

# EXCHANGE AGREEMENT

This Agreement is entered into by and between **Stockman Bank of Montana**, P.O. Box 250, Miles City, MT 59301-0250 ("Stockman") and, **City of Billings**, P.O. Box 1178, Billings, MT 59101-1178 ("City").

For good and valuable consideration, receipt of which is acknowledged by the parties' signatures below, the parties agree as follows:

**REAL PROPERTY:** Subject to the terms and conditions set forth herein, the parties agree to exchange commercial lots along North Broadway (a/k/a 28<sup>th</sup> Street), Billings, Montana, more particularly described as:

North Parcel: Lots 07 through 12, Block 049, of Foster's Addition, as set forth in the plat on file in the office of Clerk and Recorder, Yellowstone County, Montana. Together with all tenements, hereditaments and appurtenances thereunto belonging. The foregoing shall be referred to collectively as the "North Parcel" and is specifically depicted in the attached Property Exhibit.

The North Parcel contiguously runs 150' along North Broadway and is 140' deep to the alley. This parcel is owned by Stockman.

South Parcel: Lots 09 through 12, Block 053, of Foster's Addition, as set forth in the plat on file in the office of Clerk and Recorder, Yellowstone County, Montana, and Lot 2 of Plat of Vacated Railroad Right-of-Way between Blocks 49 and 53 of Foster's Addition, as set forth in the plat on file in the office of Clerk and Recorder, Yellowstone County, Montana. Together with all tenements, hereditaments and appurtenances thereunto belonging. The foregoing shall be referred to collectively as the "South Parcel" and is specifically depicted in the attached Property Exhibit.

The South Parcel contiguously runs 150' along North Broadway and is 140' deep to the alley. This parcel is owned by the City.

**REMOVAL OF ALL EXISTING DEED RESTRICTIONS:** Certain lots within the North Parcel and Lots 07 & 08, Block 053, of Foster's Addition, are subject to deed restrictions which expire on December 31<sup>st</sup>, 2016, that were created in a previous agreement between the parties dated May 10, 2010. This Agreement permanently removes and nullifies these referenced deed restrictions and all deed restrictions between the parties.

**CLOSING AGENT:** First Montana Title Company of Billings shall act as the Closing Agent.

**CLOSING DATE AND PLACE:** The date of Closing shall be 1:00 p.m., June \_\_\_\_, 2011, at the Closing Agent's office at 204 North 29<sup>th</sup> Street, Billings, Montana. The parties may agree to close the transaction at any other mutually convenient time or place. Stockman and City will deposit with the Closing Agent all instruments and monies necessary to complete the exchange in accordance with this Agreement.

**CLOSING FEES:** All costs associated with closing, including recording fees, will be split equally

by the parties.

**POSSESSION:** Each party shall have possession of their new parcel upon completion of the closing.

**CONVEYANCE:** Each party shall convey their parcel by Warranty Deed, free and clear of all liens and encumbrances, subject to:

- (a) All easements of record.
- (b) All reservations and exceptions to title existing in patents from the United States or the State of Montana, and;
- (c) Any federal, state or local building use regulations, zoning ordinances and the like, and;
- (d) Real property taxes assessed against the real property for 2011 and subsequent years, and;
- (e) Any prior conveyance, lease or other transfer of any interest in minerals, including oil, gas and other hydrocarbons.

Except with respect to the items enumerated above, subject to which title is conveyed, the warranty deed shall be given with the usual covenants expressed in § 30-11-110, Montana Code Annotated.

**CONDITION OF TITLE:** Each party shall convey their parcel free and clear of all liens, claims, leases, demands or encumbrances of any nature whatsoever. All mortgages, judgments and liens shall be paid or satisfied by the parties at or prior to closing. Each party agrees that no additional encumbrances, restrictions, easements or other adverse title conditions will be placed against the title to their parcel subsequent to the effective date of this Agreement.

**CONDITION OF PARCEL:** Each party represents and warrants as a material condition of this Agreement that during its possession and at no time to the best of their knowledge and belief has their parcel been utilized to generate, transport or store any hazardous or toxic wastes or illegal substances of any kind or nature as defined under state and federal law. This warranty shall be deemed to survive the closing. Excepting the foregoing, each party makes no additional representations or warranties of any kind as to the condition of their parcel, including without limitation warranties of fitness for a particular purpose.

**NO CHANGE IN PHYSICAL CONDITION/RISK OF LOSS:** Each party shall maintain their parcel in the same or better condition as existed at the effective date of this Agreement, normal wear and tear excepted. Each party shall bear the risk of loss between the effective date of this Agreement and the time title is transferred to the other party.

**TITLE INSURANCE:** The cost of an ALTA Standard Coverage Owners Title Insurance Policy (as evidenced by an ALTA title insurance commitment – referred to as the “Commitment”) to be obtained by the parties shall be included in closing costs. Each party’s Commitment shall be in the amount of Five Hundred Thousand Dollars (\$500,000.00), committing to insure merchantable title to their parcel in the other party’s name, free and clear of all liens and encumbrances except: zoning ordinances, building and use restrictions, reservations in federal patents, and easements of record. If a party’s title is not merchantable and cannot be made

merchantable before the stated closing date, THIRTY (30) ADDITIONAL DAYS SHALL BE ALLOWED FOR THE PARTY TO MAKE SUCH TITLE MERCHANTABLE. All encumbrances to be discharged by the parties shall be satisfied at or prior to closing. Each party shall provide said Commitment within ten (10) days of signing this Agreement.

TAXES AND ASSESSMENTS: Stockman and City agree to prorate property taxes owed for 2011 and any other special assessments that may be owed at time of closing on their parcel.

NOXIOUS WEEDS DISCLOSURE: Buyers of property in the State of Montana should be aware that some properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your obligations as an owner of property, contact either your local County extension agent or Weed Control Bureau.

REMEDIES: If a party enters into in this Agreement, but fails to timely close as required by this Agreement, the other party may:

1. Terminate this Agreement; and/or
2. Demand that the other party specifically perform their obligations under this Agreement; and/or
3. Demand that the other party pay monetary damages for their failure to perform the terms of this Agreement; and/or
4. Demand any other remedy at law or in equity, which shall be cumulative to the foregoing.

CERTIFICATION: By entering into this Agreement, each person executing this Agreement, represents that he/she is eighteen (18) years of age or older, of sound mind, and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a governmental body, corporation, or other non-human entity, that he/she is duly authorized to enter into this Agreement on behalf of such entity.

TIME IS OF THE ESSENCE: Time is of the essence in this Agreement and all clauses herein.

BINDING EFFECT: This Agreement is binding upon the heirs, personal representatives, and assigns of each of the parties hereto.

FACSIMILE: The parties agree that a facsimile copy of this Exchange Agreement which contains the parties' signatures may be used as the original.

ENTIRE AGREEMENT: This Agreement, together with the attached Property Exhibit and any addenda or amendments signed by the parties, shall constitute the entire agreement between Stockman and City, and supersedes any other written or oral agreements between Stockman and City pertaining to the property exchange. This Agreement can be modified only in writing, signed by Stockman and City.

COUNTERPARTS: A copy of this Agreement may be executed by each party separately, and when each has executed a copy thereof, such executed copies taken together shall be deemed to be a full and complete Agreement between the parties.

EFFECTIVE DATE: The effective date of this Agreement shall be the date it is executed by

both parties.

**NOTICES:** Any notice, consent, approval, waiver or election that any party shall be required or permitted to make or give under this Agreement shall be in writing and shall be hand delivered, sent by First Class United States Mail, postage prepaid, or sent by facsimile, with receipt of error free transmission, with the original sent by First Class United States Mail, postage prepaid to the respective parties at the address below:

If to Stockman:        William Coffee  
                                 Stockman Bank of Montana  
                                 P.O. Box 80850  
                                 Billings, MT 59108-0850  
                                 Fax (406) 655-2737

If to City:                Bruce McCandless  
                                 City of Billings  
                                 P.O. Box 1178  
                                 Billings, MT 59101-1178  
                                 Fax (406) 657-8390

Either party may, from time to time, change the address to which notice shall be sent by notice given to the other party. Any notice given that does not conform to this section shall be effective only upon receipt.

**BROKERS:** Neither party has hired or otherwise engaged a broker or other commissioned representative in this transaction.

**LEGALLY BINDING CONTRACT:** The parties represent and acknowledge that this Agreement is a legally binding contract between the parties.

**ATTORNEY'S FEES:** In the event of a dispute arising under this Agreement, the prevailing parties shall be entitled to their costs of ALTERNATIVE DISPUTE RESOLUTION and/or suit, including their reasonable attorney's fees, commencing upon the first notice of such dispute.

**LAW/VENUE:** The parties agree that the laws of Montana shall govern the parties' rights and remedies under this Agreement and that Yellowstone County, Montana, is the proper place of venue for any dispute arising under the Agreement.

IN WITNESS WHEREOF, Stockman and City hereby execute this Agreement to exchange real property.

**STOCKMAN BANK OF MONTANA**

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By: William E. Coffee  
Title: Chief Executive Officer  
Date: June \_\_\_\_\_, 2011

**CITY OF BILLINGS**

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By: Thomas W. Hanel  
Title: Mayor  
Date: June \_\_\_\_\_, 2011

**PARMLY BILLINGS LIBRARY**

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By:  
Title: Board Chair  
Date: June \_\_\_\_\_, 2011

**PARMLY BILLINGS LIBRARY**

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By: Bill Cochran  
Title: Library Director  
Date: June \_\_\_\_\_, 2011