

Option 1 – Gainan’s

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of City of Billings, Yellowstone County, Montana (the “City”), hereby certify that the attached resolution is a true copy of a Resolution entitled: “A RESOLUTION OF THE CITY COUNCIL SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BILLINGS, MONTANA, THE QUESTION OF IMPOSING A MILL LEVY SUFFICIENT TO PROVIDE FUNDS TO PAY ANNUAL INSTALLMENTS OWING UNDER A CONTRACT TO ACQUIRE LAND, BUILDINGS, AND IMPROVEMENTS LOCATED AT 502 30TH STREET IN THE CITY AND COMMONLY KNOWN AS GAINAN’S AND ISSUING GENERAL OBLIGATION BONDS IN THE AMOUNT OF UP TO NINE MILLION TWO HUNDRED FORTY-NINE THOUSAND AND NO/100 DOLLARS (\$9,249,000.00) TO PAY COSTS OF IMPROVING THE PROPERTY AS A PUBLIC LIBRARY, RELOCATING THE PARMLY BILLINGS LIBRARY FROM ITS CURRENT LOCATION TO THE PROPERTY, AND COSTS ASSOCIATED WITH THE SALE AND ISSUANCE OF THE BONDS; AND AUTHORIZING THE LEVY OF ADDITIONAL MILLS OVER THE CITY CHARTER LIMIT IN AN AMOUNT SUFFICIENT TO PAY AMOUNTS OWING UNDER THE FOREGOING” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council at a regular meeting on November [23], 2009, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand and seal officially this _____ day of November, 2009.

(SEAL)

City Clerk

RESOLUTION NO. 09-_____

A RESOLUTION OF THE CITY COUNCIL SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF BILLINGS, MONTANA, THE QUESTION OF IMPOSING A MILL LEVY SUFFICIENT TO PROVIDE FUNDS TO PAY ANNUAL INSTALLMENTS OWING UNDER A CONTRACT TO ACQUIRE LAND, BUILDINGS, AND IMPROVEMENTS LOCATED AT 502 30TH STREET IN THE CITY AND COMMONLY KNOWN AS GAINAN'S AND ISSUING GENERAL OBLIGATION BONDS IN THE AMOUNT OF UP TO NINE MILLION TWO HUNDRED FORTY-NINE THOUSAND AND NO/100 DOLLARS (\$9,249,000.00) TO PAY COSTS OF IMPROVING THE PROPERTY AS A PUBLIC LIBRARY, RELOCATING THE PARMLY BILLINGS LIBRARY FROM ITS CURRENT LOCATION TO THE PROPERTY, AND COSTS ASSOCIATED WITH THE SALE AND ISSUANCE OF THE BONDS; AND AUTHORIZING THE LEVY OF ADDITIONAL MILLS OVER THE CITY CHARTER LIMIT IN AN AMOUNT SUFFICIENT TO PAY AMOUNTS OWING UNDER THE FOREGOING

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

Section 1. Recitals.

1.01. Authorization.

(a) A city or town is authorized pursuant to 7-7-4101, M.C.A., to contract an indebtedness on behalf of a city or town, upon the credit of the town, by borrowing money, entering into leases, entering into lease-purchase agreements, or entering into installment purchase contracts for the purpose of acquiring land for and designing and erecting public buildings, and pursuant to Section 7-7-4221, M.C.A., to issue general obligation bonds pledging the general credit of the City for the purpose of acquiring land for and designing and erecting public buildings, upon approval of the electorate of the city or town, provided that such indebtedness will not cause the total indebtedness of the city to exceed 2.5% of the total assessed valuation of taxable property of the city, determined as provided in Section 15-8-111, M.C.A., ascertained by the last assessment for state and county taxes. A city council is authorized pursuant to Section 15-10-425, M.C.A., to call a mill levy election and pursuant to Section 7-7-4223, M.C.A., to call a bond election by adopting a resolution to that effect.

(b) Under the City Charter, except as otherwise authorized, the Council shall not levy more than 74 mills on real and personal property for all purposes, unless there is an affirmative vote of majority of votes cast in an election on the question of whether the mill levy may be increased above the 74 mills.

1.02. Proposed Library Project.

(a) The City, based on the recommendations of the Library Board and public input, has proposed that the City relocate the Parmlly Billings Library owned by the City

(the "Library"), from its current location at 510 N. Broadway in the City to the property located at 502 30th Street in the City and commonly known as Gainan's (the "Property"), which is currently owned by Big Sky Floral Supply L.L.P. and C.K. Gainan L.L.P. (collectively, "Gainan's").

(b) The City proposes that it will (i) enter into a contract with Gainan's to acquire the Property, (ii) improve the Property as a public library, (iii) relocate the Library to the Property, and (iv) undertake necessary related improvements (collectively, the "Project").

(c) The City further proposes to impose a mill levy to pay the costs of acquiring the Property over time in annual installments and to issue general obligation bonds to pay a portion of the costs of improving the Property.

1.03. Estimated Cost. The estimated costs of the Project and costs associated with the sale and issuance of such bonds, exclusive of interest, are \$14,749,000, \$1,000,000 of which would be paid from amounts the City has on hand and available therefor.

1.04. Mill Levy; Bonds. It is the judgment of the Council that, in order to undertake the Project, it is necessary and desirable for the City to impose a mill levy in an amount to raise approximately \$[_____] per year for up to 20 years to pay costs of acquiring the Property and to issue general obligation bonds in the aggregate sum of Nine Million Two Hundred Forty-Nine Thousand Dollars (\$9,249,000.00) payable during a term not to exceed twenty (20) years (the "Bonds") to pay costs of improving the Property.

1.05. Debt Limitation. The Council has determined that the arrangement for acquiring the Property and the issuance of the Bonds will not cause the City to exceed its general statutory indebtedness limitation, which in November 2009, is calculated to be \$[97,242,227].

1.06. Mills. If approved by the voters, there will be a levy of additional mills over a period of 20 years as may be required to pay (i) the annual installments of principal and interest in respect of acquiring the Property, and (ii) the principal of and interest on the Bonds. Based on the current taxable valuation of the City, it is estimated that [7.00] additional mills per year would be needed to pay the aggregate amount of the foregoing, assuming the interest rate on the obligation to acquire the Property is [_____] % per annum and on the Bonds is [3.70] % per annum.

1.07. Election. The Council has determined there should be submitted to the electors of the City qualified to vote at bond elections the question of whether the Council shall be authorized to impose a mill levy to pay over time the purchase price of the Property, and to issue and sell the Bonds of the City to obtain funds to improve the Property as a public library and to pay costs associated with the sale and issuance of the Bonds.

Section 2. Calling of the Election. The Council of the City hereby calls and directs a special city election to be held on March [___], 2010, to be conducted by mail ballot, for the purpose of voting on the following question:

Shall the City Council (the "Council") of the City of Billings, Montana (the "City") be authorized to impose a mill levy sufficient to raise up to \$_____ per year for a term

not to exceed twenty (20) years to provide funds to pay annual installments owing under a contract to acquire land, buildings, and improvements located at 502 30th Street in the City and commonly known as Gainan's (the "Property") and to issue and sell general obligation bonds of the City in one or more series in the amount of up to Nine Million Two Hundred Forty-Nine Thousand Dollars (\$9,249,000.00), bearing interest at a rate or rates to be determined by the Council and payable during a term not to exceed twenty (20) years to pay costs of improving the Property as a public library, relocating the Parmly Billings Library from its current location to the Property, and costs associated with the sale and issuance of the bonds (collectively, the "Project"); and authorizing the levy of [approximately 7.00] additional mills over the City Charter limit in an amount sufficient to pay amounts owing under the foregoing?

Section 3. Conduct of Election. All qualified electors of the City shall be entitled to vote at the bond election. The City Clerk is hereby authorized and directed to give notice of the call and details of this election to the Yellowstone County Election Administrator at least 70 days before the election. The Yellowstone County Election Administrator is requested to give notice of the close of registration and thereafter prepare printed lists of the qualified electors in the City entitled to vote in the election in the City and to conduct the election in the form and manner prescribed by law and consistent with the Mail Ballot Plan, as follows:

The election will be conducted solely by mail ballot. Ballots will be mailed to all eligible registered voters in the City on [February __], 2010, and must be returned by each voter, to the Yellowstone County Election Administrator's Office by mail or in person to the Yellowstone County Election Administrator, Yellowstone County, 217 North 27th, Billings, Montana 59107, during regular business hours (8:00 a.m. to 5:00 p.m.), weekdays, [February __], 2010 through [March __], 2010.

On Election Day, March [__], 2010, the only place for deposit of voted ballots will be the office of the Yellowstone County Election Administrator at the Yellowstone County Election Department, 217 North 27th, Billings, Montana, which will be open from 8:00 a.m. to 8:00 p.m., and all ballots must be in that office by 8:00 p.m. on that day in order to be counted. All ballots will be tallied in the office of the Yellowstone County Election Administrator after 8:00 p.m. on March [__], 2010.

A qualified voter who will be absent from the City during the time the election is being conducted may:

(a) vote in person in the office of the Yellowstone County Election Administrator as soon as the ballots are available and until noon on [February __], 2010; or

(b) make a written request prior to noon on [February __], 2010, signed by the applicant and addressed to the office of the Yellowstone County Election Administrator, that the ballot be mailed to an address other than that which appears on the registration records. All ballots to be mailed will be mailed no later than [February __], 2010.

An elector may obtain a replacement ballot if his ballot is destroyed, spoiled, lost, or not received by the elector by personally appearing at the office of the Yellowstone County Election Administrator and by:

(a) signing an affidavit form stating the reason for the request for replacement;
and

(b) if the reason given for replacement is “spoiled ballot,” by returning the spoiled ballot to the office of the Yellowstone County Election Administrator.

Section 4. Notice of Election. The City Clerk is hereby authorized and requested to cause notice of the call and holding of the election to be given by publishing notice at least once a week for the three consecutive weeks before the election in the *Billings Times*, a newspaper of general circulation in Yellowstone County. The notice of election as published shall read substantially as shown on Exhibit A hereto (which is incorporated by reference and made a part hereof).

Section 5. Form of Ballot. The ballot shall be printed in substantially the following form:

OFFICIAL BALLOT
CITY OF BILLINGS, MONTANA
MILL LEVY AND GENERAL OBLIGATION BOND ELECTION
MARCH [___], 2010

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words “MILL LEVY AND GENERAL OBLIGATION BONDS--YES” if you wish to vote for the proposition; if you are opposed to the proposition, make an X or similar mark in the square before the words “MILL LEVY AND GENERAL OBLIGATION BONDS--NO”.

Shall the City Council (the “Council”) of the City of Billings, Montana (the “City”) be authorized to impose a mill levy sufficient to raise up to \$_____ per year for a term not to exceed twenty (20) years to provide funds to pay annual installments owing under a contract to acquire land, buildings, and improvements located at 502 30th Street in the City and commonly known as Gainan’s (the “Property”) and to issue and sell general obligation bonds of the City in one or more series in the amount of up to Nine Million Two Hundred Forty-Nine Thousand Dollars (\$9,249,000.00), bearing interest at a rate or rates to be determined by the Council and payable during a term not to exceed twenty (20) years to pay costs of improving the Property as a public library, relocating the Parmly Billings Library from its current location to the Property, and costs associated with the sale and issuance of the bonds (collectively, the “Project”); and authorizing the levy of [approximately 7.0] additional mills over the City Charter limit in an amount sufficient to pay amounts owing under the foregoing?

If approved, based on 2009 assessed values of taxable property in the City, a term of 20 years, and an interest rate on the contract to acquire the Property of [___]% per annum and on the bonds of [3.70]% per annum, the additional mills would result in an estimated increase in the annual tax on a home with an assessed market value of \$100,000 of \$[_____] and on a home with an assessed market value of \$200,000 of \$ [_____].

MILL LEVY AND GENERAL OBLIGATION BONDS — YES

MILL LEVY AND GENERAL OBLIGATION BONDS — NO

Section 7. Notice to County Election Administrator. A copy of this resolution will be provided to the Yellowstone County Election Administrator as soon as possible after its adoption and approval in order to inform him of the details of the election and the pertinent requests and authorizations as to the conduct of the election.

Section 8. Reimbursement Expenditures.

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

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

(c) The City reasonably expects to reimburse the expenditures made for costs of the project out of the proceeds of bonds up to an estimated maximum aggregate principal amount of Nine Million Two Hundred Forty-Nine Thousand Dollars (\$9,249,000.00) after the date of payment of all or a portion of the costs of the project. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

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

(e) The City’s financial officer shall be responsible for making the “reimbursement allocations” described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the project. Each allocation shall be evidenced by an entry on the official books and records of the City maintained for the bonds or the project and shall specifically identify the actual original expenditure being reimbursed.

PASSED by the City Council of Billings, Montana, this [23rd] day of November, 2009.

CITY OF BILLINGS, MONTANA

Mayor

Attest: _____
City Clerk

(SEAL)

EXHIBIT A

NOTICE OF MILL LEVY AND GENERAL OBLIGATION BOND ELECTION
City of Billings, Montana
March [___], 2010

NOTICE IS HEREBY GIVEN by the City Council (the “Council”) of the City of Billings, Montana (the “City”), that pursuant to a certain resolution duly adopted at a regular meeting of the Council on November [23], 2009, a special city election of the registered voters of the City will be held on March [___], 2010, conducted by mail ballot, for the purpose of voting on the following question:

Shall the City Council (the “Council”) of the City of Billings, Montana (the “City”) be authorized to impose a mill levy sufficient to raise up to \$_____ per year for a term not to exceed twenty (20) years to provide funds to pay annual installments owing under a contract to acquire land, buildings, and improvements located at 502 30th Street in the City and commonly known as Gainan’s (the “Property”) and to issue and sell general obligation bonds of the City in one or more series in the amount of up to Nine Million Two Hundred Forty-Nine Thousand Dollars (\$9,249,000.00), bearing interest at a rate or rates to be determined by the Council and payable during a term not to exceed twenty (20) years to pay costs of improving the Property as a public library, relocating the Parmly Billings Library from its current location to the Property, and costs associated with the sale and issuance of the bonds (collectively, the “Project”); and authorizing the levy of [approximately 7.0] additional mills over the City Charter limit in an amount sufficient to pay amounts owing under the foregoing?

If approved, based on 2009 assessed values of taxable property in the City, a term of 20 years, and an interest rate on the contract to acquire the Property of [___]% per annum and on the bonds of [3.70]% per annum, the additional mills would result in an estimated increase in the annual tax on a home with an assessed market value of \$100,000 of \$[_____] and on a home with an assessed market value of \$200,000 of \$ [_____].

The election will be conducted solely by mail ballot. Ballots will be mailed to all eligible registered voters in the City on [February ___], 2010, and must be returned by each voter, to the Yellowstone County Election Administrator’s Office by mail or in person to the Yellowstone County Election Administrator, Yellowstone County, 217 North 27th, Billings, Montana 59107, during regular business hours (8:00 a.m. to 5:00 p.m.), weekdays, [February ___], 2010 through [March ___], 2010.

On Election Day, March [___], 2010, the only place for deposit of voted ballots will be the office of the Yellowstone County Election Administrator at the Yellowstone County Election Department, 217 North 27th, Billings, Montana, which will be open from 8:00 a.m. to 8:00 p.m., and all ballots must be in that office by 8:00 p.m. on that day in order to be counted. All ballots will be tallied in the office of the Yellowstone County Election Administrator after 8:00 p.m. on March [___], 2010.

A qualified voter who will be absent from the City during the time the election is being conducted may:

(a) vote in person in the office of the Yellowstone County Election Administrator as soon as the ballots are available and until noon on [February __], 2010; or

(b) make a written request prior to noon on [February __], 2010, signed by the applicant and addressed to the office of the Yellowstone County Election Administrator, that the ballot be mailed to an address other than that which appears on the registration records. All ballots to be mailed will be mailed no later than [February __], 2010.

An elector may obtain a replacement ballot if his ballot is destroyed, spoiled, lost, or not received by the elector by personally appearing at the office of the Yellowstone County Election Administrator and by:

(a) signing an affidavit form stating the reason for the request for replacement; and

(b) if the reason given for replacement is “spoiled ballot,” by returning the spoiled ballot to the office of the Yellowstone County Election Administrator.

DATED this ____ day of November, 2009.

City Clerk

Publish: _____

