

# **PARKING 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").

## **RECITALS**

The parties recently completed a property exchange, and wish to continue to use their previously owned parcels as they used those parcels prior to the property exchange, in accordance with the terms of this Agreement.

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

**REAL PROPERTY:** This Agreement covers the following 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. 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 the City, but will be used exclusively 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. 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 Stockman, but will be used exclusively by the City.

**USE OF PARCELS:** Each party grants the other an exclusive right for passenger vehicles and delivery vehicles to use their parcel for parking, and related required ingress and egress. This parking privilege is for the benefit of each individual party's guests, users, clients, customers, agents, employees, invitees, contractors, vendors, tenants, and subtenants.

**CONDITION OF PARCELS:** The party using the parcel shall have full responsibility for all security, lighting, repairs, maintenance, snow removal, cleaning, and upkeep of the parcel they are using until expiration of this Agreement. Likewise, the party using the parcel is solely responsible for all expenses and retains all benefits generated from use of the parcel.

**NO CHANGE IN PHYSICAL CONDITION:** Each party shall maintain the parcel they are using

in the same or better condition as existed at the effective date of this Agreement, normal wear and tear excepted. Any material change to either parcel must first be agreed upon in writing signed by both parties. However, each party may add, build, erect, change, or refresh signage, as allowed by law, on the parcel they are using.

**RISK OF LOSS:** Each party shall bear the risk of loss on the parcel they are using from the effective date of this Agreement through expiration of this Agreement. Insurance coverage is the sole responsibility of the party using the parcel.

**TAXES AND ASSESSMENTS:** Each party shall keep all property taxes and any special assessments current on the parcel they own through expiration of this Agreement.

**POSSESSION:** Each party shall remain in possession of their formerly owned parcel, as set forth in this Agreement, until the expiration of this Agreement. Upon expiration, each party must immediately cease use and relinquish all rights to the owner of the parcel.

**EXPIRATION:** This Agreement expires at midnight on June 30<sup>th</sup>, 2012.

**INDEMNITY:** The party using a parcel (the "Indemnifying Party") shall indemnify and hold harmless the owning party, and its successors and assigns (the "Indemnified Party"), from and against all claims, damages, judgments, penalties, costs, liabilities, losses and fees (including any and all sums reasonably paid for settlement of claims, attorney fees, consultant and expert fees, whether incurred prior to trial, at trial or on appeal), whether relating to injury to or death of any person or damage to any property, resulting from or in any way arising out of a breach of this Agreement by the Indemnifying Party or out of the use of the Indemnified Party's parcel; provided, however, the Indemnifying Party shall not indemnify nor save harmless the Indemnified Party from any such action, claim or demand arising out of the negligent or willful conduct of the Indemnified Party, or its agents.

**INSURANCE:** Each party shall purchase and maintain liability and casualty insurance with respect to the use of their parcel in an amount that is not less than \$1,500,000.00 per occurrence and \$2,000,000.00 in the aggregate. Each party shall provide proof of liability and casualty insurance to the other party.

**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.

**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 parking and the use of each other's parcel. This Agreement can be modified only in writing, signed by Stockman and City.

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

**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.

**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 use each

other's 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