programs with whom your agency has consulted to develop this application to ensure that the services and activities you proposed are designed to promote safety, confidentiality, and economic independence of victims of domestic violence, sexual assault, stalking and dating violence.

Angela Fox; Victim/Witness Coordinator Supervisor, County Attorney's Office

Amanda Green; Director of Development, Alternatives Inc.

Daniel Ball; Attorney, Hendrickson Law Firm

Fawn Reed; Legal Advocacy Program Director, YWCA

Jeanne Walker; Justice of the Peace, Justice Court

Jen Gross; State Senator, Montana SD25

Jennifer Owen; Owner, Designing Trust, LLC

Katie Nash; DV Investigator, Billings Police Department

Margaret MacDonald; State Senator, Montana SD26

Moly Rose B. Fehringer; Standing Master, District Court

Morgan Dake; Pro Bono Associate, Crowley Fleck

Shelby Goodman; CPS Supervisor, DPHHS-CFS

Kris Copenhaver, Deputy Public Defender

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DV.911 Calls Data

YCJC DV Offenses- from reports					
	2015	2016	2017	2018	2019
PFMA 1st	140	114	153	159	102
PFMA 2nd	24	35	29	38	27
VOOP 1st	21	29	16	20	23
VOOP 2nd	2	4	4	3	1
VNCO					23
Subtotal	187	182	202	220	176
Stangultation				***41***	***73***

DV Offenses Total					
	2015	**2016**	**2017**	**2018**	**2019**
YCJC	187	182	202	220	176
City of Billings DV Unit Cases	519	568	580	533	613
Total	**706**	**750**	**782**	**753**	**789**

911 Calls (Data From emails)					
	2015	2016	2017	2018	2019
YCSO	131	111	119	127	132
BPD	636	782	885	791	948

MONTANA SUPREME COURT
OFFICE OF THE COURT ADMINISTRATOR
PO BOX 203005
HELENA, MT 59620
406-841-2966

January 10, 2020

Grant Selection Committee
Montana Board of Crime Control
VAWA Grant #20-02 (W)

Dear Grant Selection Committee,

I am writing this letter to support Yellowstone County Justice Court in their mission to implement the first domestic violence court in Montana.

A court that takes a holistic response to domestic violence is crucial as criminal and civil matters, containing the same parties, often intersect in the current system. With a lack of a unified court system in Montana, different conditions and orders can be given, which can create inconsistency and put the victims in further danger.

Having a specialty court to monitor the different cases and conditions will not only help increase victim safety, but it will enhance offender accountability. I fully support the efforts of the Yellowstone County Justice Court as they seek this grant funding to create a court designated to provide this much-needed service in Yellowstone County.

Sincerely,

Beth McLaughlin
Supreme Court Administrator

2015-2018. PFMA.VOOP State Stats

Measures		Number of Offenses				
Incident Date						
Jurisdiction by Geography	**Offense Type**	2015	2016	2017	2018	Total
Big Horn County	PFMA, reasonable apprehension (0838)	4	36	23	22	85
	PFMA (non-aggravated) (0828)	0	23	7	4	34
	Violation of protective order (2673)	0	0	0	0	
		4	**59**	**30**	26	
Carbon County	PFMA, reasonable apprehension (0838)	5	6	7	9	27
	PFMA (non-aggravated) (0828)	22	18	18	27	85
	Violation of protective order (2673)	2	1	0	1	4
		29	**25**	**25**	37	
Cascade County	PFMA, reasonable apprehension (0838)	0	0	0	32	32
	PFMA (non-aggravated) (0828)	303	305	320	272	1,200
	Violation of protective order (2673)	16	21	38	25	100
		319	**326**	**358**	329	
Chouteau County	PFMA, reasonable apprehension (0838)	1	3	2	2	8
	PFMA (non-aggravated) (0828)	3	2	4	7	16
	Violation of protective order (2673)	0	0	2	0	2
		4	**5**	**8**	9	
Fergus County	PFMA, reasonable apprehension (0838)	2	3	2	0	7
	PFMA (non-aggravated) (0828)	38	26	35	30	129
	Violation of protective order (2673)	3	0	0	2	5
		43	**29**	**37**	32	
Glacier County	PFMA, reasonable apprehension (0838)	10	3	15	14	42
	PFMA (non-aggravated) (0828)	61	69	40	44	214
	Violation of protective order (2673)	1	7	10	3	21
		72	**79**	**65**	61	
Golden Valley County	PFMA, reasonable apprehension (0838)	0	0	1	1	2
	PFMA (non-aggravated) (0828)	1	1	3	0	5
	Violation of protective order (2673)	0	0	0	0	
		1	**1**	**4**	1	
Judith Basin County	PFMA, reasonable apprehension (0838)	1	0	0	0	1
	PFMA (non-aggravated) (0828)	0	2	1	0	3
	Violation of protective order (2673)	0	1	0	0	1
		1	**3**	**1**	0	
Meagher County	PFMA, reasonable apprehension (0838)	0	0	1	1	2
	PFMA (non-aggravated) (0828)	2	2	3	2	9
	Violation of protective order (2673)	0	0	1	2	3
		2	**2**	**5**	5	
Musselshell County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	24	13	15	14	66
	Violation of protective order (2673)	0	0	0	0	
		24	**13**	**15**	14	
Pondera County	PFMA, reasonable apprehension (0838)	5	6	8	3	22
	PFMA (non-aggravated) (0828)	7	13	9	5	34
	Violation of protective order (2673)	0	0	0	1	1
		12	**19**	**17**	9	
Stillwater County	PFMA, reasonable apprehension (0838)	4	5	1	6	16
	PFMA (non-aggravated) (0828)	15	14	17	33	79
	Violation of protective order (2673)	1	0	2	0	3
		20	**19**	**20**	39	
Sweet Grass County	PFMA, reasonable apprehension (0838)	0	2	6	3	11
	PFMA (non-aggravated) (0828)	4	2	8	2	16
	Violation of protective order (2673)	0	0	1	1	2
		4	**4**	**15**	6	
Teton County	PFMA, reasonable apprehension (0838)	2	4	5	6	17
	PFMA (non-aggravated) (0828)	9	10	17	10	46
	Violation of protective order (2673)	0	1	0	0	1
		11	**15**	**22**	16	
Toole County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	35	26	30	12	103
	Violation of protective order (2673)	0	0	0	0	
		35	**26**	**30**	12	
Wheatland County	PFMA, reasonable apprehension (0838)	0	0	4	4	8
	PFMA (non-aggravated) (0828)	3	4	5	6	18
	Violation of protective order (2673)	0	0	1	0	1
		3	**4**	**10**	10	
Yellowstone County	PFMA, reasonable apprehension (0838)	6	12	4	5	27
	PFMA (non-aggravated) (0828)	640	684	751	636	2,711
	Violation of protective order (2673)	61	82	79	75	297
		707	**778**	**834**	716	
Blaine County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	2	7	4	5	18
	Violation of protective order (2673)	0	0	0	0	
		2	**7**	**4**	5	
Carter County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	0	0	0	0	
	Violation of protective order (2673)	0	0	0	0	
		0	**0**	**0**	0	
Custer County	PFMA, reasonable apprehension (0838)	0	0	4	13	17
	PFMA (non-aggravated) (0828)	39	43	26	29	137
	Violation of protective order (2673)	7	14	5	11	37
		46	**57**	**35**	53	
Daniels County	PFMA, reasonable apprehension (0838)	0	1		0	1
	PFMA (non-aggravated) (0828)	2	1	1	0	4
	Violation of protective order (2673)	0	0	1	0	1
		2	**2**	**2**	0	

2015-2018. PFMA.VOOP State Stats

Measures		Number of Offenses				
Incident Date						
Jurisdiction by Geography	**Offense Type**	2015	2016	2017	2018	Total
Dawson County	PFMA, reasonable apprehension (0838)	9	10	11	8	38
	PFMA (non-aggravated) (0828)	37	33	18	18	106
	Violation of protective order (2673)	6	5	12	7	30
		52	**48**	**41**	33	
Fallon County	PFMA, reasonable apprehension (0838)	0	5	3	2	10
	PFMA (non-aggravated) (0828)	3	6	2	4	15
	Violation of protective order (2673)	0	0	0	0	
		3	**11**	**5**	6	
Garfield County	PFMA, reasonable apprehension (0838)	0	0	0	1	1
	PFMA (non-aggravated) (0828)	2	1	0	0	3
	Violation of protective order (2673)	0	0	0	0	
		2	**1**	**0**	1	
Hill County	PFMA, reasonable apprehension (0838)	25	17	29	28	99
	PFMA (non-aggravated) (0828)	113	106	95	98	412
	Violation of protective order (2673)	13	22	16	15	66
		151	**145**	**140**	141	
Liberty County	PFMA, reasonable apprehension (0838)	0	0	1	0	1
	PFMA (non-aggravated) (0828)	0	1	2	0	3
	Violation of protective order (2673)	0	0	0	0	
		0	**1**	**3**	0	
McCone County	PFMA, reasonable apprehension (0838)	0	0	1	2	3
	PFMA (non-aggravated) (0828)	2	1	3	0	6
	Violation of protective order (2673)	0	0	0	0	
		2	**1**	**4**	2	
Petroleum County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	0	0	0	0	
	Violation of protective order (2673)	0	0	0	0	
		0	**0**	**0**	0	
Phillips County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	21	18	20	13	72
	Violation of protective order (2673)	1	0	0	0	1
		22	**18**	**20**	13	
Powder River County	PFMA, reasonable apprehension (0838)	4	3	0	0	7
	PFMA (non-aggravated) (0828)	2	2	1	0	5
	Violation of protective order (2673)	0	0	0	0	
		6	**5**	**1**	0	
Prairie County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	0	1	1	0	2
	Violation of protective order (2673)	0	0	0	0	
		0	**1**	**1**	0	
Richland County	PFMA, reasonable apprehension (0838)	0	4	11	6	21
	PFMA (non-aggravated) (0828)	66	43	44	37	190
	Violation of protective order (2673)	8	9	6	6	29
		74	**56**	**61**	49	
Roosevelt County	PFMA, reasonable apprehension (0838)	0	17	59	66	142
	PFMA (non-aggravated) (0828)	84	87	139	131	441
	Violation of protective order (2673)	1	5	5	7	18
		85	**109**	**203**	204	
Rosebud County	PFMA, reasonable apprehension (0838)	6	8	4	8	26
	PFMA (non-aggravated) (0828)	13	7	12	22	54
	Violation of protective order (2673)	3	0	0	1	4
		22	**15**	**16**	31	
Sheridan County	PFMA, reasonable apprehension (0838)	2	2	8	3	15
	PFMA (non-aggravated) (0828)	6	13	13	7	39
	Violation of protective order (2673)	1	7	4	1	13
		9	**22**	**25**	11	
Treasure County	PFMA, reasonable apprehension (0838)	1	0	0	0	1
	PFMA (non-aggravated) (0828)	0	0	0	0	
	Violation of protective order (2673)	1	0	0	0	1
		2	**0**	**0**	0	
Valley County	PFMA, reasonable apprehension (0838)	9	10	12	11	42
	PFMA (non-aggravated) (0828)	13	18	18	17	66
	Violation of protective order (2673)	1	1	2	1	5
		23	**29**	**32**	29	
Wibaux County	PFMA, reasonable apprehension (0838)	0	0	0	0	
	PFMA (non-aggravated) (0828)	2	1	0	0	3
	Violation of protective order (2673)	0	0	0	0	
		2	**1**	**0**	0	
Beaverhead County	PFMA, reasonable apprehension (0838)	13	8	16	12	49
	PFMA (non-aggravated) (0828)	17	11	14	15	57
	Violation of protective order (2673)	8	2	9	1	20
		38	**21**	**39**	28	
Broadwater County	PFMA, reasonable apprehension (0838)	3	5	6	4	18
	PFMA (non-aggravated) (0828)	11	19	16	11	57
	Violation of protective order (2673)	0	3	1	4	8
		14	**27**	**23**	19	
Deer Lodge County	PFMA, reasonable apprehension (0838)	17	21	26	28	92
	PFMA (non-aggravated) (0828)	38	35	53	45	171
	Violation of protective order (2673)	8	3	6	9	26
		63	**59**	**85**	82	
Flathead County	PFMA, reasonable apprehension (0838)	87	113	119	131	450
	PFMA (non-aggravated) (0828)	288	293	292	257	1,130
	Violation of protective order (2673)	38	20	30	36	124
		413	**426**	**441**	424	

2015-2018. PFMA.VOOP State Stats

Measures		Number of Offenses				
Incident Date						
Jurisdiction by Geography	**Offense Type**	2015	2016	2017	2018	Total
Gallatin County	PFMA, reasonable apprehension (0838)	1	1	4	7	13
	PFMA (non-aggravated) (0828)	251	228	215	242	936
	Violation of protective order (2673)	29	45	44	20	138
		281	**274**	**263**	269	
Granite County	PFMA, reasonable apprehension (0838)	1	2	0	2	5
	PFMA (non-aggravated) (0828)	3	7	4	6	20
	Violation of protective order (2673)	0	1	0	0	1
		4	**10**	**4**	8	
Jefferson County	PFMA, reasonable apprehension (0838)	0	0	0	2	2
	PFMA (non-aggravated) (0828)	42	32	38	33	145
	Violation of protective order (2673)	0	0	5	1	6
		42	**32**	**43**	36	
Lake County	PFMA, reasonable apprehension (0838)	41	77	62	54	234
	PFMA (non-aggravated) (0828)	123	122	110	106	461
	Violation of protective order (2673)	8	10	6	4	28
		172	**209**	**178**	164	
Lewis and Clark County	PFMA, reasonable apprehension (0838)	19	0	0	0	19
	PFMA (non-aggravated) (0828)	310	294	270	267	1,141
	Violation of protective order (2673)	33	37	29	25	124
		362	**331**	**299**	292	
Lincoln County	PFMA, reasonable apprehension (0838)	22	19	23	24	88
	PFMA (non-aggravated) (0828)	41	67	55	37	200
	Violation of protective order (2673)	7	7	5	3	22
		70	**93**	**83**	64	
Madison County	PFMA, reasonable apprehension (0838)	2	5	8	5	20
	PFMA (non-aggravated) (0828)	10	6	11	12	39
	Violation of protective order (2673)	1	1	2	5	9
		13	**12**	**21**	22	
Mineral County	PFMA, reasonable apprehension (0838)	2	1	0	1	4
	PFMA (non-aggravated) (0828)	5	1	1	7	14
	Violation of protective order (2673)	0	0	0	0	
		7	**2**	**1**	8	
Missoula County	PFMA, reasonable apprehension (0838)	36	27	28	26	117
	PFMA (non-aggravated) (0828)	367	366	386	349	1,468
	Violation of protective order (2673)	113	61	74	86	334
		516	**454**	**488**	461	
Park County	PFMA, reasonable apprehension (0838)	0	4	13	25	42
	PFMA (non-aggravated) (0828)	87	77	46	52	262
	Violation of protective order (2673)	0	1	0	1	2
		87	**82**	**59**	78	
Powell County	PFMA, reasonable apprehension (0838)	4	13	9	7	33
	PFMA (non-aggravated) (0828)	15	22	10	18	65
	Violation of protective order (2673)	2	5	2	1	10
		21	**40**	**21**	26	
Ravalli County	PFMA, reasonable apprehension (0838)	8	7	6	5	26
	PFMA (non-aggravated) (0828)	129	132	113	84	458
	Violation of protective order (2673)	15	15	14	28	72
		152	**154**	**133**	117	
Sanders County	PFMA, reasonable apprehension (0838)	11	12	17	20	60
	PFMA (non-aggravated) (0828)	26	23	24	33	106
	Violation of protective order (2673)	5	1	12	4	22
		42	**36**	**53**	57	
Silver Bow County	PFMA, reasonable apprehension (0838)	46	36	41	48	171
	PFMA (non-aggravated) (0828)	122	134	127	135	518
	Violation of protective order (2673)	14	20	20	40	94
		182	**190**	**188**	223	
	all	1,341	1,473	1,537	1,380	5,731
			Av. 4,363			
	PFMA Only	3,868	3,980	4,067	3,851	15,766
	VOOP Only	407	408	444	427	1,686

Alternatives, Inc.
Organizational Chart

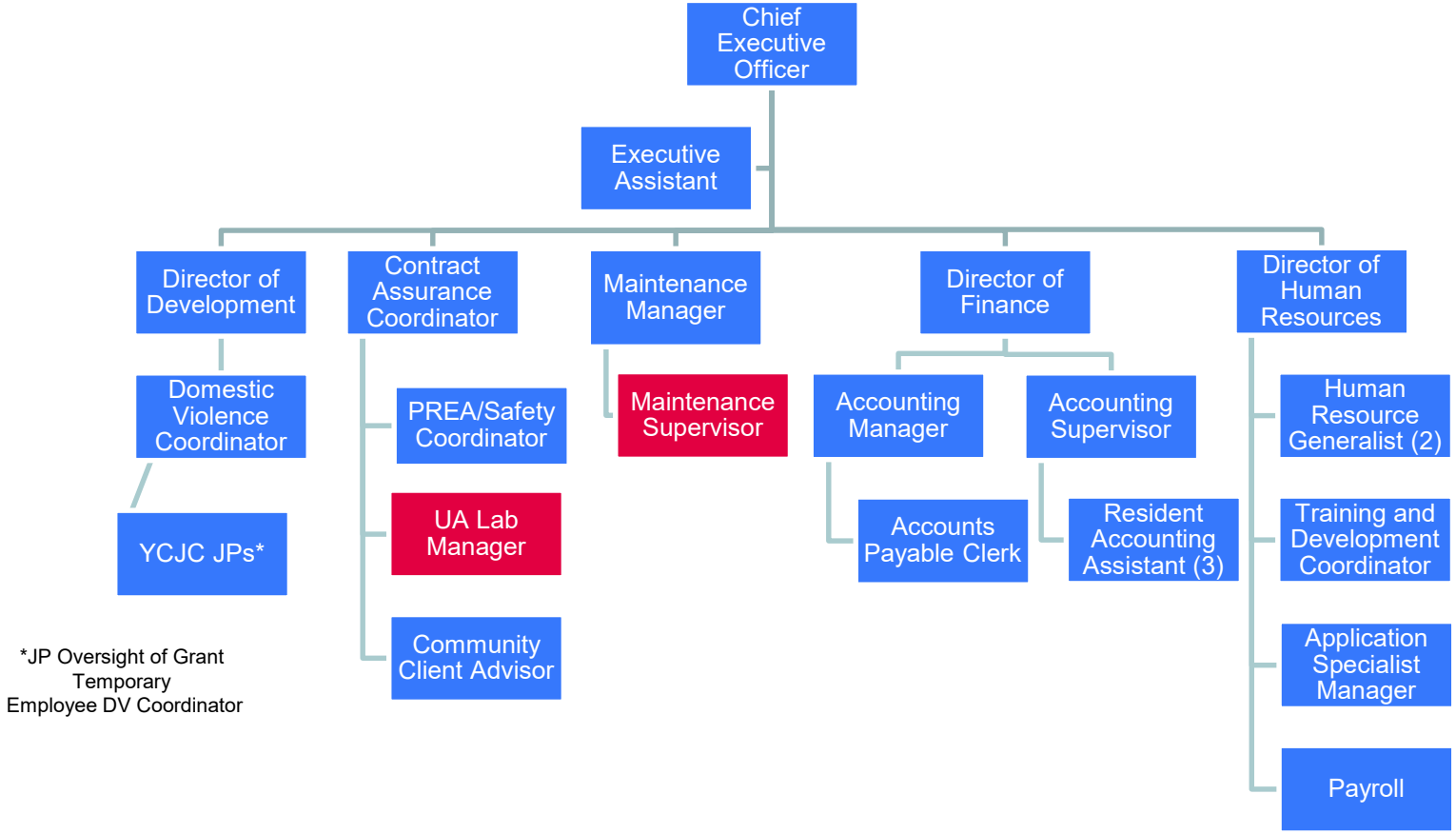

Chart 2: Administrative and Support Services

New Position: Director of Development

February 2020

B.O.C.C. Regular Agenda Item 9.

Meeting Date: 10/06/2020

Title: Snowplowing Contract with River Ridge Landscape for RSID 723 and 806

Submitted For: Tim Miller, Public Works Director

Submitted By: Tim Miller, Public Works Director

TOPIC:

Snowplowing Contracts with River Ridge Landscape for Clarksfork Estates RSID 723M and River Ranch Retreat RSID 806M

BACKGROUND:

Snowplowing contracts with River Ridge Landscape for Clarksfork Estates RSID 723 and River Ranch Retreat RSID 806

RECOMMENDED ACTION:

Place contracts to file

Attachments

RSID Quotes

RSID Quotes

Standard Form of Agreement for Snow Removal between Yellowstone County and Contractor on the Basis of a Stipulated Price

This agreement is dated as of the 21st day of September 2020, by and between Yellowstone County, Montana (the County), and River Ridge Landscape Company, Laurel, Montana (hereinafter called Contractor).

Owner and Contractor, in consideration of the material covenants hereinafter set forth, agree as follows:

Scope of Work: Automatically plow when there is at least 2 inches of snow on the ground, or as requested by the ad-hoc chair Linda Hakert on the following streets:

- Labrador Drive from River Road to the cul-de-sac
- Beretta Drive from River Road in its entirety
- Retreat Drive from Labrador Drive in its entirety

Ms. Hakert can be reached at 811 Beretta Dr, 307-763-0099.

Contractor shall provide all labor and equipment necessary to fulfill the Scope of Work specification sheet, attached.

2. **Contract Times**

This contract will be in effect from September 21st, 2020 until May 31, 2021. Should any work, outside the Scope of Work need to be performed, both parties must agree in writing.

3. **Contract Price**

The County shall pay the Contractor $300.00 per plowing of the paved roads and an additional $150 for snow drift removal when needed.

4. **Contractors Representation**

4.1 Contractor has examined and reviewed the Contract Documents and other related paperwork.

4.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

4.3 Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

4.4 Contractor has given the County written notice of all conflicts, errors, ambiguities or

discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. **Contract Documents**

The Contract Documents, which comprise the entire agreement between the County and Contractor, consist of the following:

5.1 This Agreement.

5.2 Scope of Work Specification Sheet dated December 2, 2019.

5.3 Contractor's current Certificate of Insurance, current Independent Contractor designation and Workers Compensation coverage.

6. Miscellaneous

6.1 Contractor shall not assign this agreement in whole or in part without written consent by the County, which consent shall not be unreasonably withheld.

6.2 Contractor shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County/ Public Works, as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) for each claim and One Million Five Hundred Thousand Dollars , ($1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County / Public Works, sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County /Public Works, as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County / Public Works, are named as an additional insured under the Contractors insurance policy.

Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Contractor agrees to defend, indemnify and hold harmless Yellowstone County / Public Works from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including

settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Contractors negligence. And for which Yellowstone County / Public Works, sole basis of liability is vicarious liability for the acts or omissions of Contractor. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County/ Public Works, is liable for any damages by reason of a non-delegable duty.

6.3 Contractor is required to maintain workers' compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees of Yellowstone County/Yellowstone County Public Works. Workers Compensation insurance, or the exemption from the workers' compensation obligation must be valid for the entire period.

6.7 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana

6.8 Contractor agrees to defend, indemnify and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Contractors performance under the Agreement.

6.9 In the event of litigation between Contractor and the County, the prevailing party shall be entitled to reimbursement of Court costs and reasonable attorney fees by the non-prevailing party.

7.0 The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Contractor subjects contractors to the same provisions. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

8.0 Termination

This Agreement shall terminate in its entirety in accordance with the terms found in paragraph 2. However, either party may terminate this contract on thirty (30 calendar days written notice, or if prior to such action, the other party materially breaches any of its representations or obligations under this Agreement. Except as may be otherwise provided in this Agreement, such breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement, and shall be subject to such damages as may be allowed by law including attorneys' fees and costs of enforcing this Agreement.

IN WITNESS WHEREOF, the County and Contractor have signed this Agreement in duplicate. One counterpart each will be delivered to the County and Contractor. All portions of the Contract Documents

have been signed, initialed or identified by the County and Contractor.

This Agreement will be effective September 21st, 2020.

OWNER:
Yellowstone County
Billings, Montana 59101

Tim Miller
Public Works Director

CONTRACTOR:
River Ridge Landscape Company
Laurel, MT 59044

Aaron Chrisiansen
Landscape Maintenance Manager

Snow Plowing
Scope of Work – Specification Sheet
December 2, 2019

The scope of work includes the following:

- River Ranch Retreat is located south of Laurel, Montana. An aerial map showing its location and the streets to be plowed is available by contacting the County Public Works Department; a hard copy can be picked up or an electronic version emailed.

- The areas to be plowed are: all constructed roads in the Subdivision, including cul-de-sacs.

- Snow plowing will automatically be expected once 2 or more inches of snow have accumulated on the road surfaces to be plowed for paved roads. The Ad-Hoc committee chairperson, Linda Hakert, may request snow plowing if less than 2 inches of snow have accumulated but it must requested by the Add-Hoc chairperson.

- Coordinate with property owners and RSID Ad-Hoc members as necessary.

    - After completion of the work, provide copies of the invoice to:

      Ad-Hoc Committee

      Member: Linda Hakert

      Address: 811 Beretta Dr. Laurel. MT 59044

      Phone: 307-763-0099

      Email: _____

Standard Form of Agreement between Owner and Contractor on the Basis of A Stipulated Price Snow Plowing for Clarks Fork Estates RSID 723M

This agreement is dated as of the 21st of September 2020, by and between Yellowstone County, Montana (hereinafter called Owner), and River Ridge Landscape Laurel Montana (hereinafter called Contractor).

Owner and Contractor, in consideration of the material covenants hereinafter set forth, agree as follows:

1. Scope of Work

   Contractor shall provide all labor and equipment necessary to remove the snow from all constructed roads, including cul-de-sacs, located in the Clarks Fork Estates Subdivision, RSID 723 M, as outlined in the attached Scope of dated January 14, 2019.

2. Contract Times

   This contract will be in effect from November 21st, 2020 until May 9th, 2021. Should any work, outside the Scope of Work need to be performed, both parties must agree in writing.

3. Contract Price

   The Owner shall pay the Contractor $ 175.00 per hour for plowing; minimum charge is one hour,

4. Contractors Representation

   4.1 Contractor has examined and reviewed the Contract Documents and other related paperwork.

   4.2 Contractor has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance and furnishing of the work.

   4.3 Contractor is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the work.

   4.4 Contractor has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that the Contractor has discovered in the Contract Documents and that the Contract Documents are generally sufficient to indicate and convey the understanding of all terms and conditions for performance and furnishings of the work.

5. Contract Documents

The Contract Documents, which comprise the entire agreement between Owner and Contractor, consist of the following:

5.1 This Agreement.

5.2 Scope of Work dated January 14th, 2019.

5.3 Contractor's current Certificate of Insurance and Workers Compensation coverage.

6. Miscellaneous

6.1 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without written consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will discharge the assignor from any duty or responsibility under the Contract Documents.

6.2 The successful bidder (herein after Contractor),shall maintain at its sole cost and expense, commercial general liability insurance naming Yellowstone County/ Public Works, as additional insured against liability for damages for bodily injury, including death and completed operations and property damages in a minimum amount of Seven Hundred Fifty Thousand Dollars ($750,000.00) for each claim and One Million Five Hundred Thousand Dollars , ($1,500,000.00), in the aggregate arising from incidents which occur as the result of Contractors negligence while performing any work or service and for which Yellowstone County / Public Works, sole basis of liability is vicarious liability for the acts or omissions of the Contractor or/and subcontractors. Contractor shall maintain at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability which may arise from or in connection with work or service by Contractor, agents, employees, representatives, assigns and sub-contractors. This insurance shall cover claims as may be caused by any negligent act or omission. The policy of insurance shall be an occurrence policy with a Best Rating of A- or better and must be in force throughout the period.

Contractor shall name on the Certificate of liability insurance Yellowstone County / Public Works, as additional insured for on-site work or Maintenance Service. In addition, Contractor will furnish to Yellowstone County a copy of the policy endorsement, CG 32 87 05 10, indicating that Yellowstone County / Public Works, are named as an additional insured under the Contractors insurance policy.

Contractor agrees to furnish both the Certificate of insurance and policy endorsement at least ten (10) days prior to beginning work.

Contractor agrees to defend, indemnify and hold harmless Yellowstone County / Public Works from and against any and all claims demands, obligations causes of action, lawsuits and all damages and liabilities fines, judgments, costs, (including settlement costs), and expenses associated therewith (including reasonable attorney's fees and disbursements), arising from incidents that occur the result of Contractors negligence. And for which Yellowstone County / Public Works, sole basis of liability is vicarious liability for the acts or omissions of Contractor. The defense and indemnification obligations under this paragraph of the Invitation to Bid shall not be limited by any assertions or finding that Yellowstone County/ Public Works, is liable for any damages by reason of a non-delegable duty.

6.3 Contractor is required to maintain workers compensation insurance, or an independent contractor's exemption issued by the Montana Department of Labor covering Contractor and Contractor's employees. Contractor is not, nor is Contractor's workers, employees of Yellowstone County/Yellowstone County Public Works. Workers Compensation insurance, or the exemption from the workers compensation obligation must be valid for the entire period.

6.4 Owner and Contractor each binds itself, its partners, successors, assign and legal representative to the other party hereto, its partners, successors, assign and legal representative to respect to all covenants, agreements and obligations contained in the Contract Documents.

6.5 Contractor must give preference to the employment of bona fide residents of Montana in the performance of this work.

6.6 All work and materials must be warranted for a period of one year from date of installation.

6.7 The Parties agree that the laws of the State of Montana shall govern this contract, and that venue shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana

6.8 Contractor agrees to defend, indemnify and hold harmless the County against all claims for injuries to person or damages to property occurred from or in Connection with the Contractors performance under the Agreement.

6.9 In the event of litigation between Contractor and the County, the Prevailing party shall be entitled to reimbursement of Court costs and Reasonable Attorney fees by the non-prevailing party.

7.0 The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state or local laws, rules, regulations, including the Montana Human Rights Act, Civil Rights Act of 1964, The Age Discrimination Act of 1975 and the American with Disabilities Act of 1990. Any subletting or subcontracting by the Contractor subjects contractors to the same provisions. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of

persons to perform the contract will be made on the basis of merit and qualification and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the person performing under the contract.

8.0 Termination

This Agreement shall terminate in its entirety in accordance with the terms found in paragraph 2. However, either party may terminate this contract on thirty (30 calendar days written notice, or if prior to such action, the other party materially breaches any of its representations or obligations under this Agreement. Except as may be otherwise provided in this Agreement, such breach by either party will result in the other party being responsible to reimburse the non-defaulting party for all costs incurred directly as a result of the breach of this Agreement, and shall be subject to such damages as may be allowed by law including attorneys' fees and costs of enforcing this Agreement.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in duplicate. One counterpart each will be delivered to OWNER and CONTRACTOR. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR.

This Agreement will be effective September 21st, 2020.

OWNER:
Yellowstone County
Billings, Montana 59101

Tim Miller
Public Works Director

CONTRACTOR:
River Ridge Landscape
3223 River Rd Laurel Montana 59044

Authorized Representative

Snow Plowing in Clarks For Estates
Scope of Work – Specifications
January 14, 2019

The scope of work includes the following:

- Clarks Fork Estates is located south of Laurel Mt east off HWY 212. An aerial map showing its location and the streets to be plowed is available by contacting the County Public Works Department; a hard copy can be picked up or an electronic version emailed.

- The areas to be plowed are: all constructed roads in the Subdivision, including cul-de-sacs.

- Snow plowing will automatically be expected once 3 or more inches of snow have accumulated on the road surfaces to be plowed. The Ad-Hoc committee chairperson, Jeff Lazoffy, may request additional snow plowing if less than 3 inches of snow have accumulated but it must requested by the Add-Hoc chairperson.

- Coordinate with property owners and RSID Ad-Hoc members as necessary.

    - After completion of the work, provide copies of the invoice to:

Ad-Hoc Committee
Member Jeff Laszoffy

Address 3165 US HWY 212 Laurel Mt

Phone 628-1141

Email jeff@montanafamily.org