

# CITY OF BILLINGS

## CITY OF BILLINGS VISION STATEMENT:

“THE MAGIC CITY – A VIBRANT, WELCOMING PLACE WHERE  
PEOPLE FLOURISH AND BUSINESS THRIVES.”

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### AGENDA

COUNCIL CHAMBERS

October 11, 2011

6:30 P.M.

CALL TO ORDER – Mayor Hanel

PLEDGE OF ALLEGIANCE – Mayor Hanel

INVOCATION – Councilmember Astle

ROLL CALL

MINUTES:

- September 12, 2011
- September 26, 2011

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS - TINA VOLEK

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1 and #2 ONLY.**

**Speaker sign-in required.** (Comments offered here are limited to one (1) minute. Please sign up on the clipboard located at the podium. Comment on items listed as public hearing items will be heard ONLY during the designated public hearing time for each respective item. For Items not on this agenda, public comment will be taken at the end of the agenda.)

1. **CONSENT AGENDA** -- Separations:

A. Mayor Hanel recommends that Council confirm the following appointments:

1.

	Name	Board/Commission	Term	
			Begins	Ends
1	Cheri Milne	Tourism BID Board	10/11/11	06/30/15

1. Unexpired term of Chris Johnson

**B. Bid Awards:**

1. **Three-Year Maintenance Agreement for Elevator/Escalator Maintenance Services.** (Opened 9/13/11) (Delayed from 9/26/11) Recommend ThyssenKrupp Elevator; \$20,388 for first 12 months, and \$21,586.44 for remaining two years once the new IP-9 elevator is added to the Agreement.
2. **IP-5 Building Exterior Repainting Project for Billings Logan International Airport.** (Opened 9/27/11) Recommend ACOM Painting; \$33,490.
3. **W.O. 11-03, 2010 Street Maintenance Program, City Crack Seal .** (Opened 9/27/11) Recommend Hardrives Construction, Inc.; \$133,452.46.
4. **Private Contract #631, Kings Green Subdivision, Phase IV, Infrastructure Improvements.** (Opened 10/11/11) Recommend delay of award until 10/24/11.

**C. Professional Services Contract for W.O. 11-10, North 25th Street Pedestrian Bridge** , Engineering Design and Construction Administration Services; Morrison-Maierle, Inc.; \$156,500 contingent upon CTEP concurrence.

**D. Approval** of Scheduled Airline Operating Permit with ExpressJet Airlines.

**E. Approval** of Scheduled Airline Operating Permit with Mesaba Aviation, Inc. dba Mesaba Airlines.

**F. Acceptance of Right-of-Way Easement** from Rodney Markegard for construction of sidewalk, curb, and gutter on the southwest corner of Moore Lane and Central Avenue.

**G. Approval** of the proposed Yellowstone County/City of Billings Districting and Apportionment Plan establishing new House and Senate Districts.

**H. Acceptance of Donations** from Cablevision Systems Corporation for \$2,500 and Montana Dakota Utilities Company for \$1,000 for support of the 2011 Montana League of Cities and Towns Conference.

**I. Approval and acceptance** of the Domestic Violence Unit and Victim Witness Assistance Program Grants awarded by the Montana Department of Justice and Board of Crime Control. Domestic Violence grant award - \$41,606; Victim Witness Assistance grant award - \$30,126.

**J. Resolution of Intent** to create SILMD 310, Bench Boulevard Connector, Main to 1,000' East of the Intersection; and set a public hearing date for November 14, 2011.

**K. Second/Final Reading Ordinance expanding Ward I (Annexation #11-02)** for 16.94 acres located at 3128 South Frontage Road and legally described as Tract 1 of Certificate of Survey 1591 and Tract 1 of Certificate of Survey 1596; Knife River, Inc., owner; Land Use Consulting, agent.

**L. Bills and Payroll:**

1. September 2, 2011
2. September 9, 2011
3. September 16, 2011

### **REGULAR AGENDA:**

2. **PERMANENT ORDINANCE** defining medical marijuana "storefront" businesses and prohibiting the operation of medical marijuana storefronts in the City of Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
3. **PUBLIC HEARING AND RESOLUTION** assessing the cost of cutting and/or exterminating weeds. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)
4. **PUBLIC HEARING AND RESOLUTION** granting a tax abatement to Golini Real Estate, LLC, DBA All American Pharmaceuticals, for building expansion at 2376 Main Street. Staff recommends approval. (Action: approval or disapproval of staff recommendation)
5. **PUBLIC HEARING AND FIRST READING ORDINANCE** adopting proposed amendments to the City of Billings Subdivision Regulations, Article 23, BMCC, in accordance with State law. Zoning Commission recommends approval. (Action: approval or disapproval of Zoning Commission recommendation.)
6. **PUBLIC HEARING AND FIRST READING ORDINANCE** expanding the boundaries of Ward II to include recently annexed property in Annexation #11-03: 14.87 acres legally described as Tract 2D of C/S 2776, Amended, and generally located west of Highway 87 and north of the existing commercial development that includes American Pharmaceuticals in the Billings Heights; Wayne Laufer, petitioner. Staff recommends conditional approval. (Action: approval or disapproval of staff recommendation.)
7. **PUBLIC HEARING AND RESOLUTION** authorizing energy efficiency improvements at the Billings Logan International Airport and at certain city-owned parking garages and approving the Energy Performance Contract with McKinstry Essention, Inc. and Lease-Purchase Agreement with U.S. Bank Equipment Finance, Inc.; Estimated Airport improvements - \$1,399,068. Estimated parking garage improvements - \$578,311. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

**PUBLIC COMMENT** on Non-Agenda Items -- Speaker Sign-in required. (*Restricted to ONLY items not on this printed agenda. Comments here are limited to 3 minutes. Please sign up on the clipboard located at the podium.*)

### **COUNCIL INITIATIVES**

**ADJOURN**

*Additional information on any of these items is available in the City Clerk's Office.*

*Reasonable accommodations will be made to enable individuals with disabilities to attend this meeting. Please notify Cari Martin, City Clerk, at 657-8210.*

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Boards & Commissions Appointments

**PRESENTED BY:** Tina Volek

**Department:** City Hall Administration

**Information**

**PROBLEM/ISSUE STATEMENT**

The Mayor is requesting that the City Council confirm an appointment for the Tourism Business Improvement District Board position that is vacant due to a resignation.

**ALTERNATIVES ANALYZED**

Council may:

- Confirm the proposed appointment; or
- Not confirm the appointment. Positions that are not filled will be readvertised.

**FINANCIAL IMPACT**

The proposed action has no financial impact.

**RECOMMENDATION**

Mayor Hanel recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1	Cheri Milne	Tourism BID Board	10//11/11	06/30/15

1. Unexpired term of Chris Johnson

**APPROVED BY CITY ADMINISTRATOR**

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Award of the Three Year Elevator/Escalator Maintenance Service Agreement for Billings Logan International Airport

**PRESENTED BY:** Tom Binford

**Department:** Airport

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**Information**

**PROBLEM/ISSUE STATEMENT**

One of the items included in the Airport's annual operating budget is a maintenance agreement for the Airport's elevators and escalators. The Billings Logan International Airport Terminal Building has eight elevators, two escalators, and one lift, and the Operations Building has one lift. Due to the specialized nature of this equipment, it is more cost effective for the Airport to contract for the monthly service and repair work. Specifically, this Three Year Maintenance Service Agreement will require the contractor to provide all of the necessary equipment, tools, and personnel to conduct systematic inspections, adjustments, and maintenance for all of the major components of the elevators/escalators. This Agreement will also ensure compliance with all State of Montana Operating Certificate regulations for the elevators/escalators.

This Service Agreement was advertised in the *Billings Times* on August 25, September 1 and 8, 2011, and on the City's Web Site. One bid was received on September 13, 2011 from ThyssenKrupp Elevator for the amount of \$1,699 per month for the existing elevator and escalators and an additional \$99.87 per month starting in 2013 for the new elevator being installed in the Airport Business Park office building, IP-9.

**ALTERNATIVES ANALYZED**

The City Council may:

- Approve the award of the 3-Year Elevator/Escalator Maintenance Service Agreement; or
- Decline to approve the the award of the 3-Year Elevator/Escalator Maintenance Service Agreement, reject the bid, and not complete this Agreement at this time.

**FINANCIAL IMPACT**

The total annual cost of this Service Agreement will be \$20,388 for the first twelve months of the Agreement, and then \$21,586.44 for the remaining two years once the new IP-9 elevator is added to the Agreement. The source of funding for this Agreement is the Airport's annual operating budget.

**RECOMMENDATION**

Staff recommends that the City Council approve the award of the Three Year Elevator/Escalator Maintenance Service Agreement for Billings Logan International Airport with the sole bidder, ThyssenKrupp Elevator.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Approval of the Award of the IP-5 Building Exterior Repainting Project for Billings Logan International Airport

**PRESENTED BY:** Tom Binford

**Department:** Airport

**Information**

**PROBLEM/ISSUE STATEMENT**

Included in the Airport's FY 2011 budget and approved Capital Improvement Program, is the IP-5 Building Exterior Repainting project. This metal building is located in the Airport's Business Park and was originally constructed by the United States Air Force in 1958 and is now leased by a tenant on the Airport. The metal siding on this building is beginning to rust and must be protected to prevent further deterioration and costly repairs in the future. This project will involve removing and repairing the rusted areas, refastening and replacing any loose fasteners, and preparing the surface for the new coating system. The new paint system will provide two coats of a water based acrylic coating. The recommended low bid includes an alternate that will paint one additional building in this complex. This project was advertised in the *Billings Times* for two weeks and was posted on the City's Web Site. On Tuesday, September 27, 2011 the City received the following bids:

<u>CONTRACTOR</u>	<u>BASE BID IP-5</u>	<u>ALTERNATE 2 IP-6</u>	<u>TOTAL</u>
<u>ACOM PAINTING INC</u>	<u>\$27,975</u>	<u>\$5,515</u>	<u>\$33,490</u>
<u>PAINT-ALL</u>	<u>\$28,500</u>	<u>\$7,125</u>	<u>\$35,625</u>
<u>ESTIMATE</u>	<u>\$29,000</u>	<u>\$6,000</u>	<u>\$35,000</u>

**ALTERNATIVES ANALYZED**

The City Council may;

- Approve the award of the IP-5 Building Exterior Repainting project; or
- Decline to approve the project, reject all bids, and not complete the project at this time.

**FINANCIAL IMPACT**

The total cost of this project is \$ 33,490. The source of funding for this project is in the Airport's Capital Improvement Program budget.

**RECOMMENDATION**

Staff recommends that the City Council award the IP-5 Building Exterior Repainting project to the low bidder ACOM Painting, for the amount of \$33,490.

**APPROVED BY CITY ADMINISTRATOR**

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011  
**TITLE:** WO 11-03 City Crack Seal Bid Award  
**PRESENTED BY:** David Mumford  
**Department:** Public Works

**Information**

**PROBLEM/ISSUE STATEMENT**

Bids were received and evaluated for the 2011 Street Maintenance Program, City Crack Seal, on September 27, 2011. This project is part of the on-going Street Preventative Maintenance Program supported by the City Council since 1985. Annually, staff identifies streets proposed for preventative maintenance. Staff proposes to bid this work in three contracts: for chip seal resurfacing; for overlay resurfacing; and for crack sealing. This contract will provide crack sealing on approximately 24 miles of streets throughout the city.

**ALTERNATIVES ANALYZED**

- The Council may:
- Award Work Order 11-03 City Crack Seal, to Hardrives Construction, Inc. in the amount of \$133,452.46; or
  - Reject all bids and not award Work Order 11-03 City Crack Seal.

**FINANCIAL IMPACT**

Funding for WO 11-03 City Crack Seal, will be provided from the FY12 Gas Tax and Street Maintenance Fund, which totals \$1,000,000. Bids for this project are as follows:

WO 11-03 City Crack Seal Bids

Contractor	Bid Amount
Engineer's Estimate	\$149,123.40
Hardrives Construction, Inc.	\$133,452.46
Z & Z Seal Coating, Inc.	\$141,052.64
Wharton Asphalt	\$147,556.47

**RECOMMENDATION**

Staff recommends that Council approve the construction contract for WO 11-03 City Crack Seal with Hardrives Construction, Inc. in the amount of \$133,452.46.

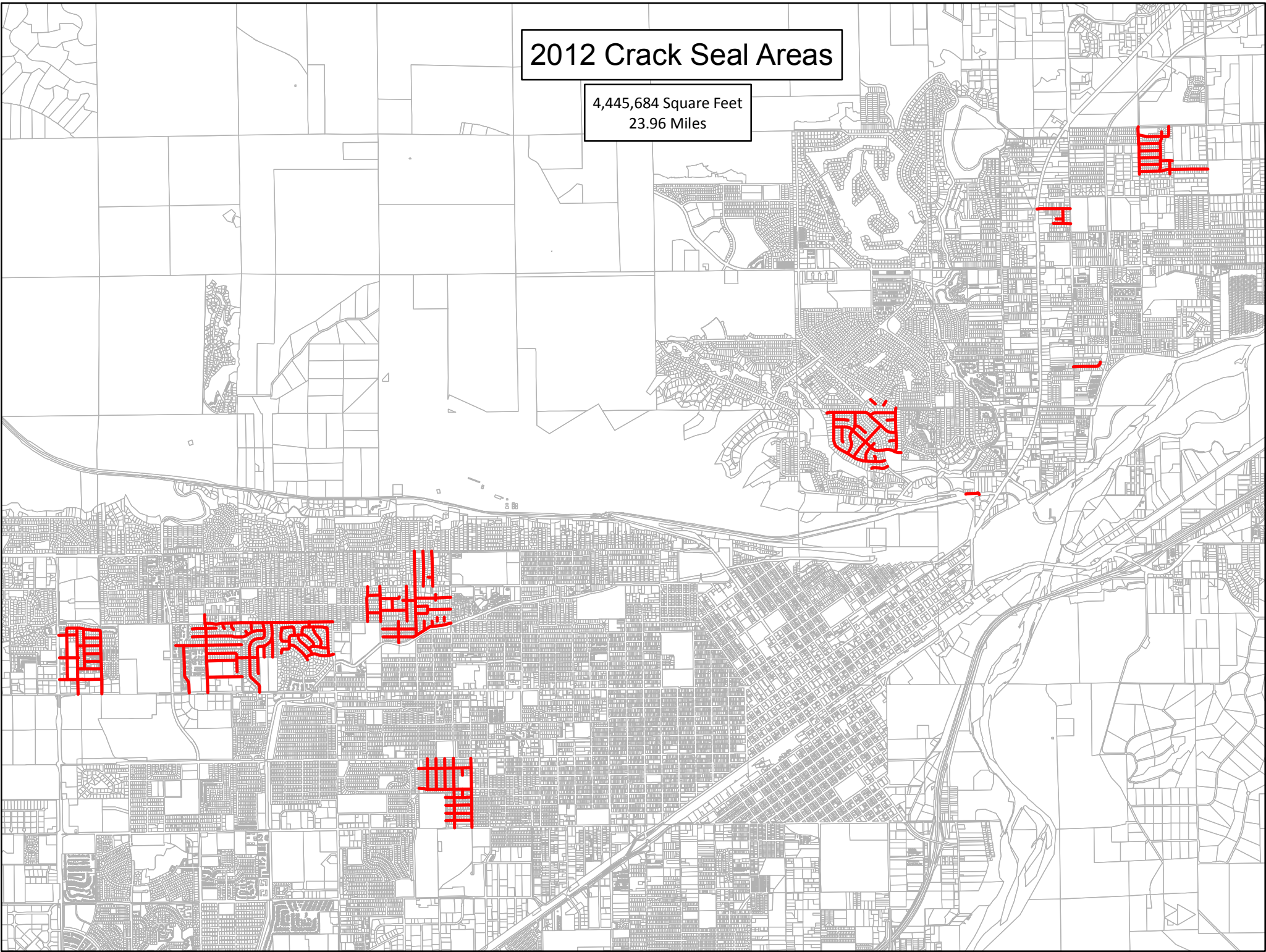
**APPROVED BY CITY ADMINISTRATOR**

**Attachments**

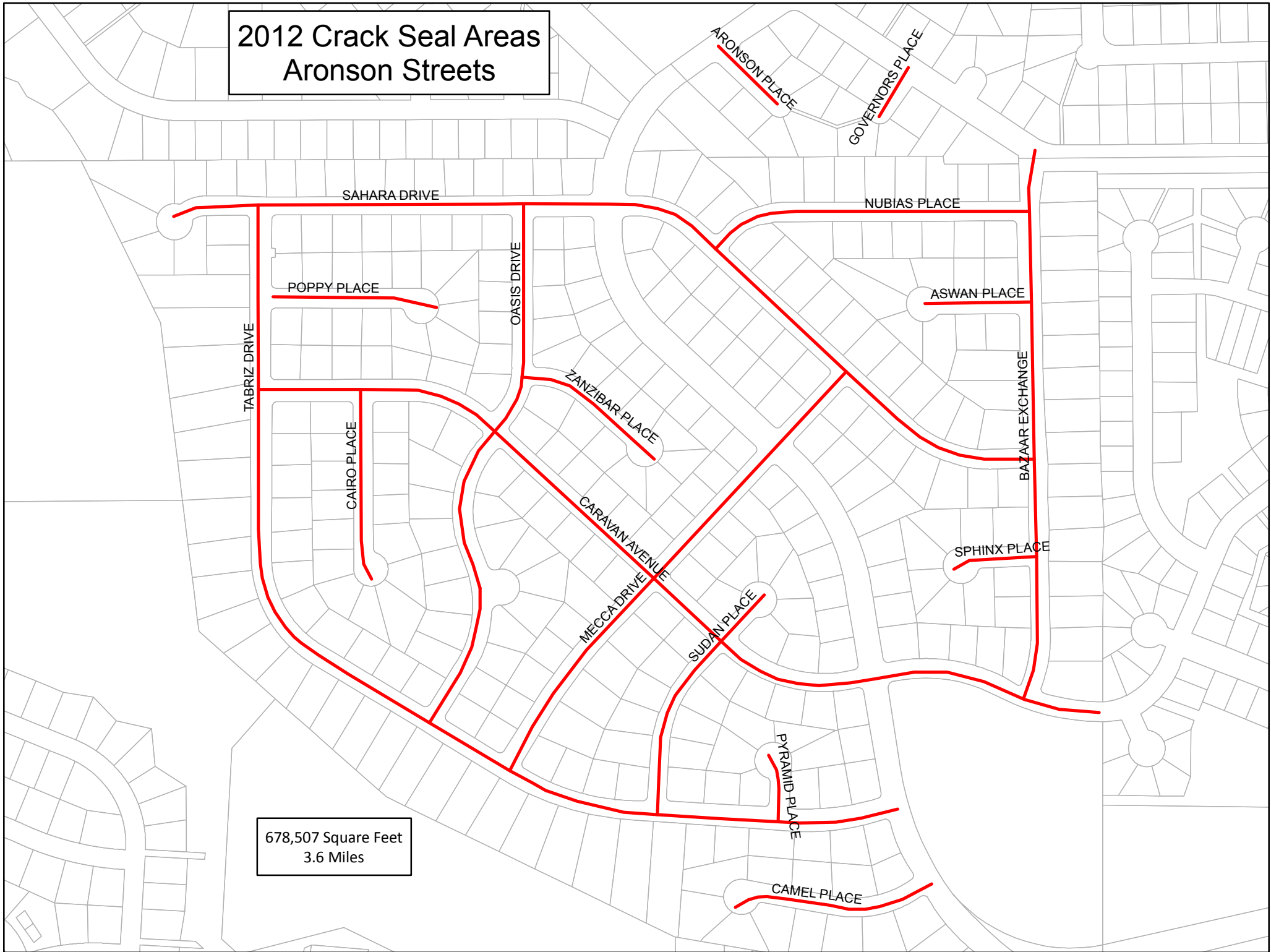
Location of Work

# 2012 Crack Seal Areas

4,445,684 Square Feet  
23.96 Miles

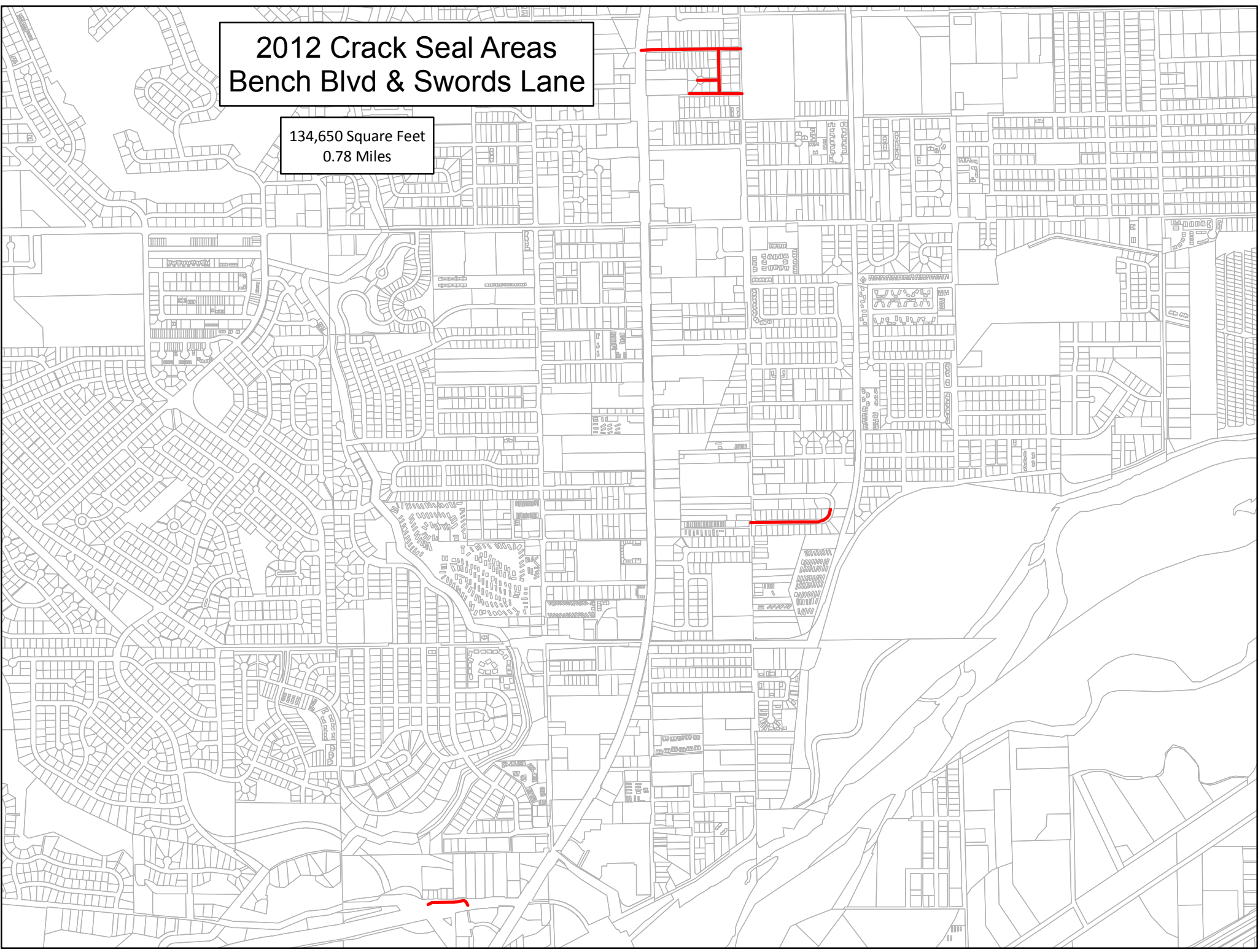


# 2012 Crack Seal Areas Aronson Streets

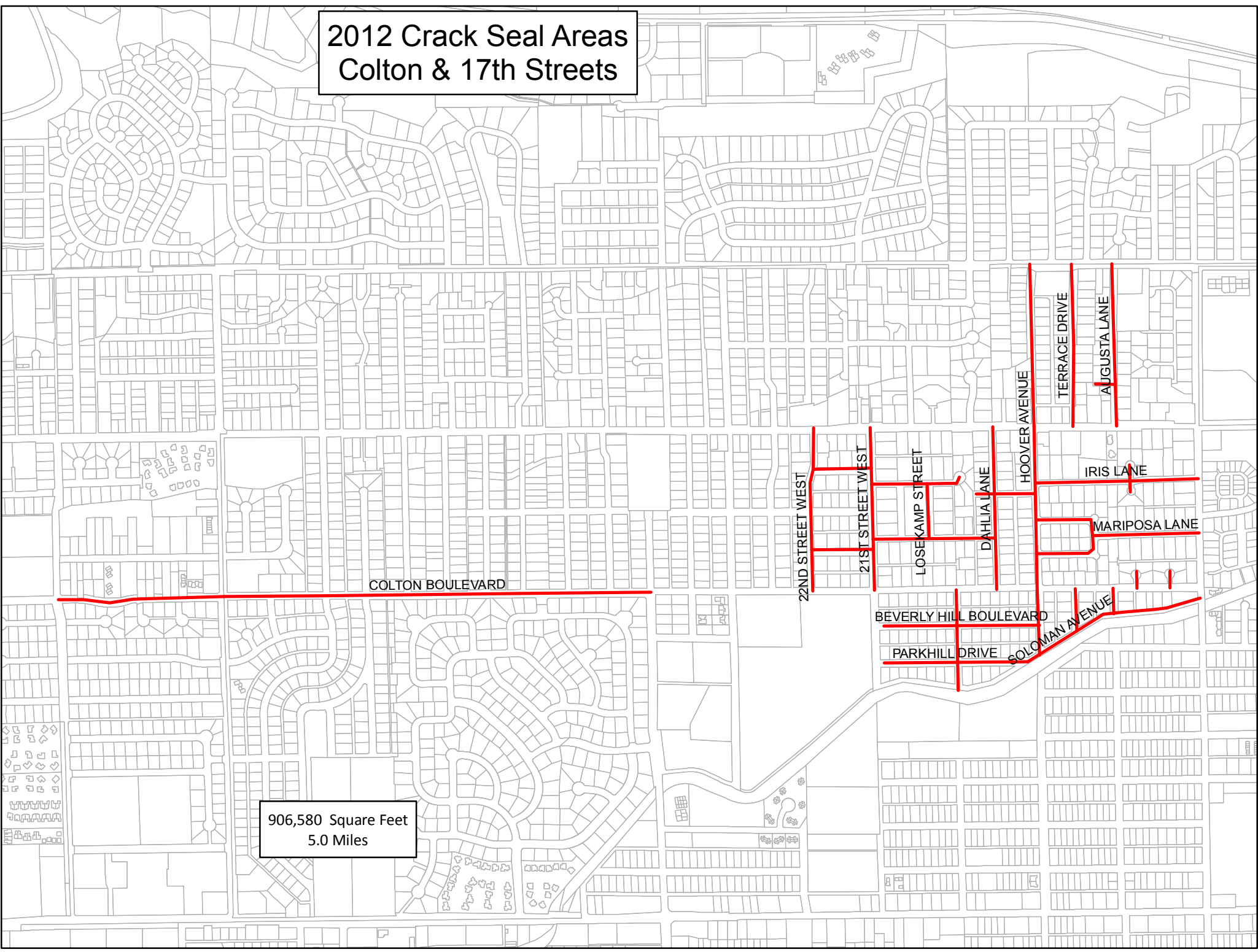


# 2012 Crack Seal Areas Bench Blvd & Swords Lane

134,650 Square Feet  
0.78 Miles



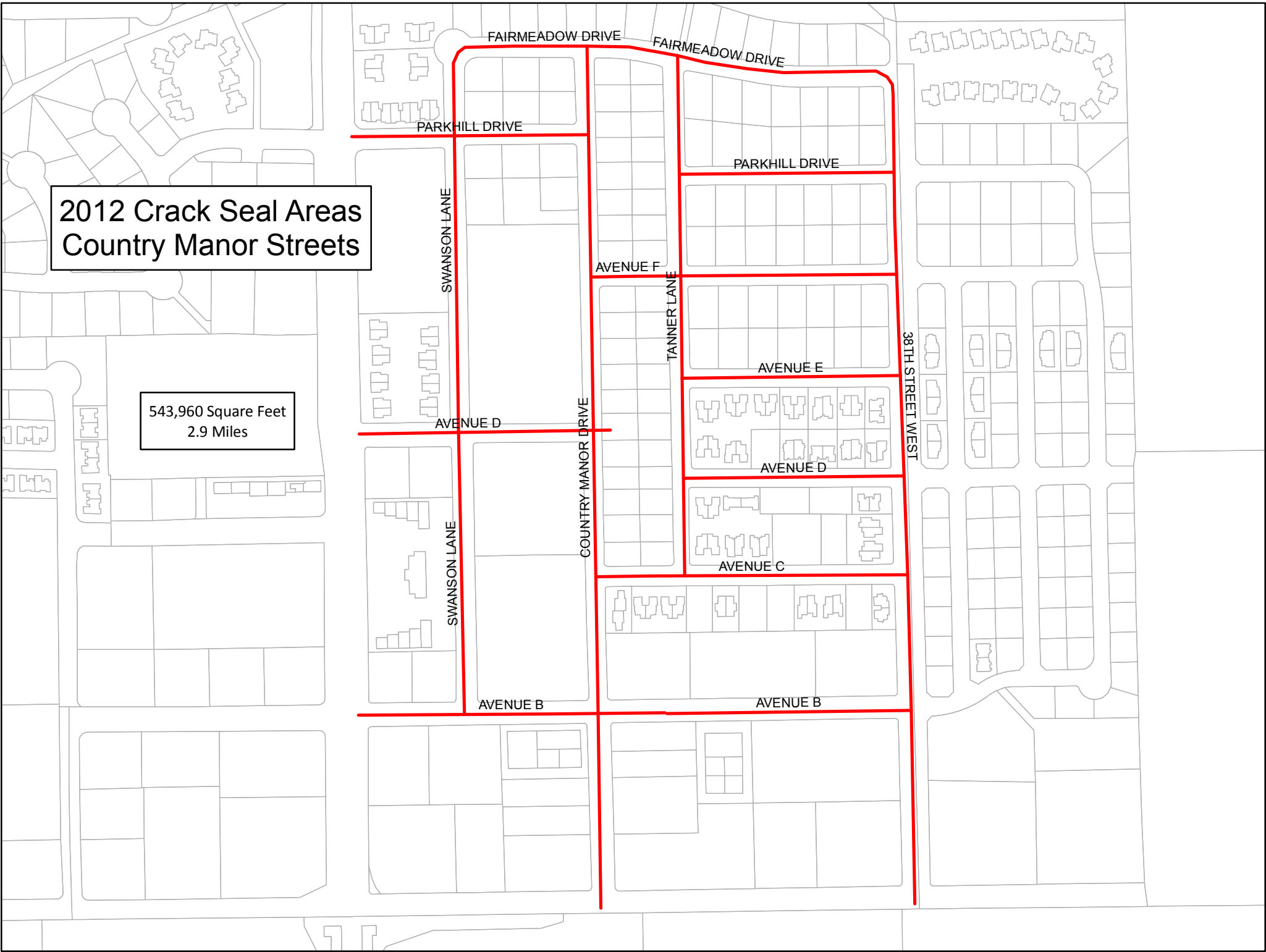
# 2012 Crack Seal Areas Colton & 17th Streets



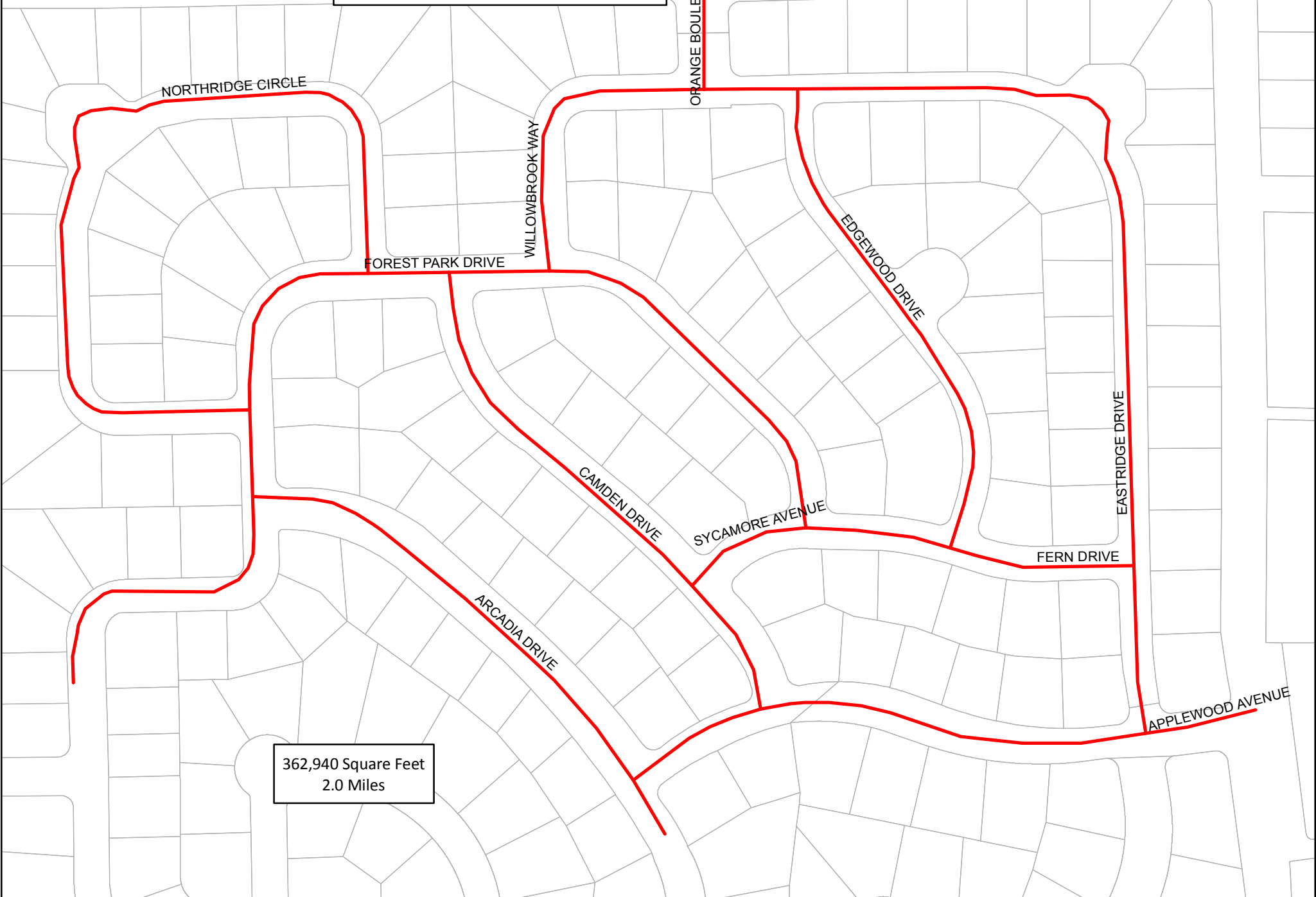
906,580 Square Feet  
5.0 Miles

# 2012 Crack Seal Areas Country Manor Streets

543,960 Square Feet  
2.9 Miles

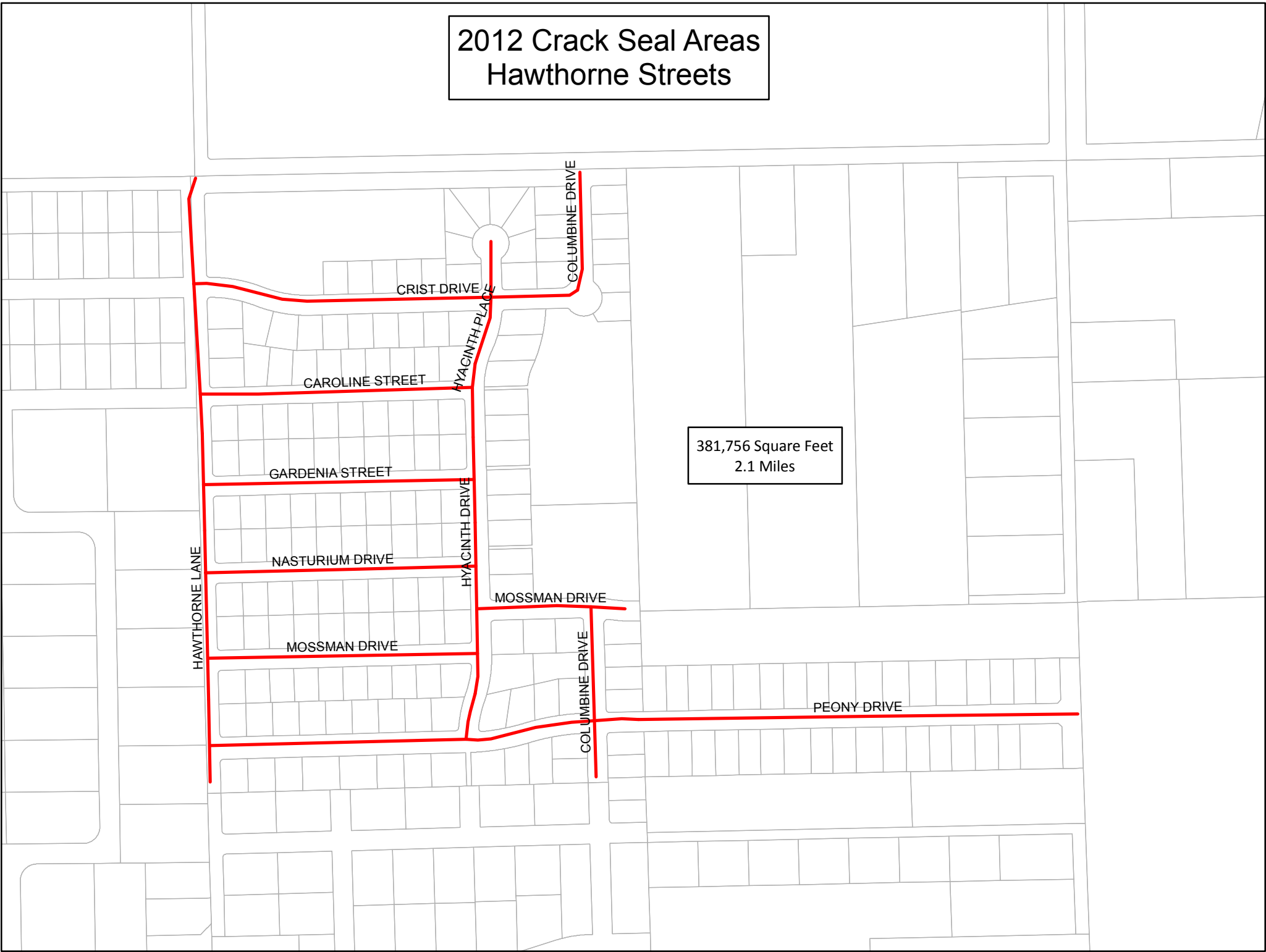


# 2012 Crack Seal Areas Forest Park Streets



362,940 Square Feet  
2.0 Miles

# 2012 Crack Seal Areas Hawthorne Streets



**2012 Crack Seal Areas  
Miles Avenue Streets**

576,108 Square Feet  
3.1 Miles

CUSTER AVENUE

GLEN DRIVE

18TH STREET WEST

NELSON DRIVE

MILES AVENUE

VAN BRAMER DRIVE

HOWARD AVENUE

COOK AVENUE

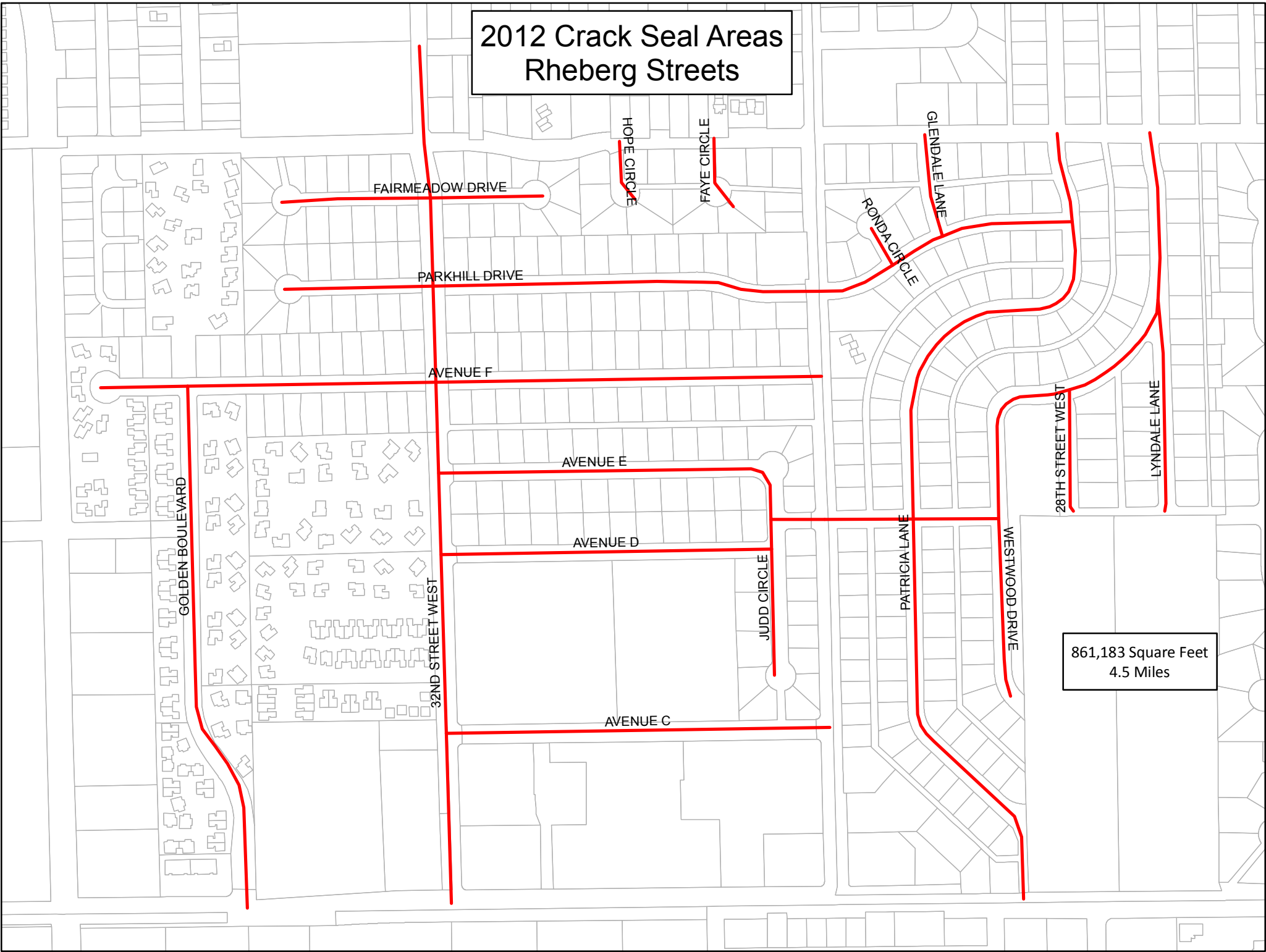
17TH STREET WEST

ST. JOHNS AVENUE

16TH STREET WEST

LYNN AVENUE

# 2012 Crack Seal Areas Rheberg Streets



861,183 Square Feet  
4.5 Miles

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Infrastructure Construction Bid Award – Private Contract 631, Kings Green Phase IV Infrastructure

**PRESENTED BY:** Candi Beaudry

**Department:** Planning & Community Services

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**Information**

**PROBLEM/ISSUE STATEMENT**

The Community Development Division opened bids for infrastructure construction for the Kings Green Phase IV Subdivision on October 11, 2011. Staff is asking that the bid award be delayed until October 24, 2011, to allow sufficient time to review the bids.

**ALTERNATIVES ANALYZED**

1. Delay the bid award until October 24, 2011.
2. Do not delay the bid award.

**FINANCIAL IMPACT**

City Council approved a staff recommendation for re-allocation of \$39,043 left over from the Kings Green Phase III project to the Kings Green Phase IV project on April 25, 2011.

The Invitation for Bids was advertised September 22 and September 29, 2011. There is sufficient money in the FY2011-12 budget in the Affordable Housing Fund to finance the award.

**RECOMMENDATION**

Staff recommends that the City Council delay the bid award for the construction of Kings Green Phase IV Infrastructure until October 24, 2011, to allow more time to review the bids.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting****Meeting Date:** 10/11/2011**TITLE:** WO 11-10 25th Street Pedestrian Bridge Consultant Contract**PRESENTED BY:** David Mumford**Department:** Public Works**Information****PROBLEM/ISSUE STATEMENT**

The purpose of this project is to construct a pedestrian bridge across the Montana Rail Link railroad tracks connecting Minnesota Avenue to Montana Avenue at North 25th Street. Staff requested the services of an engineering firm to provide design and construction administration services for the project, and Morrison Maierle, Inc. was selected through the Request for Proposals (RFP) process.

**ALTERNATIVES ANALYZED**

Council may:

- Award the Contract for Professional Services to Morrison Maierle, Inc. (Estimated design completion date of May 2012)
- Do not award the contract. (Unknown completion date)

**FINANCIAL IMPACT**

The cost of design and construction administration services is \$156,500. Funding is available from the project funds. The total project funding (for design, construction, and construction administration) is as follows:

CTEP Funding	\$718,614.00
GO Bonds	\$68,886.00
Bikenet	\$25,000.00
Sample Foundation	\$10,000.00
Donations/Grants	\$7,500.00

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute a Contract for Professional Services with Morrison Maierle, Inc. for \$156,500 for engineering design and construction administration services, contingent on CTEP concurrence.

**APPROVED BY CITY ADMINISTRATOR****Attachments**Professional Services Contract

# **Contract for Professional Architectural and Engineering Services**

## **Project W.O. 11-10 – 25<sup>th</sup> Street Pedestrian Bridge – Billings Federal Aid No. STPE 1099(71), MDT CN 7546**

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In consideration of the mutual promises herein, City of Billings and Morrison Maierle, Inc. agree as follows. This Contract consists of:

Part I, consisting of 15 Sections of Special Provisions;

Part II, consisting of 11 Sections of General Provisions;

Appendix A consisting of 8 pages (Basic Services of Contractor);

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

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

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

Appendix E consisting of 1 page (Project Schedule);

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

Appendix G CTEP Requirements consisting of 5 pages

### **PART I SPECIAL PROVISIONS**

#### **Section 1. Definitions.**

In this Contract:

- A. "Administrator" means the City Engineer of the Engineering Division of the Public Works Department or his designee.
- B. "Billings" means the City of Billings.
- C. "Contractor" means Morrison Maierle, Inc.

#### **Section 2. Scope of Services.**

- A. The Contractor shall perform professional services in accordance with Appendix A, which is attached hereto and incorporated in this Section by reference.

- B. Billings shall pay the Contractor in accordance with the Schedule of Professional Fees attached as Appendix D and incorporated herein by reference for services actually performed under this Contract.
- C. Billings shall not allow any claim for services other than those described in this Section. However, the Contractor may provide, at its own expense, any other services that are consistent with this Contract.
- D. The Contractor shall provide as-built drawings on mylars and in digital format, as approved by the City of Billings, to the Administrator within 30 days after the project completion date. Final payment will be withheld until the as-built drawings are received by the City of Billings.
- E. The Contractor shall provide certified construction payrolls to the Administrator stating in writing that the payrolls have been reviewed and are acceptable.

Section 3. Time for Performance.

- A. This Contract becomes effective when signed on behalf of Billings.
- B. The Contractor shall commence performance of the Work described in Section 2 on receipt of written Notice to Proceed and complete that performance in accordance with the schedule set forth in Appendix E.
- C. This Contract shall terminate at midnight on December 31, 2013.

Section 4. Compensation; Method of Payment.

- A. Each month, or at the conclusion of each phase of the Work for which payment is due, as negotiated on a per-task basis, the Contractor shall present a bill to the Administrator describing the Work for which it seeks payment and documenting expenses and fees to the satisfaction of the Administrator. If any payment is withheld because the Contractor's performance is unsatisfactory, the Administrator must, within ten (10) days of the payment denial, notify the Contractor of the payment denial and set forth, with reasonable specificity, what was unsatisfactory and why. Billings will pay Contractor within 30 days of receiving an acceptable invoice.
- B. The Contractor is not entitled to any compensation under this Contract, other than is expressly provided for in this Section.
- C. As a condition of payment, the Contractor shall have paid all City taxes currently due and owing by the Contractor.

Section 5. Termination of the Contractor's Services.

The Contractor's services under Section 2 of this Part may be terminated:

- A. By mutual consent of the parties.
- B. For the convenience of Billings, provided that Billings notifies the Contractor in writing of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either party where the other party fails in any material way to perform its obligations under this Contract. Termination under this Subsection is subject to the condition that the terminating party notifies the other party of its intent to

terminate, stating with reasonable specificity the grounds therefor, and the other party fails to cure the default within 30 days after receiving the notice.

#### Section 6. Duties Upon Termination

- A. If Billings terminates the Contractor's services for convenience, Billings shall pay the Contractor for its actual costs reasonably incurred in performing before termination and Billings shall pay for services rendered prior to termination. Payment under this Subsection shall never exceed the total compensation allowable under Section 4 of this Part. All finished and unfinished documents and materials prepared by the Contractor shall become the property of Billings.
- B. If the Contractor's services are terminated for cause, Billings shall pay the Contractor the reasonable value of the services satisfactorily rendered prior to termination, less any damages suffered by Billings because of the Contractor's failure to perform satisfactorily. The reasonable value of the services rendered shall never exceed ninety percent (90%) of the total compensation allowable under Section 4 of this Part. Any finished or unfinished documents or materials prepared by the Contractor under this Contract shall become the property of Billings at its option.
- C. If the Contractor receives payments exceeding the amount to which it is entitled under Subsections A or B of this Section, he shall remit the excess to the Administrator within 30 days of receiving notice to do so.
- D. The Contractor shall not be entitled to any compensation under this Section until the Contractor has delivered to the Administrator all documents, records, Work product, materials and equipment owned by Billings and requested by the Administrator.
- E. If the Contractor's services are terminated for whatever reason the Contractor shall not claim any compensation under this Contract, other than that allowed under this Section.
- F. If a final audit has not been performed before the Contractor's services are terminated, Billings may recover any payments for costs disallowed as a result of the final audit.
- G. Except as provided in this Section, termination of the Contractor's services under Section 5 of this Part does not affect any other right or obligation of a party under this Contract.

#### Section 7. Insurance.

- A. The Contractor shall maintain in good standing the insurance described in Subsection B of this Section. Before rendering any services under this Contract, the Contractor shall furnish the Administrator with proof of insurance in accordance with Subsection B of this Section.
- B. The Contractor shall provide the following insurance:
  - 1. Workers' compensation and employer's liability coverage as required by Montana law.

2. Commercial general liability, including contractual and personal injury coverage's -- \$1,500,000 per occurrence.
  3. Commercial automobile liability -- \$1,500,000 per accident.
  4. Professional liability in the amount of \$1,500,000 per claim.
- C. Each policy of insurance required by this Section shall provide for no less than 30 days' advance notice to Billings prior to cancellation.
- D. Billings SHALL be listed as an additional insured on all policies except Professional Liability and Worker's Compensation Policies. In addition, all policies except Professional Liability and Worker's Compensation shall contain a waiver of subrogation against Billings.

#### Section 8. Assignments.

Unless otherwise allowed by this Contract or in writing by the Administrator, any assignment by the Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and an attempt by the Contractor to assign any part of its interest or delegate duties under this Contract shall give Billings the right immediately to terminate this Contract without any liability for Work performed.

#### Section 9. Ownership; Publication, Reproduction and Use of Material.

- A. Except as otherwise provided herein, all data, documents and materials produced by the Contractor under this Contract shall be the property of Billings, which shall retain the exclusive right to publish, disclose, distribute and otherwise use, in whole or in part, any such data, documents, or other materials. Exclusive rights shall not be attributed to portions of such materials presently in the public domain or which are not subject to copyright. Contractor shall retain rights to pre-existing proprietary property including but not limited to interactive models. The Contractor shall have the right to include photographic or artistic representations of the design and construction of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not include Billings' confidential or proprietary information regardless of whether Billings has previously advised the Contractor in writing of the specific information considered by Billings to be confidential and proprietary.
- B. Equipment purchased by the Contractor with Contract funds: See Appendix A, Section 3. Scope of Work.
- C. Should Billings elect to reuse Work products provided under this Contract for other than the original project and/or purpose, Billings will indemnify and hold harmless the Contractor from any and all claims, demands and causes of action of any kind or character arising as a result of reusing the documents developed under this contract. Additionally, any reuse of design drawings or specifications provided under this Contract must be limited to conceptual or preliminary use for adaptation, and the original Contractor's or subcontractor's signature, professional seals and dates removed. Such reuse of drawings and specifications, which require professional seals and dates removed, will be signed, sealed, and dated by the professional who is in direct supervisory control and responsible for adaptation.

Section 10. Notices.

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

Billings: Debi Meling, PE  
City of Billings  
Public Works - Engineering  
2224 Montana Avenue  
Billings, Montana 59101 FAX: (406) 237-6291

Contractor: Carl Anderson  
Morrison Maierle, Inc.  
315 North 25<sup>th</sup> Street Suite 102  
Billings, Montana 59101 FAX: (406) 671-3255

Notices are effective upon the earlier of receipt, proof of good transmission (facsimiles only), or 5 days after proof of proper posting.

Section 11. Contract Budget.

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

Section 12. Force Majeure.

- A. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof.
- B. As used in this Contract, force majeure is an act or event of substantial magnitude, beyond the control of the delayed party, which delays the completion of this Contract, including without limitation:
  - 1. Any interruption, suspension or interference resulting solely from the act of Billings or neglect of Billings not otherwise governed by the terms of this Contract.
  - 2. Strikes or Work stoppages.
  - 3. Any interruption, suspension or interference with the project caused by acts of God, or acts of a public enemy, wars, blockades, insurrections, riots, arrests or restraints of governments and people, civil disturbances or similar occurrences.
  - 4. Order of court, administrative agencies or governmental officers other than Billings.

Section 13. Financial Management System.

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

- A. Provides accurate, current, and complete disclosure of all financial transactions relating to the Contract;

- B. Maintains separate accounts by source of funds for all revenues and expenditures and identifies the source and application of funds for the Contractor's performance under this Contract, including information pertaining to subcontracts, obligations, unobligated balances, assets, liabilities, outlays and income;
- C. Effectively controls and accounts for all municipal funds and Contract property;
- D. Compares actual expenditures with budgeted amounts and relates financial information to performance or productivity data including unit cost information where applicable;
- E. Allocates administrative costs to direct service delivery units;
- F. Minimizes the time between receipt of funds from Billings and their disbursement by the Contractor;
- G. Provides accounting records supported by source documentation; and
- H. Provides a systematic method assuring the timely and appropriate resolution of audit findings and recommendations.

#### Section 14. Funding Requirements.

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

#### Section 15. Subcontracts.

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

- A. Every subcontract shall be reduced to writing and contain a precise description of the services or goods to be provided and the nature of the consideration paid therefor.
- B. Every subcontract under which the Contractor delegates the provision of services shall be subject to review and approval by the Administrator before it is executed by the Contractor.
- C. Every subcontract in an amount exceeding \$1,000 shall require reasonable access to business records of the subcontractor relating to the purchase of goods or services pursuant to the subcontract.

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

Section 1. Relationship of Parties.

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

Section 2. Nondiscrimination.

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

Section 3. Permits, Laws, and Taxes.

The Contractor shall acquire and maintain in good standing all permits, licenses and other entitlements necessary to its performance under this Contract. All actions taken by the Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. The Contractor shall pay all taxes pertaining to its performance under this Contract.

Section 4. Nonwaiver.

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

Section 5. Amendment.

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

Contractor: Carl Anderson  
Vice President

Billings: City Council or Authorized Designee

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

Section 6. Jurisdiction; Choice of Law.

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

Section 7. Severability.

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

Section 8. Integration.

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

Section 9. Liability.

The Contractor shall indemnify, defend, save, and hold Billings harmless from any and all claims, causes of action, lawsuits, damages, judgments, liabilities, and litigation costs and expenses including reasonable attorneys' fees and costs, arising from any wrongful or negligent act, error or omission of the Contractor or any agent, employee or subcontractor as a result of the Contractor's or any subcontractor's performance pursuant to this Contract.

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

Section 10. Inspection and Retention of Records.

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

Section 11. Availability of Funds.

Payments under this Contract may require funds from future appropriations. If sufficient funds are not appropriated for payments required under this Contract, this Contract shall terminate without penalty to Billings; and Billings shall not be obligated to make payments under this Contract beyond those which have previously been appropriated.

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

City of Billings

Contractor

\_\_\_\_\_  
City Council or Designee

\_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

ATTEST:

IRS Tax ID # \_\_\_\_\_

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

APPROVED AS TO FORM:

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

By \_\_\_\_\_

BRENT BROOKS, City Attorney

STATE OF MONTANA            )  
                                          :ss.  
COUNTY OF YELLOWSTONE )

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of \_\_\_\_\_, and acknowledged to me that they executed the foregoing instrument on behalf of said corporation having first been authorized to do so.

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

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

**Note: Final contract documents will require the Contractor's signature to be notarized.**

## Appendix A

### Basic Services of Engineer

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

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete the Engineer's portion of the project as defined in the scope of work and to prepare and deliver to Billings all plans, specifications, bid documents, and other material as designated herein.
- B. Ascertain such information as may have a bearing on the work from local units of government, utility companies, and private organizations and shall be authorized to procure information from other authorities besides Billings, but shall keep Billings advised as to the extent of these contacts and the results thereof.
- C. Prepare and present such information as may be pertinent and necessary in order for Billings to pass critical judgment on the features of the work. The Engineer shall make changes, amendments or revisions in the detail of the work as may be required by Billings. When alternates are being considered, Billings shall have the right of selection.
- D. Engineer's work shall be in accordance with the standards of sound engineering and present City, State, and National standards and policies currently in use.
- E. Conform to the requirements of the Montana Code Annotated Title 18 "Public Contracts" and more particularly Sections 18-2-121 and 18-2-122, and all other codes of the State of Montana applicable to providing professional services including codes and standards nationally recognized.
- F. The Engineer shall certify with the submission of final plans that the plans are in conformance with applicable sections of Title 69, Chapter 4, Part 5, of the Montana Code Annotated as pertaining to existing utilities.
- G. To perform professional services in connection with the project and will serve as Billings' representative in those phases of the project to which this agreement applies.
- H. Where Federal funds are involved, the necessary provisions to meet all requirements will be complied with and documents secured and placed in the bidding documents.
- I. Submit an estimated progress schedule as to time and costs at the beginning of the work, and monthly progress reports thereafter until complete. The reports will include any problems, potential problems, and delays as foreseen by the Engineer. Reports will be submitted in a timely manner to permit prompt resolution of problems.

- J. Contract administration duties will include review of contractor certified payrolls for wage rate compliance. Discrepancies in certified payrolls will be resolved with the Contractor. A signed Engineer's Payroll Check Sheet (included in the Standard Modifications to MPWSS) will be submitted as proof of this review with one copy of each payroll.
- K. Name a Task Director who shall be the liaison between Billings and the Engineer. For this project the Task Director designated for the Engineer is Stephanie Seymanski working under the Principal-in-Charge, Carl Anderson.

## Section 2. Billings Rights and Duties.

- A. To furnish all labor, materials, equipment, supplies, and incidentals necessary to conduct and complete Billings' portion of the project as designated in the scope of work.
- B. Name a Task Director who shall be the liaison between the Engineer and Billings. For this project, the Task Director designated is Chris Hertz, PE, Staff Engineer.

## Section 3. Scope of Work.

The Engineer shall perform the work outlined within this agreement that includes the completion of design, bidding, and construction phase services for the 25<sup>th</sup> Street Pedestrian Bridge Project. The project consists of a pedestrian bridge over the MRL railroad tracks at 25<sup>th</sup> Street utilizing an existing truss located in Joliet, Montana. The truss will be utilized as the main span of the structure and approach ramps and stairways will be designed to allow ADA compliant pedestrian and bicycle access. The scope assumes the existing truss will be structurally sufficient and will be placed at 90 degrees to the railroad tracks on abutment towers. Ramps will be ADA compliant; have typical decking materials; and have no specialized aesthetic elements or treatments. Aesthetic element shapes and lines will be incorporated into the design where cost effective. It is anticipated that the ramps will not have curvilinear features.

The scope of services has been prepared based on the following assumptions:

- Total financing of approximately \$800,000 is available for the completion of this project.
- Primary project stakeholders include the City of Billings, Montana Department of Transportation's Community Transportation Enhancement Program (CTEP), Montana Rail Link (MRL), the Billings Depot, the Montana State Historic Preservation Office (SHPO), and the Old Town Historic District.
- Aesthetic features are simple elements and lines that enhance the project without adding significant design or construction costs.
- The truss is structurally sound and will not require significant structural rehabilitation beyond minor joint repair and redecking.
- MRL will accept a lateral clearance of 108 feet in total and the truss will not require lengthening.
- The truss will not be painted.
- It is anticipated that a coated chain-link fence complying with railroad requirements will be used.

- The bridge rehabilitation elements and new bridge elements will be load rated for pedestrian light maintenance vehicles per the AASHTO LRFD Guide Specification for Design of Pedestrian Bridges 2<sup>nd</sup> Edition and AASHTO LRFD Guide Manual for Condition Evaluation and Load and Resistance Factor Rating (LRFR) of Highway Bridges, 2005 or AASHTO Manual for Condition Evaluation of Bridges, Second Edition.
- Vertical clearance above the railroad will be 23'-4" to the lowest bridge element.
- Minimum vertical clearance on the pedestrian structure will be 8'-0" in compliance for pedestrian and bicycle traffic. Assume no equestrian use.
- Ultrasonic (UT) testing will only be performed on the pins on the existing truss. No other non-destructive and destructive testing of the existing truss members and connections is included.
- No specialized inspections are anticipated or included in this scope; however, if it becomes evident that additional inspections are necessary, the Engineer will notify the Owner in writing and the additional inspections will be conducted only upon Owner's approval through a contract amendment.

Completion of said design shall include the following tasks:

A. Concept Study

1. Site Survey. Engineer will provide a topographic survey as follows:

- a. Compile existing survey and utility information from previous projects.
- b. Provide control survey in accordance with standard engineering practices.
- c. Control points for construction layout by the contractor will be set and documented.
- d. Provide minimal survey using locally available or established control. The survey will be localized for use in the new bridge section design. Utility locates will be called in prior to the topographic survey. No phase II utility locates or research is included.
- e. Survey limits extend from Montana Avenue to Minnesota Avenue and will include the Depot parking lot on the north and the MRL gravel parking lot on the south. The survey will extend approximately 10 feet into the Montana and Minnesota right-of-ways and will be bounded on the east and west by the extent of the parking lots. Detail ground survey within the active tracks will be limited to top of rail shots. Survey on MRL property will require a temporary access permit.
- f. It is assumed that boundary or right-of-way surveys will not be required. Preparation of one easement exhibit for the MRL easement agreement as addressed in paragraph B.2. as follows will be provided. All other right-of-way acquisitions will be handled by the City.

2. Bridge Concept Study. The Engineer will provide a concept study as follows:

- a. Perform truss inspection. The intent of the inspection is to identify any cracking of the steel members, areas of significant corrosion, and to check the primary bridge members. Members will be visually checked for nicks, gouges, and tears

due to impact and deterioration. Members will be checked for repair welds, plug welded holes, and for fatigue cracks at welded locations. UT testing of the existing truss pins is included. Additional UT inspection due to unacceptable findings after the initial inspection is not included.

- b. Perform truss analysis and load rating. The analysis will include a brief memo (2 to 3 pages) describing the load rating of the structure, inspection results, any structural elements that need repair, and discussion on rehabilitation. Load rating calculations will be included as an appendix to the memo.
- c. Prepare bridge moving special provision. The City of Billings will perform the solicitation and coordinate permits, bidding, and the relocation of the truss with the move contractor.
- d. Evaluate ramp layouts, railing options and deck material types. Ramp layouts and mechanical layouts (assume 8 layouts considered) will be evaluated for their estimated cost, parking impacts, and aesthetics. No design exceptions are anticipated. Therefore, no options requiring design exceptions will be evaluated.
- e. Conduct concept review meeting with City of Billings and stakeholders and prepare minutes. A presentation will be prepared for the meeting which will include:
  - a. Summary of load rating.
  - b. Summary of existing bridge inspection and existing truss rehabilitation and repair options.
  - c. Rough outlines of plan area of 8 ramp options.
  - d. Rough elevation sketches of the most suitable ramp systems and bridge layout options (2 or 3 layout sketches).
  - e. Discussion of the benefits and challenges of each system.
  - f. Preliminary cost estimates for 2 or 3 of the most suitable bridge/ramp options.
  - g. Examples of rail and deck systems and costs associated with each system.
  - h. Document chosen bridge system.

**B. Preliminary Engineering Services.** Preliminary design will focus on advancing chosen bridge and trail design.

1. Preliminary Bridge Design. The Engineer will provide preliminary bridge design services including:
  - a. Preliminary design of preferred bridge layout and ramp option.
  - b. Refined cost estimate for preferred option.
  - c. Bridge and ramp general layout sheets.
  - d. Teleconference with the City to receive comments on layout prior to public/stakeholder meeting.
2. Coordination with MRL. Engineer will provide MRL coordination on the location and clearances of the structure. One on-site meeting with MRL is expected during coordination after bridge general layout is submitted. All agreements will be handled by the City. Three agreements with the railroad are anticipated including a

design review agreement, a construction activities agreement, and an easement agreement. The Engineer will prepare an easement exhibit and legal description for the easement agreement. Otherwise, no other efforts are included for preparation of these agreements.

3. Geotechnical. A geotechnical investigation will be performed to report the subsurface conditions at the bridge locations. Foundation design for the structure will be based on the geotechnical investigation report. Field work will consist of drilling two borings to a minimum of 5 feet into bedrock. It is expected that bedrock will be encountered at a depth of 30 to 40 feet. One boring will be located in the MRL gravel parking lot at the south abutment location. The second boring will be drilled in the Depot parking lot. The boring in the MRL parking lot will require an environmental access permit, temporary occupancy permit, and railroad insurance. The geotechnical field and laboratory work will culminate with appropriate geotechnical recommendations as summarized below:

- a. Soil, bedrock, and groundwater conditions
- b. Site and subgrade preparation
- c. Recommended foundation type(s) and design parameters
- d. Estimated settlement of foundations
- e. Seismic classification
- f. General earthwork and drainage recommendations

4. Hold one public/stakeholder information meeting to address preferred system elements. The Engineer will provide an agenda, sign-up, and comment forms; prepare displays; provide a brief presentation; prepare meeting minutes; and respond to questions. Follow up documentation of this meeting will not be provided. No effort is included for renderings or detailed trail drawings. General layouts developed Preliminary Bridge Design (see paragraph B.1 above) will be used as graphics.

C. Design Engineering Services. After the City and stakeholder comments have been received on the preliminary layout, design will be advanced. This design development phase will include:

1. Bridge Design. The Engineer will provide draft bridge design and specifications including the following:

- a. Truss rehabilitation design and detailing.
- b. Abutment tower, ramp, foundations, and railing design and detailing. Abutment tower and stairs will not be covered and will be a simple steel structure, without additional aesthetic detailing.
- c. Prepare draft plans and specifications with CTEP provisions incorporated into the bid package.

2. Trail Design/Landscaping/Aesthetics. The engineer will provide:

- a. Design of tie-in to existing pedestrian facilities on South 25<sup>th</sup> Street.

- b. Design of minimal lighting/electrical on and around the structure.
- c. Coordination with architect on landscaping and aesthetics. Architectural tasks shall include the following:
  - i. Preparing design options for the stairs/ramps and support towers to meet both ADA accessibility requirements and City of Billings bike path requirements.
  - ii. Preparing design options for stairs/open cage elevators and support towers instead of ramps and researching elevator options and costs.
  - iii. Preparing design suggestions for railings/ramp supports/support towers, etc.
  - iv. Preparing site plan options for access to bridge towers from Montana Avenue and Minnesota Avenue.
  - v. Participating in meetings with stakeholders, public officials, and others as required and as necessary.
  - vi. Providing any accepted design options to Engineer in AutoCAD format for incorporation into the construction documents.

3. Environmental Documentation. The Engineer will:

- a. Prepare a MDT Categorical Exclusion Group (d) Action Letter for this project including all necessary backup data. All environmental documentation will be in accordance with current CTEP guidelines and procedures. Copies of the draft document will be submitted to MDT CTEP Section for review, approval, and forwarding to FHWA for processing and final approval.
  - b. Submit informational letters to applicable resource agencies for comment.
  - c. Section 106 Compliance will be required for this project and will follow the MDT CTEP Historical Preservation Process (4.1.5.10.2 MDT CTEP manual) as follows:
    - i. Establish the Area of Potential Affects (APE) in consultation with CTEP.
    - ii. Review any existing information to determine if historic properties or archaeological sites exist within the APE. CTEP will provide a copy of the initial records search.
    - iii. Identify, evaluate historical significance, and gather sufficient information to assist SHPO in evaluating eligibility of the 25th Street Pedestrian Bridge for the National Register of Historic Places (NRHP).
    - iv. Assess any “effects” in coordination with MDT and SHPO.
  - d. The following tasks are excluded from this environmental scope of services:
    - i. Historical/cultural field surveying. It is assumed that MDT will prepare a historic resource survey and report for processing through SHPO.
    - ii. Wetland field delineation and associated reports and permitting.
    - iii. Major design changes due to environmental document review.
    - iv. Environmental permitting.
4. Attend design review meeting with the City of Billings and CTEP to review draft plans and specifications. Provide an agenda, reports, discussion item, and meeting minutes.

5. CTEP Coordination. Engineer will coordinate specific design aspects of the project with City of Billings and the MDT CTEP Engineer.

D. Final Engineering Services. The engineer will provide:

1. Final plans and specifications revisions. The final plan package will include the project specifications and plan sheets incorporating comments received from the City of Billings and CTEP after the draft design package submittal and design review meeting is complete.
2. Engineer will provide final design services as follows:
  - a. Stamp and sign all plans and specifications with seal of Professional Engineer in charge.
  - b. Compute final project construction quantities and prepare an engineer's opinion of probable construction cost. Submit to City of Billings and CTEP.
  - c. Provide electronic set of final plans in pdf format.

E. Construction Services

1. Bidding Services

- a. Prepare and supply project specifications and bidding documents necessary for bidding and construction. The City of Billings will advertise the project. The Engineer will prepare text for publication, preparing and issuing addenda, responding to contractor questions as necessary, and provide plan and project manual production and distribution.
- b. Schedule and hold pre-bid meeting. Conduct a pre-bid field review with contractors as necessary.
- c. Attend the bid opening, analyze bids, submit bid tabulation, make a construction contract award recommendation, and prepare the notice of award upon notification from the City of Billings and CTEP concurrence.

2. Construction Meetings

- a. Conduct a pre-construction conference and prepare minutes.
- b. Conduct progress meetings (assume four meetings scheduled on a bi-monthly basis).

3. Construction staking. No effort is included for construction staking. Staking to be performed by contractor. Engineer shall provide electronic staking data to contractor as required.

4. Construction Observation and Testing.

- a. Review testing results and documentation. Quality control testing of materials (including concrete testing, material certification and testing, steel certification and welding inspections, pile driving analysis, etc.) will be completed by an independent inspector hired by contractor.
- b. Provide coordination of quality assurance testing in accordance with the Owner's minimum testing requirements. Quality assurance testing shall be

conducted by Owner's selected testing firm. Cost for testing is not included in this scope of services. Owner will directly reimburse testing firm for quality assurance tests.

- c. Provide review of construction to check the contractor's work for compliance with the drawings, specifications, and other applicable documents, codes, or standards. Due to the nature of the project, review of work shall be made on a part-time basis while work is in progress. The amount of resident project representative (RPR) time to complete this task is 16 hours per week for a projected 6-week construction period. Two inspections by Engineer's Helena bridge personnel during construction for critical bridge elements is included. Each review shall be documented in permanent reproducible form and kept in consecutive order with the project file. Copies of the review reports shall be furnished to the City of Billings as requested during construction. Engineer will notify the City of Billings immediately of contract problems or deviation from approved plans.

#### 5. Submittal Review and Document Preparation.

- a. Prepare and provide six (6) copies of contract bidding documents to Contractor. Review contract documents and submit to City of Billings for signature.
- b. Check shop drawings, samples, equipment, concrete mix design, aggregate, and other data submitted by the Contractor for compliance with drawings and specifications.
- c. Prepare monthly and final pay estimates (three assumed) for construction and prepare contract administration forms on a monthly basis. These will be submitted in City of Billings approved format.
- d. Perform on-site EEO/wage rate inspections and collect contractor certified payrolls in accordance with Owner's policy.
- e. Issue notice to the contractor to suspend work in whole or in part when, at the recommendation of the Engineer, it is the opinion of the City of Billings that work is not being performed or cannot be performed in accordance with the contract documents and specifications.
- f. Prepare and recommend work change directives and change orders when necessary due to conditions encountered during construction and which do not require additional engineering design or inspection. The Engineer is not authorized to order additional work without the approval of City of Billings Task Director. Any work resulting in contract overages will be processed by approved changes orders using City of Billings standard forms.

#### 6. Final Services

- a. Schedule and make substantial completion inspection with City of Billings and certify to City of Billings all construction items were constructed according to plans and specifications and are acceptable to the Engineer.
- b. Prepare record drawings (as-builts) and furnish City of Billings with two (2) full-size sets of record drawings and one (1) electronic set in pdf format.
- c. Schedule and make an inspection with City of Billings prior to the expiration of the construction warranty period and provide a certification of final acceptance. If any problems are found, send a list of deficiencies to City of Billings and contractor and continue until acceptable.

## Appendix B

### Methods and Times of Payment

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#### Section 4. Payments for Basic Services.

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

Partial payment shall be made to the Engineer upon receipt of the Engineer's pay estimate, said estimate being proportioned to the work completed by the Engineer. Billings shall deduct ten percent (10%) from each monthly pay estimate to be held until the completion of the final scope of work. The final payment shall be made only after acceptance of final documents by Billings, and determination that the scope of work has been satisfactorily completed.

- A. For services rendered per Appendix A, the Engineer shall be paid based upon actual time accrued on a cost plus 15% fixed fee basis, up to the maximum amount listed below. The actual cost shall be calculated as follows: the direct raw labor cost multiplied by 2.6702 (direct labor plus 58.35% times direct labor for fringes plus 108.67% times (direct labor + fringes) for overhead), plus a 15% fixed fee. Maximum fees for the following phases are as follows:

i. Design	\$131,500.00
ii. Construction Administration	\$25,500.00

Materials and other direct expenses are included in the above phase and total fee amounts.

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

#### Section 5. Materials and Other Direct Costs.

Materials and other direct costs will be invoiced at current rates, with no handling fee. Included as direct costs are the following:

- A. Approved Employee Meals, Lodging, Transportation
- B. Premium Delivery Service (UPS, Federal Express, etc.)
- C. Toll Communication Services (Telephone, Fax, etc.)
- D. Supplies

E. Premiums for Special Insurance, Performance Bonds, etc.

F. Other Out-of-Pocket Expenses

G. Consultants

The cost of Professional Liability Insurance coverage is included in the overhead rate listed in Section 1 of this appendix.

Section 6. Payments for Extra Services when Authorized by Billings.

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

Section 7. Corrections.

Costs of Billings work that is required for corrections to the Engineer's work which requires redoing by Billings shall be deducted from any payments due the Engineer, if the Engineer fails to make the required corrections.

## **Appendix C**

### **Additional Services of Engineer**

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Extra Services of the Engineer will be paid only with written prior authorization by Billings.

- A. Field and laboratory testing of materials and reports.
- B. Requests made or conditions identified by interested groups at the agency or public meetings, which are beyond the scope and intent of this study.

Appendix D

**Schedule of Professional Fees**

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Not used.

## **Appendix E**

### **Project Schedule**

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Based on a notice to proceed by Billings date no later than October 17<sup>th</sup>, 2011, the completion date for the Engineer's work through final design shall be:

1. Bridge Concept Study / Concept Review Meeting – November 30, 2011
2. Preliminary Bridge Design Submittal – within four weeks of Concept Review Meeting assuming one week for recommendation concurrence and three weeks for preliminary bridge layout development - December 30, 2011
3. MRL Coordination and Approval of Preliminary Bridge Layout – assumed three railroad review / approval – January 16, 2011
4. Public/Stakeholder Information Meeting – within three weeks of MRL Approval – February 8, 2012
5. Geotechnical Investigation – concurrent with Public/ Stakeholder Information Meeting and start of Design
6. Design Submittal – April 13, 2012
7. Design Review Meeting – within two weeks of Design Submittal – April 27, 2012
8. Final Design – May 25, 2012

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

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

Appendix F

**Certificate(s) of Insurance**

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(Attach Certificate(s) of Insurance)

## Appendix G

### Certificate of Consultant, Certificate of City of Billings, and Notice to Consultants

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#### Exhibit A – CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of Morrison Maierle, Inc., whose address is 315 N. 25<sup>th</sup> Street Suite 102, Billings, Mt 59101 and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
  - a. has employed or retained for commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
  - b. has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
  - c. has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.
2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
  - a. is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any Federal agency or any agency of any State government;
  - b. has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - c. is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2.b of this certification; or
  - d. has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.
3. That to the best of my knowledge and belief:
  - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and

- b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the City of Billings, State of Montana, Department of Transportation and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

## **Exhibit B – CERTIFICATE OF THE CITY OF BILLINGS**

I hereby certify that I am the Public Works Director of the City of Billings, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Billings Public Works Director

## EXHIBIT "C"

### NOTICE TO CONSULTANTS

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

#### A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
2. Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
4. Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Entity, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Entity, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Local Entity or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - a. withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
  - b. cancellation, termination or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions: Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the Local Entity, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier as a result of such direction, the Consultant may request the Local Entity to enter into the litigation to protect the interests of the Local Entity or State, and, in addition, the Consultant or the Local Entity may request the United States to enter into such litigation to protect the interests of the United States.

**B. COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

1. Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."
3. All video recordings produced and created under the Agreement will be closed-captioned.

**D. COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.**

Each Agreement the Local Entity signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Airline Operating Permit with ExpressJet Airlines

**PRESENTED BY:** Tom Binford

**Department:** Airport

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**Information**

**PROBLEM/ISSUE STATEMENT**

ExpressJet Airlines operates at Billings Logan International Airport as a United Air Lines, Inc. affiliate. ExpressJet is one of United's contracted United Express carriers handling United's flights at certain airports and during schedule and fleet transitions. To ensure that specific operating requirements will continue to be met, a standard Scheduled Airline Operating Permit between the City of Billings and ExpressJet is required. The Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place. The Operating Permit is automatically renewable for one-year periods, unless there have been no operational activities for six months or either party chooses to cancel the Permit with 30 days written notice.

**ALTERNATIVES ANALYZED**

The City Council may:

- Approve the Operating Permit with ExpressJet Airlines; or
- Not approve the Operating Permit with ExpressJet Airlines.

**FINANCIAL IMPACT**

Under the new Operating Permit, ExpressJet would not lease any new space in the Terminal Building, but would operate from space currently leased by the airline affiliate contracting its services. ExpressJet will be treated as another United operation and all the common space rentals/variable charges generated by ExpressJet flights on United's behalf are paid by the airline for which it is working.

**RECOMMENDATION**

Staff recommends that City Council approve and the Mayor execute the Scheduled Airline Operating Permit with ExpressJet Airlines.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Scheduled Airline Operating Permit with Mesaba Aviation, Inc. DBA Mesaba Airlines

**PRESENTED BY:** Tom Binford

**Department:** Airport

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**Information**

**PROBLEM/ISSUE STATEMENT**

Mesaba Aviation, Inc., DBA Mesaba Airlines operates at Billings Logan International Airport as a Delta Air Lines, Inc. affiliate. Mesaba is one of Delta's contracted Delta Connection carriers handling Delta's flights at certain airports and during schedule and fleet transitions. To ensure that specific operating requirements will continue to be met, a standard Scheduled Airline Operating Permit between the City of Billings and Mesaba is required. The Operating Permit ensures that the airline follows certain operating parameters and procedures, including providing proof that the proper insurance coverage is in place. The Operating Permit is automatically renewable for one-year periods, unless there have been no operational activities for three months or either party chooses to cancel the Permit with 30 days written notice.

**ALTERNATIVES ANALYZED**

The City Council may:

- Approve the Operating Permit with Mesaba Aviation, Inc., DBA Mesaba Airlines; or
- Not approve the Operating Permit with Mesaba Aviation, Inc., DBA Mesaba Airlines.

**FINANCIAL IMPACT**

Under the new Operating Permit, Mesaba would not lease any new space in the Terminal Building, but would operate from space currently leased by the airline affiliate contracting its services. Mesaba will be treated as another Delta operation and all the common space rentals/variable charges generated by Mesaba flights on Delta's behalf are paid by the airline for which it is working.

**RECOMMENDATION**

Staff recommends that City Council approve and the Mayor execute the Scheduled Airline Operating Permit with Mesaba Aviation, Inc., DBA Mesaba Airlines.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Acceptance of Easement on Certificate of Survey 363 - Rodney Markegard, Owner

**PRESENTED BY:** David Mumford

**Department:** Public Works

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**Information**

**PROBLEM/ISSUE STATEMENT**

With reconstruction of Moore Lane, it is desirable to install a wider radius at the southwest corner of Moore Lane and Central Avenue. This will allow an easier turn for east-bound Central Ave. traffic that turns south-bound on Moore Lane. There is insufficient right of way to accommodate the new radius. The owner of the corner lot, Rodney Markegard, has agreed to grant the City of Billings a right of way easement for the sidewalk, curb and gutter to be constructed on the corner of his lot.

**ALTERNATIVES ANALYZED**

Council may:

- Accept the right of way easement from Rodney Markegard, or
- Do not accept the right of way easement, which would require the construction of a tighter radius.

**FINANCIAL IMPACT**

There is no significant financial impact with acceptance of this right of way easement. The property owner is giving the city an easement at no cost.

**RECOMMENDATION**

Staff recommends that Council accept the easement from Rodney Markegard, owner of the Certificate of Survey 363.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Sidewalk Easement

Sidewalk Easement Exhibit

RETURN TO  
City Clerk  
City of Billings  
P.O. Box 1178  
Billings, MT 59103

## **RIGHT-OF-WAY EASEMENT**

**THIS INDENTURE**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the following:

Rodney Markegard  
PO Box 1654  
Billings, Montana 59103,  
hereinafter referred to as **GRANTOR**

and

**CITY OF BILLINGS**, a Municipal Corporation  
City Hall – 210 North 27th Street  
PO Box 1178  
Billings, Montana 59103-1178,  
hereinafter referred to as **GRANTEE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged;

**WITNESSETH THAT GRANTOR** does hereby grant, sell, and convey unto the **GRANTEE**, perpetual easement and right-of-way to construct, reconstruct, maintain, operate, repair and improve necessary fixtures and appurtenances for sidewalk, accessibility ramps, and fire hydrants over, across, under, and through the real property more particularly described as follows:

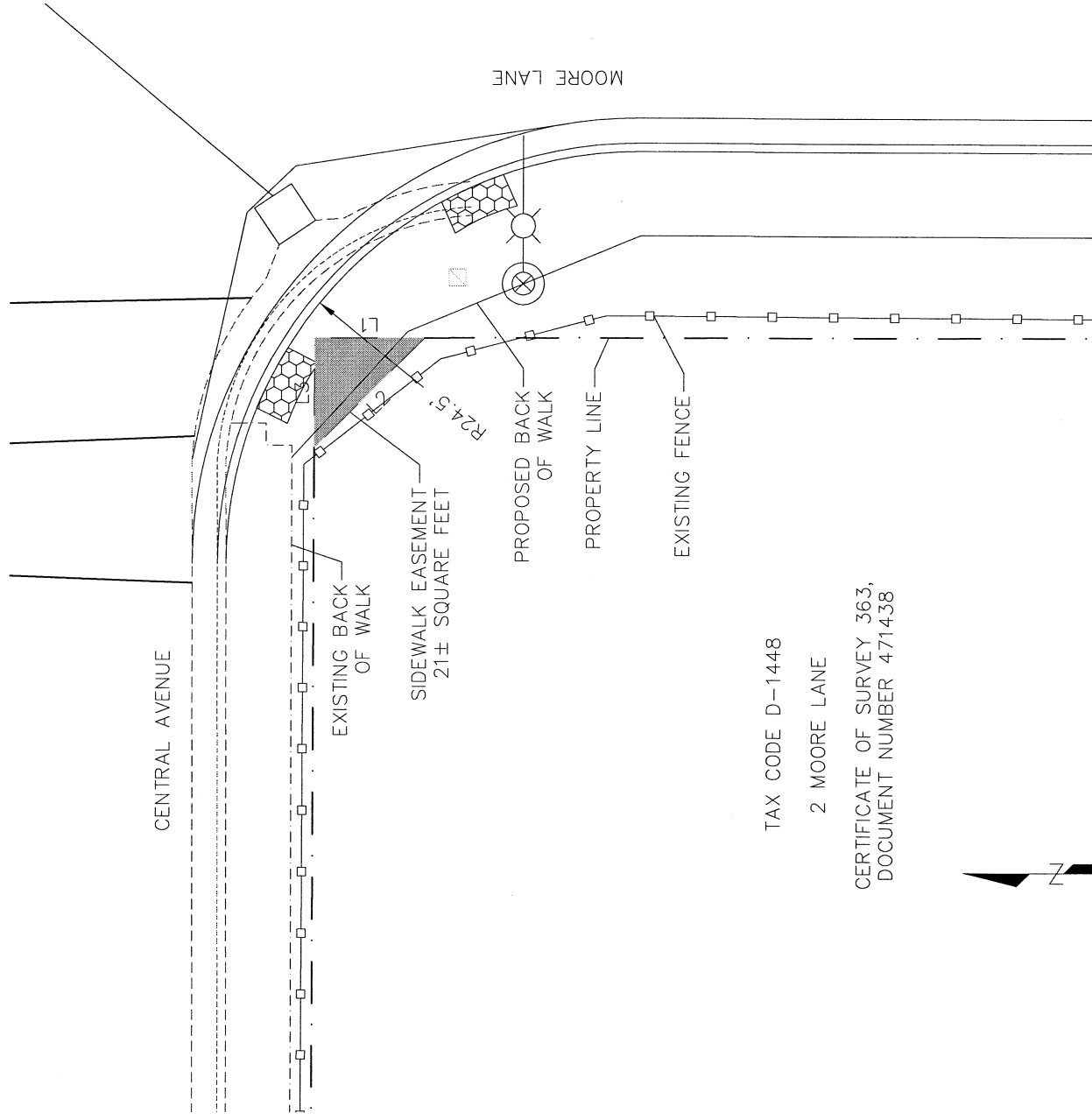
A tract of land situated in Lot 6 of Flanagan Subdivision, Described as Certificate of Survey 363, Document No. 471438. Documents of record at the Yellowstone County Clerk & Recorder, Billings,





# EXHIBIT A

SIDEWALK EASEMENT  
 SITUATED IN LOT 6 OF FLANAGAN SUBDIVISION,  
 DESCRIBED AS CERTIFICATE OF SURVEY 363,  
 DOCUMENT NUMBER 471438  
 BILLINGS, YELLOWSTONE COUNTY, MONTANA



TAX CODE D-1448

2 MOORE LANE

CERTIFICATE OF SURVEY 363,  
 DOCUMENT NUMBER 471438

Parcel Line Table		
Line #	DIRECTION	LENGTH
L1	S0° 07' 11"E	6.50
L2	N44° 59' 56"W	9.21
L3	S89° 52' 40"E	6.50

A tract of land situated in Lot 6 of Flanagan Subdivision, Described as Certificate of Survey 363, Document No. 471438. Documents of record at the Yellowstone County Clerk & Recorder, Billings, Yellowstone County, Montana

Said tract being more particularly described as follows:  
 Beginning at the northeast corner of said Certificate of Survey number 363, point also being on the west right-of-way line of Moore Lane; thence S 00°07'11" E along said west right-of-way for a distance of 6.50 feet; thence N 44°59'56" W and leaving said right-of-way for a distance of 9.21 feet, to a point on the south right-of-way line of Central Avenue; thence S 89°52'40" E along the said south right-of-way line for a distance of 6.50 feet to the Point of Beginning, containing an area of 21 square feet more or less.

## LEGEND



SIDEWALK EASEMENT

CITY OF BILLINGS, MONTANA  
 SIDEWALK EASEMENT EXHIBIT

CITY SID 1369

THIS EXHIBIT IS PREPARED BY THE CITY OF BILLINGS, MONTANA

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Proposed Districting and Apportionment Plan Establishing New House and Senate Districts

**PRESENTED BY:** Tina Volek

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

The State of Montana Districting and Apportionment Commission is required to develop a plan that establishes new House and Senate districts and to submit it to the 2013 Legislature. The Commission will accept proposals from the public and the City Council may choose to adopt and submit one or more plans. City and County staff prepared a Yellowstone County/City of Billings plan that apportions Yellowstone County into 15 House districts. The Commission will develop several statewide plans by early next year and public plans should be submitted soon so that they may be incorporated into the Commission's plans.

**ALTERNATIVES ANALYZED**

The City Council may:

- Approve the plan developed by staff
- Disapprove the plan and not submit a proposal to the Commission
- Modify the staff proposal and submit it to the Commission
- Coordinate a submittal with Yellowstone County or other local governments

**FINANCIAL IMPACT**

There should be no financial impact.

**RECOMMENDATION**

Staff recommends that Council approve the proposed districting and apportionment plan and submit it or coordinate its submittal with other local governments.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Map



**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Donations from Cablevision Systems and Montana-Dakota Utilities Company for MLCT Conference

**PRESENTED BY:** Bruce McCandless

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

Cablevision Systems Corporation would like to donate \$2,500 to be used for jackets for attendees of the Montana League of Cities and Towns (MLCT) conference that will be held in Billings in October 2011. Montana-Dakota Utilities Company would also like to offer their support to the conference by donating \$1000. According to Administrative Order #103, any donation exceeding \$500 must be reviewed and approved by City Council prior to its receipt and expenditure.

**ALTERNATIVES ANALYZED**

The Council may:

1. Accept the donations from Cablevision Systems Corporation and Montana-Dakota Utilities Company ; or
2. Do not accept the donations.

**FINANCIAL IMPACT**

There will be no financial impact to the City unless the Council rejects the donations and must cover the costs that are planned for the donations.

**RECOMMENDATION**

Staff recommends acceptance of the \$2,500 donation from Cablevision Systems Corporation and \$1,000 donation from Montana-Dakota Utilities Company for support of the 2011 MLCT conference.

**APPROVED BY CITY ADMINISTRATOR**

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**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Approval of Domestic Violence Unit & Victim Witness Assistance Sub-Grants

**PRESENTED BY:** Brent Brooks

**Department:** Legal

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**Information**

**PROBLEM/ISSUE STATEMENT**

Since July 2000, the City Attorney's Office has annually applied for and been awarded federal Violence Against Women Act (VAWA) monies through the Montana Board of Crime Control in the form of sub-grants. These sub-grants help fund positions within the City Attorney's Office Domestic Violence Unit and Victim Witness Assistance Program, which together provide statutorily-mandated services to victims of violent crime including domestic violence, sexual assault, stalking, assault and violations of protective orders. The project titles for these sub-grants are the "Victim Witness Assistance Program" (Victim Witness grant) and the "Domestic Violence Unit" (DV Unit grant). The Victim Witness grant partially funds the office's victim/witness program director and a part-time secretary, while the DV Unit grant partially funds a dedicated domestic violence prosecutor. Together, these employees provide specialized prosecutorial services and statutorily-mandated victim services (as well as a wide variety of additional services) concerning crimes of domestic violence, sexual assault, stalking, order-of-protection violations, and assault.

**ALTERNATIVES ANALYZED**

The Council may:

- Accept the grants, continuing the federal and state-supported funding of these positions; or
- Decline the grants, which would require the General Fund to provide all the funds for these state-mandated services.

**FINANCIAL IMPACT**

The sub-grant awards are conditioned upon the City funding at least 25% of the projects' budgets in the form of local match. Historically, the City has paid the costs that are above and beyond the sub-grant awards and that exceeds the match requirement.

The MBCC expects the City to take on more financial responsibility for these projects each year. As such, the MBCC has awarded \$15,746.00 less in FY12 than what the City requested for these two grants.

The total amount of the sub-grant awards from the Board of Crime Control for FY 2012 are:

\$30,126.00 (partial funding for the Victim Witness Assistance Program Director Grant); and

\$41,606.00 (partial funding for the Domestic Violence Dedicated Prosecutor Grant).

Without this grant funding, the City would have the burden of fully funding these important positions in order to maintain the staff and materials necessary to fulfill statutorily-mandated

services to victims of violent crime under MCA sections 46-24-101 through 46-24-212 (2011).

Each year the Montana Department of Justice, Board of Crime Control grant amounts have been estimated into the fiscal year budget. The City's match for the Victim Witness Assistance Program grant totals \$50,512.00 which is a hard match (money). For the Domestic Violence Unit grant the City's match will be at least \$54,325 to fund salary and benefits.

### **RECOMMENDATION**

Staff recommends that the Mayor and City Council approve and accept the Domestic Violence Unit and Victim Witness Assistance Program grants as awarded by the Montana Department of Justice and the Board of Crime Control.

### **APPROVED BY CITY ADMINISTRATOR**

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#### **Attachments**

Prosecutor Grant Award

Victim Witness Grant Award



STATE OF MONTANA  
BOARD OF CRIME CONTROL

PO Box 201408 - 5 South Last Chance Gulch - Helena MT 59620-1408

Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL  
PLEASE RETURN

**GRANT AWARD**

Subgrant: **11-W03-90931**      **DV Unit**

Grantee: Billings City  
PO Box 1178  
Billings, MT 59103

FEIN: 816001237  
Duration: 07/01/2011 through 06/30/2012  
Proj. Dir: Teague Westrope

Award Date:	07/01/2011	Personnel:	\$83,212.00
Federal Amount Awarded:	\$41,606.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$0.00
Guaranteed Local Matching:	\$41,606.00	Equipment:	\$0.00
		Operating:	\$0.00
Total:	\$83,212.00	Total:	\$83,212.00

Source of Federal Funds: 16.588 - Violence Against Women Formula Grant

**Special Conditions**

*Please see attached Special Conditions*

I am pleased to inform you that the Board of Crime Control has approved your application for financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: **06/30/2012**

*Don Merritt*

Don Merritt  
Acting Executive Director  
Board of Crime Control

*7-1-11*

Date

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

Thomas Hanel  
Mayor

Date

## SPECIAL CONDITIONS

Subgrant: 11-W03-90931

DV Unit

Billings City

1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133. This audit must be performed in accordance with GAO's Government Auditing Standards. In conjunction with the beginning date of the award, the audit report period of the state or local governmental entity to be audited under the single audit requirement is 10/01/2010 to 09/30/2011. The audit report must be submitted no later than 06/30/2012 and for each audit cycle thereafter covering the entire award period as originally approved or amended. Subsequent audits must be submitted no later than nine (9) months after the close of the recipient organization's audited fiscal year.

An original copy of the audit report shall be sent to:

Montana Board of Crime Control  
PO Box 201408  
Helena, MT 59620-1408 [ML1]

2. The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements, including EO 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements, 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant assures and certifies that 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, the recipient will forward a copy of the finding to MBCC. [ML2]
3. This grant award is conditional upon availability of government funds and may be reduced at anytime due to budget reductions. [ML10]
4. Award of this grant does not commit the Board of Crime Control to future funding. [ML11]
5. Applicant must maintain time and attendance records to support personnel costs associated with grant project. [ML12]
6. State rates for mileage, per diem, and lodging are maximum amounts that can be charged to subgrants funded by MBCC.

Mileage rate: Effective 07/01/2011 .555 cents per mile

Meals Allowance:	In-State	Out-of State
Morning Meal (12:01AM-10:00AM)	\$5.00	\$7.00
Midday Meal: (10:01AM-3:00PM)	\$6.00	\$11.00
Evening Meal: (3:01PM-12:00AM)	\$12.00	\$23.00
	\$23.00	\$41.00

In order to claim reimbursement for a meal, you must be in a travel status for more than 3 continuous hours within one of the time ranges. To receive the morning meal you must leave before 7:00AM and to receive the evening meal you must return after 6:01PM.

The lodging rate for Montana and federal lodging rate for out-of state lodging is available through the Internet at the following location:

<http://doa.mt.gov/DOAtravel/travelmain.asp>

Grant funds may not be used to pay for out-of state travel without prior approval from MBCC.

Grant funds can not be used for costs and fees associated with cancelation or changes to travel, (ie. Airline, hotels, registration, etc.) unless approved by MBCC.

Reimbursement for lodging without a receipt will be \$12.00

Allowable expenses include emergency working supplies taxi fares, and business telephone calls. Paid receipts

## SPECIAL CONDITIONS

Subgrant: 11-W03-90931

DV Unit

Billings City

must support individual expense items of \$25.00 or more. [ML15]

7. The maximum rate for consultants is \$450.00 (excluding travel and subsistence costs) for an eight (8) hour day. An 8-hour day may include preparation, evaluation and travel time in addition to the time required for actual performance. [ML16]
8. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures. [ML25]
9. Quarterly progress, financial, narrative and statistical reports, in a format required by MBCC are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of Crime Control within 5 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

FIRST LATE REPORT: Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

SECOND LATE REPORT: The grant will be cancelled. The project director must appear before the Application Review Committee and petition to get the grant reinstated. [ML26]

- 10 Consultant services provided by consultants employed with profit, nonprofit, and not-for-profit organizations are subject to competitive bidding procedures. Contracted services provided by other types of organizations may also have restrictions. Please check with Crime Control staff prior to committing grant funds. [ML28]
- 11 Any expenditure that benefits other grants, projects or purposes shall be properly pro-rated and may not be charged entirely to this grant. [ML32]
- 12 Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions. [ML34]
- 13 Subgrantee will assist victims in seeking available crime victim compensation benefits. Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. Program must demonstrate that it will coordinate its activities with the State Victims Compensation Program. [ML35]
- 14 Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board of Crime Control. [ML40]
- 15 Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking. [ML41]
- 16 The grantee shall submit one copy of all proposed publications resulting from this agreement to the Montana Board of Crime Control. Any publications (written, visual, or sound), printed with these funds shall contain the following statement.

This project was supported by Grant No. \_\_\_\_\_ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control. [ML45]

- 17 All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:
  - a) in situations where a trained professional assesses that a victim is in danger of harming herself or others ( i.e., suicide or homicide),

## SPECIAL CONDITIONS

Subgrant: 11-W03-90931

DV Unit

Billings City

b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and

c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim. [ML46]

- 18 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 sub-contractors. [ML49]
- 19 Subgrantee must submit quarterly statistical reports via the AVID database in electronic format. In addition, subgrantee must submit quarterly narrative and financial reports. All three (3) reports are due within 5 (five) days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Application Review Committee to petition for reinstatement. [ML50]
- 20 The subgrantee agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes. [ML53]
- 21 Subgrantee understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC. [ML54]
- 22 **COMMENCEMENT WITHIN 60 DAYS.** If a project is not operational within 60 days of the original start date of the award period, the subgrantee must report by letter to MBCC the steps taken to initiate the project, the reasons for delay, and the expected start date.  
**OPERATIONAL WITHIN 90 DAYS:** If a project is not operational within 90 days of the original start date of the award period, the subgrantee must submit a second statement to MBCC explaining the implementation delay. Upon receipt of the 90-day letter MBCC may cancel the project. MBCC may also, where extenuating circumstances warrant, extend the implementation date of the project past the 90-day period. When this occurs, the appropriate subgrantee files and records must so note the extension. [ML60]

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.

\_\_\_\_\_  
Thomas W Hanel  
Mayor

\_\_\_\_\_  
Date

## **Equal Employment Opportunity Plan – EEOP**

Federal regulations require recipients of federal funds prepare, maintain on file, submit to MBCC for review, and/or implement an Equal Employment Opportunity Plan (EEOP). The purpose of an EEOP is to ensure full and equal participation of men and women regardless of race or national origin in the workforce. Below is a list of criteria to determine what you need to do to comply with federal regulations.

- An agency receiving \$500,000 or more in federal funds and has 50 or more employees must submit an EEOP to Montana Board of Crime Control (MBCC) within 45 days of the date of award.
- If an agency has fewer than 50 employees, regardless of the amount of the award, no EEOP is required; however, the agency must fill out a Certification Form (included in the award packet) and return it to MBCC within 45 days of the date of award.
- Pursuant to the Department of Justice regulations, each agency that receives \$25,000 or more, but under \$500,000 in federal funds and has 50 or more employees, is required to maintain an EEOP on file and return the Certification Form.
- A recipient of under \$25,000 is not required to maintain or submit an EEOP, but must return the Certification Form.
- Educational, non-profit or Indian Tribes are not required to maintain or submit an EEOP, but must return the Certification Form.

Determine which of the above criteria your agency falls under, then complete and sign the applicable section and return it to MBCC. If you need to submit an Equal Employment Opportunity Plan, please contact MBCC.

**CERTIFICATION FORM**

Recipient Name and Address: City of Billings, P.O. Box 1178, Billings, MT 59103

Grant Title: DV Unit Grant Number: 11-W03-90931 Award Amount: \$41,606.00

Contact Person Name and Title: Teague Westrope, Deputy City Attorney Phone Number: (406) 247-8602

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-.308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete Section A below. Recipients that claim the limited exemption from the submission requirement, must complete Section B below. A recipient should complete either Section A or Section B, not both. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7<sup>th</sup> Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

**Section A- Declaration Claiming Complete Exemption from the EEOP Requirement. Please check all the boxes that apply.**

- |                                                                  |                                                                             |
|------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <input type="checkbox"/> Recipient has less than 50 employees,   | <input type="checkbox"/> Recipient is an Indian tribe,                      |
| <input type="checkbox"/> Recipient is a non-profit organization, | <input type="checkbox"/> Recipient is an educational institution, or        |
| <input type="checkbox"/> Recipient is a medical institution,     | <input type="checkbox"/> Recipient is receiving an award less than \$25,000 |

I, \_\_\_\_\_ [responsible official], certify that \_\_\_\_\_ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R §42.302. I further certify that \_\_\_\_\_ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.**

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Thomas Hanel [responsible official], certify that the City of Billings [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: City Clerk [organization], at 220 N. 27<sup>th</sup> St., Billings, MT 59101 [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Thomas Hanel, Mayor  
Print or type Name and Title \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

*Complete top and either Section A or Section B*



U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 28 CFR Part 69, "New Restrictions on Lobbying" and 28 CFR Part 67, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Justice determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check  if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 4061/7.

Check  if the State has elected to complete OJP Form 4061/7.

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

City of Billings, P.O. Box 1178, Billings, MT 59103

2. Application Number and/or Project Name

DV Unit

3. Grantee IRS/Vendor Number

Federal Employer  
Identification Number  
(FEIN): 816001237

4. Typed Name and Title of Authorized Representative

Thomas Hanel, Mayor

5. Signature

6. Date



STATE OF MONTANA  
BOARD OF CRIME CONTROL

PO Box 201408 - 5 South Last Chance Gulch - Helena MT 59620-1408

Phone: (406) 444-3604 Fax: (406) 444-4722

ORIGINAL  
PLEASE RETURN

**GRANT AWARD**

Subgrant: 11-W03-90916

**BILLINGS CITY ATTORNEY'S VICTIM WITNESS PROGRAM**

Grantee: Billings City  
PO Box 1178  
Billings, MT 59103

FEIN: 816001237  
Duration: 07/01/2011 through 06/30/2012  
Proj. Dir: Karen Benner

Award Date:	07/01/2011	Personnel:	\$63,935.00
Federal Amount Awarded:	\$30,126.00	Contract Services:	\$0.00
State Amount Awarded:	\$0.00	Travel:	\$0.00
Guaranteed Local Matching:	\$33,809.00	Equipment:	\$0.00
		Operating:	\$0.00
Total:	\$63,935.00	Total:	\$63,935.00

Source of Federal Funds: 16.588 - Violence Against Women Formula Grant

**Special Conditions**

*Please see attached Special Conditions*

I am pleased to inform you that the Board of Crime Control has approved your application for financial assistance. This grant is subject to the special conditions listed above, general conditions attached hereto, and must be implemented and administered along guidelines already established by your agency. This grant shall become effective, as of the date of award, when the grantee signs and returns a copy of this grant award to the Board of Crime Control.

Funds allocated to this project, both awarded and matching, must be obligated prior to: **06/30/2012**

*Don Merritt*

Don Merritt  
Acting Executive Director  
Board of Crime Control

*7-1-11*  
Date

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above described grant on the terms and conditions set forth above or incorporated by reference therein.

Thomas Hanel  
Mayor

Date

## SPECIAL CONDITIONS

Subgrant: 11-W03-90916

**BILLINGS CITY ATTORNEY'S VICTIM  
WITNESS PROGRAM**

Billings City

1. If your agency receives \$500,000.00 or more in federal assistance from all sources during the fiscal year, you are required to have an audit conducted in accordance with federal circular A-133.

The recipient agrees to comply with the organizational audit requirements of OMB Circular A-133. This audit must be performed in accordance with GAO's Government Auditing Standards. In conjunction with the beginning date of the award, the audit report period of the state or local governmental entity to be audited under the single audit requirement is 10/01/2010 to 09/30/2011. The audit report must be submitted no later than 06/30/2012 and for each audit cycle thereafter covering the entire award period as originally approved or amended. Subsequent audits must be submitted no later than nine (9) months after the close of the recipient organization's audited fiscal year.

An original copy of the audit report shall be sent to:

Montana Board of Crime Control  
PO Box 201408  
Helena, MT 59620-1408 [ML1]

2. The applicant hereby assures and certifies compliance with all federal statutes, regulations, policies, guidelines and requirements, including EO 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements, 28 CFR, Part 66, Common Rule, that govern the application, acceptance and use of federal funds for this federally assisted project. Also, the applicant assures and certifies that 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, the recipient will forward a copy of the finding to MBCC. [ML2]
3. This grant award is conditional upon availability of government funds and may be reduced at anytime due to budget reductions. [ML10]
4. Award of this grant does not commit the Board of Crime Control to future funding. [ML11]
5. Applicant must maintain time and attendance records to support personnel costs associated with grant project. [ML12]
6. State rates for mileage, per diem, and lodging are maximum amounts that can be charged to subgrants funded by MBCC.

Mileage rate: Effective 07/01/2011 .555 cents per mile

Meals Allowance:	In-State	Out-of State
Morning Meal (12:01AM-10:00AM)	\$5.00	\$7.00
Midday Meal: (10:01AM-3:00PM)	\$6.00	\$11.00
Evening Meal: (3:01PM-12:00AM)	\$12.00	\$23.00
	\$23.00	\$41.00

In order to claim reimbursement for a meal, you must be in a travel status for more than 3 continuous hours within one of the time ranges. To receive the morning meal you must leave before 7:00AM and to receive the evening meal you must return after 6:01PM.

The lodging rate for Montana and federal lodging rate for out-of state lodging is available through the Internet at the following location:

<http://doa.mt.gov/DOAtravel/travelmain.asp>

Grant funds may not be used to pay for out-of state travel without prior approval from MBCC.

Grant funds can not be used for costs and fees associated with cancelation or changes to travel, (ie. Airline, hotels, registration, etc.) unless approved by MBCC.

Reimbursement for lodging without a receipt will be \$12.00

Allowable expenses include emergency working supplies taxi fares, and business telephone calls. Paid receipts

## SPECIAL CONDITIONS

Subgrant: 11-W03-90916

**BILLINGS CITY ATTORNEY'S VICTIM  
WITNESS PROGRAM**

Billings City

must support individual expense items of \$25.00 or more. [ML15]

7. The maximum rate for consultants is \$450.00 (excluding travel and subsistence costs) for an eight (8) hour day. An 8-hour day may include preparation, evaluation and travel time in addition to the time required for actual performance. [ML16]
8. No more than 5% of the total project budget is to be used for public awareness or public education type expenditures. [ML25]
9. Quarterly progress, financial, narrative and statistical reports, in a format required by MBCC are required for calendar quarters ending: September 30, December 31, March 31, and June 30. These reports are to be received by the Montana Board of Crime Control within 5 days following the end of the calendar quarter. Subgrantees who fail to submit reports by the due date will be subject to the following:

**FIRST LATE REPORT:** Subgrantee will be notified to cease all expenditures of grant funds until the reports are submitted.

**SECOND LATE REPORT:** The grant will be cancelled. The project director must appear before the Application Review Committee and petition to get the grant reinstated. [ML26]

- 10 Consultant services provided by consultants employed with profit, nonprofit, and not-for-profit organizations are subject to competitive bidding procedures. Contracted services provided by other types of organizations may also have restrictions. Please check with Crime Control staff prior to committing grant funds. [ML28]
- 11 Any expenditure that benefits other grants, projects or purposes shall be properly pro-rated and may not be charged entirely to this grant. [ML32]
- 12 Subgrantee may be required to appear before a subcommittee, at the Board's discretion, to explain their progress towards successful implementation of the grant. Should grant problems or deficiencies be detected, the subcommittee is authorized to initiate corrective actions. [ML34]
- 13 Subgrantee will assist victims in seeking available crime victim compensation benefits. Such assistance may be achieved by identifying and notifying potential recipients of the compensation program and assisting them with application forms and procedures. Program must demonstrate that it will coordinate it's activities with the State Victims Compensation Program. [ML35]
- 14 Any funds not properly obligated during the grant period shall lapse and revert to the Montana Board of Crime Control. [ML40]
- 15 Funding for this project is designated for improving the justice system's response to violent crimes against women. Therefore, it is a special condition of this subgrant contract that priority for services from your program be given to women who are victims of gender-motivated crime, especially domestic violence, dating violence, sexual assault, and stalking. [ML41]
- 16 The grantee shall submit one copy of all proposed publications resulting from this agreement to the Montana Board of Crime Control. Any publications (written, visual, or sound), printed with these funds shall contain the following statement.

This project was supported by Grant No. \_\_\_\_\_ awarded by the Montana Board of Crime Control (MBCC) through the Office of Justice Programs, US Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the US Department of Justice.

All media, press releases and public presentations must acknowledge funding through Montana Board of Crime Control. [ML45]

- 17 All information furnished to VAWA subgrantee agencies by victims of gender specific violence, including identifying information, is confidential, with the following exceptions:
  - a) in situations where a trained professional assesses that a victim is in danger of harming herself or others ( i.e., suicide or homicide),

**SPECIAL CONDITIONS**

Subgrant: 11-W03-90916

**BILLINGS CITY ATTORNEY'S VICTIM  
WITNESS PROGRAM**

Billings City

b) the victim informs the subgrantee that she is violating a court order or that there is a warrant out for her arrest, and

c) in the event that the victim provides written consent for a release of information.

Programs are required by state statute MCA 26-1-812 Advocate Privilege, to maintain confidentiality of victims, privilege belongs to the victim and may not be waived even if the victim is unreachable. This privilege terminates upon death of a victim. [ML46]

- 18 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 sub-contractors. [ML49]
- 19 Subgrantee must submit quarterly statistical reports via the AVID database in electronic format. In addition, subgrantee must submit quarterly narrative and financial reports. All three (3) reports are due within 5 (five) days following the end of the calendar quarter. Failure to do so will require the subgrantee to cease all expenditures and appear before the Application Review Committee to petition for reinstatement. [ML50]
- 20 The subgrantee agrees to provide services to victims of federal and tribal crimes on the same basis as victims of state and local crimes. [ML53]
- 21 Subgrantee understands and agrees that it CANNOT use any federal funds, either directly or indirectly, in support of the enactment, repeal, modification or adoption of any law, regulation or policy, at any level of government, without the express prior written approval from MBCC. [ML54]
- 22 **COMMENCEMENT WITHIN 60 DAYS.** If a project is not operational within 60 days of the original start date of the award period, the subgrantee must report by letter to MBCC the steps taken to initiate the project, the reasons for delay, and the expected start date.  
**OPERATIONAL WITHIN 90 DAYS:** If a project is not operational within 90 days of the original start date of the award period, the subgrantee must submit a second statement to MBCC explaining the implementation delay. Upon receipt of the 90-day letter MBCC may cancel the project. MBCC may also, where extenuating circumstances warrant, extend the implementation date of the project past the 90-day period. When this occurs, the appropriate subgrantee files and records must so note the extension. [ML60]

I, as authorized representative of the above grantee agency, hereby signify acceptance of the above special conditions.

\_\_\_\_\_  
Thomas W Hanel  
Mayor

\_\_\_\_\_  
Date

## **Equal Employment Opportunity Plan – EEOP**

Federal regulations require recipients of federal funds prepare, maintain on file, submit to MBCC for review, and/or implement an Equal Employment Opportunity Plan (EEOP). The purpose of an EEOP is to ensure full and equal participation of men and women regardless of race or national origin in the workforce. Below is a list of criteria to determine what you need to do to comply with federal regulations.

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Determine which of the above criteria your agency falls under, then complete and sign the applicable section and return it to MBCC. If you need to submit an Equal Employment Opportunity Plan, please contact MBCC.

**CERTIFICATION FORM**

Recipient Name and Address: \_\_\_\_\_

Grant Title: \_\_\_\_\_ Grant Number: \_\_\_\_\_ Award Amount: \_\_\_\_\_

Contact Person Name and Title: \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_

Federal regulations require recipients of financial assistance from the Office of Justice Programs (OJP), its component agencies, and the Office of Community Oriented Policing Services (COPS) to prepare, maintain on file, submit to OJP for review, and implement an Equal Employment Opportunity Plan (EEOP) in accordance with 28 C.F.R §§ 42.301-308. The regulations exempt some recipients from all of the EEOP requirements. Other recipients, according to the regulations, must prepare, maintain on file and implement an EEOP, but they do not need to submit the EEOP to OJP for review. Recipients that claim a complete exemption from the EEOP requirement must complete Section A below. Recipients that claim the limited exemption from the submission requirement, must complete Section B below. A recipient should complete *either* Section A or Section B, not both. If a recipient receives multiple OJP or COPS grants, please complete a form for each grant, ensuring that any EEOP recipient certifies as completed and on file (if applicable) has been prepared within two years of the latest grant. Please send the completed form(s) to the Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice, 810 7<sup>th</sup> Street, N.W., Washington, D.C. 20531. For assistance in completing this form, please call (202)307-0690 or TTY (202) 307-2027.

**Section A- Declaration Claiming Complete Exemption from the EEOP Requirement.** Please check all the boxes that apply.

- |                                                                  |                                                                             |
|------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <input type="checkbox"/> Recipient has less than 50 employees,   | <input type="checkbox"/> Recipient is an Indian tribe,                      |
| <input type="checkbox"/> Recipient is a non-profit organization, | <input type="checkbox"/> Recipient is an educational institution, or        |
| <input type="checkbox"/> Recipient is a medical institution,     | <input type="checkbox"/> Recipient is receiving an award less than \$25,000 |

I, \_\_\_\_\_ [responsible official], certify that \_\_\_\_\_ [recipient] is not required to prepare an EEOP for the reason(s) checked above, pursuant to 28 C.F.R §42.302. I further certify that \_\_\_\_\_ [recipient] will comply with applicable Federal civil rights laws that prohibit discrimination in employment and in the delivery of services.

Print or type Name and Title \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**Section B- Declaration Claiming Exemption from the EEOP Submission Requirement and Certifying That an EEOP Is on File for Review.**

If a recipient agency has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, then the recipient agency does not have to submit an EEOP to OJP for review as long as it certifies the following (42 C.F.R. § 42.305):

I, Thomas Hanel [responsible official], certify that the City of Billings [recipient], which has 50 or more employees and is receiving a single award or subaward for \$25,000 or more, but less than \$500,000, has formulated an EEOP in accordance with 28 CFR §42.301, *et seq.*, subpart E. I further certify that the EEOP has been formulated and signed into effect within the past two years by the proper authority and that it is available for review. The EEOP is on file in the office of: City Clerk [organization], at 220 N 27th Billings MT 59101 [address], for review by the public and employees or for review or audit by officials of the relevant state planning agency or the Office for Civil Rights, Office of Justice Programs, U. S. Department of Justice, as required by relevant laws and regulations.

Print or type Name and Title \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

*Complete top and either  
Section A or Section B*



U.S. DEPARTMENT OF JUSTICE  
OFFICE OF JUSTICE PROGRAMS  
OFFICE OF THE COMPTROLLER

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

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(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS (DIRECT RECIPIENT)

As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, for prospective participants in primary covered transactions, as defined at 28 CFR Part 67, Section 67.510—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check  if there are workplaces on file that are not identified here.

Section 67, 630 of the regulations provides that a grantee that is a State may elect to make one certification in each Federal fiscal year. A copy of which should be included with each application for Department of Justice funding. States and State agencies may elect to use OJP Form 406177.

Check  if the State has elected to complete OJP Form 406177.

**DRUG-FREE WORKPLACE  
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67; Sections 67.615 and 67.620—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Department of Justice, Office of Justice Programs, ATTN: Control Desk, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

1. Grantee Name and Address:

City of Billings  
220 N 27th Billings, MT 59101

2. Application Number and/or Project Name

3. Grantee IRS/Vendor Number

816-00-1237

Billings City Attorneys Office Victim Witness Program

4. Typed Name and Title of Authorized Representative

Thomas Hanel, Mayor

5. Signature

6. Date

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Resolution of Intent to Create SILMD 310 - Bench Boulevard Connector, Main to 1,000' East of the Intersection

**PRESENTED BY:** David Mumford

**Department:** Public Works

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**Information**

**PROBLEM/ISSUE STATEMENT**

With the construction of the Bench Boulevard Connector project, streetlights will be installed on Bench Boulevard between Main Street and approximately 1,000' east of the intersection. In order to pay for the ongoing energy and maintenance costs of the lights, it is necessary to create a Special Improvement Lighting Maintenance District (SILMD) to assess the district costs to abutting and benefiting property owners. Passage of the Resolution of Intent is the first step in the legal process of creating an SILMD. Passage of the Resolution of Intent will trigger the mailing of legal notices to the affected property owners and set a Council public hearing for the November 14, 2011, City Council meeting.

**ALTERNATIVES ANALYZED**

The Council may:

- Pass the Resolution of Intent to Create SILMD 310 - Bench Boulevard Connector and set a public hearing for the the SILMD creation on November 14, 2011; or
- Do not pass this Resolution, nor set a public hearing, leaving this section of Bench Boulevard without lighting.

**FINANCIAL IMPACT**

All energy and maintenance costs for this proposed light district will be paid for by assessments against properties within the district. Installation of the street lights will be paid for under the 6th Avenue North to Bench Boulevard Connector project and not by assessments.

**RECOMMENDATION**

Staff recommends that Council pass this Resolution of Intent to create SILMD 310 and set a public hearing date for November 14, 2011.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Resolution

Exh A - Map

Exh B - Property

Exh C - Description

# SILMD 310

RESOLUTION NO. 11-\_\_\_\_\_

A RESOLUTION OF INTENTION TO CREATE SPECIAL IMPROVEMENT LIGHTING MAINTENANCE DISTRICT NO. 310 OF THE CITY OF BILLINGS, MONTANA, FOR THE PURPOSE OF PROVIDING ENERGY AND MAINTENANCE FOR STREET LIGHTS, DESIGNATING THE NUMBER OF SAID DISTRICT, DESCRIBING THE BOUNDARIES THEREOF, STATING THE GENERAL CHARACTER OF THE IMPROVEMENTS TO BE MADE, ESTABLISHING THE ESTIMATE OF THE COST OF MAINTAINING SUCH LIGHTS AND SUPPLYING ELECTRICAL CURRENT THEREFOR FOR THE FIRST YEAR, THE PROPORTION OF THE COST TO BE ASSESSED AGAINST THE ABUTTING PROPERTY, AND THE METHOD OF ASSESSMENT OF SAID COST.

WHEREAS, the City Council of Billings, Montana, has determined that the public interest and convenience require the creation of a Special Improvement Lighting Maintenance District as hereinafter provided;

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

## SECTION 1:

That the public interest and convenience require, and it is deemed necessary, to create a Special Improvement Lighting Maintenance District for the purpose providing energy and maintenance for new street lights for lighting in said district; and the intention of said City Council to create such a district, hereinafter more particularly described, is hereby declared.

## SECTION 2:

That said district shall be known and designated as "Special Improvement Lighting Maintenance District No. 310" hereinafter called the District, and the boundaries of the District are hereby declared to include lots, parcels and pieces of land abutting Bench Boulevard between Main Street and Airport Road, as shown on the map designated as Exhibit "A" attached hereto, and as listed in Exhibit "B" which is attached hereto. The district boundary shall be as described in Exhibit "C" attached hereto.

## SECTION 3:

That the City of Billings, Montana, hereby finds, determines and declares that each of the lots, blocks, pieces and parcels of land situated within the boundaries of the District, will be especially benefited and affected by said improvements, and that all of the property included within the District is hereby declared to be the property to be assessed for the cost and expense of obtaining the electrical energy for and maintenance of said street lights.

## SECTION 4:

That the general character of the improvements to be made for the District is hereby declared to be as follows: The provision of energy and maintenance for street lighting facilities consisting of thirteen (13) 250-watt HPS luminaries and five (5) LED pedestrian underpass luminaires. The City of Billings shall own the thirteen (13) streetlights and all

associated appurtenant structures and materials, and Yellowstone County shall own the five (5) LED pedestrian underpass luminaires and all associated appurtenant structures and materials.

SECTION 5:

The City of Billings intends to establish the contract rate for supplying electrical energy in accordance with the rate schedule approved by the Montana Public Service Commission. Said rate is currently estimated at \$11.25 per streetlight unit, per month, and \$2.63 per underpass luminaire unit, per month, and that NorthWestern Energy Company shall provide energy to the lighting fixtures. That the City of Billings shall provide normal maintenance to lighting fixtures, poles, cables and other incidental equipment, and shall at all times own said lighting fixtures, poles, cables and other incidental equipment.

SECTION 6:

The estimate of the cost of the District per year, including City administrative costs, is the sum of \$3,327.91; that the entire cost of said District shall be paid by the owners of the property within said District, with each lot, parcel or piece of land within the District to be assessed for that portion of the whole cost which its assessable area bears to the assessable area of the entire District, exclusive of streets, avenues, alleys and public places. The estimated cost of the District per year for property owners is on the basis of approximately \$2.37 per linear foot.

SECTION 7:

That the entire cost of the District shall be paid by an annual assessment against the property in the District; that annually, pursuant to MCA 7-12-4332, the City Council shall adopt a resolution estimating the cost of maintaining said lights including a reserve, and furnishing electrical current and assessing all of said property within said District for the annual costs; that all monies derived from the collection of such assessments shall be paid into a fund to be known as "Special Lighting Maintenance District No. 310 Maintenance Fund," and warrants shall be drawn on said fund for the payment of such costs of maintaining such lights and supplying electrical current therefore.

SECTION 8:

That on the 14th day of November, 2011, at 6:30 o'clock p.m., at the Council Chambers of the City Hall in said City, the City Council intends to create such Special Improvement Lighting Maintenance District No. 310 and will hear objections and protests against the proposed improvements and the extent and creation of such District to be assessed, or any matter pertaining thereto, at said time and place, by any person, firm, or corporation who has filed a written protest with the City Clerk of the City of Billings within fifteen (15) days after the date on which the Notice of the passage of this Resolution of Intention is mailed to the property owners affected and published in "The Billings Times".

SECTION 9:

That the City Clerk is hereby authorized and directed to publish a copy of the Notice of the passage of this Resolution in "The Billings Times", a weekly newspaper published and circulated in the City of Billings, Montana, and

to send a copy of said Notice to the owners of all the lots, blocks, pieces or parcels of land included within the boundaries of said Special Improvement Lighting Maintenance District No. 310. Said notice is to be published and mailed on the same date.

PASSED by the City Council and APPROVED this 11th day of October, 2011.

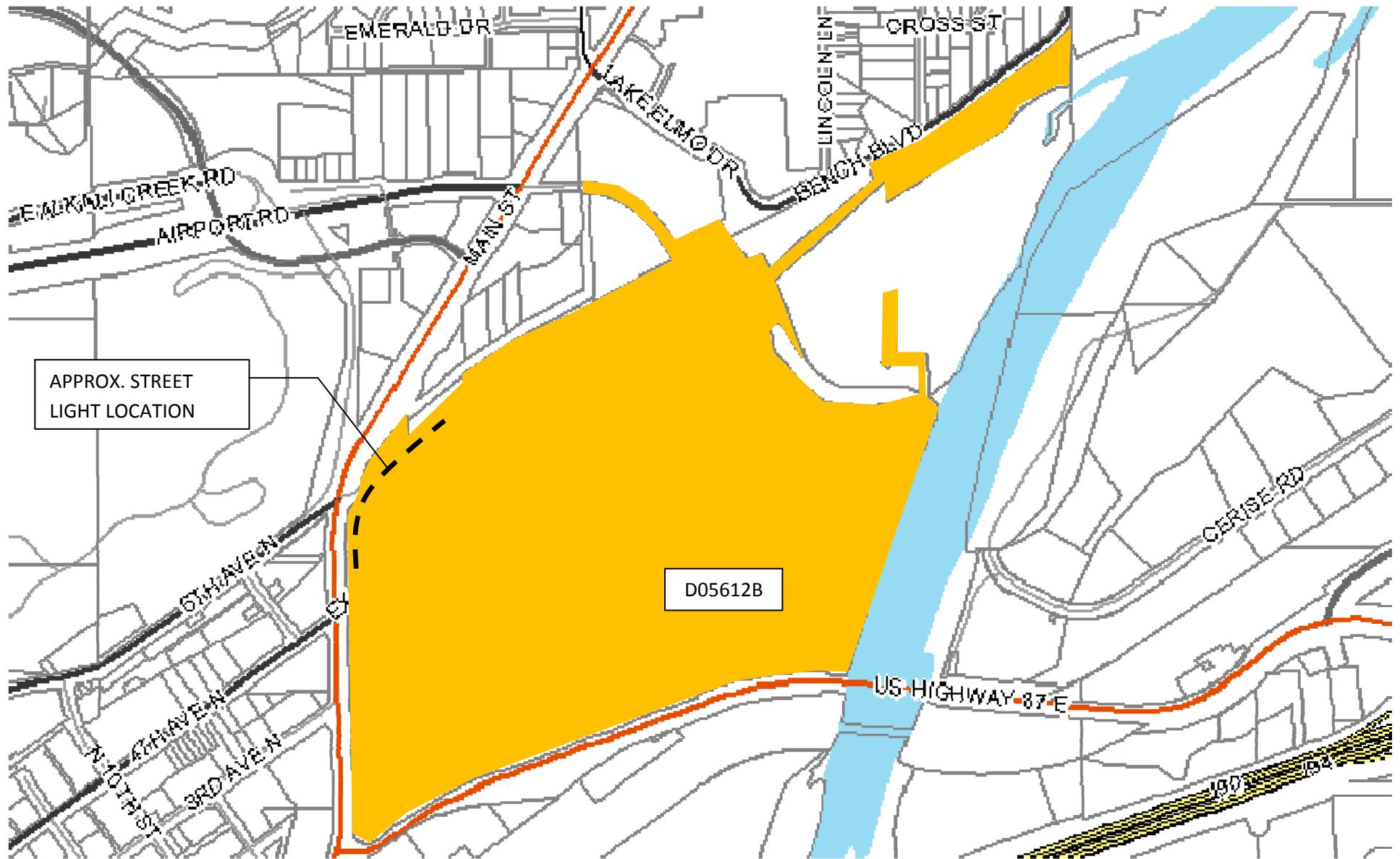
CITY OF BILLINGS

By \_\_\_\_\_  
Thomas W. Hanel Mayor

ATTEST:

By \_\_\_\_\_  
Cari Martin City Clerk

SILMD 310  
EXHIBIT A



SILMD 310 - Bench Boulevard, Main to Airport

TaxID	OwnerName	PhysicalAddress	Lot	Block	Subdivision	Property Frontage (LF)	Assessment
D05612B	YELLOWSTONE COUNTY	PO BOX 35000	n/a	n/a	n/a	1404.87	\$ 3,327.91

# **SILMD 310 – Bench Boulevard Main Street to Airport Road**

## **Exhibit C Boundary Description**

The following lots are included within SILMD 310:

- A portion of a tract of land situated in the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 27, T.1S., R.26E., P.MM., Yellowstone County, Montana, containing 1,400 linear feet, more or less.

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Second Reading of Ordinance to Add Recently Annexed Property to Ward I

**PRESENTED BY:** Candi Beaudry

**Department:** Planning & Community Services

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**Information**

**PROBLEM/ISSUE STATEMENT**

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexing property into the city. The City Council approved the annexation of Tract 1 of Certificate of Survey Number 1591 and Tract 1 of Certificate of Survey Number 1596, located at 3128 South Frontage Road (Annexation #11-02) on September 12, 2011. This annexation requires a change in the boundaries of Ward I to include the subject property. Two readings are required for this action. The Council approved the Ward I ordinance on first reading at its meeting on September 26, 2011. The second reading is scheduled for this meeting. If the Council approves this ordinance on second reading, the property will be included in Ward I.

**ALTERNATIVES ANALYZED**

The subject property has already been annexed into the City. The process to complete the annexation of the property is for the City Council to include the subject property in the corresponding City Ward. Ward I is the appropriate Ward for this property. The City Council should approve second reading of the ordinance that adjusts the Ward I boundary.

**FINANCIAL IMPACT**

There should be no direct financial impact to the City by adding the subject property to Ward I.

**RECOMMENDATION**

Staff recommends that Council approve this ordinance on second reading adding recently annexed property to Ward I.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Ward I Ordinance

**ORDINANCE NO. 11-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD I PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward I the following described real property:

Tracts of land situated in the N1/2 of Section 15, T.1S., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Being Tract 1 of Certificate of Survey Number 1591, Recorded August 20, 1976, under Document No. 1026729, Records of Yellowstone County;  
Tract 1 of Certificate of Survey Number 1596, Recorded September 16, 1976, under Document No. 1029099, Records of Yellowstone County;

Containing 16.937 gross and net acres.  
(# 11-02) See Exhibit "A" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 26<sup>th</sup> day of September, 2011.

PASSED by the City Council on the second reading this 11<sup>th</sup> day of October, 2011.

THE CITY OF BILLINGS:

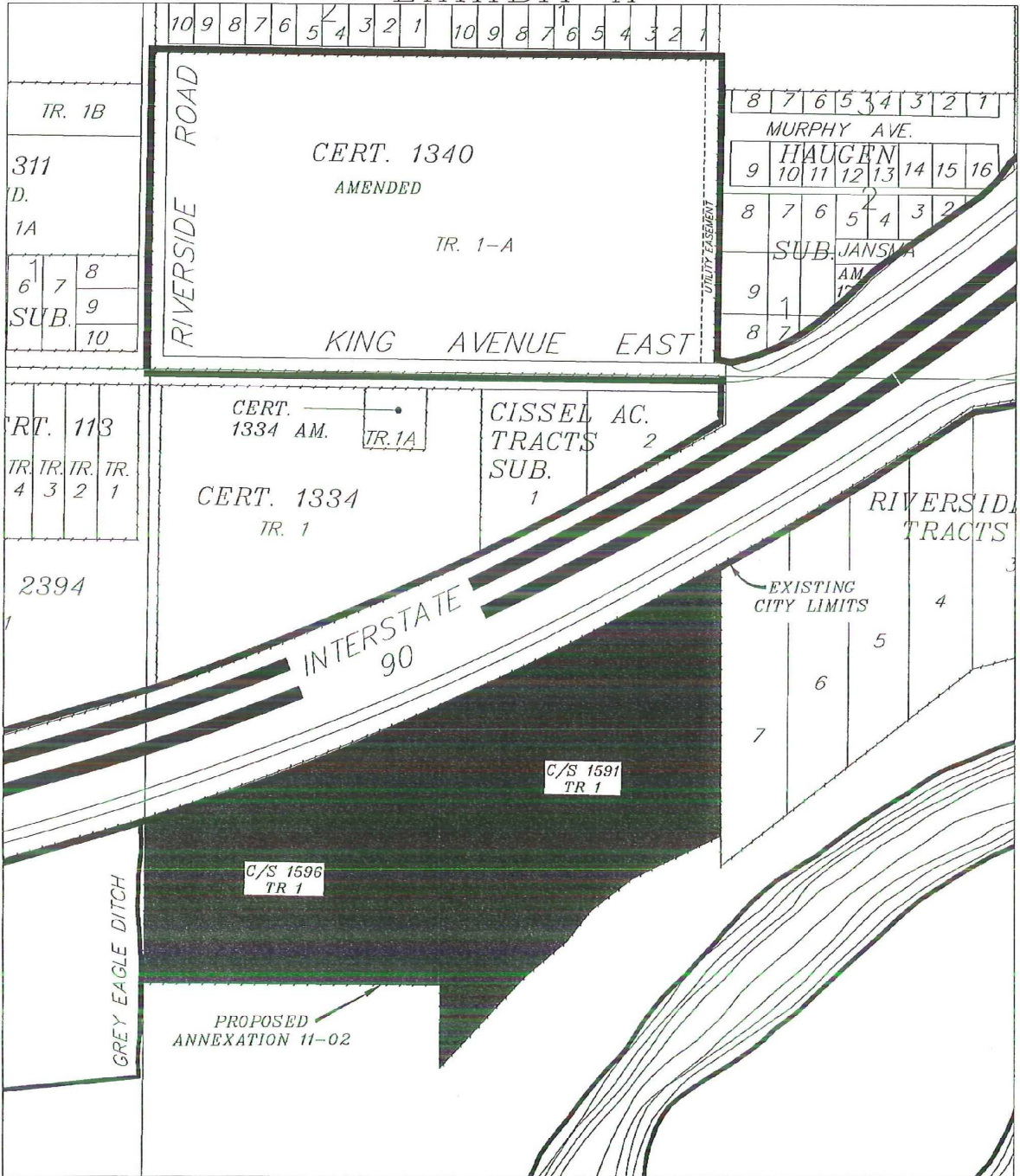
\_\_\_\_\_  
Thomas W. Hanel, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, CITY CLERK

(AN 11-02)

# EXHIBIT A



**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Payment of Claims September 2, 2011.

**PRESENTED BY:** Pat M. Weber, Finance Director

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

Claims in the amount of \$787,034.91 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 2, 2011, is available in the Finance Department.

**ALTERNATIVES ANALYZED**

The Council may:

- Approve the payment of claims; or
- Not approve the payment of claims.

**FINANCIAL IMPACT**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

**RECOMMENDATION**

Staff recommends that Council approve the Payment of Claims.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

List of claims greater than \$2500.

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
09/02/2011 630-1753-485.73-10	748349 08/31/2011	ACE ELECTRIC INC	40 MISC SERVICES	25445	287062 02/2012	4,807.22 4,807.22	
09/02/2011 280-6581-464.72-77	748355 08/29/2011	AMERICAN TITLE & ESCROW	159 1ST TIME HB-HOLUM	HOLUM, 404 S 29	286946 02/2012	15,000.00 15,000.00	
09/02/2011 503-7491-603.93-90	748379 08/31/2011	BROWN AND CALDWELL	18626 WO0816 SCADA UPGRADE PHS2	3/140653	282469 02/2012	8,597.07 8,597.07	
09/02/2011 505-7515-609.36-71 441-3165-431.93-11 503-7591-609.93-40 513-8591-625.93-40 840-3184-431.93-10 845-3186-431.93-10	748381 08/29/2011 08/31/2011 08/31/2011 08/31/2011 08/31/2011 08/31/2011	BUSINESS TAX SECTION	2449 MISC SERVICES WO0911 RIMROCK 17TH/REHBG WO0911 RIMROCK 17TH/REHBG WO0911 RIMROCK 17TH/REHBG WO0911 RIMROCK 17TH/REHBG WO0911 RIMROCK 17TH/REHBG	025710 2 2 2 2 2	285350 02/2012 284005 02/2012 284005 02/2012 284005 02/2012 284005 02/2012 284005 02/2012	2,537.32 147.25 35.39 729.05 109.52 496.20 1,019.91	
09/02/2011 840-3184-431.36-60	748385 08/31/2011	CASTLEROCK EXCAVATING INC	19707 CONNELL STRMDRAIN BACK FL	785	286998 02/2012	4,900.00 4,900.00	
09/02/2011 561-7113-711.36-60 561-7113-711.36-60	748393 08/29/2011 08/29/2011	CONNOR'S GARAGE DOOR SERVICE	20573 INVOICE #1520 INVOICE #1526	1520/1526 1520/1526	F13359 02/2012 F13359 02/2012	3,071.00 2,551.00 520.00	
09/02/2011 650-1567-487.36-90	748394 09/01/2011	CORY SIMONS CONSTRUCTION	21869 MISC SERVICES	27	287088 03/2012	2,550.00 2,550.00	
09/02/2011 627-1752-417.35-12 627-1752-417.35-15 627-1752-417.51-61 627-1752-417.35-11 627-1752-417.35-15 627-1752-417.35-13	748401 08/22/2011 08/22/2011 08/22/2011 08/22/2011 08/22/2011 08/22/2011	EBMS	20398 ADMIN FEES SPECIFIC PREM CARE LINK FEE FLEX ADMIN FEE PRO FEE SCRIPTS		02/2012 02/2012 02/2012 02/2012 02/2012 02/2012	64,729.56 16,298.00 34,690.46 7,051.35 2,075.00 3,360.00 1,254.75	
09/02/2011 630-1753-485.73-10 630-1753-485.73-10	748412 08/30/2011 08/30/2011	FRANK & WETCH TRUCK BODY INC	4662 MISC SERVICES MISC SERVICES	9045 9050	287036 02/2012 287036 02/2012	5,400.98 3,618.43 1,782.55	
09/02/2011 601-0000-141.71-41 601-0000-141.71-41 601-0000-141.71-41 601-0000-141.71-41 601-0000-141.71-41 601-0000-141.71-41	748415 08/23/2011 08/30/2011 08/30/2011 09/01/2011 09/01/2011 09/01/2011	GILLIG CORPORATION	18154 MP MP MP MP MP MP	4740819 4745418 4745706 4730953 4734561 4744928	02/2012 02/2012 02/2012 03/2012 03/2012 03/2012	4,862.98 2,981.26 29.80 148.88 136.08 513.70 1,053.26	
09/02/2011 512-8400-623.23-60	748417 08/29/2011	HACH COMPANY	1554 MISC SERVICES	2060586	286971 02/2012	10,422.03 322.00-	

PROGRAM: GM350L  
CITY OF BILLINGS

MINIMUM AMOUNT: 2,500.00  
FROM 09/02/2011 TO 09/02/2011

BANK CODE 00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
502-7400-603.23-60	08/29/2011	MISC SERVICES	7361141	286971	02/2012	46.20	
502-7400-603.23-60	08/29/2011	MISC SERVICES	7385129	286971	02/2012	4,785.65	
502-7400-603.23-60	08/29/2011	MISC SERVICES	7385129	286971	02/2012	4,785.66	
512-8400-623.22-23	08/29/2011	MISC SERVICES	7389398	286971	02/2012	1,126.52	
09/02/2011	748422	HDR INC	1544			10,933.31	
503-7491-603.93-90	08/31/2011	WO1011 WTP HIGH SRVC H2-1	17/315060-H	273326	02/2012	671.53	
503-7591-609.93-40	08/31/2011	WO1012 BLGS LOW SRVC PUMP	13/315055-H	276189	02/2012	4,550.36	
513-8491-623.93-90	08/31/2011	WO1029 WWTP WEST MECH MCC	8/315061-H	280428	02/2012	1,990.36	
503-7491-603.93-90	08/31/2011	WO1108 WTP HSPS 2011 PUMP	3/315062-H	282927	02/2012	3,721.06	
09/02/2011	748431	INTEGRATED INFORMATION SOLUTIO	13770			4,018.00	
620-1911-482.53-70	08/23/2011	MISC SERVICES	64726	287003	02/2012	4,018.00	
09/02/2011	748433	INTERSTATE POWERSYSTEMS	17926			2,518.70	
150-2226-422.23-20	08/30/2011	MP	25772.01	287040	02/2012	53.03	
571-7144-713.23-20	08/30/2011	MP	19067.01	287041	02/2012	34.34	
601-0000-141.71-41	09/01/2011	MP	18904.01		03/2012	2,431.33	
09/02/2011	748437	JTL GROUP INC DBA KNIFE RIVER	2417			236,616.67	
441-3165-431.93-11	08/31/2011	WO0911 RIMROCK 17TH/REHBG	2	284004	02/2012	3,502.93	
503-7591-609.93-40	08/31/2011	WO0911 RIMROCK 17TH/REHBG	2	284004	02/2012	72,176.11	
513-8591-625.93-40	08/31/2011	WO0911 RIMROCK 17TH/REHBG	2	284004	02/2012	10,842.08	
840-3184-431.93-10	08/31/2011	WO0911 RIMROCK 17TH/REHBG	2	284004	02/2012	49,124.67	
845-3186-431.93-10	08/31/2011	WO0911 RIMROCK 17TH/REHBG	2	284004	02/2012	100,970.88	
09/02/2011	748451	MATOVICH, KELLER & MURPHY	20434			3,228.27	
10-1611-416.35-60	08/30/2011	CONSULTANT SRVCS.	5480	286894	02/2012	3,228.27	
09/02/2011	748461	MONTANA DAKOTA UTILITIES CO	2492			3,586.74	
502-7400-603.34-40	08/29/2011	MISC SERVICES	07369223 AUG11	286980	02/2012	13.76	
561-7117-711.34-40	08/29/2011	073869 28	082911	F13357	02/2012	10.40	
561-7117-711.34-40	08/29/2011	073858 25	082911	F13357	02/2012	15.97	
561-7112-711.34-40	08/31/2011	AIRPORT	07387221		02/2012	781.51	
512-8400-623.34-40	08/31/2011	PUD	07555321	25%	02/2012	202.34	
512-8400-623.34-40	08/31/2011	PUD	07555321	50%	02/2012	404.70	
512-8400-623.34-40	08/31/2011	PUD	07555321	25%	02/2012	202.34	
10-5127-451.34-40	08/31/2011	REC	07586821		02/2012	35.49	
650-1567-487.34-40	08/31/2011	FACILITIES	07610421		02/2012	119.60	
260-5512-455.34-40	08/31/2011	LIBRARY	07617521		02/2012	52.70	
521-1595-493.34-40	08/31/2011	PARKING 2906 N 3RD AVE	07624629		02/2012	10.40	
521-1595-493.34-40	08/31/2011	PARKING 2910 N 3RD AVE	07624725		02/2012	10.40	
521-1595-493.34-40	08/31/2011	PARK 1 LEASE	07624823		02/2012	10.40	
571-7143-713.34-40	08/31/2011	TRANSIT	07647023		02/2012	371.12	
150-2221-422.34-40	08/31/2011	FIRE	07676421		02/2012	65.94	
150-2221-422.34-40	08/31/2011	FIRE	07935121		02/2012	72.91	
541-3123-435.34-40	08/31/2011	SW	08073321		02/2012	11.10	
502-7400-603.34-40	08/31/2011	PUD	08156221		02/2012	77.10	
502-7400-603.34-40	08/31/2011	PUD	08156322	50%	02/2012	5.20	
502-7400-603.34-40	08/31/2011	PUD	08156322	50%	02/2012	5.20	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
502-7400-603.34-40	08/31/2011	PUD	08156421		02/2012	44.54	
502-7400-603.34-40	08/31/2011	PUD	08156521		02/2012	22.05	
502-7400-603.34-40	08/31/2011	PUD	08156621		02/2012	22.05	
502-7400-603.34-40	08/31/2011	PUD	08156721		02/2012	15.97	
502-7400-603.34-40	08/31/2011	PUD	08156821		02/2012	10.40	
502-7400-603.34-40	08/31/2011	PUD	08156922		02/2012	10.40	
502-7314-602.34-40	08/31/2011	PUD	08157021	75%	02/2012	116.88	
512-8314-622.34-40	08/31/2011	PUD	08157021	25%	02/2012	38.95	
502-7314-602.34-40	08/31/2011	PUD	08157121	75%	02/2012	36.92	
512-8314-622.34-40	08/31/2011	PUD	08157121	25%	02/2012	12.31	
502-7400-603.34-40	08/31/2011	PUD	08157221		02/2012	10.40	
502-7400-603.34-40	08/31/2011	PUD	08157322		02/2012	10.40	
502-7400-603.34-40	08/31/2011	CSD	31563202		02/2012	10.40	
502-7400-603.34-40	08/31/2011	CSD	31563302		02/2012	10.40	
502-7400-603.34-40	08/31/2011	PUD	31753602		02/2012	10.40	
150-2171-441.34-40	08/31/2011	ANIMAL SHELTER	32062801		02/2012	238.04	
650-1566-487.34-40	08/31/2011	ADMIN BUILDING	32577402		02/2012	166.97	
650-1566-487.34-40	08/31/2011	EVIDENCE BUILDING	32629302		02/2012	10.40	
650-1566-487.34-40	08/31/2011	PD1	32708002		02/2012	37.38	
650-1566-487.34-40	08/31/2011	GARAGE	32781001		02/2012	22.05	
10-5126-451.34-40	08/31/2011	PARKS & REC	34329601		02/2012	22.05	
521-1592-493.34-40	08/31/2011	PARK II	34941902		02/2012	13.19	
512-8500-625.34-40	08/31/2011	PUD	35059801		02/2012	24.14	
150-2221-422.34-40	08/31/2011	FIRE STATION #7	35322001		02/2012	60.37	
512-8500-625.34-40	08/31/2011	PUD LIFT STATION	36738301		02/2012	24.84	
660-3110-431.34-40	08/31/2011	2224 MONTANA AVE	37667401	40%	02/2012	25.54	
670-3141-489.34-40	08/31/2011	2224 MONTANA AVE	37667401	60%	02/2012	38.31	
10-5141-436.34-40	09/01/2011	CEMETERY	08543421		03/2012	19.46	
10-5141-436.34-40	09/01/2011	CEMETERY	08543521		03/2012	22.95	
09/02/2011	748465	MORRISON MAIERLE INC	2572			16,683.71	
513-8491-623.93-90	08/31/2011	W00926 WTP CLARIFIERS	11/110975	274059	02/2012	1,606.78	
503-7591-609.93-40	08/31/2011	W01008 WTP CLEARWELL CT	10/110974	274702	02/2012	414.00	
503-7591-609.93-40	08/31/2011	W01105 CHAPPLE WTR	8	279882	02/2012	13,371.96	
845-3186-431.93-10	08/31/2011	W01031 29TH/CENTRAL SIGNL	4-FINAL	284001	02/2012	1,290.97	
09/02/2011	748470	NATIONAL RESEARCH CENTER INC	20307			5,900.00	
10-1411-414.35-87	08/30/2011	MISC SERVICES	2011 ENROLL	287038	02/2012	5,900.00	
09/02/2011	748472	NORTHWEST SCIENTIFIC INC	2760			2,985.82	
502-7400-603.22-20	08/29/2011	MISC SERVICES	5015632	286967	02/2012	163.80	
502-7400-603.22-20	08/29/2011	MISC SERVICES	5015910	286967	02/2012	961.36	
502-7400-603.22-20	08/29/2011	MISC SERVICES	5016143	286967	02/2012	443.34	
512-8400-623.22-23	08/29/2011	MISC SERVICES	5015205	286968	02/2012	133.64	
512-8400-623.22-23	08/29/2011	MISC SERVICES	5015419	286968	02/2012	94.00	
512-8400-623.22-23	08/29/2011	MISC SERVICES	5015420	286968	02/2012	668.70	
512-8400-623.22-23	08/29/2011	MISC SERVICES	5015909	286968	02/2012	374.56	
512-8400-623.22-23	08/29/2011	MISC SERVICES	5016251	286968	02/2012	146.42	
09/02/2011	748477	NORTHWESTERN ENERGY	15771			58,729.58	
521-1594-493.34-10	08/26/2011	MISC SERVICES	09052011	286965	02/2012	1,360.97	

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
521-1591-493.34-10	08/29/2011	PARK 1	1569636-2		02/2012	1,678.99	
10-5127-451.34-10	08/29/2011	ELECTRICAL CHARGES	0100506-AUG11	286943	02/2012	1,706.74	
502-7400-603.34-10	08/29/2011	MISC SERVICES	01005404 AUG11	286981	02/2012	5,107.22	
502-7400-603.34-10	08/29/2011	MISC SERVICES	01005404 AUG11	286981	02/2012	5,107.23	
561-7112-711.34-10	08/29/2011	0100482-9	082911	F13377	02/2012	29,567.49	
10-5141-436.34-10	08/31/2011	NW PARK/REC/PL	07125396		02/2012	80.84	
502-7400-603.34-10	08/31/2011	NW PUD-WATER TREAT	07222524		02/2012	3,245.70	
502-7400-603.34-10	08/31/2011	NW PUD-WATER TREAT	07230436		02/2012	4,941.42	
10-5112-452.34-10	08/31/2011	NW PARK/REC/PL	09208018		02/2012	25.22	
10-5112-452.34-10	08/31/2011	NW Parks	11412848		02/2012	276.87	
10-5112-452.34-10	08/31/2011	NW Parks	11607801		02/2012	1,207.16	
10-5141-436.34-10	08/31/2011	CEMETERY	16352890		02/2012	13.98	
10-5126-451.34-10	09/01/2011	NW PARK/REC/PL	07208416		03/2012	1,308.52	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222532		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222565		03/2012	202.95	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222581		03/2012	9.24	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222599		03/2012	15.48	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222722	50%	03/2012	9.06	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07222722	50%	03/2012	6.05	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222730	40%	03/2012	18.20	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222748		03/2012	11.97	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222755		03/2012	100.36	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222771		03/2012	36.25	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222789		03/2012	30.16	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222797		03/2012	15.36	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222805		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222813		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222839		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07222847		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07228083		03/2012	15.36	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07228521		03/2012	10.37	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07228620		03/2012	9.24	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07229016		03/2012	197.09	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07229768		03/2012	9.20	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07229958		03/2012	143.97	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230055		03/2012	78.01	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230253		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230394		03/2012	21.33	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230469		03/2012	7.30	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230493		03/2012	12.60	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230535		03/2012	29.77	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230642		03/2012	17.70	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07230659		03/2012	17.70	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233844		03/2012	7.30	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233851		03/2012	8.92	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233869		03/2012	8.92	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233877		03/2012	8.92	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233885		03/2012	8.92	
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07233919	60%	03/2012	5.20	
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233919	40%	03/2012	3.47	

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233927		03/2012	8.92
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233935		03/2012	8.06
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233943		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233950		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233968		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233976		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07233984		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238355		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238363		03/2012	9.24
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238405		03/2012	7.30
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238793		03/2012	257.12
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238835		03/2012	7.95
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07238843		03/2012	103.04
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	07238850		03/2012	8.14
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07238876		03/2012	17.70
10-5112-452.34-10	09/01/2011	NW PARK/REC/PL	07931348		03/2012	260.63
872-5198-452.34-10	09/01/2011	NW PARK/REC/PL	09718248		03/2012	.85
10-5129-451.34-10	09/01/2011	NW FIRE	09998071		03/2012	178.29
607-2235-486.34-10	09/01/2011	NW FIRE	10069151		03/2012	195.06
10-5112-452.34-10	09/01/2011	NW Parks	11565272		03/2012	36.03
10-5112-452.34-10	09/01/2011	NW	12300661		03/2012	11.11
872-5198-452.34-10	09/01/2011	NW	13127071		03/2012	.66
10-5112-452.34-10	09/01/2011	NW	14093942		03/2012	.67
872-5198-452.34-10	09/01/2011	NW	15137961		03/2012	334.18
872-5198-452.34-10	09/01/2011	NW	15138001		03/2012	296.24
872-5198-452.34-10	09/01/2011	NW	15138027		03/2012	59.97
872-5198-452.34-10	09/01/2011	NW	15138043		03/2012	26.05
872-5198-452.34-10	09/01/2011	PARKS	15642093		03/2012	8.06
10-5112-452.34-10	09/01/2011	PARKS 1	16926669		03/2012	40.39
512-8500-625.34-10	09/01/2011	SEWER LIFTSTATION C	17040254		03/2012	10.16
512-8500-625.34-10	09/01/2011	WWTP	17040304		03/2012	33.37
211-3132-433.34-10	09/01/2011	STREETS/TRAFFIC	17389891		03/2012	12.92
211-3132-433.34-10	09/01/2011	STREETS/TRAFFIC	17978289		03/2012	5.15
09/02/2011	748482	PERMANENT EXTERIORS	21283			18,696.50
521-1593-493.24-50	09/01/2011	MISC SERVICES	2591	287070	03/2012	8,580.00
650-1567-487.36-60	09/01/2011	MISC SERVICES	2591	287070	03/2012	6,840.00
650-1567-487.39-90	09/01/2011	MISC SERVICES	2591	287070	03/2012	700.00
650-1567-487.36-90	09/01/2011	MISC SERVICES	2592	287070	03/2012	2,576.50
09/02/2011	748495	SAFETECH, INC	17952			4,128.00
234-1340-465.72-91	08/29/2011	MISC SERVICES	7582	287019	02/2012	2,580.00
234-1340-465.72-91	09/01/2011	MISC SERVICES	7561	287072	03/2012	1,548.00
09/02/2011	748500	SHERWIN WILLIAMS	3417			10,897.00
561-7113-711.36-50	08/29/2011	MISC SERVICES	3992-9	286018	02/2012	10,897.00
09/02/2011	748506	STANDARD & POORS CORP	5365			8,700.00
466-3161-431.55-10	09/01/2011	MISC SERVICES	10279083	287083	03/2012	8,700.00
09/02/2011	748507	STAR SERVICE INC	3553			25,011.00
10-5112-452.36-90	08/29/2011	SOUTH PARK RESTRRM	STAR SERVICE	276112	02/2012	476.00

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
10-5126-451.36-90	08/29/2011	SOUTH PARK RESTRROM	STAR SERVICE	276112	02/2012	12,070.00
490-5161-452.36-60	08/29/2011	SOUTH PARK RESTRROM	STAR SERVICE	276112	02/2012	5,215.00
502-7312-602.23-80	08/29/2011	MISC SERVICES	42948	286993	02/2012	350.00
502-7314-602.24-50	08/30/2011	NONSTOCKING ITEMS-P.U.D.	42935	286341	02/2012	3,999.93
512-8314-622.24-50	08/30/2011	NONSTOCKING ITEMS-P.U.D.	42935	286341	02/2012	2,900.07
09/02/2011 748508		STEWART TITLE OF BILLINGS	17985			15,000.00
280-6581-464.72-77	08/30/2011	1ST TIME HB, 1407 AVE B	SHEETZ, LINDSE	287030	02/2012	15,000.00
09/02/2011 748511		SUNSET EXCAVATION	11477			22,777.75
505-7515-609.36-71	08/29/2011	MISC SERVICES	025710	285340	02/2012	14,577.75
505-7515-609.36-71	08/29/2011	MISC SERVICES	159632	286989	02/2012	1,700.00
505-7515-609.36-71	08/29/2011	MISC SERVICES	159633	286989	02/2012	3,750.00
505-7515-609.36-71	08/29/2011	MISC SERVICES	159634	286989	02/2012	2,200.00
505-7515-609.36-71	08/29/2011	MISC SERVICES	159635	286989	02/2012	550.00
09/02/2011 748522		TOWN & COUNTRY SUPPLY ASSOCIAT	18295			104,806.68
10-5142-436.23-10	08/24/2011	326 GAL DYED #2 DIESEL	77017	286928	02/2012	1,054.00
601-0000-141.71-41	08/29/2011	MP	86805		02/2012	22,710.80
561-7118-711.23-13	08/29/2011	INVOICE #86555	86555/87067	F13358	02/2012	14,657.45
561-7118-711.23-13	08/29/2011	INVOICE #87067	86555/87067	F13358	02/2012	15,738.51
601-0000-141.00-00	08/30/2011	MP	86941		02/2012	12,977.60
502-0000-141.00-00	08/31/2011	WATER PARTS AND SUPPLIES	86927 86891		02/2012	872.33
502-0000-141.00-00	08/31/2011	WATER PARTS AND SUPPLIES	87030		02/2012	20,554.20
601-0000-141.00-00	08/31/2011	MP	87034		02/2012	16,241.79
09/02/2011 748527		VIC REICHENBACH	21866			8,745.89
414-1519-493.93-90	09/01/2011	MISC SERVICES	RETAINAGE	287084	03/2012	8,745.89
09/02/2011 748535		YELLOWSTONE COUNTY FINANCE DPT	16736			22,092.08
150-2111-421.35-90	08/26/2011	MISC SERVICES	PRISONER	286927	02/2012	21,280.00
150-2111-421.35-90	08/31/2011	JULY 2011 INMATE MEDICAL	JUL11MEDBILLING	F13384	02/2012	157.69
521-0000-229.15-31	09/02/2011		082011		02/2012	654.39

DATE RANGE TOTAL \* 712,933.86 \*

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Payment of Claims September 09, 2011.

**PRESENTED BY:** Pat M. Weber, Finance Director

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

Claims in the amount of \$1,119,142.37 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 09, 2011, is available in the Finance Department.

**ALTERNATIVES ANALYZED**

The Council may:

- Approve the payment of claims; or
- Not approve the payment of claims.

**FINANCIAL IMPACT**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

**RECOMMENDATION**

Staff recommends that Council approve the Payment of Claims.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

List of claims greater than \$2500.

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
09/09/2011 240-4301-419.35-60	748540 09/07/2011	ACTIVE TRANSPORTATION ALTERNAT ALT MODES AUG 2011	20644	ALT MODES AUG	287197 03/2012	5,667.00 5,667.00	
09/09/2011 571-7146-713.32-10 571-7146-713.32-10 571-7146-713.32-10	748549 09/01/2011 09/01/2011 09/02/2011	ARTCRAFT PRINTERS OF BILLINGS INVOICE# 03224BK-IN INVOICE# 03223MP-IN INVOICE# 03224AD-IN	214	03224BK-IN 03224BK-IN 03224AD-IN	F13388 03/2012 F13388 03/2012 F13394 03/2012	19,792.00 15,386.00 2,420.00 1,986.00	
09/09/2011 10-1414-414.94-80	748551 09/08/2011	AUTOMATED OFFICE INC MISC SERVICES	241	INV13581	286951 03/2012	12,600.00 12,600.00	
09/09/2011 10-5125-451.39-90	748557 09/08/2011	BILLINGS TENNIS ASSOCIATION TENNIS LESSONS	20948	TENNIS 201	287192 03/2012	11,545.68 11,545.68	
09/09/2011 845-3186-431.93-10 205-3131-433.93-10 439-3165-431.93-11 840-3184-431.93-10 205-3131-433.93-90 205-3131-433.93-10 466-3161-431.93-10 840-3184-431.93-10 205-3131-433.93-10 466-3161-431.93-10 840-3184-431.93-10 234-1340-465.72-91	748562 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/07/2011 09/08/2011	BUSINESS TAX SECTION WO1104 2011 ADA RAMPS WO1102 2011 MISC DEVELOPR WO1102 2011 MISC DEVELOPR WO1102 2011 MISC DEVELOPR WO1103 2011 ST MAINT SID1369 MOORE LANE SID1369 MOORE LANE SID1369 MOORE LANE SID1369 MOORE LANE SID1369 MOORE LANE SID1369 MOORE LANE PRIOR YEAR ENCUMBRANCES	2449	2 3 3 3 2 1 1 1 2 2 2 LM	283335 03/2012 283739 03/2012 283739 03/2012 283739 03/2012 284452 03/2012 285271 03/2012 285271 03/2012 285271 03/2012 285271 03/2012 285271 03/2012 285271 03/2012 285760 03/2012	7,108.00 519.04 472.05 477.35 157.17 2,499.65 275.42 450.23 55.61 657.62 594.32 610.27 339.27	
09/09/2011 502-7211-601.35-90	748563 09/06/2011	CHARLES & JANET BLAKLEY 7/21/11 WATER DAMAGE	9993141	WATER DAMAGE	02/2012	9,448.53 9,448.53	
09/09/2011 845-3186-431.93-10	748564 09/07/2011	CMG CONSTRUCTION, INC. WO1104 ADA RAMPS	17342	2	283331 03/2012	51,385.02 51,385.02	
09/09/2011 805-1570-425.53-50	748567 09/08/2011	COUNTY WATER DISTRICT OF MISC SERVICES	881	1484	287206 03/2012	19,719.36 19,719.36	
09/09/2011 211-3132-433.23-20 211-3132-433.23-20	748575 09/06/2011 09/06/2011	ESCOSUPPLY MISC SERVICES MISC SERVICES	19696	1055439 1055802	287120 03/2012 287120 03/2012	4,528.90 3,666.86 862.04	
09/09/2011 416-7493-603.92-20 416-7493-603.93-40 421-8493-623.93-40	748586 09/07/2011 09/07/2011 09/07/2011	HDR INC WO0426 ZONE 4/5 RESERVOIR PL0049 WTR SYS EMRG PWR WO0822 WWTP DISINFECT SYS	1544	54/315056-H 19 30	247294 03/2012 249305 03/2012 263835 03/2012	26,487.90 20,123.22 2,335.53 4,029.15	
09/09/2011 900-0000-209.99-20	748588 09/09/2011	IAFF PAYROLL SUMMARY	20196	20110909	03/2012	4,306.50 4,306.50	
09/09/2011 620-1911-482.53-70	748589 09/02/2011	INTEGRATED INFORMATION SOLUTIO MISC SERVICES	13770	64728	287004 03/2012	2,747.00 2,747.00	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
09/09/2011	748591	J & J CONCRETE	15244			109,549.34	
205-3131-433.93-10	09/07/2011	WO1102 MISC. DEVELOPER	3	283738	03/2012	46,732.01	
439-3165-431.93-11	09/07/2011	WO1102 MISC. DEVELOPER	3	283738	03/2012	47,257.67	
840-3184-431.93-10	09/07/2011	WO1102 MISC. DEVELOPER	3	283738	03/2012	15,559.66	
09/09/2011	748592	JTL GROUP INC DBA KNIFE RIVER	2417			253,617.79	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	255399	287111	03/2012	65.77	
211-3132-433.47-10	09/06/2011	ROAD AND HIGHWAY MATERIAL	255417	287111	03/2012	1,372.49	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256123	287111	03/2012	30.37	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256124	287111	03/2012	188.12	
211-3132-433.45-20	09/06/2011	ROAD AND HIGHWAY MATERIAL	256129	287111	03/2012	300.37	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256162	287111	03/2012	162.49	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256390	287111	03/2012	61.15	
211-3132-433.47-10	09/06/2011	ROAD AND HIGHWAY MATERIAL	256396	287111	03/2012	1,174.04	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256716	287111	03/2012	63.42	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256918	287111	03/2012	177.15	
211-3132-433.47-10	09/06/2011	ROAD AND HIGHWAY MATERIAL	256927	287111	03/2012	1,668.94	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	256962	287111	03/2012	89.00	
211-3132-433.47-10	09/06/2011	ROAD AND HIGHWAY MATERIAL	256989	287111	03/2012	74.97	
211-3132-433.45-20	09/06/2011	ROAD/HIGHWAY MATERIAL	257020	287111	03/2012	324.81	
211-3132-433.47-10	09/06/2011	ROAD AND HIGHWAY MATERIAL	257033	287111	03/2012	399.35	
205-3131-433.93-90	09/07/2011	WO1103 2011 ST MAINT	2	284451	03/2012	247,465.35	
09/09/2011	748594	KB COMMERCIAL PRODUCTS	1957			3,042.40	
260-5512-455.21-20	09/07/2011	AQUACLEAN CARPET EXTRACTO	S2951508.001	286791	03/2012	3,042.40	
09/09/2011	748600	LM EXCAVATING INC	21826			33,588.09	
234-1340-465.72-91	09/08/2011	PRIOR YEAR ENCUMBRANCES	4	285761	03/2012	30,534.62	
234-1340-465.72-91	09/08/2011	PRIOR YEAR ENCUMBRANCES	4A	285761	03/2012	3,053.47	
09/09/2011	748609	MONTANA MUNICIPAL INTERLOCAL	20725			35,935.19	
630-1753-485.73-11	09/08/2011	MISC SERVICES	811003	287211	03/2012	35,935.19	
09/09/2011	748612	MONTANA STATE FIREMAN'S ASSOC	20195			2,780.63	
900-0000-209.99-24	09/09/2011	PAYROLL SUMMARY	20110909		03/2012	2,780.63	
09/09/2011	748616	MPPA	20198			2,505.73	
900-0000-209.99-23	09/01/2011	PAYROLL SUMMARY	20110901		02/2012	18.29	
900-0000-209.99-23	09/09/2011	PAYROLL SUMMARY	20110909		03/2012	2,487.44	
09/09/2011	748620	NEXTX COMMUNICATIONS INC	20952			2,725.00	
260-5518-455.35-90	09/07/2011	INVOICE 946	946	F13406	03/2012	1,445.00	
260-5518-455.35-90	09/07/2011	INVOICE 947	946	F13406	03/2012	1,280.00	
09/09/2011	748625	NORTHWESTERN ENERGY	15771			24,224.92	
260-5512-455.34-10	09/07/2011	ACCOUNT 0100467 PARMLY BI	100467-0 9/5/11	F13403	03/2012	11,285.31	
406-7119-711.92-90	09/07/2011	1906787-5	090711	F13411	03/2012	3.66	
406-7119-711.92-90	09/07/2011	1906787-5	090711	F13411	03/2012	316.06	
150-2221-422.34-10	09/08/2011	NW FIRE	07125321		03/2012	21.92	

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07125339		03/2012	104.34
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07125347		03/2012	15.36
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07125354		03/2012	222.69
10-5141-436.34-10	09/08/2011	NW PARK/REC/PL	07125388		03/2012	756.45
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07127913		03/2012	15.36
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07127954		03/2012	15.13
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07127970		03/2012	12.61
561-7117-711.34-10	09/08/2011	NW AVIATION/TRAN	07128051		03/2012	11.22
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07128135		03/2012	7.30
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07195431		03/2012	2,182.69
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07197593		03/2012	14.63
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07197601		03/2012	20.87
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07197619		03/2012	24.16
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07197627		03/2012	13.87
561-7113-711.34-10	09/08/2011	NW AVIATION/TRAN	07202963		03/2012	16.31
502-7400-603.34-10	09/08/2011	NW PUD-WATER TREAT	07222490		03/2012	10.44
502-7400-603.34-10	09/08/2011	NW PUD-WATER TREAT	07222706		03/2012	5,621.57
512-8500-625.34-10	09/08/2011	NW Parks	07233836		03/2012	82.56
512-8500-625.34-10	09/08/2011	NW PUD-WASTE WATER	07234040		03/2012	1,272.11
512-8500-625.34-10	09/08/2011	NW PUD-WASTE WATER	07238785		03/2012	371.60
872-5198-452.34-10	09/08/2011	NW PARK/REC/PL	08814550		03/2012	8.36
10-5112-452.34-10	09/08/2011	PARKS	09789173		03/2012	8.06
872-5198-452.34-10	09/08/2011	NW PARK/REC/PL	10458206		03/2012	4.64
502-7400-603.34-10	09/08/2011	NW Pud	11608072		03/2012	43.99
150-2171-441.34-10	09/08/2011	NW	11834835		03/2012	1,525.13
10-5112-452.34-10	09/08/2011	NW	12422226		03/2012	7.72
10-5112-452.34-10	09/08/2011	NW	12488631		03/2012	75.84
502-7400-603.34-10	09/08/2011	NW	13466735		03/2012	53.82
872-5198-452.34-10	09/08/2011	NW	15143886		03/2012	8.47
521-1524-493.34-10	09/08/2011	PARKING-LINC CEN LOT POLE	15696313		03/2012	39.00
10-5112-452.34-10	09/08/2011	SOUTH PARK CONCESSION	15882624		03/2012	7.30
502-7400-603.34-10	09/08/2011	2421 BELKNAP AVE	18672659		03/2012	11.55
10-5112-452.34-10	09/08/2011	SKATEPARK RSTRM	19412436		03/2012	12.82
09/09/2011	748628	ONE EIGHTY COMMUNICATIONS	15590			5,166.01
561-7110-711.34-50	09/08/2011	ONE EIGHTY SEPT 2011	AIRPORT 2948370		03/2012	40.60
606-1931-484.34-50	09/08/2011	ONE EIGHTY SEPT 2011	ACCT 00001906		03/2012	3,686.87
606-1931-484.34-50	09/08/2011	ONE EIGHTY SEPT 2011	ACCT 00018768		03/2012	195.67
150-2111-421.34-50	09/08/2011	ONE EIGHTY SEPT 2011	247-8592		03/2012	39.00
10-5112-452.34-50	09/08/2011	ONE EIGHTY SEPT 2011	867-7275		03/2012	46.00
670-3141-489.34-50	09/08/2011	ONE EIGHTY SEPT 2011	DEPOT 60%		03/2012	489.86
660-3110-431.34-50	09/08/2011	ONE EIGHTY SEPT 2011	DEPOT 40%		03/2012	326.56
260-5518-455.35-90	09/08/2011	ONE EIGHTY SEPT 2011	INTERNET LIB		03/2012	259.00
620-1911-482.34-52	09/08/2011	ONE EIGHTY SEPT 2011	IT INTERNET		03/2012	79.95
150-2225-422.34-50	09/08/2011	ONE EIGHTY SEPT 2011	LONG DISTANCE		03/2012	2.50
09/09/2011	748630	OSTERMILLER CONST	2839			261,703.62
205-3131-433.93-10	09/07/2011	SID1369 MOORE LANE	1	285320	03/2012	27,266.58
466-3161-431.93-10	09/07/2011	SID1369 MOORE LANE	1	285320	03/2012	44,573.39
840-3184-431.93-10	09/07/2011	SID1369 MOORE LANE	1	285320	03/2012	5,505.26

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
205-3131-433.93-10	09/07/2011	SID1369 MOORE LANE	2	285320	03/2012	65,103.36
466-3161-431.93-10	09/07/2011	SID1369 MOORE LANE	2	285320	03/2012	58,837.83
840-3184-431.93-10	09/07/2011	SID1369 MOORE LANE	2	285320	03/2012	60,417.20
09/09/2011	748632	PEN-LINK LTD	21705			12,367.00
255-2146-421.22-90	07/11/2011	MISC SERVICES	9561	283466	02/2012	3,800.00
718-2160-421.94-90	07/11/2011	MISC SERVICES	9561	283466	02/2012	8,567.00
09/09/2011	748635	PERMANENT EXTERIORS	21283			2,780.00
521-1593-493.24-50	09/02/2011	MISC SERVICES	2608	287107	03/2012	2,780.00
09/09/2011	748637	PROTECH MECHANICAL INC	7475			6,353.00
260-5512-455.36-70	09/07/2011	REFRIGERANT - 270 LBS R22	58215	F13405	03/2012	5,400.00
260-5512-455.36-70	09/07/2011	VEHICLE MOBILIZATION	58215	F13405	03/2012	5.00
260-5512-455.36-70	09/07/2011	TECH. LABOR	58215	F13405	03/2012	948.00
09/09/2011	748639	PUBLIC UTILITIES	5022			77,287.90
872-5198-452.34-20	09/08/2011	2445 WESTFIELD DR.	675778356		03/2012	201.28
872-5198-452.34-20	09/08/2011	2700 COUNTRY LN SP/IR	676233865		03/2012	396.72
872-5198-452.34-20	09/08/2011	HARVEST PARK-3600 GRANGER	676393901		03/2012	3,293.58
872-5198-452.34-20	09/08/2011	HARVEST PARK-3200 CANYON	676413853		03/2012	3,920.90
872-5198-452.34-20	09/08/2011	HARVEST PARK-3294 HENESTA	676433910		03/2012	12,725.02
872-5198-452.34-20	09/08/2011	HARVEST PARK-710 S. 32 W.	676454062		03/2012	7,260.90
872-5198-452.34-20	09/08/2011	OLYMPIC PK-3675 MARATHON	676473935		03/2012	7,971.81
872-5198-452.34-20	09/08/2011	OLYMPIC PK-701 DECATHLON	676497694		03/2012	5,100.58
872-5198-452.34-20	09/08/2011	PARKLAND WEST-3920 MONAD	676513943		03/2012	4,045.66
872-5198-452.34-20	09/08/2011	OLYMPIC PK-3914 DECATHLON	676533868		03/2012	300.21
872-5198-452.34-20	09/08/2011	OLYMPIC PK-531 S 38 WEST	676554066		03/2012	183.26
872-5198-452.34-20	09/08/2011	OLYMPIC PK-3748 OLYMPIC B	676574011		03/2012	977.29
872-5198-452.34-20	09/08/2011	OLYMPIC PK-3747 OLYMPIC B	676594010		03/2012	514.95
872-5198-452.34-20	09/08/2011	OLYMPIC PK-3890 STILLWTER	676614077		03/2012	492.10
872-5198-452.34-20	09/08/2011	HIGH SIERRA PK-2000 WICKS	676654097		03/2012	3,617.57
872-5198-452.34-20	09/08/2011	PARKLAND WEST-380 S 36 W.	676754063		03/2012	2,593.86
561-7110-711.34-20	09/08/2011	1901 AIRPORT TERM CIR	68407759		03/2012	12,113.81
872-5198-452.34-20	09/08/2011	1760 COUNTRY MANOR BLVD.	8992912649100		03/2012	2,597.98
872-5198-452.34-20	09/08/2011	4002 PARKHILL DR	899739343		03/2012	384.65
872-5198-452.34-20	09/08/2011	255 ENERGY BLVD.	904059154		03/2012	1,483.98
872-5198-452.34-20	09/08/2011	1515 38TH ST WEST	10697714654		03/2012	1,161.58
872-5198-452.34-20	09/08/2011	4550 RANGVIEW DR	1142018810		03/2012	4,504.09
872-5198-452.34-20	09/08/2011	4430 HI-LINE DR	11460717358		03/2012	65.03
872-5198-452.34-20	09/08/2011	4430 HI-LINE DR	12051919090		03/2012	1,001.42
872-5198-452.34-20	09/08/2011	210 S 36 ST W	13264320441		03/2012	370.18
512-8500-625.34-20	09/08/2011	2229 BLUE CREEK RD	13670319854		03/2012	9.49
09/09/2011	748647	SANDERSON STEWART	20446			4,922.34
205-3131-433.35-90	09/07/2011	WO1013 SAFE RTE TO SCHOOL	7/32810 FINAL	279883	03/2012	4,922.34
09/09/2011	748648	SCHMITT, DEBORAH	10473			2,603.85
620-1911-482.38-70	09/08/2011	MISC SERVICES	VM CONF	287186	03/2012	2,603.85
09/09/2011	748653	ST VINCENT OCCUPATIONAL HEALTH	3535			2,896.71
10-1750-417.35-72	09/08/2011	MISC SERVICES	27980	287209	03/2012	780.00

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ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
10-5112-452.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	110.00	
150-2229-422.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	499.21	
211-3132-433.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	210.00	
502-7312-602.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	30.00	
502-7400-603.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	297.50	
541-3121-435.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	70.00	
571-7142-713.35-10	09/08/2011	MISC SERVICES	27980	287209	03/2012	420.00	
627-1752-417.51-60	09/08/2011	MISC SERVICES	27980	287209	03/2012	480.00	
09/09/2011	748654	STEWART TITLE OF BILLINGS	17985			10,000.00	
280-6581-464.72-77	09/08/2011	4145 PHILLIP ST	KYNDRA MURRAY	287189	03/2012	10,000.00	
09/09/2011	748662	TOWN & COUNTRY SUPPLY ASSOCIAT	18295			45,617.43	
601-0000-141.00-00	09/06/2011	MP	86497		03/2012	23,314.03	
561-7118-711.23-13	09/06/2011	INVOICE #87110	87110	F13398	03/2012	7,124.60	
561-7118-711.23-13	09/07/2011	INVOICE #89456	89456	F13408	03/2012	15,178.80	
DATE RANGE TOTAL *						1,075,002.84 *	

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Payment of Claims September 16, 2011.

**PRESENTED BY:** Pat M. Weber, Finance Director

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

Claims in the amount of \$2,409,975.44 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 16, 2011, is available in the Finance Department.

**ALTERNATIVES ANALYZED**

The Council may:

- Approve the payment of claims; or
- Not approve the payment of claims.

**FINANCIAL IMPACT**

Claims have a varying impact on department budgets, but are submitted by the departments and reviewed by Finance staff before being sent to the Council.

**RECOMMENDATION**

Staff recommends that Council approve the Payment of Claims.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Payment of claims greater than \$2500.

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
09/16/2011	748671	A & I DISTRIBUTORS	16			12,949.48	
601-0000-141.00-00	08/09/2011	MP	2072702		02/2012	2,049.98	
150-2112-421.23-20	08/09/2011	MP	2072702	285258	02/2012	28.32	
211-3132-433.23-20	08/09/2011	MP	2072702	285258	02/2012	28.32	
541-3122-435.23-20	08/09/2011	MP	2072702	285258	02/2012	28.31	
601-1553-481.26-50	08/09/2011	MP	2072702	285258	02/2012	.17	
502-0000-141.00-00	08/17/2011	WATER PARTS AND SUPPLIES	2076521		02/2012	1,238.60	
601-0000-141.71-41	08/19/2011	MP	2073109		02/2012	461.34	
601-0000-141.00-00	08/19/2011	MP	2076502		02/2012	4,459.84	
571-7144-713.23-20	08/19/2011	MP	2073109	285258	02/2012	.11	
571-7144-713.23-10	08/19/2011	MP	2073110	285258	02/2012	697.95	
601-1553-481.26-50	08/19/2011	MP	2076502	285258	02/2012	.26	
601-0000-141.00-00	08/29/2011	MP	2080684		02/2012	2,334.34	
211-3132-433.23-20	08/29/2011	MP	2077989	285258	02/2012	62.08	
601-1553-481.26-50	08/29/2011	MP	2080684	285258	02/2012	.22	
571-7144-713.23-20	09/02/2011	MP	2078490	285258	03/2012	94.62	
541-3123-435.22-90	09/06/2011	OIL MISC	2081015	285258	03/2012	955.35	
541-3123-435.22-90	09/06/2011	DIESEL FUEL TREATMENT	2082966	285258	03/2012	350.52	
601-1553-481.26-50	09/14/2011	MP	2072702-AA	285258	03/2012	.20	
541-3122-435.23-20	09/14/2011	MP	2082365	285258	03/2012	158.95	
09/16/2011	748677	ADAMSON INDUSTRIES CORP	13219			4,666.95	
150-2112-421.23-90	08/16/2011	MISC SERVICES	104402	285399	03/2012	4,666.95	
09/16/2011	748686	ARCHIE COCHRANE	800			4,069.83	
630-1753-485.73-10	09/14/2011	MISC SERVICES	811197/1	287350	03/2012	1,674.18	
10-5112-452.23-20	09/15/2011	MP	287368	287368	03/2012	71.89	
150-2112-421.23-20	09/15/2011	MP	5058219	287368	03/2012	18.08	
150-2112-421.23-20	09/15/2011	MP	5058614	287368	03/2012	383.30	
150-2112-421.23-20	09/15/2011	MP	5058676	287368	03/2012	57.30	
502-7400-603.23-20	09/15/2011	MP	5059239	287368	03/2012	27.30	
150-2112-421.23-20	09/15/2011	MP	5059317	287368	03/2012	57.30	
502-7312-602.23-20	09/15/2011	MP	5059354	287368	03/2012	10.88	
150-2112-421.23-20	09/15/2011	MP	5059526	287368	03/2012	475.32	
541-3122-435.23-20	09/15/2011	MP	5059530	287368	03/2012	26.24	
150-2112-421.23-20	09/15/2011	MP	5059590	287368	03/2012	94.77	
150-2112-421.23-20	09/15/2011	MP	5060003	287368	03/2012	49.11	
150-2112-421.23-20	09/15/2011	MP	5060034	287368	03/2012	257.31	
630-1753-485.73-10	09/15/2011	MISC SERVICES	811215/1	287392	03/2012	866.85	
09/16/2011	748690	BIG SKY LINEN SUPPLY	387			2,778.16	
561-7112-711.22-40	09/12/2011	INVOICE #05836	091211	F13426	03/2012	38.50	
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561-7112-711.22-60	09/12/2011	INVOICE #S06120	091211	F13426	03/2012	31.40	
561-7112-711.22-40	09/12/2011	INVOICE #06710	091211	F13426	03/2012	35.75	
561-7112-711.22-60	09/12/2011	INVOICE #06710	091211	F13426	03/2012	99.00	
561-7112-711.22-40	09/12/2011	INVOICE #07583	091211	F13426	03/2012	28.05	
561-7112-711.22-60	09/12/2011	INVOICE #07583	091211	F13426	03/2012	99.00	
561-7112-711.22-40	09/12/2011	INVOICE #08466	091211	F13426	03/2012	22.00	

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561-7113-711.22-60	09/12/2011	INVOICE #06708	091211	F13426	03/2012	35.39	
561-7113-711.22-60	09/12/2011	INVOICE #07582	091211	F13426	03/2012	95.09	
561-7113-711.22-60	09/12/2011	INVOICE #08464	091211	F13426	03/2012	35.39	
502-7312-602.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	309.56	
502-7314-602.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	47.53	
502-7400-603.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	531.57	
502-7500-609.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	418.22	
512-8314-622.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	15.84	
512-8400-623.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	429.60	
512-8500-625.22-60	09/14/2011	MISC SERVICES	AUGUST 2011	287266	03/2012	278.88	
09/16/2011	748694	BILLINGS GAZETTE	420			4,124.25	
10-1411-414.31-10	08/31/2011	ONLINE BANNER	AUGUST 2011		03/2012	565.71	
571-7146-713.33-70	08/31/2011	MET TRANSTI	AUGUST 2011		03/2012	742.72	
10-1750-417.33-70	08/31/2011	HUMAN RESOURCES	AUGUST 2011		03/2012	1,597.84	
502-7211-601.33-10	08/31/2011	PUD-WATER	AUGUST 2011		03/2012	280.28	
512-8211-621.33-10	08/30/2011	PUD-WASTE WATER	AUGUST 2011		03/2012	186.86	
10-1512-415.32-10	08/30/2011	FINANCE	AUGUST 2011		03/2012	114.84	
260-5511-455.33-60	08/30/2011	LIBRARY	AUGUST 2011		03/2012	636.00	
09/16/2011	748695	BILLINGS PRECAST ENTERPRISES I	438			3,178.00	
513-8591-625.93-40	09/14/2011	MISC SERVICES	38966	287270	03/2012	3,178.00	
09/16/2011	748703	BUSINESS TAX SECTION	2449			17,806.68	
563-7122-711.92-90	09/12/2011	MISC SERVICES	285383-2	285383	03/2012	195.59	
503-0000-201.10-00	09/13/2011	WO1008 WTP CLEARWELL BAFF	RET RELEASE	281070	03/2012	245.23	
416-7493-603.92-20	09/13/2011	WO0426 ZONE 4 RESERVOIR	10	267953	03/2012	1,331.20	
416-7493-603.92-20	09/13/2011	WO0426 ZONE 4 RESERVOIR	23	267994	03/2012	1,544.33	
503-7591-609.93-40	09/13/2011	WO1008 WTP CLEARWELL BAFF	6	281070	03/2012	335.38	
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	FUND TRANSFER	283737	03/2012	4.25-	
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	FUND TRANSFER	283737	03/2012	4.25	
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	FUND TRANSFER	283737	03/2012	119.19-	
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	FUND TRANSFER	283737	03/2012	119.19	
205-3131-433.93-10	09/13/2011	WO0513 JACKSON STREET	3	283737	03/2012	276.11	
210-3110-431.93-11	09/13/2011	WO0513 JACKSON STREET	3	283737	03/2012	1,313.50	
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	3	283737	03/2012	188.58	
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	3	283737	03/2012	150.69	
503-7591-609.93-40	09/13/2011	WO1101 2011 WTR REPLC PRJ	2	284454	03/2012	5,699.66	
503-7591-609.93-40	09/14/2011	TEMP WATER SERVICE	3005	287324	03/2012	79.50	
405-7125-711.96-93	09/15/2011	MISC SERVICES	284934-3	284934	03/2012	956.41	
405-7125-711.96-94	09/15/2011	MISC SERVICES	284934-3	284934	03/2012	50.35	
405-7125-711.96-93	09/15/2011	MISC SERVICES	284934-4	284934	03/2012	5,168.14	
405-7125-711.96-94	09/15/2011	MISC SERVICES	284934-4	284934	03/2012	272.01	
09/16/2011	748705	CAMP DRESSER & MCKEE INC.	17330			5,322.54	
502-7211-601.35-90	09/13/2011	SYS DEV FEE/WTR RESALE	5/FINAL	279879	03/2012	5,322.54	
09/16/2011	748710	CARQUEST AUTO PARTS	3890			3,526.03	
512-8500-625.23-20	05/23/2011	NONSTOCKING ITEMS-P.U.D.	1935203885	282811	11/2011	25.92	

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10-5112-452.23-20	08/03/2011	MP	1910-220456	285262 02/2012 4.70
150-2112-421.23-20	08/03/2011	MP	1910-220456	285262 02/2012 89.78
211-3132-433.23-20	08/03/2011	MP	1910-220458	285262 02/2012 17.28
512-8500-625.23-20	08/03/2011	NONSTOCKING ITEMS-P.U.D.	1935214201	285262 02/2012 5.75
502-7400-603.24-50	08/03/2011	NONSTOCKING ITEMS-P.U.D.	1935214207	285262 02/2012 31.39
502-7400-603.23-20	08/03/2011	NONSTOCKING ITEMS-P.U.D.	1935214246	285262 02/2012 81.78
502-7400-603.24-50	08/03/2011	NONSTOCKING ITEMS-P.U.D.	1935214249	285262 02/2012 56.52
502-7400-603.24-50	08/05/2011	NONSTOCKING ITEMS-P.U.D.	1935214350	285262 02/2012 12.00-
502-7400-603.23-20	08/05/2011	MP	285262	285262 02/2012 34.30
502-0000-141.00-00	08/08/2011	WATER PARTS AND SUPPLIES	1935214800	02/2012 202.80
150-2112-421.23-20	08/08/2011	MP	1910-220929	285262 02/2012 86.94
150-2112-421.23-20	08/10/2011	MP	1910-220985	285262 02/2012 75.06
211-3132-433.23-20	08/10/2011	MP	1910-221421	285262 02/2012 14.58
601-0000-141.00-00	08/11/2011	MP	1910-220659	02/2012 144.96
150-2112-421.23-20	08/11/2011	MP	1910-220930	285262 02/2012 9.61
601-0000-141.00-00	08/12/2011	MP	1910-220805	02/2012 45.49
601-0000-141.00-00	08/12/2011	MP	1910-221111	02/2012 47.04
601-0000-141.00-00	08/12/2011	MP	1910-221710	02/2012 15.32
601-0000-141.00-00	08/12/2011	MP	1910-221798	02/2012 43.00
502-0000-141.00-00	08/12/2011	WATER PARTS AND SUPPLIES	1935215578	02/2012 153.12
502-0000-141.00-00	08/12/2011	WATER PARTS AND SUPPLIES	1935215642	02/2012 61.77
502-7400-603.23-20	08/12/2011	MP	1910-220896	285262 02/2012 29.66
670-3141-489.23-20	08/12/2011	MP	1910-221002	285262 02/2012 58.65
601-1553-481.26-50	08/12/2011	MP	1910-221111	285262 02/2012 11.11
502-7400-603.23-20	08/12/2011	MP	1910-221295	285262 02/2012 69.78
150-2226-422.23-20	08/12/2011	MP	1910-221710	285262 02/2012 19.52
512-8500-625.23-20	08/12/2011	NONSTOCKING ITEMS-P.U.D.	1935215524	285262 02/2012 23.05
502-7500-609.23-20	08/12/2011	NONSTOCKING ITEMS-P.U.D.	1935215658	285262 02/2012 43.74
502-7400-603.23-20	08/12/2011	NONSTOCKING ITEMS-P.U.D.	1935215731	285262 02/2012 13.66
502-7312-602.23-20	08/15/2011	NONSTOCKING ITEMS-P.U.D.	1935215862	285262 02/2012 3.99
502-7400-603.23-20	08/15/2011	NONSTOCKING ITEMS-P.U.D.	1935216197	285262 02/2012 46.68
601-0000-141.00-00	08/16/2011	MP	1910-221940	02/2012 23.55
512-8500-625.23-20	08/16/2011	NONSTOCKING ITEMS-P.U.D.	1935216192	285262 02/2012 8.85
601-0000-141.00-00	08/17/2011	MP	1910-221664	02/2012 46.54
601-0000-141.00-00	08/17/2011	MP	1910-221664	02/2012 11.32
601-0000-141.00-00	08/17/2011	MP	1910-221664	02/2012 58.00
150-2226-422.23-20	08/17/2011	MP	1910-221748	285262 02/2012 61.87
502-7500-609.23-20	08/17/2011	MP	1910-222325	285262 02/2012 9.61
502-7400-603.23-20	08/17/2011	NONSTOCKING ITEMS-P.U.D.	1935216369	285262 02/2012 4.94
541-3122-435.23-20	08/18/2011	MP	1910-222222	285262 02/2012 56.64
150-2112-421.23-20	08/19/2011	MP	1910-222765	285262 02/2012 21.73
601-0000-141.00-00	08/22/2011	MP	1910-222635	02/2012 114.00
502-0000-141.00-00	08/22/2011	WATER PARTS AND SUPPLIES	1935216934	02/2012 306.71
502-0000-141.00-00	08/22/2011	WASTEWATER PARTS & SUPPLY	1935216934	02/2012 96.60
502-0000-141.00-00	08/22/2011	WATER PARTS AND SUPPLIES	1935216953	02/2012 46.68
502-7500-609.23-20	08/22/2011	NONSTOCKING ITEMS-P.U.D.	1935216953	285262 02/2012 24.64
670-3141-489.23-20	08/23/2011	MP	1910-222346	285262 02/2012 7.78
512-8400-623.24-50	08/23/2011	NONSTOCKING ITEMS-P.U.D.	1935216895	285262 02/2012 9.23
512-8400-623.24-50	08/24/2011	NONSTOCKING ITEMS-P.U.D.	1935217347	285262 02/2012 18.46

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502-7400-603.24-50	08/25/2011	NONSTOCKING ITEMS-P.U.D.	1935217703	285262	02/2012	5.93	
502-0000-141.00-00	08/29/2011	WATER PARTS AND SUPPLIES	1935218301		02/2012	6.60	
10-5112-452.23-20	08/29/2011	MP	1910-223230	285262	02/2012	31.19	
601-0000-141.00-00	08/30/2011	MP	1910-223364		02/2012	10.50	
502-0000-141.00-00	08/30/2011	WATER PARTS AND SUPPLIES	1935218330		02/2012	95.40	
512-8500-625.23-20	08/30/2011	MP	1910-223340	285262	02/2012	49.33	
502-0000-141.00-00	08/31/2011	WATER PARTS AND SUPPLIES	1935218551		02/2012	22.11	
670-3141-489.23-20	08/31/2011	MP	2833-201101	285262	02/2012	84.73	
601-0000-141.00-00	09/02/2011	MP	1910-223053		03/2012	94.40	
502-0000-141.00-00	09/02/2011	WATER PARTS AND SUPPLIES	1935218629		03/2012	44.59	
502-0000-141.00-00	09/02/2011	WATER PARTS AND SUPPLIES	1935218685		03/2012	4.05	
541-3122-435.23-20	09/02/2011	MP	1910-223505	285262	03/2012	23.25	
502-7400-603.23-60	09/02/2011	NONSTOCKING ITEMS-P.U.D.	1935216681	285262	03/2012	4.49	
512-8400-623.23-60	09/12/2011	NONSTOCKING ITEMS-P.U.D.	902863668	285262	03/2012	537.91	
502-7400-603.23-20	09/13/2011	MP	1910-223890	285262	03/2012	71.07	
541-3122-435.23-20	09/14/2011	MP	1910-222764	285262	03/2012	7.19	
601-1553-481.26-50	09/14/2011	MP	1910-222764	285262	03/2012	29.80	
211-3132-433.23-20	09/14/2011	MP	1910-222964	285262	03/2012	54.42	
10-5112-452.23-20	09/14/2011	MP	1910-222972	285262	03/2012	24.66	
10-4321-419.23-20	09/14/2011	MP	1910-223135	285262	03/2012	5.08	
150-2112-421.23-20	09/14/2011	MP	1910-223227	285262	03/2012	81.37	
211-3132-433.23-20	09/14/2011	MP	1910-223227	285262	03/2012	72.23	
541-3122-435.23-20	09/14/2011	MP	1910-223501	285262	03/2012	67.04	
541-3122-435.23-20	09/14/2011	MP	1910-223939	285262	03/2012	28.09	
10-5112-452.23-20	09/14/2011	MP	1910-223994	285262	03/2012	43.81	
512-8500-625.23-20	09/15/2011	NONSTOCKING ITEMS-P.U.D.	1935203885A	285262	03/2012	25.92-	
502-7400-603.24-50	09/15/2011	NONSTOCKING ITEMS-P.U.D.	1935220715	285262	03/2012	5.93-	
512-8400-623.23-60	09/15/2011	NONSTOCKING ITEMS-P.U.D.	902863668A	285262	03/2012	537.91-	
09/16/2011	748712	CB & I INC	20708			131,788.80	
416-7493-603.92-20	09/13/2011	WO0426 ZONE 4 RESERVOIR	10	267952	03/2012	131,788.80	
09/16/2011	748717	COP CONSTRUCTION CO	865			57,479.84	
503-0000-201.10-00	09/13/2011	WO1008 WTP CLEARWELL BAFF	RET RELEASE	281069	03/2012	24,276.76	
503-7591-609.93-40	09/13/2011	WO1008 WTP CLEARWELL BAFF	6	281069	03/2012	33,203.08	
09/16/2011	748718	COUNTY WATER DISTRICT OF	881			9,745.87	
10-5112-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	4,102.77	
872-5198-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	684.76	
872-5198-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	465.52	
872-5198-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	520.09	
872-5198-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	1,055.29	
872-5198-452.34-20	09/08/2011	WATER CHARGES	AUG11 CW	287140	03/2012	1,114.77	
512-8500-625.34-20	09/14/2011	MISC SERVICES	1603500 AUG11	287276	03/2012	320.01	
211-3132-433.35-90	09/15/2011	MISC SERVICES	1486	287366	03/2012	1,482.66	
09/16/2011	748720	CSG SYSTEMS INC	20870			15,220.40	
502-7311-602.31-10	09/14/2011	MISC SERVICES	74510	287273	03/2012	6,730.46	
502-7311-602.31-11	09/14/2011	MISC SERVICES	74510	287273	03/2012	2,401.78	

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512-8311-622.31-10	09/14/2011	MISC SERVICES	74510	4,486.97
512-8311-622.31-11	09/14/2011	MISC SERVICES	74510	1,601.19
09/16/2011	748725	DALE & JAX DOOR & GLASS INC	938	3,850.00
561-7112-711.24-50	09/12/2011	INVOICE #13432	13432	3,850.00
09/16/2011	748734	DORSEY & WHITNEY LLP	8347	8,000.00
437-3165-431.55-10	09/14/2011	MISC SERVICES	1746739	6,288.00
440-3165-431.55-10	09/14/2011	MISC SERVICES	1746739	1,712.00
09/16/2011	748746	FISHER CONSTRUCTION	1313	19,363.01
563-7122-711.92-90	09/12/2011	MISC SERVICES	285353-2	19,363.01
09/16/2011	748762	GUARDIAN SECURITY INC	12486	6,125.00
260-5512-455.35-74	09/12/2011	INVOICE 995556 PARMLY BIL	995556	6,125.00
09/16/2011	748769	HYDROTECH	21327	7,870.50
503-7591-609.93-40	09/14/2011	TEMP WATER SERVICE	3005	7,870.50
09/16/2011	748774	INGRAM BOOK COMPANY	1820	7,221.68
260-5519-455.33-34	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155783	16.50
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155784	15.90
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155785	14.75
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155786	106.58
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155786	29.48
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155787	14.74
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155788	92.28
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155788	15.31
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155789	82.49
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155789	151.86
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155789	636.83
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155790	15.33
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155791	11.97
260-5519-455.32-55	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155792	168.03
260-5519-455.33-33	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155792	1,108.98
260-5519-455.33-34	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00155792	126.90
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188018	29.95
260-5519-455.32-41	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188019	49.42
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188020	29.97
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188021	18.35
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188022	47.96
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188023	27.47
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188023	4.79
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188023	101.80
260-5519-455.32-55	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188024	185.52
260-5519-455.33-33	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188024	166.40
260-5519-455.33-34	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00188024	42.81
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287878	14.15
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287879	38.50
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287880	45.40

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #	CHECK AMOUNT		
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287881	285836	03/2012	17.70
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260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287882	285836	03/2012	98.88
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287883	285836	03/2012	25.16
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287884	285836	03/2012	17.08
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287885	285836	03/2012	64.99
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287885	285836	03/2012	593.27
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00287885	285836	03/2012	648.25
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312407	285836	03/2012	10.17
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312408	285836	03/2012	61.54
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312408	285836	03/2012	97.23
260-5519-455.32-55	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312409	285836	03/2012	64.40
260-5519-455.33-33	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312409	285836	03/2012	132.06
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00312410	285836	03/2012	346.62
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260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383601	285836	03/2012	16.52
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383602	285836	03/2012	16.49
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383602	285836	03/2012	139.14
260-5519-455.32-55	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383603	285836	03/2012	11.20
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383604	285836	03/2012	38.51
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260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383605	285836	03/2012	17.69
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260-5519-455.33-33	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383606	285836	03/2012	35.42
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383607	285836	03/2012	46.81
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383607	285836	03/2012	22.19
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	00383609	285836	03/2012	17.69
260-5519-455.32-23	09/09/2011	PUBLICATIONS/AUDIOVISUAL	0383608	285836	03/2012	46.48
260-5519-455.32-26	09/09/2011	PUBLICATIONS/AUDIOVISUAL	0383608	285836	03/2012	146.41
260-5519-455.32-27	09/09/2011	PUBLICATIONS/AUDIOVISUAL	0383608	285836	03/2012	846.45
260-5519-455.32-55	09/09/2011	PUBLICATIONS/AUDIOVISUAL	0383608	285836	03/2012	104.45
09/16/2011	748780	JBT AERO TECH, JETWAY SYSTEMS	20116			2,993.46
561-7112-711.36-60	09/12/2011	INVOICE #2283602	2283602	F13423	03/2012	2,993.46
09/16/2011	748793	MAILING TECHNICAL SERVICES	12577			6,952.27
260-5511-455.31-10	09/12/2011	AUGUST SERVICE - FARMLY B	AUGUST 2011	F13433	03/2012	704.63
521-1521-493.31-10	09/14/2011	MISC SERVICES	AUGUST2011	287343	03/2012	154.50
571-7141-713.31-10	09/14/2011	MISC SERVICES	AUGUST2011	287343	03/2012	704.40
605-1515-483.31-10	09/14/2011	MISC SERVICES	AUGUST2011	287343	03/2012	5,388.74
09/16/2011	748794	MARKETING SPECIALTIES INC	2292			2,691.56
561-7113-711.36-60	09/12/2011	INVOICE #063773	063773	F13435	03/2012	2,691.56
09/16/2011	748798	MCKINSTRY CO LLC	21281			81,055.00
233-7104-711.35-90	08/31/2011	MISC SERVICES	44193	287336	03/2012	81,055.00
09/16/2011	748799	MES-NW	19056			5,606.20
258-2134-421.21-20	07/29/2011	MISC SERVICES	00254314_SNV	285406	03/2012	4,434.00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
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405-7125-711.96-93	09/15/2011	MISC SERVICES	111094/95	282106	03/2012	36,547.65	
405-7125-711.96-93	09/15/2011	MISC SERVICES	111094/95	282106	03/2012	30,905.15	
405-7125-711.96-94	09/15/2011	MISC SERVICES	111094/95	282106	03/2012	1,923.56	
405-7125-711.96-94	09/15/2011	MISC SERVICES	111094/95	282106	03/2012	1,626.59	
09/16/2011	748814	NORTHERN TOOL & EQUIPMENT	13570			2,599.99	
541-3123-435.29-20	09/15/2011	AIR COMPRESSOR LF	24541213	286273	03/2012	2,599.99	
09/16/2011	748816	NORTHWEST INDUSTRIAL	2755			3,574.21	
513-8591-625.93-40	08/02/2011	NONSTOCKING ITEMS-P.U.D.	1432526	285266	02/2012	67.46	
541-3122-435.22-90	08/05/2011	MISC SUPPLIES	1432092	285266	02/2012	120.00	
512-8400-623.24-50	08/05/2011	NONSTOCKING ITEMS-P.U.D.	1432612	285266	02/2012	450.88	
502-0000-141.00-00	08/11/2011	WATER PARTS AND SUPPLIES	1432935		02/2012	442.22	
502-7312-602.24-10	08/12/2011	NONSTOCKING ITEMS-P.U.D.	1432991	285266	02/2012	13.60	
502-7500-609.24-10	08/15/2011	NONSTOCKING ITEMS-P.U.D.	1432652	285266	02/2012	113.37	
502-7500-609.24-10	08/15/2011	NONSTOCKING ITEMS-P.U.D.	1433013	285266	02/2012	44.45	
541-3123-435.24-10	08/16/2011	WRENCH	1432979	285266	02/2012	707.10	
513-8591-625.93-40	08/18/2011	NONSTOCKING ITEMS-P.U.D.	1433300	285266	02/2012	119.46	
502-7500-609.24-10	08/19/2011	NONSTOCKING ITEMS-P.U.D.	1433303	285266	02/2012	42.56	
502-7500-609.24-10	08/22/2011	NONSTOCKING ITEMS-P.U.D.	1433331	285266	02/2012	120.00	
502-7500-609.24-10	08/23/2011	NONSTOCKING ITEMS-P.U.D.	1433397	285266	02/2012	245.00	
513-8591-625.93-40	08/23/2011	NONSTOCKING ITEMS-P.U.D.	1433407	285266	02/2012	161.00	
512-8400-623.24-50	08/30/2011	NONSTOCKING ITEMS-P.U.D.	1433605	285266	02/2012	99.13	
502-7500-609.24-10	08/30/2011	NONSTOCKING ITEMS-P.U.D.	1433771	285266	02/2012	37.79	
502-7312-602.24-10	09/02/2011	NONSTOCKING ITEMS-P.U.D.	1433852	285266	03/2012	51.62	
541-3123-435.22-90	09/06/2011	AIR TOOL GALLON	1433836	285266	03/2012	28.30	
512-8400-623.24-50	09/12/2011	NONSTOCKING ITEMS-P.U.D.	1431433849	285266	03/2012	40.96	
541-3122-435.22-90	09/12/2011	BROOMS PER LEON	1432092-1	285266	03/2012	409.92	
512-8500-625.23-60	09/12/2011	NONSTOCKING ITEMS-P.U.D.	1433613	285266	03/2012	146.64	
512-8400-623.24-50	09/12/2011	NONSTOCKING ITEMS-P.U.D.	1433841	285266	03/2012	53.44	
512-8500-625.24-10	09/13/2011	NONSTOCKING ITEMS-P.U.D.	14320311	285266	03/2012	40.70	
502-7500-609.24-10	09/13/2011	NONSTOCKING ITEMS-P.U.D.	1433020	285266	03/2012	18.61	
09/16/2011	748818	NORTHWESTERN ENERGY	15771			30,324.28	
571-7143-713.34-10	09/08/2011	ACCOUNT# 0100473-8	09012011	F13416	03/2012	2,854.81	
502-7400-603.34-10	09/14/2011	MISC SERVICES	01004787 AUG11	287296	03/2012	998.12	
512-8500-625.34-10	09/14/2011	MISC SERVICES	11759727 SEP11	287296	03/2012	170.24	
502-7400-603.34-10	09/14/2011	MISC SERVICES	19209519 AUG11	287296	03/2012	455.01	
10-5127-451.34-10	09/15/2011	NW PARK/REC/PL	07123870		03/2012	41.76	
10-5122-451.34-10	09/15/2011	NW PARK/REC/PL	07125362		03/2012	149.93	
571-7143-713.34-10	09/15/2011	NW AVIATION/TRAN	07192255		03/2012	224.65	
150-2221-422.34-10	09/15/2011	NW FIRE	07208176		03/2012	321.46	
10-5122-451.34-10	09/15/2011	NW PARK/REC/PL	07208184		03/2012	24.90	
10-5126-451.34-10	09/15/2011	NW PARK/REC/PL	07208218		03/2012	1,663.01	
502-7400-603.34-10	09/15/2011	NW PUD-WATER TREAT	07222649		03/2012	12,293.85	
10-5112-452.34-10	09/15/2011	NW PARK/REC/PL	07222870		03/2012	1,402.38	
502-7400-603.34-10	09/15/2011	NW PUD-WATER TREAT	07230402		03/2012	7,276.11	

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10-5112-452.34-10	09/15/2011	NW PARK/REC/PL	07230451	949.63
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10-5112-452.34-10	09/15/2011	NW PARK/REC/PL	08134892	50.56
150-2221-422.34-10	09/15/2011	NW FIRE	08715468	529.35
872-5198-452.34-10	09/15/2011	NW PARKS	10291920	.09
502-7400-603.34-10	09/15/2011	NW Parks	11422532	173.09
10-5112-452.34-10	09/15/2011	NW	11914041	587.09
211-3132-433.34-10	09/15/2011	STREETS/TRAFFIC	17403577	.20
211-3132-433.34-10	09/15/2011	STREETS/TRAFFIC	17488966	.58
10-5112-452.34-10	09/15/2011	PARKS	18366666	34.34
10-5112-452.34-10	09/15/2011	PARKS & REC	18494088	59.68
10-5112-452.34-10	09/15/2011	PARKS & REC	19049444	53.18
09/16/2011	748820	OSTERMILLER CONST	2839	190,958.86
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	FUND TRSFR	420.85
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	FUND TRSFR	11,800.26
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	283736	420.85-
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	283736	11,800.26-
205-3131-433.93-10	09/13/2011	WO0513 JACKSON STREET	3	27,334.98
210-3110-431.93-11	09/13/2011	WO0513 JACKSON STREET	3	130,036.48
440-3165-431.93-11	09/13/2011	WO0513 JACKSON STREET	3	18,669.58
840-3184-431.93-10	09/13/2011	WO0513 JACKSON STREET	3	14,917.82
09/16/2011	748823	PAINT DOCTOR THE	21895	3,081.71
630-1753-485.73-10	09/15/2011	MISC SERVICES	1594	3,081.71
09/16/2011	748825	PROTECH MECHANICAL INC	7475	6,475.00
260-5512-455.36-70	09/08/2011	PARMLY BLGS LIBRARY	INV 55848	6,475.00
09/16/2011	748829	RDO EQUIPMENT CO.	17861	3,114.70
502-7500-609.23-30	09/14/2011	MISC SERVICES	P51682	414.70
512-8500-625.53-33	09/14/2011	MISC SERVICES	R05478	900.00
512-8500-625.53-33	09/14/2011	MISC SERVICES	R05492	1,800.00
09/16/2011	748833	RIVERSIDE SAND & GRAVEL INC	19447	638,244.15
405-7125-711.96-93	09/15/2011	MISC SERVICES	284931-3	94,685.74
405-7125-711.96-94	09/15/2011	MISC SERVICES	284931-3	4,983.46
405-7125-711.96-93	09/15/2011	MISC SERVICES	284931-4	511,646.20
405-7125-711.96-94	09/15/2011	MISC SERVICES	284931-4	26,928.75
09/16/2011	748839	SCHAEFER REMODEL & REPAIR	19787	4,875.00
296-6554-463.72-75	09/13/2011	MHR-MOMOHARA-29HARTLAND D	1002	4,875.00
09/16/2011	748842	SHERWIN WILLIAMS COMPANY	21749	26,500.90
211-3132-433.23-40	09/15/2011	PAINT, COATINGS, WALLPAPER	915050622	1,558.40
211-3132-433.23-40	09/15/2011	PAINT, COATINGS, WALLPAPER	915131387	24,942.50
09/16/2011	748845	SKYCON INC	19639	4,750.00
561-7112-711.36-60	09/12/2011	INVOICE #422	422	4,750.00
09/16/2011	748847	SOLID WASTE SYSTEMS INC	9811	29,649.40
562-7120-711.94-90	09/12/2011	MISC SERVICES	0052094-IN	29,547.20

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
ACCOUNT #	TRN DATE	DESCRIPTION	INVOICE	PO #	PER/YEAR	TRN AMOUNT	
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820-1572-479.55-10	09/14/2011	MISC SERVICES	1-1061.112	287345	03/2012	14,814.21	
465-3161-431.55-10	09/14/2011	MISC SERVICES	1-1061.113	287345	03/2012	1,579.13	
466-3161-431.55-10	09/14/2011	MISC SERVICES	1-1061.113	287345	03/2012	8,592.28	
09/16/2011	748850	STAR SERVICE INC	3553			152,888.23	
416-7493-603.92-20	09/13/2011	WO0426 ZONE 4 RESERVOIR	23	267993	03/2012	152,888.23	
09/16/2011	748853	SUNSET EXCAVATION	11477			6,350.00	
505-7515-609.36-71	09/14/2011	MISC SERVICES	159636	287303	03/2012	675.00	
505-7515-609.36-71	09/14/2011	MISC SERVICES	159638	287303	03/2012	4,400.00	
505-7515-609.36-71	09/14/2011	MISC SERVICES	159641	287303	03/2012	1,275.00	
09/16/2011	748860	TIDAL WAVE CARWASH LLC	21270			5,217.12	
561-0000-141.00-00	09/14/2011	INVOICE #102432 - SOAP	102432		03/2012	2,348.76	
561-0000-141.00-00	09/14/2011	INVOICE #102432 - RINSE	102432		03/2012	2,868.36	
09/16/2011	748861	TIRE-RAMA	1864			40,386.90	
541-3122-435.23-90	08/16/2011	NEW TIRES FOR STOCK	1050182633	285270	02/2012	6,106.40	
541-3122-435.23-90	08/16/2011	NEW TIRES FOR STOCK	1050182634	285270	02/2012	6,106.40	
541-3122-435.23-90	08/16/2011	RECAPS	1050182636	285270	02/2012	4,656.00	
541-3122-435.23-90	08/16/2011	NEW RECAPS	1050182637	285270	02/2012	4,656.00	
541-3122-435.23-90	08/16/2011	RECAPS	1050182956	285270	02/2012	6,080.50	
541-3122-435.23-90	08/16/2011	TIRE REPAIRS	1050182957	285270	02/2012	1,772.80	
541-3123-435.23-90	08/16/2011	LANDFILL	1050182959	285270	02/2012	1,310.78	
541-3123-435.23-90	08/31/2011	GRADER TIRE LF	1050184036	285270	02/2012	60.00	
211-3132-433.23-90	09/02/2011	MP	1050-183669	285270	03/2012	30.00	
541-3122-435.23-90	09/06/2011	TIRES	1050184168	285270	03/2012	5,060.50	
541-3122-435.23-90	09/06/2011	TIRES	1050184169	285270	03/2012	4,134.52	
541-3123-435.23-90	09/06/2011	TIRES LF	1050184177	285270	03/2012	383.00	
211-3132-433.23-90	09/08/2011	MISC SERVICES	1050184022	285270	03/2012	30.00	
09/16/2011	748864	TOWN & COUNTRY SUPPLY ASSOCIAT	18295			74,427.50	
502-0000-141.00-00	08/03/2011	WATER PARTS AND SUPPLIES	76616		02/2012	509.06	
502-0000-141.00-00	09/02/2011	WATER PARTS AND SUPPLIES	86948		03/2012	544.12	
561-7118-711.23-13	09/12/2011	INVOICE #87704	87704/86501	F13437	03/2012	10,887.00	
561-7113-711.23-10	09/12/2011	INVOICE #86501	87704/86501	F13437	03/2012	28,261.12	
601-0000-141.00-00	09/14/2011	MP	89486		03/2012	13,942.80	
601-0000-141.71-41	09/14/2011	MP	89486		03/2012	6,961.40	
601-0000-141.00-00	09/14/2011	MP	86993		03/2012	13,322.00	
09/16/2011	748866	TRACTOR & EQUIPMENT	3775			3,561.52	
502-7400-603.53-33	09/14/2011	MISC SERVICES	41006049.0001	287309	03/2012	852.30	
541-3122-435.23-20	09/15/2011	MP	BLW00125057	287374	03/2012	2,709.22	
09/16/2011	748869	TRUCK COUNTRY USA INC	21778			5,389.00	
211-3132-433.94-20	09/15/2011	MISC SERVICES	98681	285142	03/2012	5,389.00	
09/16/2011	748884	WESTERN MUNICIPAL CONSTRUCTION	11742			564,266.54	
503-7591-609.93-40	09/13/2011	WO1101 WATER REPLAC PRJ	2	284453	03/2012	564,266.54	

PREPARED 09/16/2011, 14:05:51  
PROGRAM: GM350L  
CITY OF BILLINGS

A/P CHECKS BY PERIOD AND YEAR  
MINIMUM AMOUNT: 2,500.00  
FROM 09/16/2011 TO 09/16/2011

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BANK CODE 00

CHECK DATE	CHECK NUMBER	VENDOR NAME	VENDOR #				CHECK AMOUNT
09/16/2011	748889	YELLOWSTONE VALLEY ANIMAL SHEL	20525				20,256.05
150-2170-441.39-90	09/13/2011	CONTRACT 7-22\8-21-11		11-1265	287238	03/2012	20,256.05
DATE RANGE TOTAL *							2,337,265.14 *

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Permanent Ordinance Defining and Prohibiting Medical Marijuana Storefronts

**PRESENTED BY:** Brent Brooks

**Department:** Legal

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**Information**

**PROBLEM/ISSUE STATEMENT**

Pursuant to specific statutory authority conferred by MCA Sec 7-5-104 and BMCC Sec. 2-235, the Billings City Council enacted Emergency Ordinance 11-5537 on July 5th, 2011, prohibiting medical marijuana providers from operating storefront businesses in the City of Billings for a 90-day period effective immediately upon passage. Senate Bill 423, Section 13(2) passed by the 2011 Montana Legislature specifically authorized local governments to enact ordinances prohibiting such storefront businesses.

The attached permanent ordinance defines “storefront” medical marijuana businesses and permanently prohibits them from operating in the City of Billings. The attached proposed ordinance prohibits any open and visible display of marijuana, marijuana products, and depictions of marijuana, in a manner visible from the exterior of any building or structure wherein a provider operates a medical marijuana business. The ordinance also prohibits any provider from allowing members of the general public to access the provider’s place of business, and restricts access to cardholders registered with that provider and persons seeking to become cardholders registered with that provider.

**ALTERNATIVES ANALYZED**

The City Council may:

- Approve the attached permanent ordinance defining medical marijuana “storefront” businesses, and prohibiting the operation of medical marijuana storefronts in Billings; or
- Disapprove the proposed ordinance; or
- Take no action; or
- Postpone action to another time.

**FINANCIAL IMPACT**

Enforcement of Senate Bill 423 and the attached permanent ordinance prohibiting medical marijuana storefront businesses will likely have an impact on law enforcement and code enforcement allocation, although the exact costs cannot be defined.

**RECOMMENDATION**

Staff recommends the Council approve the attached ordinance.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Ordinance

ORDINANCE NO. 11-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS MONTANA CITY CODE BE AMENDED BY ADDING A NEW ARTICLE 7-1700 TITLED "MEDICAL MARIJUANA", ADDING NEW CODE SECTIONS, DEFINING MEDICAL MARIJUANA STOREFRONTS, AND PERMANENTLY PROHIBITING THE OPERATION OF MEDICAL MARIJUANA STOREFRONTS, PURSUANT TO SB 423 PASSED BY THE 2011 MONTANA LEGISLATURE.

RECITALS

**WHEREAS**, the 2011 Montana Legislature passed the Montana Marijuana Act, Senate Bill (SB) 423, with most sections effective July 1, 2011, which extensively changes, restricts and regulates the use and prohibits the sale for profit of medical marijuana, including the option granted to local governments to prohibit storefront medical marijuana facilities to operate beyond July 1, 2011; and

**WHEREAS**, the City Council of the City of Billings previously enacted emergency ordinance No. 11-5537 pursuant to the statutory authority conferred by MCA Sec. 7-5-104 and BMCC 2-235, prohibiting storefront medical marijuana businesses for a 90 day period effective July 5<sup>th</sup>, 2011; and

**WHEREAS**, in order to protect and preserve the public peace, health, safety, and welfare, the City Council of the City of Billings wishes to permanently prohibit storefront medical marijuana businesses, pursuant to the explicit authority granted by SB 423, Section 13(2) codified at Montana Code Annotated (MCA) Section 50-46-328(2)(2011);

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Billings, Montana, as follows:

**Section 1: Recitals.** All of the Recitals set forth above are hereby adopted as Findings of Fact.

**Section 2: New Article.** That the Billings Montana City Code be amended to add a new article, Article 7-1700 MEDICAL MARIJUANA, and new sections BMCC Section 7-1701, 7-1702, 7-1703.

**BMCC Section 7-1701 Definitions.**

The terms "marijuana", "provider", "marijuana-infused product", "marijuana-infused product provider", "registered cardholder" or "cardholder" shall have the meaning

provided to such terms by the Montana Marijuana Act, Section 2, (SB 423) passed by the 2011 Montana Legislature. Now codified at MCA section 50-46-302(2011).

The term “Storefront Business” means any commercial establishment, structure or building that is openly accessible by members of the general public. Storefront Business does not include a commercial establishment, structure, or building that is inaccessible to the general public, which only provides access to Cardholders registered with that Provider by the Montana Department of Health and Human Services or other persons, by appointment, who are intending to establish a bona fide Provider/Cardholder relationship with that Provider.

### **BMCC Section 7-1702 Storefronts Prohibited.**

(1) As authorized by Senate Bill (SB) 423, Section 13(2) or the Montana Marijuana Act, MCA section 50-46-328(2), passed by the 2011 Montana Legislature, no “Provider” of marijuana or marijuana-infused products shall be permitted to open or operate a “Storefront Business” within the Billings City Limits. “Providers” who are in full compliance with the Montana Marijuana Act of 2011 shall be permitted to dispense medical marijuana and marijuana infused products to “Cardholders” who are registered with that Provider by the Montana Department of Health and Human Services, provided that access to the Storefront Business is limited to Cardholders registered with that Provider and other persons, by appointment, who are intending to establish a bona fide Provider/Cardholder relationship with that Provider.

(2) As authorized by Senate Bill (SB) 423, Section 13(1) of the Montana Marijuana Act, passed by the 2011 Montana Legislature, MCA section 50-46-328 (1), “Providers” permitted to dispense medical marijuana and medical marijuana infused products under Section (1) above are prohibited from displaying, in an open or visible manner to the general public, any medical marijuana plant, marijuana infused product, or any depictions, caricatures, or other artistic renditions of a marijuana plant, leaf, bud or parts in a manner visible from the exterior of the establishment, structure or building in which the “Provider” does business.

### **BMCC Section 7-1703 Penalties.**

Any individual, entity or establishment that violates the terms of this ordinance set forth above shall be deemed to be creating a public nuisance and shall be subject to criminal penalties as provided in Billings, Montana City Code (BMCC) Section 1-110 and shall further be subject to civil action to restrain or abate as authorized in B.M.C.C. Section 18-301, et. seq. as the City deems appropriate. Such ability of the City to prosecute and/or enjoin or abate is in addition to any other remedies available to the City at law or in equity.

It shall be a defense to a violation of B.M.C.C. Sec. 7-1703 that a Provider did not allow members of the general public, who were not registered Cardholders with that Provider or persons seeking, by appointment, to establish a bona fide Provider/Cardholder relationship with that Provider, to access the Provider's place of business.

**Section 3: Severability:** In the event any word, phrase, clause, sentence, paragraph, section or other part of the ordinance set forth herein is held invalid by a court of competent jurisdiction, such judgment shall affect only that part held invalid and the remaining provisions thereof shall continue in full force and effect.

**Section 4: Effective Date:** This ordinance shall become effective 30 days after passage and approval upon second reading of the Billings Montana City Council.

PASSED by the City Council on first reading this 11<sup>th</sup> day of October, 2011.

PASSED, ADOPTED and APPROVED on second reading this 24<sup>th</sup> day of October, 2011.

CITY OF BILLINGS

BY: \_\_\_\_\_  
Thomas W. Hanel, Mayor

Attest:

\_\_\_\_\_  
Cari Martin, City Clerk

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011  
**TITLE:** Public Hearing & Resolution for Weed Assessments  
**PRESENTED BY:** Patrick M. Weber, Finance Director  
**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

The annual weed assessments have been completed by the Finance Division and are ready to be spread on the tax rolls by the attached resolution.

Pursuant to BMCC 25-304, property owners are notified in writing and given seven (7) days from the date of the notice of noncompliance to exterminate or remove the weeds or tall grass. If owners fail to cut the vegetation, the City may cut it and assess the costs to the real property, together with an additional administrative cost of 25% of the cost of removal and a \$25 penalty. If the charges are not paid within a given time, the costs and penalties constitute a lien on the property and special assessments may be levied. The General Fund initially pays the costs, so the collected assessments reimburse those expenses.

The attached list of properties had weeds removed from them during the growing season, the owners didn't pay the charges and the properties may be assessed to recover the costs, penalty and fee.

**ALTERNATIVES ANALYZED**

The Council must hold a public hearing and then may:

- Approve the resolution; or
- Not approve the resolution, in which case the property owners will not be assessed, and the General Fund will be responsible for paying for the weed removal.

**FINANCIAL IMPACT**

The assessments total \$15,611.19 and the payments will reimburse the General Fund.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and pass the attached assessment resolution.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Resolution

RESOLUTION NO. 11 \_\_\_\_\_

A RESOLUTION LEVYING A SPECIAL TAX UPON PROPERTY WITHIN THE CITY OF BILLINGS, MONTANA, TO DEFRAY THE COST OF CUTTING AND/OR EXTERMINATING WEEDS.

WHEREAS, Billings, Montana City Code, Section 25-307, provides that the City Clerk shall prepare and present a resolution containing a list of all parcels of land in the City, from which and adjacent to which, the weeds were cut, exterminated and/or removed, and such list shall contain opposite the number of such lots or description of such parcels of land, the name of the owner, if known, and the amount of cost for cutting and removing such weeds.

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

1. LEVYING OF SPECIAL TAX. That for the purpose of collecting funds to defray the cost of cutting and removing of weeds, there is hereby levied and assessed a special tax upon the owners and the lots or parcels described on the list attached hereto.

2. ASSESSMENT AND COLLECTION. Said tax shall be placed upon the assessment rolls and collected in the same manner as other taxes.

3. DISPOSITION OF COLLECTIONS. All monies collected from taxes shall be paid to the General Fund of the City of Billings.

4. NOTICE OF HEARING. On Tuesday, **October 11, 2011**, at 6:30 o'clock p.m., or as soon thereafter as the matter may be considered on the agenda in the Council Chambers of the City Hall, Billings, Montana, the City Council will hear objections to the final adoption of this resolution. The City Clerk published notice hereof twice, on September 22<sup>nd</sup> and September 29<sup>th</sup>, 2011 in the Billings Times.

5. EFFECTIVE DATE. This resolution shall be effective upon adoption.

ADOPTED and APPROVED by the City Council on the **11th** day of **October, 2011**

CITY OF BILLINGS:

BY: \_\_\_\_\_  
Thomas W. Hanel, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, CITY CLERK

<u>Property Owner</u>	<u>Address</u>	<u>Tax ID#</u>	<u>Balance Due</u>
Donald Jones	609 1st St W	A15715	\$ 655.00
Timothy Hert	23 Rhea Ln	A05526	\$ 177.50
Timothy Hert	23 Rhea Ln	A05526	\$ 239.63
Schneiter Enterprises	Clubhouse Way Lot 11	A22188	\$ 233.75
Schneiter Enterprises	Clubhouse Way Lot 14	A22216	\$ 177.50
Schneiter Enterprises	408 Tamarask Dr	A22721	\$ 346.25
Sands Law Firm	2334 Golden Blvd	A13061A	\$ 515.00
Sands Law Firm	2334 Golden Blvd	A13062	\$ 177.50
Randal Schneider	1813 St. Andrews Dr	A22341	\$ 515.00
Lusicha Gorman	22 7th St W	A04397	\$ 177.50
Linda Nelson	3709 Poly Dr	A12985	\$ 346.25
Sandra Murray Lee	632 Miles Ave	A19108	\$ 346.25
Robert Molina	3839 King's Green Dr	A28878	\$ 177.50
John Oglesby	4634 Ruth Ave	A17390	\$ 290.00
Dan Villareal	703 Yellowstone Ave	A15629	\$ 177.50
Robert Pratsch	2691 Gabel Rd	A26156	\$ 824.38
Jay Lindes	Unassigned	D11510	\$ 537.50
Jay Lindes	28 Riveroaks Dr	C10773A	\$ 214.63
Marvin Dunster	302 S 27th St	A01125	\$ 121.25
Bradley & Shandra Martin	1750 High Sierra Blvd	A27105	\$ 346.25
Robert H Weins - Trustee	1344 Wicks Ln	C06121	\$ 346.25
KW Signature Homes	3405 McMasters Rd	A32139	\$ 402.50
KW Signature Homes	3335 McMasters Rd	A32137	\$ 402.50
Jori Billingsley	767 Aquarius Pl	A24479	\$ 327.50
Edward & Jill Corcoran	531 Howard Ave	A19122	\$ 121.25
Steven Reece	273 Prospectors Ln	A22862C	\$ 177.50
Middleton Roofing	847 Governors Blvd	A19971	\$ 215.00
Bruce Sherman	217 Terry Ave	A15825	\$ 233.75
Timothy Loudan	3103 Solar Ave	A28707	\$ 177.50
Monette Cox	1413 18th St W	A09751	\$ 102.50
Eric Hennen	1426 Wicks Ln	C00348	\$ 290.00
Lucas Ferguson	307 Howard Ave	A15947	\$ 121.25
Carol Mick	2902 Ramada Dr	A20232	\$ 121.25
Arthur Jackson III	702 25th St W	A10306	\$ 233.75
Brenda Frigon	129 Broadwater Ave	A17909	\$ 177.50
Brett Fletcher	2507 Lake Heights Dr	C08266	\$ 402.50
Yellowstone County	Bazaar Exchange	A21892	\$ 290.00
Lee Ann Quinn	2401 Custer Ave	A05971	\$ 177.50
Duke's Concrete Construction	3417 McMasters Rd	A32141	\$ 402.50
TS Billings Limited Partnership	496 Main St	D11724	\$ 290.00

Kenmark Corporation	5849 Foxtail Loop S	C14872D	\$ 290.00
Kenmark Corporation	5826 Foxtail Loop S	C14875D	\$ 102.50
Jon Reineking	1475 S 32nd St W	A33294	\$ 543.13
Harold Miller	3004 Gabel Rd	C11807	\$ 205.63
Harold Miller	3034 Gabel Rd	C11806	\$ 205.63
Harold Miller	3060 Gabel Rd	C11805	\$ 205.63
Vicky Panasuk	2941 Custer Ave	C01941	\$ 121.25
Bryana Cischke	501 Lewis Ave	A15260	\$ 93.13
New Southside Properties	Orchard Lane	D01553	\$ 683.75
Vicki Thomas	2223 9th Ave N	A02138	\$ 346.25
Cassie Casterline	129 Jefferson St	A14741	\$ 177.50
Bonini Enterprises	1823 Key Stone St	A32909	\$ 205.63
Bonini Enterprises	5415 Summer Stone Ave	A32903	\$ 205.63
Bonini Enterprises	1923 Country Stone St	A31903	\$ 205.63
Christopher Tullar	32 Prickett Ln	D01441	\$ 261.88
Kenneth Glock	134 Wyoming Ave	A17917	\$ 149.38
Alice Gabel	3509 6 <sup>th</sup> Ave S	A01452	\$ 127.50

TOTAL TO BE  
ASSESSED

\$ 15,738.69

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Public Hearing and Resolution Approving Tax Abatement for All American Pharmaceuticals

**PRESENTED BY:** Bruce McCandless, Asst. City Administrator

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

The City of Billings operates tax incentive programs under state law authority found in MCA 15-24-1401, 1501 and 1502. All American Pharmaceuticals (Golini Real Estate, LLC), located at 2376 Main Street, applied for tax abatement under 15-24-1501 and City Resolution No. 05-18377. This program encourages existing building remodeling, reconstruction or expansion by exempting 100% of the improvements' value from city and local school property tax during construction and for four years following the construction period. In the fifth and subsequent years, the improvements are fully taxable. Minimum requirements are that the construction cost at least \$500,000, it adds at least 2.5% to the taxable value, property tax payments are current and that the applicant identify jobs that the investment creates. All American Pharmaceuticals submitted an application to abate taxes on a 33,000 sq. ft., \$2,000,000 building expansion. The company plans to add 5-10 full time employees within two years of the expansion. The company received a tax abatement on a 2007 building remodel. Zoning is appropriate and taxes are current. The City Council must conduct a public hearing and at its conclusion, may approve, disapprove or conditionally approve the application for tax abatement and the attached resolution.

**ALTERNATIVES ANALYZED**

The City Council may approve, disapprove or conditionally approve the application and the resolution.

**FINANCIAL IMPACT**

The tax abatement's financial impact is difficult to accurately determine because the MT Dept of Revenue consistently undervalues commercial property and the Legislature artificially adjusts real property taxable values. Assuming that the applicant's cost/value estimate of \$2 million is correct, the city tax abatement would be approximately \$7,720/year and local school levies would also be abated. The City will continue assessing for special services such as street and storm maintenance, arterial construction, etc.

**RECOMMENDATION**

Staff recommends that the City Council conduct a public hearing and adopt a Resolution granting a tax abatement per MCA 15-24-1501 and City Resolution No. 05-1837 for All American Pharmaceuticals.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Application

Existing building

Building expansion photo

Resolution

**APPLICATION FORM FOR TAX REDUCTION  
BUILDING REMODEL, EXPANSION OR RECONSTRUCTION**  
(As allowed under Yellowstone County Resolution 02-66, City Council Resolutions 05-18377  
and 05-18378 and 15-24-1501, 15-24-1502 or 15-24-1601 MCA)

1. Name of business: All American Pharmaceutical
2. \_\_\_\_\_ Building Remodel or Reconstruction: Start of construction (date) \_\_\_\_\_  
End of construction (date) \_\_\_\_\_
3. X Building Expansion: Start of construction (date) 10/15/10  
End of construction (date) 11/1/11
4. Address of business: 2376 Main Street Billings, MT 59105  
Actual location of business: same as above  
Tax Code: \_\_\_\_\_
- Within city limits of Billings  YES  NO
5. Person representing business and responsible for application:  
Name: Jeff Golini Title: President  
Address: 2376 Main St Billings, MT 59105 Telephone: 406-245-5793
6. Amount of capital investment for Expansion, Remodel or Reconstruction in Billings / Yellowstone County: \$2,000,331.50 (attach detailed costs of materials and labor and dates of construction. County Commissioners and/or City Council may request further information, such as financial statements, business references, or other documents prior to acting on this request).
7. Approximate market value of building prior to remodel, reconstruction, or expansion:  
\$ 3,000,000
8. Explain business activity – what business does: Manufacture dietary, food, and nutritional products
9. How long has this business been located in Billings and/or Yellowstone County?  
Started in 1984
10. As of the date of this application, how many employees does the business have:  
69 Full-time 4 Part-time
11. How many employees will the applicant have within 2 years after completion of construction:  
74 Full-time 5 Part-time

12. Describe job skills required for all new employees both full and part-time: \_\_\_\_\_  
Good Attitude. Good Attendance
- 
13. What is the hourly pay scale of both full and part-time employees to include benefits (new employees only): \$11.00/hour after 12 months
14. Other Economic impacts of capital investment: \_\_\_\_\_  
Business will continue to grow + employ new people
15. Planned hiring schedule: 5 new employees by December 2010  
Approximately 5-10 new employees by December 2011
16. List other property tax benefits business currently receives or has applied for: \_\_\_\_\_  
Tax abatement on 2007 remodel
- 
17. Building permit (attach copy or explain absence): ~~NA~~
- 
18. A non-refundable fee of \$500 must accompany this application to cover the cost of application administration. Make checks payable to the Big Sky Economic Development Authority.
19. All items on this application must be addressed. Upon completion and accompanied by the application fee, the original can be submitted to the Big Sky Economic Development Authority, 222 N. 32<sup>nd</sup> Street, Suite 200, Billings, Montana 59101 (telephone 256-6871). If the application is complete, a duly advertised public hearing will be scheduled, after which the Commissioners and/or City Council, in their discretion, will decide whether to approve or deny the application. The applicant, or a representative of the applicant, must appear in person at the public hearings.
20. The application to the Department of Revenue, which is part of this application, must also be completed and signed by the applicant.
21. The Board of County Commissioners and/or City Council may review this applicant's tax incentive program at any time and terminate further reductions at their discretion if they find the provisions of Resolution are not being met.
22. If application is approved, applicant will comply with the following provisions. Failure to comply may lead to the previously approved tax abatement being rescinded:
- i. Provide copy of Occupancy Certificate and/or Certificate of Substantial Completion
  - ii. Annual Survey to be completed and returned to Big Sky EDA by June 30 of each year
  - iii. Remain current on all property taxes on the subject property
  - iv. Notify Big Sky EDA of any ownership changes or change of use of the facility
  - v. Comply with any other provisions set by the Board of County Commissioners and/or City Council
23. In order for this incentive program to apply to the applicant's current year taxes, Yellowstone County must receive the properly completed application by March of the year in which the reduction is desired. If within the city of Billings, City Council must approve the application by March of the year in which the reduction is desired.

24

Signature of applicant/representative: [Signature]

Date of application: 8/30/2010

County Commissioner's Public hearing held (date): 11/8/2010

City Council's Public hearing held (date): \_\_\_\_\_

Recommendation by the Big Sky Economic Development Authority:

Approve     Deny    Signature: [Signature]    Date: 8/17/11

County Board of Planning or Laurel-Yellowstone City-County Planning Board certifies that business conforms to zoning regulations:

Signature: [Signature]    Date: 8-18-11

If a non-public water or sewer system is used (i.e., septic tank and water well) County Health Department certifies that system conforms to acceptable standard, or will do so on completion of construction:

Signature: N/A    Date: \_\_\_\_\_

County Treasurer's Office certifies that City and County taxes have been paid in full or otherwise satisfied:

Signature: please see attached    Date: \_\_\_\_\_

City Finance office certifies that the business has applied for the appropriate City business license:

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

**Action by Board of County Commissioners:**

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

Approve     Deny    Chair: \_\_\_\_\_    Date: \_\_\_\_\_

Member: \_\_\_\_\_    Date: \_\_\_\_\_

Member: \_\_\_\_\_    Date: \_\_\_\_\_

**Action by Billings City Council (if applicable – project within City limits):**

Approve     Deny

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

CITY OF BILLINGS

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

ATTEST:

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

APPLICATION TO THE DEPARTMENT OF REVENUE  
BUILDING REMODEL, RECONSTRUCTION OR EXPANSION  
(Title 15- Chapter 24 – Part 14 MCA)

To: Assessor  
Yellowstone County

Name of Applicant: All American Pharmaceutical

Mailing Address: 2376 Main Street Billings, MT 59105

Legal description of affected property: see attached

Date construction permit issued: \_\_\_\_\_  
(If no permit is required, specify the date when certificate in lieu of building permit was issued).  
This application covers the (expansion/new) construction of the \_\_\_\_\_ plant.  
A public hearing on this matter of Building Expansion, Remodel, or Reconstruction was held at the  
Yellowstone County Courthouse at \_\_\_\_\_ (am/pm) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
Due notice as defined in 76-15-103 was given. True and exact copies of said notices are attached to this  
application. \_\_\_\_\_ Yes \_\_\_\_\_ No

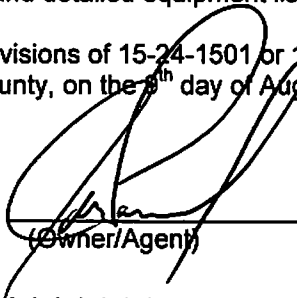
The statutory \$500,000 investment requirement for expansion or modernization has been met.  
 Yes \_\_\_\_\_ No

The statutory 2.5% increase in value requirement for new improvements has been met.  
 Yes \_\_\_\_\_ No

The statutory 5% increase in value requirement for new improvements has been met.  
 Yes \_\_\_\_\_ No

The qualifying property consists of the following: \_\_\_\_\_  
(Attach site plats, construction prints, and detailed equipment list identifying the qualifying property.)

This application is made under the provisions of 15-24-1501 or 1601 MCA, and by resolution adopted by  
the Commissioners of Yellowstone County, on the 8<sup>th</sup> day of August 2002. A copy of the same is  
attached.

  
\_\_\_\_\_  
(Owner/Agent)

~~~~~

We, the undersigned, Commissioners of Yellowstone County, (approve/disapprove) this application for  
\_\_\_\_\_. We find that it (does/does not) conform to the criteria  
as set forth in the resolution adopted by this Board on the 9<sup>th</sup> day of August 2002.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**PROPERTY DEVELOPMENT PROFORMA**

**PROJECT NAME**

All American Pharmaceutical

DATE June 2010

**PROJECT DESCRIPTION**

33,000 sq. ft. warehouse addition, some interior remodeling, site development

**LEGAL DESCRIPTION**

PRELIMINARY # \_\_\_\_\_ FINAL \_\_\_\_\_

**A. PROJECT COSTS:**

**I. LAND**

\_\_\_\_\_ S.F. @ \_\_\_\_\_ / S.F. = \$ 0.00

**II. HARD COSTS**

**A. On Site Improvements (per breakdown attached)**

\_\_\_\_\_ / S.F. = \$ 175,000.00

**B. Building Costs (per breakdown attached)** = \$ 1,738,500.00

**Building Area**

First Floor: 33,000 S.F. @ \$ 50.00 / S.F.  
 Interiors: 2,950 S.F. @ \$ 30.00 / S.F.

**C. Contractor Overhead & Profit**

\_\_\_\_\_ % of A + B above = \$ \_\_\_\_\_

**D. Building Permit** = \$ 4,500.00

**E. Plan Check Fee** = \$ 2,900.00

**II. TOTAL HARD COSTS:** = \$ 1,920,900.00

**III. SOFT COSTS**

**A. Architect/Design/Consultants**

3.50 % of II above = \$ 67,231.50

**B. Site Analysis (LS per Geotech quote)** = \$ 3,200.00

**C. Testing** = \$ 1,000.00

**D. Civil Engineering**  
 \_\_\_\_\_ % of II A above or LS = \$ 16,000.00

**E. Legal**  
 Preliminary = \$ \_\_\_\_\_  
 Leasing = \$ \_\_\_\_\_  
 Closing = \$ \_\_\_\_\_

**F. Accounting** = \$ \_\_\_\_\_

**III. TOTAL SOFT COSTS:** = \$ 87,431.50

**IV. FINANCING COSTS**

**A. Origination** \_\_\_\_\_ pts. + \_\_\_\_\_ pts. = \$ 0.00

**B. Construction Financing**  
 \_\_\_\_\_ months @ \_\_\_\_\_ % = \$ 0.00

**C. Construction Bond** = \$ \_\_\_\_\_

**D. Real Estate Taxes (excl. SID)** = \$ \_\_\_\_\_

**E. Insurance, Title &/or Builders Risk** = \$ \_\_\_\_\_

**F. Lender Inspection** = \$ \_\_\_\_\_

**G. Letter of Credit/Appraisal** = \$ \_\_\_\_\_

**H. Closing** = \$ \_\_\_\_\_

**IV. TOTAL FINANCING COSTS:** = \$ 0.00

**V. COMMISSIONS/SALES COSTS/DEVELOPMENT FEES**

= \$ \_\_\_\_\_

**VI. CASH CONTINGENCY @ \_\_\_\_\_ %**

= \$ 0.00

**\*TOTAL PROJECT COSTS (I - VI Inclusive)**

= \$ 2,008,331.50

**VII. OFF-SITE IMPROVEMENTS**

SID Costs @ \_\_\_\_\_ /S.F. = \$ 0.00

**\*TOTAL PROJECT COSTS (Including SID payoff)**

= \$ 2,008,331.50

# ALL AMERICAN PHARMACEUTICAL

STOP

2376

ALL-CHEM

KRI-ALKALYN  
KRI-ALKALYN  
KRI-ALKALYN

ARBO-LIN

PROTALYN





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

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS,  
MONTANA, APPROVING TAX BENEFITS FOR GOLINI REAL ESTATE,  
LLC, DBA ALL AMERICAN PHARMACEUTICALS

WHEREAS, Resolution 05-18377 provides for granting tax incentives for remodeling, reconstructing and expanding existing commercial buildings pursuant to Section 15-24-1501, M.C.A. and establishes a procedure for applying for said tax incentives; and

WHEREAS, Golini Real Estate, LLC, dba All American Pharmaceuticals has applied for said tax incentives for the property described herein; and

WHEREAS, The City Council of the City of Billings, Montana held a public hearing and duly considered the application of Golini Real Estate LLC and has determined that said application meets all qualifications for the tax incentive and should be approved

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

That the application for tax benefits made by Golini Real Estate, LLC, dba All American Pharmaceutical is APPROVED. The tax benefits approved are those provided in Resolution 05-18377. The property receiving the tax benefits is described as follows:  
Tax Code #C11832; Lot 4, Block 1 of North Point Square Subdivision, 1<sup>st</sup> filing

PASSED AND APPROVED by the City Council this 11<sup>th</sup> day of October, 2011

CITY OF BILLINGS

By:

\_\_\_\_\_  
Thomas W. Hanel, Mayor

ATTEST:

By: \_\_\_\_\_  
Cari Martin, City Clerk

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Public Hearing and First Reading of an Ordinance for Amendments to the City Subdivision Regulations

**PRESENTED BY:** Candi Beaudry

**Department:** Planning & Community Services

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**Information**

**PROBLEM/ISSUE STATEMENT**

The 2011 and 2009 State Legislatures passed a number of laws that have an impact on the Montana Subdivision and Platting Act (76-3,101 et seq., MCA). As a result, the City's subdivision regulations, Article 23, BMCC, need to be amended to be consistent with State law.

Planning staff drafted the proposed amendments based on recommendations from the legal staff at Montana Association of County Officials (MACO) and has solicited input from other City staff, the development community, the Planning Board, and other interested parties.

The City-County Planning Board held a public hearing and reviewed the proposed amendments to the City Subdivision Regulations on September 27, 2011. The City Council must hold a public hearing on the proposed amendments and decide whether to adopt them.

**ALTERNATIVES ANALYZED**

The City Council may:

- Adopt the proposed amendments to the City Subdivision Regulations in part or in whole; or
- Not adopt the the City Subdivision Regulations. Not adopting the proposed amendments would leave the City Subdivision Regulations inconsistent with state statute.

**FINANCIAL IMPACT**

There are no foreseen financial impacts to the City for adopting the proposed amendments to the City Subdivision Regulations.

**RECOMMENDATION**

The Planning Board recommends that the City Council approve the proposed amendments to the City Subdivision Regulations.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Summary of Legislative Bills necessitating the proposed amendments  
Ordinance

## Recent Legislative Bills Affecting the Montana Subdivision and Platting Act

### 2011 Legislative Bills

**House Bill 460:** Updates definitions of townhouse/townhome and provides that townhouses may be exempt from subdivision review under certain provisions of the Unit Ownership Act.

**Senate Bill 298:** Provides that governing bodies cannot deny a subdivision based solely on the fact that parcels in the subdivision are within the Wildland Urban Interface.

**House Bill 522:** Allows the 3-year preliminary plat approval period to be extended to a time period mutually agreed upon by the governing body and subdivider.

**House Bill 403:** Allows for permanently protecting open space parcels in clustered or conservation subdivisions by creation of any irrevocable covenant prohibiting further development, not just conservation easements.

### 2009 Legislative Bills

**Senate Bill 305:** Adds provisions of an 80 working-day review period for subdivisions with more than 50 lots.

**House Bill 486:** Provided for numerous minor procedural amendments.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BILLINGS PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTIONS 23-201, 23-302, 23-303, 23-305, 23-413, 23-704, 23-708, 23-801, 23-802, 23-803, 23-902, 23-1101, and 23-1105; PROVIDING UPDATES TO THE SUBDIVISION REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BILLINGS, MONTANA:

**Section 1.** That Section 23-201 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-201. Definitions.**

**CONDOMINIUM:** ~~A form of individual ownership with unrestricted right of disposal of one or more units in a multiple unit project with the land and all other parts of the project held in common ownership or use by owners of the units (The ownership of single units with common elements located on property submitted to the provisions of 70-23-101, et seq., MCA). The term does not include a townhome or townhouse.~~

**SUBDIVISION, FIRST MINOR:** A subdivision of a parcel that has never been subdivided or created by a subdivision, or has not resulted from a tract of record that has had more than five parcels created from that tract of record under 76-3-201 or 76-3-207, MCA since July 1, 1973 (76-3-609(2), MCA). Furthermore the first minor subdivision contains five or fewer lots, and legal and physical access to all lots is provided ~~and no land is required to be dedicated to public use for parks or playgrounds.~~

**TOWNHOME/TOWNHOUSE:** ~~A building or structure that has two (2) or more one (1) family dwelling units erected as a single building, each being separated from the adjoining unit or units by an approved fire wall or walls along individual property lines and providing for fee simple ownership of land and dwelling unit. Property that is owned subject to an arrangement under which persons own their own units and hold separate title to the land beneath their units, but under which they may jointly own the common areas and facilities (70-23-102(14), MCA).~~

**TRACT OF RECORD:** An individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the County Clerk and Recorder's office (76-3-103(4716)(a), MCA).

**TRANSPORTATION PLAN:** Billings Urban Area ~~2005~~ Transportation Plan 2009 Update, or any newer transportation planning document adopted by the Billings City Council and Board of County Commissioners for the Billings urban area.

**WILDLAND-URBAN INTERFACE:** Areas where wildland vegetation meets urban developments, or where forest fuels meet urban fuels (such as homes). These areas encompass not only the interface (areas immediately adjacent to urban development) but also the continuous slopes and fuels that lead directly to a risk to urban developments, and are generally mapped in the Yellowstone County WUI Community Wildfire Protection Plan.

**Section 2.** That Section 23-302 of the Billings, Montana, City Code be amended so that such section shall read as follows:

### **Section 23-302. Major Subdivisions.**

#### **D. Major Preliminary Plat Application Submittal.**

- 3. Review period.** Upon receipt of a complete and sufficient application, the governing body has sixty (60) working days to approve, conditionally approve, or deny the preliminary plat application. For subdivisions containing fifty (50) or more lots the review period is eighty (80) working days. The review period may be extended upon written consent from the subdivider.

#### **G. Staff and Agency Review.**

- 2. Submittal distribution.** Planning staff shall distribute the application to all affected City Departments, local, state, and federal agencies, school districts and public utilities for review, and include a copy of the review procedure schedule. These affected entities shall determine what effect the proposed subdivision may have on their ability to provide services and submit recommendations for mitigation of those impacts. The affected entities shall respond to the Planning staff within approximately ten (10) working days. A public utility or agency review may not delay the governing body's action on the plan beyond the sixty (60) or eighty (80) working day review period. Failure of any agency to complete a review of a plat will not be the basis for denial of the plat by the governing body (76-3-504(1)(i), MCA).

**H. Planning Board Plat Review.** The Planning Board, as the authorized agent of the governing body shall conduct a plat review of the major preliminary plat application at a regularly scheduled meeting prior to the scheduled public hearing. The purpose of the plat review meeting is to consider the following relevant review criteria:

1. The environmental assessment and all criteria discussed therein, unless the plat is exempted from the requirement of submitting an environmental assessment pursuant to ~~76-3-210(1)616~~, MCA; and
2. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and

**J. Subsequent Hearing.** Before acting on the subdivision application, the governing body shall determine whether public comments or documents presented at the Planning Board public hearing constitute:

1. Information that the public has not had a reasonable opportunity to examine and comment, or
2. New information never submitted or considered by the Planning Board or staff.

If the governing body determines that public comments or documents meets at least one (1) of the criteria listed above, it may act on the subdivision application in accordance with this Article or schedule a subsequent public hearing for consideration of the new information only. The subsequent public hearing shall be held by the Planning Board at the Planning Board's next scheduled meeting for which proper notice for the public hearing on the subdivision application can be provided.

If a subsequent hearing is held, the sixty (60) or eighty (80) working day review period is suspended and the new hearing must be noticed and held within forty-five (45) days of the governing body's determination to hold a subsequent public hearing. The sixty (60) or eighty (80) working day review period will resume from the date of the subsequent public hearing. The governing body may not consider any information that is presented after the subsequent hearing (76-3-615, MCA).

**L. Governing Body Action.** The governing body's decision to approve, conditionally approve, or deny a subdivision is based on the preliminary plat, applicable environmental assessment, public hearing, Planning Board recommendations, or additional information that demonstrates the development of the subdivision meets the requirements of the Montana Subdivision and Platting Act and these Regulations. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA (76-3-608(1), MCA), or solely on compliance with a Growth Policy (76-1-605(2)(b), MCA).

The governing body shall issue written findings of fact that weigh the criteria as listed in Section 23-302.H. of this Article. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).

In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).

The governing body shall approve, conditionally approve or deny the preliminary plat within sixty (60) or eighty (80) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send the subdivider a

letter within thirty (30) working days of its decision stating the reasons for the denial or enumerating the conditions which must be met to assure approval of the final plat along with written findings of fact (76-3-608(4), MCA).

**M. Preliminary Plat Approval Period.** The approval or conditional approval shall be valid for not more than three (3) calendar years. At the end of this period the governing body may, at the request of the subdivider, extend its approval for ~~a period of one (1) year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA)~~ a mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

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

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

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

**Section 3.** That Section 23-303 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-303. First Minor Subdivisions from a Tract of Record.**

**H. Governing Body Action.** At a regularly scheduled meeting the governing body shall consider the following information in deciding whether to approve, conditionally approve, or deny a preliminary plat:

1. Unless the subdivision is proposed in an area that is zoned, the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and
2. Compliance with:
  - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608(3)(b), MCA); and
  - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
  - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
  - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
  - e. Local zoning requirements; and
3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan (76-1-606, MCA); and
4. A summary of probable impacts prepared in accordance with Section 23-904 of these Regulations.
5. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA (76-3-608(1), MCA), or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).
6. The governing body shall issue written findings of fact that weigh the criteria listed in this section. The governing body shall determine if there are any significant adverse impacts the subdivision may have based on its review of this information and formulate conditions to reasonably minimize those impacts (76-3-608(4), MCA).
7. In reviewing a subdivision and when requiring mitigation, the governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat (76-3-608(5)(a), MCA).
8. The governing body shall approve, conditionally approve or deny the preliminary plat within thirty-five (35) working days of the submittal deadline and when the application was considered complete and sufficient. The governing body shall send to the subdivider a letter within thirty (30) working days of its decision stating the reasons for the denial or

enumerating the conditions which must be met to assure approval of the final plat, along with written findings of fact (76-3-608(4), MCA).

**I. Preliminary Plat Approval Period.** The approval or conditional approval shall be valid for not more than three (3) calendar years. ~~At the end of this period the governing body may, at the request of the subdivider, extend its approval for a period of one year. The governing body may extend the approval for more than one (1) year if that approval period is included as a specific condition of a written subdivision improvements agreement between the governing body and the subdivider, according to Article 23-500 of these Regulations (76-3-610(1), MCA).~~ mutually agreed-upon period of time. Any mutually agreed-upon extension must be in writing and dated and signed by the governing body and the subdivider or subdivider's agent. The governing body may issue more than one extension.

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

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

After the preliminary plat is approved, the governing body may not impose any additional conditions as a prerequisite to final plat approval, providing the approval is obtained within the original or extended approval period described above (76-3-610(2), MCA).

**Section 4.** That Section 23-305 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-305. Subdivisions Qualifying for Expedited Review.**

**F. Governing Body Action.** At a regularly scheduled meeting, the governing body shall consider the following information in deciding whether to approve or deny a final plat:

1. The effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, ~~and~~ wildlife habitat, and public health and safety (76-3-608(3)(a), MCA); and
2. Compliance with:
  - a. The Montana Subdivisions and Platting Act (76-3-101 et seq., MCA) (76-3-608(3)(b), MCA); and
  - b. The provision of easements for the location and installation of any planned utilities (76-3-608(3)(c), MCA); and
  - c. The provision of legal and physical access to each parcel within the subdivision (76-3-608(3)(d), MCA); and
  - d. The required notation of that access on the applicable plat and any instrument of transfer concerning the parcel (76-3-608(3)(d), MCA); and
  - e. Local zoning requirements; and
3. Consistency with the adopted Growth Policy, Transportation Plan, and the Heritage Trail Plan (76-1-606, MCA).
4. The governing body shall give due weight and consideration to the subdivider's expressed preferences (76-3-608(5)(b), MCA). The governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services, or based solely on parcels within the subdivision having been designated as wildland-urban interface parcels under 76-13-145, MCA (76-3-608(1), MCA), or solely on compliance with the Growth Policy (76-3-605(2)(b), MCA).
5. In the event the governing body denies the final plat, it shall send a letter to the subdivider stating the reasons for the denial along with written findings of fact (76-3-608(4), MCA).

**Section 5.** That Section 23-413 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-413. Fire Protection Requirements.**

To ensure a reasonable level of fire protection and life-safety for the public and firefighters, fire apparatus access roads and an approved water supply capable of providing the required water flow for fire protection shall be provided in accordance with this section and the adopted fire code to all premises upon which facilities, buildings, or portions of buildings are hereafter constructed or moved into the jurisdiction.

**Section 6.** That Section 23-704 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-704. Design Standards and Applications for Cluster Developments.**

**D. Instrument of Permanent Protection Required.** An instrument of permanent protection as detailed in ~~Title 76, Chapter 6, MCA, the Open Space Land and Voluntary Conservation Easement Act,~~ irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, shall be placed on the open space concurrent with the application for final plat approval.

**Section 7.** That Section 23-708 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-708. Legal Instrument for Permanent Protection of Open Space.**

**A. Legal Instrument.** Privately owned open space shall be protected in perpetuity by an irrevocable covenant prohibiting further subdivision, division, or development of the open space lots or parcels as provided in 70-17-201, et seq., MCA, ~~binding legal instrument~~ that is recorded with the deed. The instrument for permanent protection shall include clear restrictions on the use of the open space. These restrictions shall include all restrictions contained in this Chapter, as well as any further restrictions the applicant chooses to place on the use of the open space.

**Section 8.** That Section 23-801 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-801. Condominium and Townhome or Townhouse Development.**

**A. Exemptions.** All condominium, townhome, or townhouse developments are subdivisions subject to the terms of these Regulations and the Montana Subdivision and Platting Act (MSPA), except those exempted by 76-3-203, MCA, as described below.

1. The approval of the original subdivision of land expressly contemplated the construction of the condominiums, townhomes, or townhouses, and any applicable park dedication requirements in 76-3-621, MCA are complied with; or
2. The condominium, townhome, or townhouse proposal is in conformance with applicable local zoning regulations ~~where~~ when local zoning regulations are in effect.

**B. Procedures.** All condominium, townhome, or townhouse developments which are not exempt from subdivision review, are subject to the applicable procedures contained in Article 23-300, Subdivision Review Procedures or Article 23-600, Subdivisions for Rent or Lease. The applicable subdivision procedure will be based on:

1. Whether a division of land is to be created.

2. The number of proposed units.
3. Whether the land is a first or subsequent minor subdivision.

**Section 9.** That Section 23-802 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-802. ~~Townhome Development. Condominium and Townhome Standards~~**

~~All townhome developments are subject to the applicable procedures contained in Article 23-300. The applicable subdivision procedure will be based on:~~

- ~~A. The number of proposed units; and~~
  - ~~B. Whether the land is a first or subsequent minor subdivision.~~
- A. Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.
  - B. All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.
  - C. Condominium, townhome, and townhouse developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.

**Section 10.** That Section 23-803 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-803. ~~Condominium and Townhome Standards.~~**

- ~~A. Condominium and townhome developments shall comply with those standards contained in Article 23-400, Development Requirements and Article 23-1000, Parks, Trails and Open Space.~~
- ~~B. All buildings and structures in a condominium or townhome development shall meet the minimum setback requirements of Article 27-308, BMCC from all perimeter boundary lines. In the case where a boundary line is adjacent to an arterial street, all homes and accessory structures must meet setbacks as required in Article 27-602, BMCC.~~
- ~~C. Condominium developments shall comply with all applicable provisions of the Unit Ownership Act – Condominiums, Title 70, Chapter 23, MCA, as amended.~~

**Section 11.** That Section 23-902 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-902. General Requirements.**

**C. Exemptions.** The following subdivisions shall not be required to submit an environmental assessment:

1. A first minor subdivision from a tract of record (76-3-609(3), MCA).
2. A subdivision qualifying for expedited review as described in Section 23-305 of these Regulations.
3. Other subdivisions that satisfy all of the following criteria (76-3-~~608(7)~~616(2), MCA):
  - a. The proposed subdivision is completely within an area adopted by the Growth Policy pursuant to 76-1-601, et seq., MCA;
  - b. The proposed subdivision is located within zoning pursuant to ~~76-2-201 through 76-2-328, MCA~~203 or 76-2-304, MCA, that avoids significantly reduces, or mitigates adverse impacts identified in a growth policy that includes the provisions of 76-1-601(4)(c); and-
  - c. The proposed subdivision is located within an area where a long-range public works development program (i.e. Capital Improvements Plan) has been adopted pursuant to 76-1-601(4), MCA.

**Section 12.** That Section 23-1101 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-1101. Variances.**

**A. Requesting a Variance.** The subdivider shall include with the submission of the variance request, a written statement describing the facts of hardship upon which the request for the variance is based. Each requested variance shall be deemed a separate application, for which a fee of ~~\$325~~ shall be required.

**Section 13.** That Section 23-1105 of the Billings, Montana, City Code be amended so that such section shall read as follows:

**Section 23-1105. Appeals.**

**B.** A party who is aggrieved by a decision of the City Council to approve, conditionally approve, or disapprove a proposed preliminary plat or final subdivision plat may, within thirty (30) days after the date of the written decision, appeal to the district court. The petition must specify the grounds upon which the appeal is made.

**Section 14. EFFECTIVE DATE.** This ordinance shall be effective thirty (30) days after second reading and final adoption as provided by law.

**Section 15. REPEALER.** All resolutions, ordinances, and sections of the City Code inconsistent herewith are hereby repealed.

**Section 16. SEVERABILITY.** If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect the other provisions of this ordinance which may be given effect without the invalid provisions or application, and, to this end, the provisions of this ordinance are declared to be severable.

PASSED by the City Council on first reading this 11<sup>th</sup> day of October, 2011.

PASSED, ADOPTED and APPROVED on second reading this 24<sup>th</sup> day of October, 2011.

CITY OF BILLINGS

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

ATTEST:

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

**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Public Hearing and First Reading of Ordinance to Add Recently Annexed Property to Ward II

**PRESENTED BY:** Candi Beaudry

**Department:** Planning & Community Services

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**Information**

**PROBLEM/ISSUE STATEMENT**

City election ward boundaries must be adjusted to conform to city limit amendments resulting from annexing property into the city. The City Council approved the annexation of Tract 2-D of Certificate of Survey Number 2776, which is located north of the All American Pharmaceuticals business on Highway 87 in the Billings Heights (Annexation #11-03) on September 26, 2011. This annexation requires a change in the boundaries of Ward II to include the subject property. Two readings are required for this action. The first reading of the ordinance is scheduled for October 11, 2011, and the second reading is scheduled for October 24, 2011.

**ALTERNATIVES ANALYZED**

The subject property has already been annexed into the City. The process to complete the annexation of the property is for the City Council to include the subject property in the corresponding City Ward. Ward II is the appropriate Ward for this property. The City Council should conduct the public hearing and approve first reading of the ordinance that adjusts the Ward II boundary.

**FINANCIAL IMPACT**

There should be no direct financial impact to the City by adding the subject property to Ward II.

**RECOMMENDATION**

Staff recommends that Council hold a public hearing and approve this ordinance on first reading adding recently annexed property to Ward II.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Ward II Ordinance

**ORDINANCE NO. 11-\_\_\_\_\_**

AN ORDINANCE OF THE CITY OF BILLINGS, AMENDING BILLINGS MUNICIPAL CODE, CHAPTER 11, ELECTIONS, IN PARTICULAR, SECTION 11-102(c), WARD BOUNDARIES; AND CHANGING THE WARD BOUNDARIES ESTABLISHED THEREIN BY ADDING CERTAIN NEWLY ANNEXED REAL PROPERTY TO WARD II PROVIDING FOR CERTIFICATION AND REPEALING OF ALL ORDINANCES AND RESOLUTIONS INCONSISTENT THEREWITH.

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

1. AMENDMENT. Pursuant to Billings Municipal Code, Section 11-102(c) and the State Law, Billings Municipal Code, Section 11-102(c) Ward Boundaries is hereby amended by adding to Ward II the following described real property:

Tract of land situated in the SE1/4 of Section 10, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as:

Tract 2-D of Certificate of Survey Number 2776, Recorded September 28, 2009, under Document No. 3525526, Records of Yellowstone County; including all adjacent right-of-way of U.S. Highway No. 87.

Containing 20.158 gross acres and 14.875 net acres, more or less.  
(# 11-03) See Exhibit "A" Attached

2. CERTIFICATION. Pursuant to M.C.A. Section 13-3-103, the above change and alteration is hereby certified to the election administrator by the City Council, and the City Administrator or his designee is hereby directed to certify the changes and alterations and to deliver a map showing the boundaries of the ward, the streets, avenues and alleys by name and the ward by number, to the election administrator not more than ten (10) days after the effective date of this ordinance.
3. REPEALER. All other ordinances, sections of the Billings Municipal Code and ordinances inconsistent herewith are hereby repealed.

PASSED by the City Council on the first reading this 11<sup>th</sup> day of October, 2011.

PASSED by the City Council on the second reading this 24<sup>h</sup> day of October, 2011.

THE CITY OF BILLINGS:

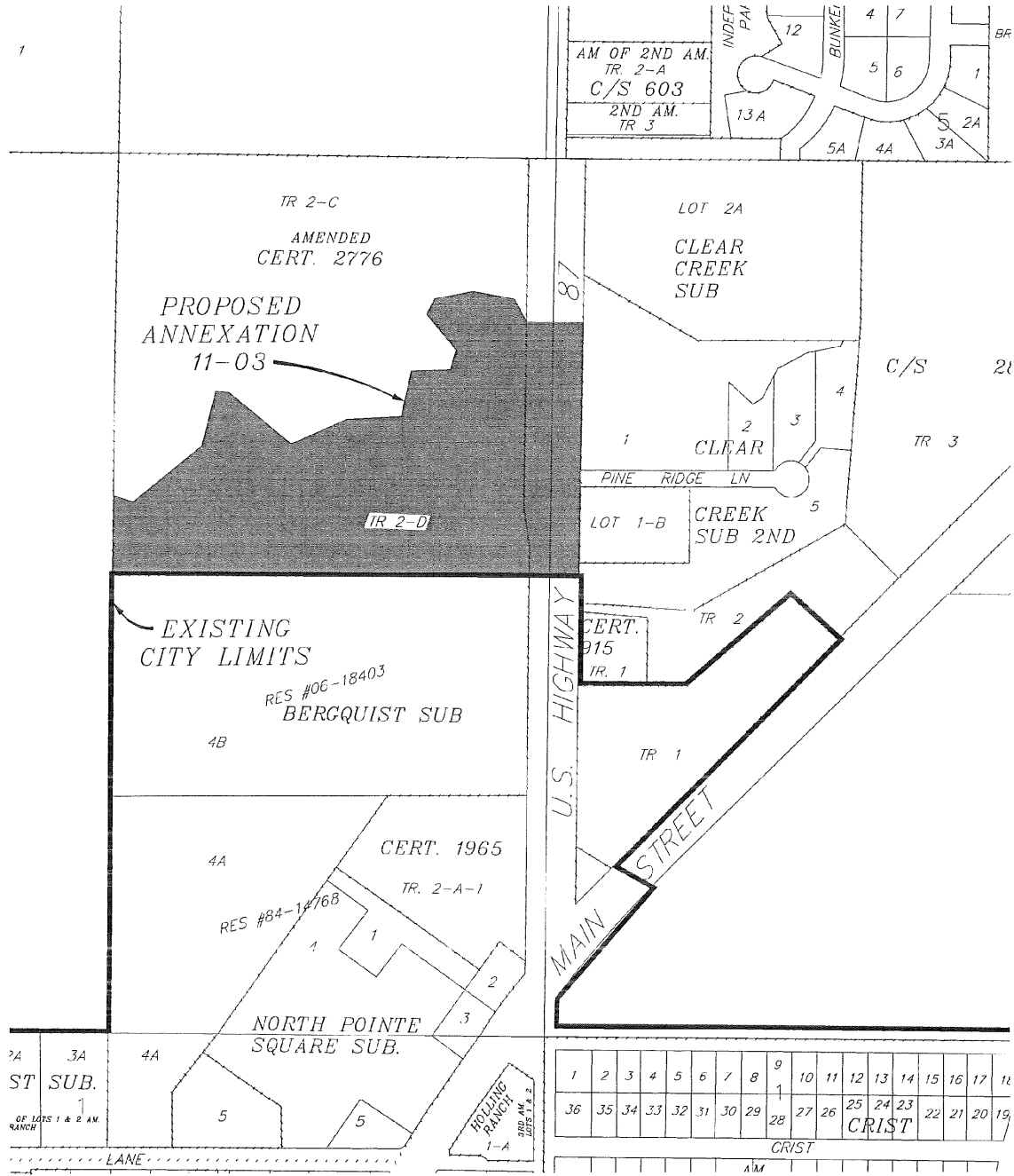
\_\_\_\_\_  
Thomas W. Hanel, MAYOR

ATTEST:

BY: \_\_\_\_\_  
Cari Martin, CITY CLERK

(AN 11-03)

# EXHIBIT A



**Regular City Council Meeting**

**Meeting Date:** 10/11/2011

**TITLE:** Public Hearing and Resolution Approval for the Energy Performance Contract and Lease-Purchase Agreement With US Bancorp

**PRESENTED BY:** Patrick M Weber

**Department:** City Hall Administration

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**Information**

**PROBLEM/ISSUE STATEMENT**

On September 12, 2011, the City Council approved the Investment Grade energy audit findings. Because of this audit, the City proposes to undertake energy efficiency improvements to various buildings and facilities at the Airport and within certain City-owned parking garages. The total cost of the Airport improvements is estimated to be \$1,399,078 and the total cost of the parking garage improvements is estimated to be \$578,311. It is anticipated that the energy savings will offset a portion of the expense. Bond Counsel, Dorsey Whitney LLC., has provided a resolution for the City to enter into an energy performance contract with McKinstry Essention, Inc to complete the improvements, and to enter into a Purchase Lease Agreement with U.S. Bancorp to finance the improvements over the next 15 years utilizing energy savings to cover the majority of the improvements and financing costs.

**ALTERNATIVES ANALYZED**

The Council must hold a public hearing and then may:

- Approve the resolution; or
- Not approve the resolution and not complete the energy efficiency improvements for the Airport and parking garages.

**FINANCIAL IMPACT**

In order to finance the improvements, the City proposes to enter into an agreement with US Bank Equipment Finance Inc. The installment payment shall be made from Airport and Parking funds and shall not be construed to be debts of the City. The debt schedules are included in the Master Tax Exempt Installment Purchase Agreement.

The expected energy savings are at least \$307,188 over a 3-year period with respect to the Airport improvements and at least \$151,998 over a 3-year period with respect to the Parking improvements.

**RECOMMENDATION**

Staff recommends that Council conduct a public hearing and pass the proposed resolution.

**APPROVED BY CITY ADMINISTRATOR**

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**Attachments**

Energy Resolution

Contract Attachment

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution No. \_\_\_\_\_ entitled: "RESOLUTION AUTHORIZING CERTAIN ENERGY EFFICIENCY IMPROVEMENTS AND APPROVING THE ENERGY PERFORMANCE CONTRACT AND LEASE-PURCHASE AGREEMENT IN CONNECTION THEREWITH" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on October 11, 2011, 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 11th day of October, 2011.

(SEAL)

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

RESOLUTION NO. \_\_\_\_

RESOLUTION AUTHORIZING CERTAIN ENERGY  
EFFICIENCY IMPROVEMENTS AND APPROVING  
THE ENERGY PERFORMANCE CONTRACT AND  
LEASE-PURCHASE AGREEMENT IN CONNECTION  
THEREWITH

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

Section 1. Recitals and Authorization.

1.01. The City proposes to undertake energy efficiency improvements to various buildings and facilities at the City-owned Billings Logan International Airport (the “Airport Improvements”) and within certain City-owned parking garages (the “Parking Improvements”). The total cost of the Airport Improvements is estimated to be \$1,399,078, and the total cost of the Parking Improvements is estimated to be \$578,311. The City will enter into an energy performance contract with McKinstry Essention, Inc. (“McKinstry”) to complete the Airport Improvements and the Parking Improvements, substantially in the form attached hereto as Exhibit A (the “Energy Performance Contract”). The Energy Performance Contract will guarantee the City energy savings of at least \$307,188 over a 3-year period with respect to the Airport Improvements (an average of \$102,396 per year) and at least \$151,998 over a 3-year period with respect to the Parking Improvements (an average of \$50,666 per year).

1.02. In order to finance the Airport Improvements and the Parking Improvements, the City proposes to enter into a Master Tax-Exempt Installment Purchase Agreement with U.S. Bancorp Equipment Finance, Inc., as lessor (“U.S. Bancorp”), substantially in the form attached hereto as Exhibit B (the “Lease-Purchase Agreement”). The financing of the Airport Improvements will be further governed by the terms and conditions set forth in Property Schedule No. 1 to the Lease-Purchase Agreement (the “Airport Property Schedule”) and the financing of the Parking Improvements will be further governed by the terms and conditions set forth in Property Schedule No. 2 to the Lease-Purchase Agreement (the “Parking Property Schedule”).

1.03. The installment payments payable by the City pursuant to the Airport Property Schedule with respect to the Airport Improvements (the “Airport Installment Payments”) and the installment payments payable by the City pursuant to the Parking Property Schedule with respect to the Parking Improvements (the “Parking Installment Payments”) shall constitute current expenses of the City’s Airport Enterprise Fund and the City’s Parking Enterprise Fund, respectively, and shall not in any way be construed to be debts of the City in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, nor shall anything contained therein constitute a pledge of the general tax revenues, funds or money of the City. The Airport Installment Payments and the Parking Installment

Payments shall be payable only from current funds which are budgeted and appropriated solely from the City's Airport Enterprise Fund and the City's Parking Enterprise Fund, respectively, for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated. The City has not pledged the full faith and credit of the City, Yellowstone County or the State of Montana to the payment of amounts due under the Lease-Purchase Agreement.

Section 2. Public Hearing. At a public hearing duly called, noticed and held on October 11, 2011 as required by Section 147 of the Internal Revenue Code of 1986, as amended (the "Code"), all persons who appeared were afforded an opportunity to express their views with respect to the proposal to undertake and finance the Airport Improvements. The Council hereby authorizes and confirms the authority of the City Clerk to publish or cause to be published a notice of public hearing in the *Billings Times*, a newspaper of general circulation in the county on September 22, 2011 and September 29, 2011.

Section 3. Approval of Improvements and Agreements.

3.01. The City hereby approves the Airport Improvements and the Parking Improvements. All actions heretofore taken by officers of the City in connection with the Improvements, to the extent not inconsistent with the provisions of this Resolution, are hereby ratified, approved and confirmed.

3.02. The City hereby approves the form of the Energy Performance Contract. Each of the Mayor, the City Administrator and the City Finance Director is hereby authorized and directed to approve, execute and deliver the Energy Performance Contract, together with such modifications thereto as may be approved by the officer or officers executing the same, which approval shall be conclusively evidenced by the execution thereof. Each of the Mayor, the City Administrator and the City Finance Director is also authorized to enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith as may be reasonably required by McKinstry.

3.03. The City hereby approves the forms of the Lease-Purchase Agreement, the Airport Property Schedule and the Parking Property Schedule. Each of the Mayor, the City Administrator and the City Finance Director is hereby authorized and directed to approve, execute and deliver to U.S. Bancorp the Lease-Purchase Agreement, the Airport Property Schedule and the Parking Property Schedule, together with such modifications thereto as may be approved by the officer or officers executing the same, which approval shall be conclusively evidenced by the execution thereof. Each of the Mayor, the City Administrator and the City Finance Director is also authorized to enter into and deliver such other documents and certificates as may be necessary or desirable in connection therewith, in the opinion of Dorsey & Whitney LLP, as special counsel to the City, or as may be reasonably required by U.S. Bancorp.

Section 3. Tax Matters.

4.01. General Covenant. The City covenants and agrees that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the portion of the Airport Installment Payments and Parking Installment Payments designated as interest to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the “Regulations”), and covenants to take any and all actions within its powers to ensure that the portion of the Airport Installment Payments and the Parking Installment Payments designated as interest will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

4.02. Airport Improvements. The City provides as follows:

(a) the Airport Property Schedule is being issued as a “exempt facility bond” pursuant to Section 142(a)(1) of the Code, 95% or more of the net proceeds of the Airport Property Schedule will be used to provide airport facilities and such airport facilities, including any leased facilities, are owned by the City within the meaning of Section 142(b) of the Code;

(b) the City was not required to obtain a volume allocation for the Airport Property Schedule pursuant to Section 146(g) of the Code;

(c) estimated economic life of the Airport Improvements is not less than 20 years;

(d) no portion of the proceeds of the Airport Property Schedule will be used to provide any of the facilities described in Section 147(e) of the Code;

(e) the public approval requirements of Section 147(f) of the Code have been satisfied with respect to the Airport Property Schedule; and

(f) as required by Section 147(g) of the Code, no more than 2% of the proceeds of the Airport Property Schedule be used to finance issuance costs of the Airport Improvements.

4.03. Parking Improvements. The Parking Improvements are and will be owned and operated by the City and used by the City to provide parking services to members of the general public. No user of the Parking Improvements is granted any concession, license or special arrangement with respect to the Parking Improvements. Except for the Lease-Purchase Agreement and the Parking Property Schedule, the City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Parking Improvements or security for the payment of amounts due under the Parking Property Schedule that might cause the Parking Property Schedule or any payments to be made in connection therewith to be considered an “arbitrage bond” or “private loan bond” within the meaning of Sections 148 and 141 of the Internal Revenue Code of 1986, as amended (the “Code”).

4.04. Arbitrage Certification. The Mayor, the City Finance Director and the City Clerk, being the officers of the City charged with the responsibility for executing the

Lease-Purchase Agreement, the Airport Property Schedule and the Parking Property Schedule, are authorized and directed to execute and deliver to U.S. Bancorp a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of execution and delivery of the Airport Property Schedule and the Parking Property Schedule, it is reasonably expected that the proceeds of the Airport Property Schedule and the Parking Property Schedule will be used in a manner that would not cause the Airport Property Schedule or the Parking Property Schedule, respectively, to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

4.05. Arbitrage Rebate. The City acknowledges that the Airport Property Schedule and the Parking Property Schedule are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Regulations to preserve the exclusion of interest on the Airport Property Schedule and the Parking Property Schedule from gross income for federal income tax purposes, unless the Airport Property Schedule and the Parking Property Schedule qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Airport Property Schedule and the Parking Property Schedule arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the City Finance Director and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by bond counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof.

4.06. Information Reporting. The City shall file with the Secretary of the Treasury, not later than February 15, 2012, a statement concerning the Airport Property Schedule and the Parking Property Schedule containing the information required by Section 149(e) of the Code.

4.07. Qualified Tax-Exempt Obligations. Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Parking Property Schedule as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City has not designated any other obligations in 2011 under Section 265(b)(3) other than the Special Improvement District No. 1360 Refunding Bonds, Series 2011, the Pooled Special Improvement District Bonds, Series 2011 (Special Improvement Districts Nos. 1369 and 1391), the Higher Education Revenue Note (Rocky Mountain College Energy Performance Project), Series 2011, and the Special Improvement District No. 1392 Bond Anticipation Note, Series 2011. The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the City in 2011 in an amount greater than \$10,000,000.

Section 5. Transcript Certification. The officers of the City are directed to furnish to U.S. Bancorp certified copies of all proceedings and information in their official records relevant to the authorization of the Lease-Purchase Agreement, the Airport Property Schedule, the Parking Property Schedule and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and enforceability of the Lease-Purchase Agreement, the Airport Property Schedule, the Parking Property Schedule and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

Section 6. Effective Date. This Resolution shall become effective upon passage and all provisions of ordinances, resolutions and other actions and proceedings of the City which are in any way inconsistent with the terms and provisions of this Resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this Resolution.

Adopted this 11th day of October, 2011.

CITY OF BILLINGS, MONTANA

\_\_\_\_\_  
\_\_\_\_ Mayor

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

(SEAL)

**EXHIBIT A**

**ENERGY PERFORMANCE CONTRACT**

**CITY OF BILLINGS CONTRACT**

**FOR**

**ENERGY PERFORMANCE CONTRACTING**

**ENERGY PERFORMANCE CONTRACT**  
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THIS CONTRACT is entered into by and between the City of Billings, Billings, Montana, (hereinafter referred to as the "City of Billings"), and McKinstry Essention, Inc., (hereinafter referred to as the "Contractor"). This Contract is entered into in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, chapter 5, for the purpose of installing certain energy and water cost saving equipment, described in **Schedule H (Equipment to Be Installed by Contractor)**, and providing other services designed to save energy for the City of Billings and its property and buildings, (the "Project Site(s)").

## **ARTICLE 1. DEFINITIONS; ACCEPTANCE OF TECHNICAL ENERGY AUDIT REPORT; OTHER DOCUMENTS**

### **Section 1.1. Definitions**

**Certificate of Acceptance:** The certificate substantially in the form provided in **Exhibit III (i) and (ii)**.

**Commencement Date:** The date described in **Section 2.4. (Commencement Date)**.

**Contract:** This Energy Performance Contract and all attached Schedules and Exhibits.

**Contract Sum:** The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project.

**Energy Conservation Measures (ECM):** Individual energy improvement projects identified and recommended in the Investment Grade Audit Report and that will be implemented as part of the Energy Performance Contract.

**Energy and Cost Savings Guarantee:** The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract, as specified in **Schedule F (Compensation to Contractor for Annual Services)** and in accordance with the Savings Calculation Formula, shown in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**.

**Equipment:** The goods specified in **Schedule H (Equipment to be Installed by Contractor)**.

**Independent Auditor:** Independent auditor referenced in Section 3.2 shall be an Engineering Consulting firm or an ESCO with a registered Professional Engineer.

**Interim Period:** The period from contract execution until the Commencement Date.

**Investment Grade Audit Report (IGAR):** A study that includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements.

**Project Site(s):** The City of Billings facilities in need of energy and water saving

equipment.

**Total Guaranteed Cost:** The maximum amount that the City of Billings will have to pay for the Work to implement the ECM's identified in the Investment Grade Audit Report and agreed to by the City of Billings.

**Work:** Collectively, the Equipment, professional services, and project construction related to the project.

### **Section 1.2. Investment Grade Audit Report**

Contractor has prepared the Investment Grade Audit Report of the Project Site(s) set forth in **Appendix A (Investment Grade Audit Report)** and dated May 24, 2011, which has been approved and accepted by the City of Billings, as set forth in **Exhibit III (i) (Certificate of Acceptance—Investment Grade Audit Report)**. The audit includes all Energy Conservation Measures (ECM) agreed upon by the parties.

### **Section 1.3. Other Documents**

Acceptance by the City of Billings of the Investment Grade Audit Report is reflected in **Exhibit III (i)**. This Contract and the attached Schedules govern in the event of any inconsistencies between the Investment Grade Audit Report and this Contract.

## **PAYMENTS AND SCHEDULES**

### **ARTICLE 2. PURCHASE AND SALE; CONSIDERATION/PAYMENT; SERVICES AND/OR SUPPLIES; COMMENCEMENT DATE AND TERMS**

#### **Section 2.1. Purchase and Sale**

The City of Billings agrees to purchase Equipment using proceeds from private financing proceeds, as provided for in attached document, **Schedule E (Financing Agreement and Payment Schedule)**. Contractor agrees to provide the Equipment, together with installation, maintenance and other services as provided in **Schedule H (Equipment to be Installed by Contractor)** based upon the terms in **Schedule E (Financing Agreement and Payment Schedule)**.

#### **Section 2.2. Consideration/Payment**

In Consideration for the services to be provided, the City of Billings shall pay the Contractor up to the guaranteed maximum cost, in conformance with **Schedule D (Final Project Cost & Project Cash Flow Analysis)**. Financing payment terms are described in **Schedule E (Financing Agreement and Payment Schedule)**.

#### **Section 2.3. Services and/or Supplies**

Contractor shall provide to the City of Billings the services identified in **Schedule H (Equipment to be Installed by Contractor)** and the services detailed in **Schedule M (Contractor's Maintenance Responsibilities)** and **Schedule F (Compensation to Contractor for Annual Services)**. Equipment to be installed and the quality of materials selected are subject to approval by the City of Billings in the design review

process. Contractor shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

The Contractor shall furnish the City of Billings with design documents for each portion of the work, in a reasonable timeframe prior to construction, to allow the City of Billings sufficient time to acknowledge receipt of design documents and advise if there is reasonable objection to the scope of work. The Contractor shall not proceed with the designed scope of work if the City of Billings raises an objection within ten (10) business days after receipt of design documents. Design documents and anticipated design reviews for the various Energy Conservation Measures (ECM) categories are defined below:

- Lighting Fixture Upgrades: Equipment submittals and lighting audit spreadsheets.
- Comprehensive Digital Control Additions: Points Lists and Sequences of Operation, 50% DD review and 95% CD review meetings with the Owner and Contractor.
- Variable Speed Drives on HVAC Equipment: 50% DD review and 95% CD review meetings with the Owner and Contractor.
- Comprehensive Commissioning and Balancing of existing systems.

#### **Section 2.4. Commencement Date**

The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by the City of Billings and the Contractor has delivered a Notice to the City of Billings that it has installed and commenced operating all of the Equipment specified in **Schedule H (Equipment to be Installed by Contractor)** in accordance with **Article 8 (Construction Schedule and Equipment Installation; Approval)**, **Schedule I (Construction and Equipment Installation Schedule)** and **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and the City of Billings has inspected and accepted the installation and operation as evidenced by the Certificate of Acceptance, **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**.

Notwithstanding anything to the contrary in this **Article 2 (Purchase and Sale; Commencement Date and Terms, Interim Period)**, the Commencement Date shall not occur and the City of Billings shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by Contractor in accordance with the terms of this Contract. The City of Billings shall have fifteen (15) business days after notification by Contractor to inspect and accept the Equipment. The City of Billings reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until after a final walk through and acceptance by the City of Billings is completed and Contractor has satisfied all claims for labor and materials and the Certificate of Acceptance has been signed.

Compensation payments due to Contractor for on-going services and maintenance under this Contract, as set forth in **Schedule F (Compensation to Contractor for Annual Services)**, shall begin no earlier than thirty (30) calendar days after the Commencement Date.

### **Section 2.5. Effective Date/Duration**

This Contract shall take effect immediately upon its execution by all parties and terminate three (3) years from the Commencement Date, unless terminated earlier in accordance with this Contract. Refer to Section 4 for an explanation of payments due to the Contractor if the City of Billings terminates the Contract prior to three (3) years after the Commencement Date. The length of contract shall include the full term of Measurement and Verification time period as set forth in Schedule A (Energy and Cost Savings Guarantee). The period from contract execution until the Commencement Date constitutes the "Interim Period." All energy savings achieved during the Interim Period are to be credited to The City of Billings.

## **ARTICLE 3. SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO CONTRACTOR**

### **Section 3.1. Energy and Cost Savings Guarantee**

Contractor has formulated and, subject to the adjustments provided for in **Article 15 (Material Changes)**, guarantees the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract, in accordance with the methods of savings measurement and verification set forth in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract, as specified in **Schedule A (Energy and Cost Savings Guarantee)**, and has been structured by Contractor to be sufficient to cover all annual payments required to be made by the City of Billings, as set forth in **Schedule F (Compensation to Contractor for Annual Services)** and **Schedule E (Financing Agreement and Payment Schedule)**, less City of Billings contributed capital (if any) as set forth in **Schedule D (Final Project Cost & Cash Flow Analysis)**.

### **Section 3.2. Annual Review and Reimbursement/Reconciliation**

For each one-year period of the Contract after the Commencement Date, Contractor shall measure and/or calculate energy related cost savings, as specified in **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)**, and provide an Annual Energy Reconciliation report of the cost savings to the City of Billings within sixty (60) calendar days after the end of each one-year period assuming the City of Billings meets the reporting requirements established in Section 20.1 herein.

If Energy and Cost Savings achieved during a guarantee year are less than the Guaranteed Energy and Cost Savings, as defined in **Schedule A (Energy and Cost Savings Guarantee)**, Contractor shall pay the City of Billings an amount equal to the deficiency. Contractor shall remit such payments to the City of Billings within thirty (30) calendar days after the Contractor has submitted the Annual Energy Reconciliation report to the City of Billings.

In the event of any disagreement in the amount payable by the Contractor, the City of Billings shall notify the Contractor in writing of the alleged discrepancy within thirty (30) calendar days. Any deficiency amounts not in dispute shall be paid in accordance with this section.

The Contractor and the City of Billings agree to work in good faith to resolve any disagreement over the calculation of the energy savings. Should the parties be unable to resolve their disagreement as to the energy savings achieved, then either party may provide written notice to the other party and both parties will then agree that an independent auditor will be engaged to provide a binding decision on whether the calculation of saving or deficiencies, as prepared by the Contractor, is fairly stated in accordance with this Contract. If the parties cannot agree upon an auditing firm, then each shall designate a firm, and the two designated firms shall identify a mutually agreeable third firm and such third firm alone shall perform the audit. The independent auditing firm shall include in its report any exceptions determined by its review. Each party agrees to reasonably cooperate with the auditing firm, including without limitation, delivering to such firm any records, documents or information reasonably requested in electronic format, if available, or otherwise. Any payments between the parties that are necessary to resolve any irregularities identified in the review will be made within sixty (60) calendar days after submission of the review to the parties. If the audit is called by the Contractor or the City of Billings, the following structure will be applied to pay for the cost of the audit:

If the independent auditor determines that Contractor's determination of the difference between the annual Energy Savings Guarantee and the amount of the actual energy savings achieved at the Project Site(s) was in error in the City of Billings favor (i.e. contractor showed greater savings than determined by independent audit) by more than 5%, the Contractor shall pay the entire cost of the audit; however, if the Contractor's determination of the Energy Savings Guarantee is not in error or is in error in the Contractor's favor, the City of Billings shall pay for the entire cost of the audit. In any case, the calculation of energy savings shall be changed to reflect the findings of the audit, and the calculations of savings related to the Energy Savings Guarantee will be modified to reflect such.

When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee set forth in **Schedule A (Energy and Cost Savings Guarantee)** and are in addition to those monies due Contractor for compensation for services, as set forth in **Schedule F (Compensation to Contractor for Annual Services)**, the excess savings shall first be applied to reimburse Contractor for any payment Contractor made to the City of Billings to meet Contractor's guarantee for previous years in which the energy savings fell short of Contractor's Energy and Cost Savings Guarantee under the terms of **Schedule A (Energy and Cost Savings Guarantee)**. In no event shall credit for excess savings be used to satisfy savings guarantees or deficiencies in future years of the Contract.

### **Section 3.3. Contractor Compensation and Fees**

Contractor has structured the Energy and Cost Savings Guarantee, referred to in **Section 3.1** above, to be sufficient to include all annual payments required to be made by the City of Billings in connection with financing/purchasing the Equipment to be

installed by Contractor under this Contract, as set forth in **Schedule E (Financing Agreement and Payment Schedule)**. Actual energy and operations' savings achieved by the City of Billings through the operation of Equipment and through the performance of services by Contractor, plus capital infusion by the City of Billings shall be sufficient to cover all annual fees to be paid by the City of Billings to Contractor for its services, as set forth in, and in accordance with, **Schedules F (Compensation to Contractor for Annual Services)** and **M (Contractor's Maintenance Responsibilities)** and **Schedule D (Final Project Cost & Cash Flow Analysis)**.

#### **Section 3.4. Billing Information Procedure for Annual Services**

Payments due to Contractor for Annual Services are established for each year in accordance with **Schedule F (Compensation to Contractor for Annual Services)**. Annual Services provided by Contractor shall be in accordance with **Schedule F (Compensation to Contractor for Annual Services)**.

#### **Section 3.5. Payment Procedure for Work Completed During the Interim Period**

The application for progress payment shall be made monthly in a form similar to that attached hereto as Exhibit VI (Progress Payment Application) and shall constitute a representation by the Contractor to the City of Billings that the design and construction have progressed to the point indicated, and the Contractor is entitled to payment in the amount requested. All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the City of Billings is allowed thirty (30) calendar days to pay such invoices.

Pursuant to 15-50-205 and 206, MCA, the Contractor shall withhold the 1% license fee required for public contracts from payments to any subcontractors and inform the Montana Department of Revenue on prescribed forms of the amount of the 1% license fee in the Contractor's account to be allocated and transferred to the subcontractor. The notification to transfer portions of the 1% license fee must be filed within thirty (30) calendar days after each payment is made to subcontractors.

Pursuant to 15-50-206 MCA, the City of Billings shall withhold, in addition to other amounts withheld as provided by law, 1% of all payments due the Contractor and shall transmit that money to the Montana Department of Revenue. Each subcontractor who performs work greater than \$5,000 shall have 1% of its gross receipts withheld by the contractor. The contractor shall notify the Department of Revenue on the department's prescribed forms. All gross receipts tax obligations withheld shall be handled, disbursed, and otherwise processed as dictated by the Department of Revenue.

Payments due to the Contractor under this Section 3 shall be calculated in accordance with the provisions shown in **Schedule D, Table 1: Budget Summary Report**. The Contractor shall provide the City of Billings with an itemized monthly invoice of amount due along with any other evidence reasonably required by the City of Billings to demonstrate amount of required payment. Contractor fixed fees shall be invoiced and substantiated on a percent complete basis. All invoices submitted by the Contractor, less a five percent (5%) retainage (0% if a retention bond is provided by the Contractor), shall be due and payable within thirty (30) calendar days of receipt of the invoice. Five percent (5%) retainage will not be withheld on any Audit Fee or Design Services fees.

Once payments made to the Contractor total ninety-five percent (95%) of the Total Guaranteed Cost, as increased or decreased by approved change orders requested by the City of Billings, the City of Billings shall not make further payments other than the five percent (5%) retainage in accordance with this Section 3, unless a retention bond is provided by the Contractor in which case there shall be 0% retainage. The City of Billings shall have ten (10) business days from the date of receipt of said invoices and all support documentation to notify the Contractor of any irregularity in the billing. The failure of the City of Billings to provide notice of disagreement within said ten (10) business day period shall be deemed agreement with the information or calculations set forth in that particular invoice, except in cases where the City of Billings does not have full information and later learns of additional information that would cause it to disagree with a particular invoice. The City of Billings shall extend every effort to remit payment within thirty (30) calendar days after the later of receipt of said invoice and all supporting documentation reasonably requested. Interest at a rate equal to the lesser of 12% per annum or the maximum rate permitted by law will accrue on all undisputed unpaid balances commencing ten (10) business days after invoice is due. For purposes of this section, business days shall be Monday through Friday excluding holidays as set by the City of Billings calendar. In lieu of a 5% retainage, the Contractor has the option to provide a retention bond at Contractor's expense.

### **Section 3.6. Effective Date of Payment Obligation For Annual Services**

Notwithstanding the above provisions in **Section 3**, the City of Billings is not required to begin any payments to the Contractor for Annual Services under this Contract until all equipment is installed by Contractor in accordance with **Article 8 (Construction Schedule and Equipment Installation; Approval)** and **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and accepted by the City of Billings, as evidenced by the signed Certificate of Acceptance, **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**, and until this equipment is fully and properly functioning.

### **Section 3.7. Open Book Pricing**

Open book pricing is required, such that the Contractor shall fully disclose all direct construction costs, including all Subcontract Costs and Equipment Costs. These costs, excluding Contractor fixed fees (fixed fees: Audit Fee, Project Development Cost, Design Services, Construction Administration/Management, Overhead, Fees, and Performance Bonds) will be reconciled to the City of Billings upon formal completion in the event of any construction cost savings. Contractor will maintain cost accounting records on work performed, reflecting the direct construction costs for all ECM projects as identified for construction or installation under this contract.

The contractor and all subcontractors at any level or tier of the work shall give preference to the employment of bona fide Montana residents employing at least 50% in the performance of the work (18-2-401 and 18-2-403, MCA) and shall pay the standard prevailing rate of wages, including fringe benefits of health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed (18-2-403, MCA). Contractor shall follow state law concerning selection of any subcontractors. Contractor shall afford the City of Billings access to these records and all related project records and preserve all project records for at least three (3) years after final payment under this Contract. The

Contractor guarantees that the aggregate cost of implementing all ECM's will not exceed the contract sum. However, any one of the individual construction costs identified in **Schedule D (Final Project Cost & Cash Flow Analysis)** may exceed the identified budget.

### **Section 3.8. Construction Savings and Owner Directed Change Orders**

Upon the execution of a Certificate of Acceptance – Installed Equipment (Exhibit III (ii)), if the Total Project Cost is less than the Total Guaranteed Cost, then the difference between the actual and estimated costs as reconciled in accordance with Section 3.7 herein, may at the City of Billings discretion, be used to implement more projects per the terms of this Contract, provided that the difference is sufficient to fund additional projects. The Contractor shall apply the fee structure to those additional projects per **Schedule D, Table 1: Budget Summary Report**. For purposes of those additional projects, a new **Certificate of Acceptance – Installed Equipment** shall be executed, which date shall be the Commencement Date, for purposes of this Contract, as to those projects only. Otherwise the difference between the actual and estimated costs will be identified as project savings that can be used to offset other ECM project costs such as change orders. If there is a net project savings from all ECM projects installed, the net savings belongs to the City of Billings to be applied according to the terms of the Financing requirements for the total project.

In the event the City of Billings issues change orders that increase costs, the amount of those cost increases shall be identified by the Contractor and accounted for in a separate budget beyond the original Total Guaranteed Cost. It will be the City of Billings responsibility to pay these costs as the Project is being constructed. The Contractor shall use the mark-up structure indicated in **Schedule D, Table 1: Budget Summary Report**, as the original basis for the pricing of change orders. However, if either party believes that the scale and /or scope of the change order is not properly reflected in the pricing in **Schedule D**, then the parties will negotiate a mutually agreed upon fee for the specific change order and record it in writing, which writing may be satisfied by authorized persons from both parties signing the change order.

## **ARTICLE 4. FISCAL FUNDING**

### **Section 4.1. Non-appropriation of Funds**

The City of Billings is dependent upon state and federal appropriations for its funding. If state or federal government funds are not appropriated or otherwise made available to support continued performance of this Contract in subsequent fiscal periods, the City of Billings may terminate this contract. The City of Billings shall provide Contractor the date the City of Billings termination shall take effect. The City of Billings shall not be liable to the Contractor for any Contract payment that would have been payable had the contract not been terminated under this provision. The City of Billings shall be liable to the Contractor only for the Contract payment, or prorated portion of that payment, owed to the Contractor up to the date the City of Billings termination takes effect. The City of Billings shall be responsible for any contract charges incurred and demobilization charges caused due to contract termination. This is the Contractor's sole remedy.

## **Section 4.2. Non-substitution**

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by Contractor due to a default by the City of Billings, the City of Billings agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by Contractor from another Energy Service Company for a period of three-hundred sixty five (365) calendar days following such default by the City of Billings, or termination of this Contract due to non-appropriations.

## **AUDIT AND CONSTRUCTION PHASE**

### **ARTICLE 5. ENERGY USAGE RECORDS AND DATA**

The City of Billings has furnished, and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract, to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

### **ARTICLE 6. LOCATION AND ACCESS**

Contractor acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Contractor is responsible for all aspects of protecting the equipment during construction. The City of Billings shall take reasonable steps to protect the Equipment from harm, theft, and misuse after final acceptance has been obtained. The City of Billings shall provide access to the Project Site(s) for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the City of Billings. The City of Billings shall grant Contractor immediate access to make emergency repairs or corrections as Contractor may, in its discretion, determine are needed. Contractor shall immediately notify the City of Billings when emergency action is taken and follow up with written notice within three (3) business days, specifying the action taken, the reasons for the action, and the impact upon the Project Site(s), if any.

### **ARTICLE 7. PERMITS AND APPROVALS; COORDINATION**

#### **Section 7.1. Permits and Approvals**

The City of Billings shall use its best efforts to assist Contractor in obtaining all necessary permits and other approvals for installation of the Equipment. However, the City of Billings is not responsible for payment of any permit or other approval fees. The equipment, and the operation of the equipment by Contractor, shall conform to all federal, state, and local code requirements. Contractor shall furnish to the City of Billings copies of each permit and license required to perform the work before Contractor commences the portion of the work requiring the permit or license.

The Contractor has excluded all scope and cost associated with hazardous abatement. As such, any cost associated with permitting hazardous abatement work has also been

excluded.

## **Section 7.2. Coordination During Installation**

The Contractor shall coordinate the activities of its equipment installers with those of the City of Billings, its employees, and agents. Contractor shall not commit or permit any act that will interfere with the performance of business activities conducted by the City of Billings or its employees, without prior written approval of the City of Billings.

## **ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; AWARD OF SUBCONTRACTS; SYSTEMS STARTUP APPROVAL**

### **Section 8.1. Construction Schedule; Equipment Installation**

Construction and Equipment installation shall proceed in accordance with the construction schedule approved by the City of Billings and attached as **Schedule I (Construction and Equipment Installation Schedule)**.

### **Section 8.2. Award of Subcontracts**

The Contractor shall furnish the City of Billings with the names of subcontractors and suppliers proposed for each principle portion of the work at least ten (10) business days prior to subcontract award. The City of Billings will promptly acknowledge receipt of this subcontractor and supplier plan and advise if there is reasonable objection to any listed person or entity. The Contractor shall not enter into an agreement with any subcontractor or supplier to which the City of Billings raises a timely objection. Should the disqualification of a subcontractor by the City of Billings add to the Project Cost, the Contractor reserves the right to increase the Contract Sum proportionally.

The Contractor and all subcontractors must comply with all Montana Department of Labor and Industry requirements, regulations, rules and statutes.

### **Section 8.3. Systems Startup and Equipment Commissioning Approval**

Contractor shall conduct a thorough and systematic performance test of each element and the total system of the installed Equipment in accordance with **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the City of Billings, as specified in **Exhibit III (i) (Certificate of Acceptance-Technical Energy Audit Report)**. Testing must be designed to determine whether the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract and whether modified building systems, subsystems, and components are functioning properly. Contractor shall notify the City of Billings of the scheduled test(s) and the City of Billings and/or its designees have the right to be present at any tests conducted by Contractor and/or manufacturers of the Equipment. Contractor is responsible for correcting and/or adjusting any deficiencies in systems and Equipment operations observed during system commissioning procedures, as specified in **Schedule J (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. Contractor also is responsible for correcting and/or adjusting any deficiencies in Equipment operation observed during system testing procedures. Prior to the City of Billings' acceptance of the Equipment, Contractor also shall provide the City of Billings with reasonable

documentation that the Equipment installed is the Equipment specified in **Schedule H (Equipment to be Installed by Contractor)**. This documentation may be in the form of standard equipment submittals or equipment O & M manuals.

#### **Section 8.4. Airport Security Regulations**

The Contractor and all Sub-Contractors that will be performing work at the Billings Logan International Airport, especially in the secured areas of the Airport, must comply with all Airport Security Regulations including, but not limited to:

Filling out proper Forms; providing a list of all employees who will be working on the Project; ensuring that employees submit to a Criminal History Records Background Check and Security Threat Assessment; obtaining and paying for Personnel Security identification badges.

Contractor should contact the Airport Police office at the Airport for additional information regarding the security requirements that will impact the Project. The Airport Police office is located in Room 210 of the Airport Terminal building or may be reached by phone at 406-657-8498.

#### **ARTICLE 9. EQUIPMENT WARRANTIES**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract.

The Contractor warrants and guarantees all work, workmanship, and materials for the full warranty period. The warranty period shall be defined as started upon documented approval of Substantial Completion for each Energy Conservation Measure (ECM) and continue for one (1) calendar year.

Substantial Completion means the stage in the progress of an ECM, or portion thereof, where the ECM is sufficiently complete in accordance with the Contract Documents so that the City of Billings can take beneficial use of the ECM for its intended purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Substantial Completion" form has been fully executed.

After the warranty period, as said warranty pertains to each individual ECM, Contractor is not responsible for performing maintenance or repairs or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule M (Contractor's Maintenance Responsibilities)**.

Manufacturer and product warranties and guarantees, as provided by the manufacturer or as specified in the Contract Documents, are in addition to the Contractor's warranty.

Contractor shall assign to the City of Billings all available manufacturer's warranties relating to the Equipment and deliver the written warranties to the City of Billings for attachment to this Contract as **Exhibit IV (Equipment Warranties)**. Contractor shall

pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction, improper or defective function, or defects in parts, workmanship, or performance. Contractor shall, during the warranty period, notify the City of Billings whenever defects in Equipment parts or performance occurs that give rise to rights and remedies and when those rights and remedies are exercised by Contractor. During this period, Contractor shall be liable to the City of Billings for the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the City of Billings or the Project Site(s), due to Contractor's failure to exercise its warranty rights.

All warranties, to the extent transferable, shall be transferable and extend to the City of Billings at Substantial Completion. Warranties must specify that only new, not reconditioned parts will be installed when repair is necessitated by malfunction. All extended warranties must be addressed as the property of the City of Billings and appropriately documented and titled.

## **ARTICLE 10. STANDARDS OF COMFORT**

Contractor shall maintain and operate the Equipment in a manner that provides the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels described in **Schedule K (Standards of Comfort)**. During the term of this Contract, Contractor and the City of Billings shall maintain, according to **Schedule M (Contractor's Maintenance Responsibilities)** and **Schedule N (the City of Billings Maintenance Responsibilities)**, and operate the Equipment in a manner that provides the standards of comfort and levels of operation described in **Schedule K (Standards of Comfort)**.

## **ARTICLE 11. ENVIRONMENTAL REQUIREMENTS**

### **Section 11.1. Excluded Material and Activities**

In connection with the installation and/or service or maintenance of Equipment at the Project Site(s), Contractor is not responsible for any work relating to: (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment of asbestos; (ii) fungus, including any type or form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi; (iii) pre-existing incomplete or damaged work or systems or code violations discovered during, or prior to, the work under this Contract; or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment of such materials. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." If performance of work involves any Excluded Materials and Activities, the City of Billings shall perform, or arrange for the performance of, such work and shall bear the sole risk and responsibility for such work. If Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel and subcontractors from the site, and notify the City of Billings. The City of Billings is responsible for handling such materials at its expense. Contractor shall undertake no further work on the area of the Project site affected by such materials, except as authorized by the City of Billings in writing. Any such discovery or remediation by the City of Billings does not constitute a default by the City

of Billings. In the event of such stoppage of work by Contractor, the time for Completion of Work is automatically extended by the amount of time of the work stoppage, and any additional costs incurred by Contractor in performing the work under this Contract as a result will be negotiated with the City of Billings and added by Change Order.

Contractor is responsible for any hazardous or other materials, including, without limitation, those listed in this section that it brings to the Project Site(s).

#### **Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps**

Contractor shall enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from the Project Site(s) containing PCB's must be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction must be provided by the approved facility to the City of Billings. Contractor is responsible for proper and legal management of all the City of Billings PCB ballasts removed as a result of installation of the Equipment until PCB ballasts are loaded onto the approved PCB ballast disposal company's vehicle for transportation.

Contractor shall enter into an agreement with an approved mercury lamp disposal company that will provide approved containers, materials required for labeling, transportation, and recycling or incineration, in accordance with EPA requirements, and a copy of the manifest.

The City of Billings agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

### **ARTICLE 12. TRAINING BY CONTRACTOR**

Contractor shall conduct the training program described in **Schedule L (Contractor's Training Responsibilities)**. The training specified in **Schedule L (Contractor's Training Responsibilities)** must be completed prior to acceptance of the Equipment installation by the City of Billings, unless noted differently in **Schedule L (Contractor's Training Responsibilities)**. Contractor shall provide ongoing training as set forth in **Schedule L**.

### **POST-CONSTRUCTION PHASE**

### **ARTICLE 13. EQUIPMENT SERVICE**

#### **Section 13.1. Actions by Contractor**

Contractor shall provide all service, repairs, and adjustments to the Equipment installed under this Contract, pursuant to **Schedule M (Contractor's Maintenance Responsibilities)**. The City of Billings shall incur cost for Equipment service, repairs, and adjustments, as set forth in **Schedule N (City of Billings Maintenance Responsibilities)** and as set forth in **Schedule F (Compensation to Contractor for Annual Services)**. However, if the Contractor demonstrates that the need for maintenance or repairs principally arises due to the negligence or willful misconduct of

the City of Billings or any employee or other agent of the City of Billings, Contractor may charge the City of Billings for the cost of the maintenance or repair if the cost is not covered by any warranty or insurance.

### **Section 13.2. Malfunctions and Emergencies**

The City of Billings shall use its best efforts to notify Contractor or its designated subcontractors within 24 hours after the City of Billings' actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or in any preexisting energy related equipment that might materially impact guaranteed energy savings; (ii) any interruption or alteration to the energy supply to the Project Site(s); or (iii) any alteration or modification in any energy-related equipment or its operation.

When the City of Billings exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration, it is not liable to Contractor for additional costs for failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings, however the Contractor shall account for these conditions in the Measurement and Verification analysis. The City of Billings shall notify Contractor within twenty-four (24) hours upon learning of any emergency condition affecting the Equipment. Contractor shall respond, or cause its designee(s) to respond, within 48 hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by the City of Billings must be followed within five (5) business days by written notice or email to Contractor from the City of Billings. If the City of Billings unreasonably delays in notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, the City of Billings is liable to Contractor for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, if Contractor demonstrates a direct causal connection between the delay and the loss.

Contractor shall provide a written record of all service work performed. This record must state the reason for the service, a description of the problem, and the corrective action performed.

### **Section 13.3. Actions by the City of Billings**

The City of Billings may not move, remove, modify, alter, or change the Equipment or any part of the Equipment without prior written approval of Contractor, except as stated in **Schedule N (The City of Billings Maintenance Responsibilities)**. The City of Billings may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking action. If there is an emergency, the City of Billings shall take reasonable steps to protect the Equipment from damage or injury and shall follow any instructions for emergency action provided in advance by Contractor. The City of Billings shall maintain the Project Site(s) in good repair, and protect and preserve all portions that may affect operation or maintenance of the Equipment.

## **ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT**

### **Section 14.1. Modification of Equipment**

During the Term of this Contract, the City of Billings may not, without prior written

consent of Contractor, install any accessory Equipment or device on any of the Equipment if the addition will change or impair the originally intended functions, value, or use of the Equipment.

## **Section 14.2. Upgrade or Alteration of Equipment**

Contractor may, subject to the City of Billings prior written approval, which approval may not unreasonably be withheld, change the Equipment, revise any procedures for operation of the Equipment, or implement other energy saving actions in the Project Site(s), if: (i) Contractor complies with the standards of comfort and services specified in **Schedule K (Standard of Comfort)**; (ii) modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable Contractor to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) Contractor bears any cost incurred relative to such modifications, additions, or replacement of the Equipment, or operational changes or new procedures.

All modifications, additions, or replacements of the Equipment, or revisions to operating or other procedures, must be described by Contractor in a supplemental Schedule(s) provided to the City of Billings for approval, which may not be unreasonably withheld, and any replacement Equipment must, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. Contractor may update any software to be used in connection with the Equipment, in accordance with **Section 17.1 (Ownership of Certain Proprietary Property Rights)** and **Schedule M (Contractor's Maintenance Responsibilities)**. All replacements of, and alterations or additions to, the Equipment become part of the Equipment described in **Schedule H (Equipment to be Installed by Contractor)** and are covered by the terms of **Article 8 (Construction Schedule and Equipment Installation; Systems Startup Approval)**.

## **ARTICLE 15. MATERIAL CHANGES**

### **Section 15.1. Material Change Defined**

A Material Change includes any change in, or to, the Project Site(s), whether structural, operational, or otherwise in nature that reasonably could be expected, in the judgment of the City of Billings, to increase or decrease annual energy consumption, in accordance with **Schedule B (Baseline Energy Consumption)** and **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** by at least 3%, after adjustments for climatic variations. Actions by the City of Billings that may result in a Material Change include, but are not limited to, the following:

- (i) Manner of use of the Project Site(s) by the City of Billings;
- (ii) Hours of operation for the Project Site(s), or for any equipment or energy using systems operating at the Project Site(s);
- (iii) Permanent changes in the comfort and service parameters specified in **Schedule K (Standards of Comfort)**;
- (iv) Occupancy of the Project Site(s);
- (v) Structure of the Project Site(s);
- (vi) Types and quantities of equipment used at the Project Site(s);
- (vii) Modification, renovation or construction at the Project Site(s);
- (viii) The City of Billings' failure to maintain and repair the Equipment in accordance

with **Schedule N (The City of Billings Maintenance Responsibilities)**;

- (ix) Any other conditions other than climate affecting energy use at the Project Site(s), including, but not limited to, replacement, addition, or removal of energy and water consuming devices, whether plug in or fixed assets;
- (x) Casualty or condemnation of the Project Site(s) or Equipment;
- (xi) Changes in utility provider or utility rate classification;
- (xii) Any other conditions other than climate affecting energy or water use at the Project Site(s); or
- (xiii) Modifications, alterations, or overrides of the energy management system schedules or hours of operation, set back/start up, or holiday schedules.

### **Section 15.2. Reported Material Changes; Notice by the City of Billings**

The City of Billings shall use its best efforts to deliver to Contractor a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least thirty (30) calendar days before any actual or proposed Material Change is implemented, or as soon as practicable after an emergency or other unplanned event. Notice to Contractor of Material Changes that result because of an emergency or other situation that precludes advance notice is sufficient if given by the City of Billings within 48 hours after the City of Billings knew or discovered that the event constituting the Material Change occurred.

### **Section 15.3. Other Adjustments**

The City of Billings shall alert Contractor of known Materials Changes. Contractor shall work with the City of Billings to investigate, identify, and correct any changes that prevent the guaranteed savings from being realized. Based on the investigation, Contractor and the City of Billings shall determine what, if any, adjustments to the baseline are to be made in accordance with **Schedule C (Savings Measurement and Verification Plan; Methodology to Adjust Baseline)** and **Schedule B (Baseline Energy Consumption)**. Any disputes between the City of Billings and Contractor concerning any such adjustment shall be resolved in accordance with **Schedule Q (Alternative Dispute Resolution Procedures)**.

When the affect on energy savings cannot be accurately determined due to changes that may be Material Changes, Projected Energy Savings for that portion of the Projected Sites(s) undergoing change will be used to determine the actual savings until the effect of the change can be determined by the Contractor unless there is at least two (2) years of historical energy savings available to use as a basis for the Energy Savings prior to the Material Change. Then the historical information will be used instead of the Projected Energy Savings.

If the City of Billings elects not to use the Projected Energy Savings or historical energy savings that applies to the portion of the Project Site(s) adversely affected by the Material Change, the Contractor has the right to charge for work required to assess the effect on energy savings for any Material Changes, including but not limited to the conditions identified in Section 15.1, that requires more than eight (8) total hours per year to be spent in calculating their effect on the energy savings. Such hours will be billed at the Contractors then current engineering rates. Before initiating such work, the Contractor will notify the City of Billings in writing of the intent and relevant scope of the

work.

The City of Billings, within forty-five (45) calendar days thereafter, shall notify the Contractor in writing with permission to proceed at current rates or, alternatively and at no charge, stipulating that the Projected Energy Savings or the historical energy savings for the portion of the Project Site(s) in question shall be used as the actual achieved savings for the purpose of meeting the Energy Savings Guarantee. If the Contractor does not receive written notice within the required forty-five (45) calendar days, the Projected Energy Savings or historical energy savings for the portion of the Project Sites(s) in question from the date the Material Change begins will be used in the calculation of energy savings until such time that the City of Billings approves the work, as long as the scope of work has not changed. Such work is in addition to the work performed under the Total Guaranteed Cost.

If required notice of Material Changes is not given, or if the City of Billings fails to supply the Contractor with copies of its applicable monthly utility bills and/or data within the timeframe established, energy savings calculated for the period will be equal to the Projected Energy Savings or historical energy savings for the period at the portion of the Project Site(s) affected by such oversight. If information or utility bills for the period in question are supplied at a later date other than is permitted, the energy savings calculated for the period will be modified only if such calculated energy savings for the period exceeds the Projected Energy Savings or historical energy savings for that period of time.

## **ARTICLE 16. PERFORMANCE BY CONTRACTOR**

### **Section 16.1. Corrective Action; Accuracy of the Services**

Contractor shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and in conformance with the standards in **Schedule K (Standards of Comfort)** and the construction schedule specified in **Schedule I (Construction and Equipment Installation Schedule)**. Contractor shall repair and restore to its original condition any area of damage caused by Contractor's performance under this Contract. The City of Billings may review the work performed by Contractor and direct Contractor to take corrective action reasonably necessary to remedy damage caused by Contractor if the structural integrity of the Project Site(s) or its operating system is or will be harmed. Contractor shall bear all costs associated with such corrective action.

Contractor is responsible for the professional and technical accuracy of all services performed, whether by Contractor or its subcontractors or others on its behalf, throughout the term of this Contract.

### **Section 16.2. Annual Reporting Requirements; Annual ENERGY STAR Rating**

Within ninety (90) days after the end of each year during the guarantee period, as specified in **Schedule A (Energy and Water Cost Savings Guarantee)**, Contractor shall complete and submit to the City of Billings the data required in **Schedule P (Annual Reporting Requirements)**. Contractor shall provide an ENERGY STAR rating for each eligible facility for each year of the guarantee period, if applicable.

## **ADMINISTRATION**

### **ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS; EXISTING EQUIPMENT**

#### **Section 17.1. Ownership of Certain Proprietary Property Rights**

The City of Billings does not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property used in connection with the Equipment. Contractor grants to the City of Billings a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the City of Billings to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. Contractor shall provide new versions of software or other enhancements if new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

#### **Section 17.2. Ownership of Existing Equipment**

Equipment and materials existing at the Project Site(s) at the time of execution of this Contract remain the property of the City of Billings, even if replaced or operation is made unnecessary by work performed by Contractor pursuant to this Contract. At least fourteen (14) calendar days prior to replacement, Contractor shall provide the City of Billings with written advance notice of all equipment and materials to be replaced at the Project Site(s). Within ten (10) calendar days after receipt of the notice, the City of Billings shall identify in writing to Contractor the equipment and materials that are not to be disposed of off-site by Contractor, and Contractor may not dispose of any such equipment or materials off site. The City of Billings shall designate the location and manner of storage for any equipment and materials that are to be stored on-site. Contractor is only responsible for disposal, in accordance with all applicable laws and regulations, of all equipment and materials designated by the City of Billings as disposable off-site.

### **ARTICLE 18. INSURANCE AND CLAIMS**

Contractor shall maintain through the term of this Contract and for two (2) years after termination or expiration of this Contract the insurance coverage, outlined below, and all such other insurance as required by applicable law. Within ten (10) calendar days of execution of this Contract, Contractor shall provide evidence of coverage to the City of Billings and shall update such evidence on an annual basis via a Certificate of Insurance or endorsement, as required by the City of Billings.

Workers' Compensation/Employers Liability: Workers' Compensation/Employers Liability for states in which Contractor is not a qualified self-insured. Limits as follows:

Workers' Compensation - Statutory

Employers Liability:

- Bodily Injury by Accident \$1,000,000 Each Accident

- Bodily Injury by Disease \$1,000,000 Each Employee
- Bodily Injury by disease \$1,000,000 policy limit

Commercial General Liability: Commercial General Liability insurance with limits of:

- \$2,000,000 Per Occurrence for Bodily Injury and Property Damage
- \$4,000,000 General Aggregate - Other Than Products/Completed Operations
- \$4,000,000 Products/Completed Operations Aggregate
- \$300,000 Damage to Rented Premises (Each Occurrence)
- \$ 10,000 Medical Expenses (Any One Person)
- \$2,000,000 Personal and ADV Injury

Coverage is to be written on an Occurrence form. Coverage is to be issued as on ISO form CG 2010 (10/01), without endorsements that limit the policy terms with respect to: (i) the definition of an Insured Contract, (ii) provisions for severability of interest, (iii) explosion, collapse, underground hazard.

Auto Liability: Auto Liability insurance for owned, hired, and non-owned vehicles with limits of \$1,000,000 per accident Coverage is to be written on an Occurrence form.

Professional Liability: Professional Liability insurance with limits of:

- \$2,000,000 Per Occurrence
- \$2,000,000 Aggregate

Coverage is to be written on a Claims-made form.

Excess Liability: Excess Liability insurance. Limits as follows:

- \$5,000,000 Each Occurrence
- \$5,000,000 Aggregate

Coverage is to be written on an Occurrence form. Coverage terms and limits to apply in excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability.

Endorsements: Policy Endorsements.

All insurance specified herein, shall contain waivers of subrogation rights against the City of Billings and its agents, officers, directors and employees for recovery of damages to the extent such damages are covered by the required policies.

The insurance provided for above shall:

- For Commercial General Liability, Professional Liability, Excess Liability and Auto Liability, include the City of Billings as a primary additional insured with respect to work performed and services provided under this Contract,
- Provide that the insurance is primary coverage with respect to all insured and shall not be considered contributory insurance with any insurance policies of the City of Billings, and
- Require thirty (30) calendar days written notice to the City of Billings, by first class mail, prior to any cancellation of, or refusal to renew the policy. Contractor shall provide thirty (30) calendar days written notice to the City of Billings of a material change to the policy.

Good Standing: Any insurance, or additional insurance required under this Article, shall be covered by an insurance policy with an insurer licensed and in good standing to do business in the state of Montana.

Waiver: Contractor waives all rights against the City of Billings and its agents, agencies, officers, directors and employees for recovery of damages to the extent these damages are covered by the required policies. Policies may contain deductibles but such deductibles shall not be reduced from any damages due to City of Billings.

No Representation: By requiring insurance herein, the City of Billings does not represent that coverage and limits will necessarily be adequate to protect the Contractor and such coverage and limits shall not be deemed a limitation on Contractor's indemnity liabilities under the Contract.

Contractor Responsibility: To the extent where such damage or injury occurs as a result of Contractor's negligent acts or omissions under this Contract, Contractor shall be responsible for (i) any damage to the Equipment and (ii) any bodily injury, personal injury and property damage, but only if such damage is not covered by insurance required to be maintained by Contractor.

Hold Harmless: Contractor agrees to defend, indemnify, and hold the City of Billings and its officers, agents, and employees ("Indemnities") harmless from any and all claims, demands, losses, liabilities, damages, and court awards (including costs, expenses, and attorney fees) to or by third parties arising from, resulting from, or connected with the services and work performed and equipment installed under this Contract by Contractor, its agents, employees, invitees, guests and subcontractors and sub-consultants of any tier, subject to the limitations provided below.

Contractor's duty to indemnify Indemnities shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City of Billings, its agents or employees or invitees, or guests, or subcontractors or sub-consultants of any tier.

Contractor specifically and expressly waives any immunity that may be granted it under any worker's compensation act. Further, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under worker's compensation acts, disability benefits acts, or other employee benefits acts; PROVIDED Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by Indemnities, it does not include, or extend to, any claims by Contractor's employees directly against Contractor. This Section shall survive termination of this Contract.

**Section 18.1. Claims, Disputes and Controversies**

**18.1.1.** Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extensions of time or other relief with respect to the terms of the Contract. The term "Claim" includes all disputes, controversies, and matters in question between the City of Billings and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice to the other party. The responsibility to substantiate Claims shall rest solely with the party making the Claim.

**18.1.1.1.** All Claims must contain sufficient justification and substantiation or they may be rejected without consideration by the other party with no additional impact or consequence to the Contract.

**18.1.1.2.** If additional compensation is claimed, the exact amount claimed and a breakdown of that amount into the following categories shall be provided with each and every claim:

**18.1.1.2.1.** Direct costs;

**18.1.1.2.2.** Indirect costs.

**18.1.1.3.** If additional time is claimed the following shall be provided with each and every claim:

**18.1.1.3.1.** The specific number of days and specific dates for which the additional time is sought;

**18.1.1.3.2.** The specific reasons, causes, and/or effects whereby the Contractor believes that additional time should be granted; and,

**18.1.1.3.3.** The Contractor shall provide analyses, documentation, and justification of its claim for additional time.

**18.1.2. Continuing Contract Performance**

Pending final resolution of a Claim except as otherwise agreed in writing or as provided in this Contract, the Contractor shall proceed diligently with performance of the Contract and the City of Billings shall continue to make payments in accordance with the Contract on portions of the Work not involved in a Claim.

**Section 18.2. Resolution of Claims, Disputes and Controversies**

**18.2.1.** Upon receipt of a Claim against the Contractor or at any time thereafter, the City of Billings may, but is not obligated to, notify the surety of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the City of Billings may, but is not obligated to, notify

the surety and request the surety's assistance in resolving the controversy.

- 18.2.2.** A Claim subject to or related to liens or bonds shall be governed by applicable law regarding notices, filing deadlines, and resolution of such Claim prior to any resolution of such Claim by the City of Billings, by mediation, or by arbitration, except for claims made by the City of Billings against the Contractor's bonds.

**Section 18.3. Mediation**

- 18.3.1.** Any Claim arising out of or related to the Contract, except Claims waived elsewhere in the Contract, shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

- 18.3.2.** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise in writing, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect and/or those rules specified in the contract documents or separately agreed upon between the parties. Construction Industry Mediation Rule M-2 (filing with AAA) does not apply, unless the parties mutually agree in writing to use AAA, and no filing of a request for mediation shall be made to AAA by either party until such mutual agreement has been made. Unless the parties agree to use AAA, the parties shall mutually agree upon a mediator who shall then take the place of AAA in the Construction Industry Mediation Rules. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association, if the parties have agreed to use AAA. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) calendar days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

- 18.3.3.** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon in writing. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**Section 18.4. Arbitration**

- 18.4.1.** Any controversy or Claim arising out of or related to this Contract or the breach thereof, that is not first resolved by mediation, shall be settled by arbitration in accordance with the Montana Uniform Arbitration Act (MUAA). To the extent it does not conflict with the MUAA, the Construction Industry Arbitration Rules of the American Arbitration Association shall apply except as modified herein, or unless the parties mutually agree otherwise in writing. The parties to the arbitration shall

bear their own costs and expenses for participating in the arbitration. Costs of the Arbitration panel shall be borne equally between the parties except those costs awarded by the Arbitration panel (including costs for the arbitration itself).

- 18.4.2.** Prior to the arbitration hearing, all parties to the arbitration may conduct discovery in conformance with the provisions of the Montana Rules of Civil Procedure. In addition to any other remedies available, the arbitration panel may award actual damages incurred if a party fails to provide full disclosure under any discovery request. If a party claims a right of information privilege protected by law, the party must submit that claim to the arbitration panel for a ruling, before failing to provide information requested under discovery or the arbitration panel may award actual damages.
- 18.4.3.** The venue for all arbitration proceedings required by this Contract shall be the seat of the county in which the work occurs or the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, Montana, as determined solely by the City of Billings. Arbitration shall be conducted by a panel comprised of three members with one selected by the Contractor, one selected by the City of Billings, and one selected by mutual agreement of the City of Billings and the Contractor.
- 18.4.4.** Any Claim arising out of or related to the Contract, except Claims waived elsewhere in the Contract, shall be subject to arbitration if a demand for arbitration is properly made after the mediation process has been completed without resolving the claim.
- 18.4.5.** Construction Industry Arbitration Rule R-3 (filing with AAA) does not apply, unless the parties mutually agree in writing to use AAA, and no filing of a request for arbitration shall be made to AAA by either party until such mutual agreement has been made. Unless the parties agree to use AAA, the parties shall mutually agree upon an arbitrator or arbitrators who shall then take the place of AAA in the Construction Industry Arbitration Rules. The demand for arbitration shall be filed in writing with the other party to the Contract and a copy shall be filed with the City of Billings.
- 18.4.6.** In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.
- 18.4.7.** Pending final resolution of a Claim for which a request for arbitration has been made, unless otherwise mutually agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the City of Billings shall continue to make payments in accordance with the Contract on Work or amounts not in dispute.
- 18.4.8.** **Limitation on Consolidation or Joinder.** No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the City of Billings and Contractor, a separate contractor of the City of Billings, and other persons substantially involved in a common question of fact or

law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the City of Billings, Contractor or a separate contractor of the City of Billings, whose interest or responsibility is insubstantial, shall be included as an original third party or additional third party to an arbitration. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**18.4.9. Claims and Timely Assertion of Claims.** The party filing a demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**18.4.10. Judgment on Final Award.** The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The parties agree that the costs of the arbitrator(s)' compensation and expenses shall be borne equally. The parties further agree that the arbitrator(s) shall have authority to award to either party some or all of the costs and expenses involved, including attorney's fees. The parties agree that the costs of the arbitrator(s)' compensation and expenses shall be borne equally by the parties, except that the arbitrator(s) shall have authority to award to either party some or all of that parties' costs and expenses involved, including arbitrator costs and attorney's fees.

## **ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES**

### **Section 19.1. Force Majeure**

In no event shall the City of Billings be liable to the Contractor, any subcontractor, any supplier, Contractor's surety, or any other person or organization, for damages or costs arising out of or resulting from: (1) delays caused by or within the control of the Contractor which include but are not limited to labor issues or labor strikes on the Project, federal, state, or local jurisdiction enforcement actions related directly to the Contractor's Work (e.g. safety or code violations, etc.); or, (2) delays beyond the control of both parties including but not limited to fires, floods, earthquakes, abnormal weather conditions, acts of God, nationwide material shortages, actions or inaction by utility owners, emergency declarations by federal, state, or local officials enacted in the immediate vicinity of the project, or (3) delays caused by other contractors performing work for the City of Billings unless said delays are the direct result of negligent acts on the part of the City of Billings or its contractor.

### **Section 19.2 Conditions Beyond Control of the Parties**

If Contractor reasonably is unable to perform any of its obligations under this Contract due to unforeseeable events beyond Contractor's control, at the City of Billings' option, the Contract shall: (i) remain in effect but the Contractor's obligations are suspended until such events have ended; or, (ii) the City of Billings may terminate the Contract upon ten (10) business days written notice to the performing party, in which event neither party has any further liability to the other under this Contract.

Additionally, if the City of Billings reasonably is unable to perform any of its obligations under this Contract due to unforeseeable events beyond the City of Billings' control, at the Contractor's option, the Contract shall: (i) remain in effect but the City of Billings' obligations are suspended until such events have ended; or, (ii) the Contractor may terminate the Contract upon ten (10) business days written notice to the City of Billings, in which event neither party has any further liability to the other under this Contract.

## **ARTICLE 20. ADDITIONAL DUTIES AND REPRESENTATIONS OF THE PARTIES**

**Section 20.1.** For the term of this contract, as set forth in Section 2.5 (Effective Date/Duration) or as subsequently amended, the City of Billings timely shall provide the Contractor with accurate and complete copies of all records relating to the Contract, including, but not limited to, records relating to energy usage and energy-related maintenance of Project Site(s) requested by Contractor that have not already been provided. Said information shall be provided to Contractor within thirty (30) calendar days after the end of each calendar quarter for as long as Contractor will be providing the annual services and Measurement and Verification reporting as specified in Article 3 (Savings Guarantee; Annual Reconciliation; Payments to Contractor) and Schedule A (Energy and Cost Savings Guarantee), herein.

**Section 20.2.** The City of Billings represents that it has not entered into any lease or other contract regarding energy efficiency equipment, provision of energy management services for the Project Site(s), or servicing of any energy related equipment located in the Project Site(s). If the City of Billings enters into any such lease or other contract, within ten (10) calendar days after execution, it shall provide Contractor with a copy of the lease or other contract.

**Section 20.3.** Contractor represents that it is financially solvent, able to pay its debts as they mature, and has sufficient working capital to perform its duties under this Contract.

**Section 20.4.** Within thirty (30) calendar days after executing this Contract, and before commencing performance of this Contract, Contractor shall provide the City of Billings with written documentation that it is licensed to perform its duties under this Contract within the State of Montana and that all insurance and bonding requirements applicable to Contractor under this Contract have been met. Contractor must also have a valid City of Billings Business License.

**Section 20.5.** Upon request, Contractor shall make available to the City of Billings all documents relating to its performance under this Contract, including all contracts and subcontracts.

**Section 20.6.** All subcontractors used by Contractor in performing its duties under this Contract must be qualified, licensed, and bonded in the State of Montana to perform the subcontracted work. Subcontractor must also have a valid City of Billings Business License.

**Section 20.7.** All Equipment installed by Contractor under this Contract must meet, or exceed, the requirements specified in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule J (Systems Start-Up and Commissioning);**

**Operating Parameters of Installed Equipment).**

**Section 20.8.** All Equipment installed by Contractor under this Contract must be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, and components with which the Equipment interacts.

**ARTICLE 21. MISCELLANEOUS DOCUMENTATION PROVISIONS**

**Section 21.1. Construction Performance and Payment Bonds, Labor and Material Payment Bonds**

Contractor shall obtain and maintain the bonds shown in **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond)** for the term of this Contract.

**Section 21.2. Further Documents**

The parties to this Contract shall timely execute and deliver to each other all documents and shall perform all further acts reasonably necessary to effectuate the provisions of this Contract.

**Section 21.3. The City of Billings Responsibilities**

(a) Methods of Operation by the City of Billings

The parties agree that the guaranteed Energy and Cost Savings may not be obtained unless certain procedures and methods of operation designed for energy and water conservation are implemented and followed by the City of Billings on a regular and continuous basis.

(b) The City of Billings Maintenance Responsibilities

The City of Billings shall implement and follow the conservation procedures and methods of operation specified in **Schedule N (City of Billings Maintenance Responsibilities)**.

(c) Inspection of Project Site(s)

Once per month, with prior notice to the City of Billings, Contractor may inspect the Project Site(s) to determine whether the City of Billings is complying with **Section 21.3(b)**. Compliance is to be determined by Contractor using the checklist shown in **Schedule O (Facility Maintenance Checklist)**, as completed by Contractor during its monthly inspections. The City of Billings shall make the Project Site(s) available to Contractor during each monthly inspection and may witness each inspection and Contractor's notations on the checklist. The City of Billings may complete its own checklist at the same time. Contractor may not interfere with the City of Billings operations during any monthly inspection.

**Section 21.4. Waiver Of Liens**

Contractor shall obtain, and furnish to the City of Billings a Waiver of Liens from each

vendor, material manufacturer, and laborer related to the supply, installation, and servicing of each piece of Equipment.

## **ARTICLE 22. CONFLICTS OF INTEREST**

**Section 22.1.** Conflicts of interest relating to this Contract are strictly prohibited. Neither party to this Contract, nor any director, employee, or agent of either party may give to, or receive from, any director, employee, or agent of the other party any gift, entertainment, or other favor of significant value, or any commission, fee, or rebate in connection with this Contract.

**Section 22.2.** Neither party to this Contract, nor any director, employee, or agent of either party may, without prior notice to the other party, enter into any business relationship with any director, employee, or agent of the other party or of any affiliate of the other party.

**Section 22.3.** The parties to this Contract promptly shall notify the other party of any violation of this article, and any consideration received as a result of such violation shall be paid or credited to the other party.

**Section 22.4.** Any representative of a party to this Contract, authorized by that party, may, upon reasonable notice to the other party and during regular business hours, audit the records of the other party related to this Contract, including the expense records of the parties' employees involved in this Contract, for the purpose of determining whether there has been compliance with this section.

## **ARTICLE 23. SCOPE, AMENDMENT AND INTERPRETATION**

Contract. This Contract consists of thirty-six (36) numbered pages, Attachments, and Exhibits. In the case of dispute or ambiguity about the minimum levels of performance required of Contractor, the order of precedence of document interpretation is in the same order.

Entire Contract. These documents contain the entire Contract of the parties. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

## **ARTICLE 24. CHOICE OF LAW AND VENUE**

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, State of Montana, and each party shall pay its own costs and attorney fees. (MCA § 18-1-401)

## **ARTICLE 25. DISPUTE RESOLUTION**

Questions of fact that arise in relation to interpretation of this Contract are subject to the Alternative Dispute Resolution procedures described in **Schedule Q (Alternative Dispute Resolution Procedures)**. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, Alternative Dispute

Resolution procedures are not cause for delay of the Work under this Contract. Continuation of the Work does not constitute a waiver of any rights accruing to Contractor or the City of Billings.

## **ARTICLE 26. LIAISON AND SERVICE OF NOTICES**

All project management and coordination on behalf of the City of Billings shall be through a single point of contact at each designated City of Billings' project location. Contractor shall designate a liaison who will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this Contract shall be coordinated between the City of Billings liaisons and Contractor's liaison. All written notice required by this Contract shall be sent by mail through the United States Postal Service or electronically by e-mail.

Mark Evangeline will be the liaison for the City of Billings Airport Project.

1901 Terminal Circle, Room 216  
Billings, MT 59105  
Telephone: 406-657-8499  
Cell Phone: 406-698-7350  
Fax: 406-657-8438  
E-mail: [evangelinem@ci.billings.mt.us](mailto:evangelinem@ci.billings.mt.us)

Chris Mallow will be the liaison for the City of Billings Parking Garage Project.

210 North 27th Street  
Billings, MT 59101  
Telephone: 406-237-6188  
Cell Phone:  
Fax:  
E-mail: [mallow@ci.billings.mt.us](mailto:mallow@ci.billings.mt.us)

Jeff Davis, PE, will be the liaison for Contractor.

McKinstry Essention, Inc.  
1982 Stadium Drive, Suite #1  
Bozeman, MT 59715  
Telephone: 406-582-7573  
Cell Phone: 406-579-9058  
Fax: 406-586-0486  
E-mail: [jeffd@mckinstry.com](mailto:jeffd@mckinstry.com)

Notices will also be sent to:

Paul Zasada  
McKinstry Essention, Inc.  
9 S. Washington St. #605  
Spokane, WA 99201  
Telephone: 509-625-7246  
Cell Phone: 208-640-9294  
Fax: 206-658-1743  
E-mail: [PaulZ@mckinstry.com](mailto:PaulZ@mckinstry.com)

The City of Billings liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison.

## **ARTICLE 27. GENERAL TERMS AND CONDITIONS**

### **DESIGN/ENGINEERING**

All analysis, design, equipment selections, specifications, and all aspects connected with design, installation, and construction of energy-savings measures, completed by the Contractor shall be performed by an engineer licensed in the State of Montana in accordance with 18-2-121 and 12-2-122, MCA.

### **ACCESS AND RETENTION OF RECORDS**

Access to Records: The Contractor agrees to provide the City of Billings or its authorized agents, access to any records necessary to determine contract compliance. (MCA § 18-1-118).

Retention Period: The Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of this Contract or the conclusion of any claim, litigation, or exception relating to this Contract taken by the City of Billings or third party.

### **ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

The Contractor may not assign, transfer, or subcontract any portion of this Contract without the express written consent of the City of Billings. (MCA § 18-4-141) The City of Billings will not unreasonably withhold consent. The Contractor shall be responsible to the City of Billings for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between subcontractor(s) and the City of Billings.

### **COMPLIANCE WITH LAWS**

The Contractor and any subcontractor must, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. 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 qualifications 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 persons performing the Contract.

### **CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the City of Billings.

Supplies delivered which do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense.

**DISABILITY ACCOMMODATIONS**

The City of Billings does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to the City of Billings. Interested parties should provide as much advance notice as possible.

**HOLD HARMLESS/INDEMNIFICATION**

The Contractor agrees to protect, defend, and save the City of Billings, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, or subcontractors, except the sole negligence of the City of Billings, under this Contract.

**REFERENCE TO CONTRACT**

The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract.

**REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with Sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their Website at <http://sos.mt.gov>.

**SEPARABILITY CLAUSE**

A declaration by any court, or any other binding legal source, that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually dependent.

**SHIPPING**

Supplies shall be shipped prepaid, F.O.B. Destination, unless the Contract specifies otherwise.

**TAX EXEMPTION**

The City of Billings is exempt from Federal Excise Taxes (#81-6001237).

**VENUE**

This Contract is governed by the laws of Montana. The parties agree that any litigation concerning this Contract must be brought in the District Court of the Montana Thirteenth Judicial District, Billings, Yellowstone County, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

The parties through their authorized agents have executed this contract on the dates set out below.

CITY OF BILLINGS  
CITY HALL  
210 NORTH 27TH STREET  
BILLINGS, MT 59101

MCKINSTRY ESSENTION, INC.  
5005 3RD AVENUE SOUTH  
SEATTLE, WA 98134  
FEDERAL ID # 91-2055773

BY: THOMAS W. HANEL  
MAYOR, CITY OF BILLINGS

BY: JOSEPH HAGAR  
DIRECTOR OF FINANCE

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(SIGNATURE)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM AND  
LEGAL CONTENT:

APPROVED AS TO FORM AND  
LEGAL CONTENT:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
MCKINSTRY ESSENTION, INC.

## **EXHIBIT B**

### **LEASE-PURCHASE AGREEMENT**

#### **MASTER TAX-EXEMPT INSTALLMENT PURCHASE AGREEMENT**

Between: U.S. Bancorp Equipment Finance, Inc. (the "Seller")  
13010 SW 68th Parkway, Suite 100  
Portland, Oregon 97223

And: City of Billings, Montana (the "Purchaser")  
P.O. Box 1178  
Billings, Montana 59103  
Attention: Finance Director  
Telephone: (406) 657-8209

Dated: October 28, 2011

#### **ARTICLE I DEFINITIONS**

The following terms will have the meanings indicated below unless the context clearly requires otherwise:

**"Agreement"** means this Master Tax-Exempt Installment Purchase Agreement, including all exhibits and schedules attached hereto.

**"Code"** is defined in Section 3.01(f).

**"Commencement Date"** is the date when the term of a Property Schedule and Purchaser's obligation to pay Installment Payments thereunder commences, which date shall be set forth in such Property Schedule.

**"Event of Default"** is defined in Section 13.01.

**"Installment Payments"** means the installment payments payable by Purchaser under Article VI of this Agreement and each Property Schedule, as set forth in each Property Schedule.

**"Installment Payment Dates"** means the Installment Payment dates for the Installment Payments as set forth in each Property Schedule.

**"Net Proceeds"** is defined in Section 9.01.

**"Nonappropriation Event"** is defined in Section 6.06.

“**Property**” means, collectively, the property purchased pursuant to this Agreement, and with respect to each Property Schedule, the property described in such Property Schedule, and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

“**Property Schedule**” means a Property Schedule in the form attached hereto for Property Schedule 1. Subsequent Property Schedules pursuant to this Agreement shall be numbered consecutively, beginning with Property Schedule 2.

“**Purchaser**” means the entity identified as such in the first paragraph hereof, and its permitted successors and assigns.

“**Seller**” means the entity identified as such in the first paragraph hereof, and its successors and assigns.

“**State**” means the state where Purchaser is located.

“**Term**” means, with respect to a Property Schedule, the Term set forth in such Property Schedule.

“**Vendor**” means the manufacturer or contractor of the Property as well as the agents or dealers of the manufacturer or contractor from whom Seller or Purchaser arranged for the purchase of all or any portion of the Property.

## **ARTICLE II**

**2.01 Property Schedules Separate Financings.** Each Property Schedule executed and delivered under this Agreement shall be a separate financing, distinct from other Property Schedules. Without limiting the foregoing, upon the occurrence of an Event of Default with respect to a Property Schedule, Seller shall have the rights and remedies specified herein with respect to the Property financed and the Installment Payments payable under such Property Schedule, and except as expressly provided in Section 12.02 below, Seller shall have no rights or remedies with respect to Property financed or Installment Payments payable under any other Property Schedules unless an Event of Default has also occurred under such other Property Schedules.

## **ARTICLE III**

**3.01 Covenants of Purchaser.** As of the Commencement Date for each Property Schedule executed and delivered hereunder, Purchaser shall be deemed to represent, covenant and warrant for the benefit of Seller as follows:

- (a) Purchaser is a public body corporate and politic duly organized and existing under the constitution and laws of the State and its home rule charter with full power and authority to enter into this Agreement and the

Property Schedule and the transactions contemplated thereby and to perform all of its obligations thereunder.

- (b) Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Purchaser should merge with another entity under the laws of the State, Purchaser agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Purchaser's rights and shall assume Purchaser's obligations hereunder.
- (c) Purchaser has been duly authorized to execute and deliver this Agreement and the Property Schedule by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement and the Property Schedule, and Purchaser has complied with such public bidding requirements as may be applicable to this Agreement and the Property Schedule and the acquisition by Purchaser of the Property thereunder. On or before the Commencement Date for the Property Schedule, Purchaser shall cause to be delivered an opinion of counsel in substantially the form of Exhibit 2 to the Property Schedule.
- (d) During the Term for the Property Schedule, the Property thereunder will perform and will be used by Purchaser only for the purpose of performing essential governmental uses and public functions within the permissible scope of Purchaser's authority.
- (e) Purchaser will provide Seller with current financial statements, budgets and proof of appropriation for the ensuing fiscal year and other financial information relating to the ability of Purchaser to continue this Agreement and the Property Schedule in such form and containing such information as may be requested by Seller.
- (f) Purchaser will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Installment Payments under the Property Schedule and will not use or permit the use of the Property in such a manner as to cause a Property Schedule to be a "private activity bond" under Section 141(a) of the Code. Purchaser covenants and agrees that it will use the proceeds of the Property Schedule as soon as practicable and with all reasonable dispatch for the purpose for which the Property Schedule has been entered into, and that no part of the proceeds of the Property Schedule shall be invested in any securities, obligations or other

investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Property Schedule to be or become “arbitrage bonds” within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Property Schedule.

- (g) The execution, delivery and performance of this Agreement and the Property Schedule and compliance with the provisions hereof and thereof by Purchaser does not conflict with or result in a violation or breach or constitute a default under, any resolution, bond, agreement, indenture, mortgage, note, lease or other instrument to which Purchaser is a party or by which it is bound by any law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over Purchaser or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of Purchaser or to which it is subject.
- (h) Purchaser’s exact legal name is as set forth on the first page of this Agreement. Purchaser will not change its legal name in any respect without giving thirty (30) days prior notice to Seller.

#### **ARTICLE IV**

**4.01 Sale of Property.** On the Commencement Date of each Property Schedule executed hereunder, Seller will be deemed to sell, transfer and convey to Purchaser, and Purchaser will be deemed to purchase and accept from Seller, the Property described in such Property Schedule, in accordance with this Agreement and such Property Schedule, for the Term set forth in such Property Schedule.

**4.02 Term.** The term of each Property Schedule shall commence on the Commencement Date set forth therein and shall terminate upon payment of the final Installment Payment set forth in such Property Schedule, unless terminated sooner pursuant to this Agreement or the Property Schedule.

**4.03 Delivery, Installation and Acceptance of Property.** Purchaser shall order the Property, shall cause the Property to be delivered and installed at the locations specified in the applicable Property Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. To the extent funds are deposited under an escrow agreement or trust agreement for the acquisition of the Property, such funds shall be disbursed as provided therein. When the Property described in such Property Schedule is delivered, installed and accepted as to Purchaser’s specifications, Purchaser shall immediately accept the Property and evidence said acceptance by

executing and delivering to Seller the Acceptance Certificate substantially in the form attached to the Property Schedule.

## **ARTICLE V**

**5.01 Location; Inspection.** The Property will be initially located or based at the location specified in the applicable Property Schedule. Seller shall have the right at all reasonable times during business hours to enter into and upon the property of Purchaser for the purpose of inspecting the Property.

## **ARTICLE VI**

**6.01 Payment of Installment Payments.** Purchaser shall pay Installment Payments under a Property Schedule, exclusively from the funds or accounts described in such Property Schedule, in lawful money of the United States of America, to Seller in such amounts and on such dates as described in such Property Schedule, at Seller's address set forth on the first page of this Agreement, unless Seller instructs Purchaser otherwise. Purchaser shall pay a late charge of five cents per dollar or the highest amount permitted by applicable law, whichever is lower, on all delinquent Installment Payments and interest on said delinquent amounts from the date such amounts were due until paid at the rate of 12% per annum or the maximum amount permitted by applicable law, whichever is less, subject to appropriation by Purchaser.

**6.02 Installment Payments to Constitute Binding Contractual Obligation.** The Seller and the Purchaser understand and intend that the obligation of the Purchaser to pay Installment Payments shall constitute a current expense of the funds or accounts described in the applicable Property Schedule and shall not in any way be construed to be a debt of the Purchaser in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Purchaser, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or money of the Purchaser. Installment Payments due shall be payable only from current funds which are budgeted or appropriated from the funds or accounts described in the applicable Property Schedule for such purpose during the fiscal year of the Purchaser for which such funds were budgeted and appropriated. The Purchaser has not pledged the full faith and credit of the Purchaser, the State or any agency or department of the Purchaser to the payment of the Installment Payments or any other payment due under this Agreement.

The person or entity in charge of preparing the Purchaser's budget will include in the budget request for each fiscal year the Installment Payments to become due in such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all such Installment Payments coming due therein, and the Purchaser reasonably believes that moneys in an amount sufficient to make all such Installment Payments can and will lawfully be appropriated and made available for this purpose.

**6.03 Interest Component.** A portion of each Installment Payment due under each Property Schedule is paid as, and represents payment of, interest, and each Property Schedule hereunder shall set forth the interest component (or method of computation thereof) of each Installment Payment thereunder during the Term.

**6.04 Installment Payments to be Unconditional.** EXCEPT AS PROVIDED IN SECTION 6.06, THE OBLIGATIONS OF PURCHASER TO PAY THE INSTALLMENT PAYMENTS DUE UNDER THE PROPERTY SCHEDULES AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT PURCHASER'S RIGHTS OR ACTIONS AGAINST ANY VENDOR AS PROVIDED IN SECTION 10.02.

**6.05 Defeasance of Installment Payments.** Purchaser may at any time irrevocably deposit in escrow with a defeasance escrow agent for the purpose of paying all of the principal component and interest component accruing under a Property Schedule, a sum of cash and non-callable securities consisting of direct obligations of, or obligations the principal of an interest on which are unconditionally guaranteed by, the United States of America or any agency or instrumentality thereof, in such aggregate amount, bearing interest at such rates and maturing on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Seller in the Property under said Property Schedule shall terminate. Purchaser shall cause such investment to comply with the requirements of federal tax law so that the exclusion from gross income of the interest component of Installment Payments on said Property Schedule is not adversely affected.

**6.06 Nonappropriation.** If during the Term, sufficient funds are not appropriated to make Installment Payments required under a Property Schedule for the following fiscal year, Purchaser shall be deemed to not have renewed such Property Schedule for the following fiscal year and the Property Schedule shall terminate at the end of the fiscal year for which funds have been appropriated and Purchaser shall not be obligated to make Installment Payments under said Property Schedule beyond the fiscal year for which funds have been appropriated. Upon the occurrence of such nonappropriation (a "Nonappropriation Event") Purchaser shall, no later than the end of the fiscal year for which funds have been appropriated, deliver possession of the Property under said Property Schedule to Seller. If Purchaser fails to deliver possession of the Property to Seller upon termination of said Property Schedule by reason of a Nonappropriation Event, the termination shall nevertheless be effective but Purchaser shall be responsible for the payment of damages in an amount equal to the portion of Installment Payments thereafter coming due that is attributable to the number of days after the termination during which the Purchaser fails to deliver possession and for any

other loss suffered by Seller as a result of Purchaser's failure to deliver possession as required. In addition, Seller may, by written instructions to any escrow agent who is holding proceeds of the Property Schedule, instruct such escrow agent to release all such proceeds and any earnings thereon to Seller, such sums to be credited to Purchaser's obligations under the Property Schedule and this Agreement. Purchaser shall notify Seller in writing within seven (7) days after the failure of the Purchaser to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Purchaser.

## **ARTICLE VII**

**7.01 Title to the Property.** Upon acceptance of the Property by Purchaser and unless otherwise required by the laws of the State, title to the Property shall vest in Purchaser, subject to Seller's interests under the applicable Property Schedule and this Agreement.

**7.02 Personal Property.** The Property is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Property or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Seller, Purchaser will, at Purchaser's expense, furnish a waiver of any interest in the Property from any party having an interest in any such real estate or building.

**7.03 Security Interest.** To secure the performance of all of Purchaser's obligations under this Agreement with respect to a Property Schedule, including without limitation all Property Schedules now existing and hereafter executed, Purchaser grants to Seller, for the benefit of Seller and its successors and assigns, a security interest constituting a first lien on Purchaser's interest in all of the Property under the Property Schedule, whether now owned or hereafter acquired, all additions, attachments, alterations and accessions to the Property, all substitutions and replacements for the Property, and on any proceeds of any of the foregoing, including insurance proceeds. Purchaser shall execute any additional documents, including financing statements, affidavits, notices and similar instruments, in form and substance satisfactory to Seller, which Seller deems necessary or appropriate to establish, maintain and perfect a security interest in the Property in favor of Seller and its successors and assigns. Purchaser hereby authorizes Seller to file all financing statements which Seller deems necessary or appropriate to establish, maintain and perfect such security interest.

## **ARTICLE VIII**

**8.01 Maintenance of Property by Purchaser.** Purchaser shall keep and maintain the Property in good condition and working order and in compliance with the manufacturer's specifications, shall use, operate and maintain the Property in conformity with all laws and regulations concerning the Property's ownership, possession, use and maintenance, and shall keep the Property free and clear of all liens and claims, other than those created by this Agreement. Purchaser shall have sole responsibility to maintain and

repair the Property. Should Purchaser fail to maintain, preserve and keep the Property in good repair and working order and in accordance with manufacturer's specifications, and if requested by Seller, Purchaser will enter into maintenance contracts for the Property in form approved by Seller and with approved providers.

**8.02 Liens, Taxes, Other Governmental Charges and Utility Charges.**

Purchaser shall keep the Property free of all levies, liens and encumbrances, except for the interest of Seller under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Purchaser and, therefore, that the Property will be exempt from all property taxes. The Installment Payments payable by Purchaser under this Agreement and the Property Schedules hereunder have been established to reflect the savings resulting from this exemption from taxation. Purchaser will take such actions necessary under applicable law to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Property is determined to be subject to taxation or later becomes subject to such taxes, Purchaser shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Purchaser shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property. Purchaser shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Purchaser shall be obligated to pay only such installments as accrue during the then-current fiscal year of the Term for such Property.

**8.03 Insurance.** At its own expense, Purchaser shall maintain (a) casualty insurance insuring the Property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Seller in an amount equal to at least the outstanding principal component of Installment Payments, and (b) liability insurance that protects Seller from liability in all events in an amount reasonably acceptable to Seller, and (c) worker's compensation insurance covering all employees working on, in, near or about the Property; provided that Purchaser may self-insure against all such risks (other than rental interruption). All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. All such insurance shall be with insurers that are authorized to issue such insurance in the State. All such liability insurance shall name Seller as an additional insured. All such casualty insurance shall contain a provision making any losses payable to Seller and Purchaser as their respective interests may appear. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification. Such changes shall not become effective without Seller's prior written consent. Purchaser shall furnish to Seller, on or before the Commencement Date for each Property Schedule, and thereafter at Seller's request, certificates evidencing such coverage, or, if Purchaser self-insures, a written description of its self-insurance program together with a certification from Purchaser's risk manager or insurance agent or consultant to the effect that Purchaser's self-insurance program provides adequate coverage against the risks listed above.

**8.04 Advances.** In the event Purchaser shall fail to either maintain the insurance required by this Agreement or keep the Property in good repair and working order, Seller may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof or maintain and repair the Property and pay the cost thereof. All amounts so advanced by Seller shall constitute additional rent for the Term for the applicable Property Schedule and shall be due and payable on the next Installment Payment Date and Purchaser covenants and agrees to pay such amounts so advanced by Seller with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by applicable law, whichever is less, subject to appropriation by Purchaser.

## **ARTICLE IX**

**9.01 Damage or Destruction.** If (a) the Property under a Property Schedule or any portion thereof is destroyed, in whole or in part, or is damaged by fire or other casualty, or (b) title to, or the temporary use of, the Property under a Property Schedule or any part thereof shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Seller and Purchaser will cause the Net Proceeds (as hereinafter defined) of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, unless Purchaser shall have exercised its right to defease the Property Schedule as provided herein, or unless Purchaser shall have exercised its option to prepay the Installment Payments if the Property Schedule so provides. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Purchaser. For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

**9.02 Insufficiency of Net Proceeds.** If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or improvement referred to in Section 9.01, Purchaser shall (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Purchaser shall make any payments pursuant to this Section, Purchaser shall not be entitled to any reimbursement therefor from Seller nor shall Purchaser be entitled to any diminution of the amounts payable under Section 6.01, or (b) defease the Property Schedule pursuant to Section 6.05, or (c) exercise its option to prepay the Installment Payments pursuant to the optional prepayment provisions if the Property Schedule so provides. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance or purchase may be retained by Purchaser.

## **ARTICLE X**

**10.01 Disclaimer of Warranties.** SELLER MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND SELLER HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS SOLD TO PURCHASER "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY PURCHASER. Purchaser acknowledges that it has made (or will make) the selection of the Property from the Vendor based on its own judgment and expressly disclaims any reliance upon any statements or representations made by Seller. Purchaser understands and agrees that (a) neither the Vendor nor any sales representative or other agent of Vendor, is (i) an agent of Seller, or (ii) authorized to make or alter any term or condition of this Agreement, and (b) no such waiver or alteration shall vary the terms of this Agreement unless expressly set forth herein. In no event shall Seller be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement, the Property Schedules, or the existence, furnishing, functioning or use of any item, product or service provided for in this Agreement or the Property Schedules.

**10.02 Vendor's Warranties.** Seller hereby irrevocably assigns to Purchaser all rights that Seller may have to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property against the Vendor. Purchaser's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor, and not against Seller, nor shall such matter have any effect whatsoever on the rights and obligations of Seller with respect to this Agreement, including the right to receive full and timely payments hereunder. Purchaser expressly acknowledges that Seller makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor.

**10.03 Use of the Property.** Purchaser will not install, use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement and the applicable Property Schedule. Purchaser shall provide all permits and licenses, if any, necessary for the installation and operation of the Property. In addition, Purchaser agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Property may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Property; provided that Purchaser may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Seller, adversely affect the interest of Seller in and to the Property or its interest or rights under this Agreement. Purchaser shall promptly notify

Seller in writing of any pending or threatened investigation, inquiry, claim or action by any governmental authority which could adversely affect this Agreement, any Property Schedule or the Property thereunder.

**10.04 Modifications.** Subject to the provisions of this Section, Purchaser shall have the right, at its own expense, to make alterations, additions, modifications or improvements to the Property. All such alterations, additions, modifications and improvements shall thereafter comprise part of the Property and shall be subject to the provisions of this Agreement. Such alterations, additions, modifications and improvements shall not in any way damage the Property, substantially alter its nature or cause it to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, on completion of any alterations, additions, modifications or improvements made pursuant to this Section, shall be of a value which is equal to or greater than the value of the Property immediately prior to the making of such alterations, additions, modifications and improvements. Purchaser shall, at its own expense, make such alterations, additions, modifications and improvements to the Property as may be required from time to time by applicable law or by any governmental authority.

## **ARTICLE XI**

**11.01 Option to Prepay.** Purchaser shall have the option to prepay in whole the Installment Payments due under a Property Schedule, but only if the Property Schedule so provides, and on the terms set forth in the Property Schedule.

## **ARTICLE XII**

**12.01 Assignment by Seller.** Seller's right, title and interest in, to and under each Property Schedule and the Property under such Property Schedule may be assigned and reassigned in whole or in part to one or more assignees or subassignees by Seller without the necessity of obtaining the consent of Purchaser; provided that any assignment shall not be effective until Purchaser has received written notice, signed by the assignor, of the name, address and tax identification number of the assignee. Purchaser shall retain all such notices as a register of all assignees and shall make all payments to the assignee or assignees designated in such register. Purchaser agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Seller or any assignee to protect its interests in this Agreement and the Property Schedules.

**12.02 Property Schedules Separate Financings.** Assignees of the Seller's rights in one Property Schedule shall have no rights in any other Property Schedule unless such rights have been separately assigned.

**12.03 Release and Indemnification Covenants.** To the extent permitted by applicable law, Purchaser shall indemnify, protect, hold harmless, save and keep harmless Seller from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all expenses in connection therewith,

including, without limitation, counsel fees and expenses, penalties and interest (collectively, “Losses”) arising out of or resulting from the entering into this Agreement, any Property Schedules hereunder, the ownership of any item of the Property, the loss of federal tax exemption of the interest on any of the Property Schedules, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury to or death to any person; provided, however, that Purchaser shall not be required to indemnify Seller for Losses arising out of or resulting from Seller’s own willful or negligent conduct, or for Losses arising out of or resulting from Seller’s preparation of disclosure material relating to certificates of participation in this Agreement and any Property Schedule (other than disclosure material provided to Seller by Purchaser). The indemnification arising under this Section shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement, or the applicable Property Schedule, or the termination of the Term for such Property Schedule for any reason.

### **ARTICLE XIII**

**13.01 Events of Default Defined.** Any of the following shall constitute an “Event of Default” under a Property Schedule:

- (a) Failure by Purchaser to pay any Installment Payment under the Property Schedule or other payment required to be paid with respect thereto at the time specified therein;
- (b) Failure by Purchaser to observe and perform any covenant, condition or agreement on its part to be observed or performed with respect to the Property Schedule, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Purchaser by Seller, unless Seller shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Seller will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Purchaser within the applicable period and diligently pursued until the default is corrected;
- (c) Any statement, representation or warranty made by Purchaser in or pursuant to the Property Schedule or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (d) Purchaser shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Purchaser, or of all or a substantial part of the assets of Purchaser, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general

assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Purchaser in any bankruptcy, reorganization or insolvency proceeding; or

- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Purchaser or of all or a substantial part of the assets of Purchaser, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 consecutive days.

The foregoing provisions of Section 13.01 are subject to the following limitation: if by reason of force majeure Purchaser is unable in whole or in part to perform its agreements under this Agreement and the Property Schedule (other than the obligations on the part of Purchaser contained in Article VI hereof) Purchaser shall not be in default during the continuance of such inability. The term “force majeure” as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of Purchaser. Notwithstanding anything in this Agreement to the contrary, an event of Nonappropriation shall not constitute an Event of Default.

**13.02 Remedies on Default.** Whenever any Event of Default exists with respect to a Property Schedule, Seller shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

- (a) Without terminating the Property Schedule, and by written notice to Purchaser, Seller may declare all Installment Payments and other amounts payable by Purchaser thereunder to the end of the then-current fiscal year of Purchaser to be due, including without limitation delinquent Installment Payments under the Property Schedule from prior fiscal years, and such amounts shall thereafter bear interest at the rate of 12% per annum or the maximum rate permitted by applicable law, whichever is less, subject to appropriation by Purchaser;
- (b) Seller may terminate the Property Schedule, and by written notice to Purchaser, Seller may accelerate the principal component of all outstanding Installment Payments due or to become due during the then-current fiscal year, in which case Purchaser shall pay to Seller such principal component, together with interest thereon from the date of acceleration until so paid at the rate of 12% per annum or the maximum

rate permitted by applicable law, whichever is less, subject to appropriation by Purchaser;

- (c) Seller may terminate the Property Schedule, may enter the premises where the Property subject to the Property Schedule is located and retake possession of the Property, or require Purchaser, at Purchaser's expense, to promptly return any or all of the Property to the possession of Seller at such place within the United States as Seller shall specify, and Seller may thereafter dispose of the Property in accordance with Article 9 of the Uniform Commercial Code in effect in the State, continuing to hold Purchaser liable for any outstanding Installment Payments due or to become due during the then-current fiscal year and all costs and expenses incurred by Seller in exercising its remedies hereunder, including, without limitation, all costs and expenses of taking possession, removing, storing and reconditioning the Property, and including, without limitation, all brokerage and attorneys fees;
- (d) By written notice to any escrow agent who is holding proceeds of the Property Schedule, Seller may instruct such escrow agent to release all such proceeds and any earnings thereon to Seller, such sums to be credited to payment of Purchaser's obligations under the Property Schedule;
- (e) Seller may take any action, at law or in equity, that is permitted by applicable law and that may appear necessary or desirable to enforce or to protect any of its rights under the Property Schedule and this Agreement.

**13.04 No Remedy Exclusive.** No remedy herein conferred upon or reserved to Seller is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Seller to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

**13.05 Costs and Attorney Fees.** Upon the occurrence of an Event of Default by Purchaser in the performance of any term of this Agreement, Purchaser agrees to pay to Seller or reimburse Seller for, in addition to all other amounts due hereunder, all of Seller's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Purchaser, shall be secured by this Agreement until paid and shall bear interest at the rate of 12% per annum or the maximum amount permitted by applicable law, whichever is less, subject to appropriation by Purchaser. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court

may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

#### **ARTICLE XIV**

**14.01 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, to the parties hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Purchaser.

**14.02 Further Assurances.** Purchaser agrees to execute such other and further documents, including, without limitation, confirmatory financing statements, continuation statements, certificates of title and the like, and to take all such action as may be necessary or appropriate, from time to time, in the reasonable opinion of Seller, to perfect, confirm, establish, reestablish, continue, or complete the interests of Seller in this Agreement and the Property Schedules, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and the Property Schedules.

**14.03 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Seller and Purchaser and their respective successors and assigns.

**14.04 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**14.05 Waiver of Jury Trials.** Purchaser and Seller hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Seller or Purchaser in the negotiation, administration, performance or enforcement hereof.

**14.06 Amendments, Changes and Modifications.** This Agreement may be amended in writing by Seller and Purchaser to the extent the amendment or modification does not apply to outstanding Property Schedules at the time of such amendment or modification. The consent of all assignees shall be required to any amendment or modification before such amendment or modification shall be applicable to any outstanding Property Schedule.

**14.07 Execution in Counterparts.** This Agreement and the Property Schedules hereunder may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**14.08 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State.

**14.09 Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

**SELLER:**  
**U.S. BANCORP EQUIPMENT**  
**FINANCE, INC.**

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Thomas Hanel  
Title: Mayor

Attest:

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

**PROPERTY SCHEDULE NO. 1**  
**MASTER TAX-EXEMPT INSTALLMENT PURCHASE AGREEMENT**

This Property Schedule No. 1 is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), dated as of October 28, 2011, between U.S. Bancorp Equipment Finance, Inc. (the "Seller") and the City of Billings, Montana (the "Purchaser").

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Purchaser in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms used herein but not otherwise defined shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is October 28, 2011.
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit 1 hereto. It includes all replacements, parts, repairs, additions, accessions and accessories incorporated therein or affixed or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries. Purchaser shall not remove such property from the locations set forth therein without giving prior written notice, including the new location of such property, to Seller. The Installment Payment Schedule for this Property Schedule is set forth in Exhibit 1 hereto.
4. Opinion. The Opinion of Purchaser's Counsel is attached as Exhibit 2 hereto.
5. Purchaser's Certificate. The Purchaser's Certificate is attached as Exhibit 3 hereto.
6. Proceeds. Seller shall disburse the proceeds of this Property Schedule in accordance with the instructions attached as Exhibit 4 hereto.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5 hereto.
8. Additional Purchase Option Provisions. Installment Payments payable under this Property Schedule shall be subject to prepayment in whole at any time at the option of the Purchaser by payment of the applicable Prepayment Balance set forth in Exhibit 1 hereto and payment of all accrued and unpaid interest through the date of prepayment.

9. Tax Certificate. Attached as Exhibit 6 hereto.
10. Expiration. Seller, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Master Agreement (including this Property Schedule and all ancillary documents) is not received by Seller at its place of business by November 11, 2011.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

**SELLER:**  
**U.S. BANCORP EQUIPMENT**  
**FINANCE, INC.**

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Thomas Hanel  
Title: Mayor

Attest:

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

**EXHIBIT 1**  
**Property Description and Payment Schedule**

Re: **Property Schedule No. 1** to Master Tax-Exempt Installment Purchase Agreement U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana.

The Property is as follows: The Property as more fully described in Exhibit A incorporated herein by reference and attached hereto.

PROPERTY LOCATION: Airport Highway 3 Office Building – 291 South View Drive, Billings, Montana – Lighting Upgrades; Airport Operations Center – 2281 Overlook Drive, Billings, Montana – Lighting Upgrades and Comprehensive Systems Commissioning and Balancing; Airport Terminal Building – 1901 Terminal Circle, Billing, Montana – Lighting Upgrades, Centralized Comprehensive Digital Control System, Variable Frequency Drive Install and Comprehensive Systems Commissioning and Balancing.

USE: Energy Efficiency Improvements. This use is essential to the proper, efficient and economic functioning of Purchaser or to the services that Purchaser provides; and Purchaser has immediate need for and expects to make immediate use of substantially all of the Property, which need is not temporary or expected to diminish in the foreseeable future.

ACCOUNT: Installment Payments payable by the Purchaser pursuant to this Property Schedule shall constitute current expenses of the Purchaser’s Airport Enterprise Fund and shall not in any way be construed to be debts of the Purchaser in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the Purchaser, nor shall anything contained therein constitute a pledge of the general tax revenues, funds or money of the Purchaser. Installment Payments payable by the Purchaser pursuant to this Property Schedule shall be payable only from current funds which are budgeted and appropriated solely from the Purchaser’s Airport Enterprise Fund for such purpose during the fiscal year of the Purchaser for which such funds were budgeted and appropriated. The Purchaser has not pledged the full faith and credit of the Purchaser, Yellowstone County or the State of Montana to the payment of amounts due under the Master Agreement.

Installment Payment Schedule

Total Principal Amount: \$1,353,078.00.

| <u>Pay #</u> | <u>Date</u> | <u>Payment</u> | <u>Principal</u> | <u>Interest<br/>(4.86%)</u> | <u>Prepayment<br/>Balance</u> |
|--------------|-------------|----------------|------------------|-----------------------------|-------------------------------|
| 1            | 28-Apr-2012 | 64,475.00      | 30,918.04        | 33,556.96                   | 1,361,824.76                  |
| 2            | 28-Oct-2012 | 64,475.00      | 31,684.83        | 32,790.17                   | 1,329,189.39                  |
| 3            | 28-Apr-2013 | 64,475.00      | 32,470.62        | 32,004.38                   | 1,295,744.64                  |
| 4            | 28-Oct-2013 | 64,475.00      | 33,275.91        | 31,199.09                   | 1,261,470.46                  |
| 5            | 28-Apr-2014 | 64,475.00      | 34,101.17        | 30,373.83                   | 1,226,346.25                  |

|       |             |              |              |            |              |
|-------|-------------|--------------|--------------|------------|--------------|
| 6     | 28-Oct-2014 | 64,475.00    | 34,946.89    | 29,528.11  | 1,190,350.95 |
| 7     | 28-Apr-2015 | 64,475.00    | 35,813.59    | 28,661.41  | 1,153,462.96 |
| 8     | 28-Oct-2015 | 64,475.00    | 36,701.78    | 27,773.22  | 1,115,660.12 |
| 9     | 28-Apr-2016 | 64,475.00    | 37,612.01    | 26,862.99  | 1,076,919.75 |
| 10    | 28-Oct-2016 | 64,475.00    | 38,544.80    | 25,930.20  | 1,037,218.61 |
| 11    | 28-Apr-2017 | 64,475.00    | 39,500.73    | 24,974.27  | 996,532.85   |
| 12    | 28-Oct-2017 | 64,475.00    | 40,480.37    | 23,994.63  | 954,838.08   |
| 13    | 28-Apr-2018 | 64,475.00    | 41,484.30    | 22,990.70  | 912,109.25   |
| 14    | 28-Oct-2018 | 64,475.00    | 42,513.13    | 21,961.87  | 868,320.73   |
| 15    | 28-Apr-2019 | 64,475.00    | 43,567.47    | 20,907.53  | 823,446.23   |
| 16    | 28-Oct-2019 | 64,475.00    | 44,647.97    | 19,827.03  | 777,458.83   |
| 17    | 28-Apr-2020 | 64,475.00    | 45,755.26    | 18,719.74  | 730,330.92   |
| 18    | 28-Oct-2020 | 64,475.00    | 46,890.01    | 17,584.99  | 682,034.21   |
| 19    | 28-Apr-2021 | 64,475.00    | 48,052.90    | 16,422.10  | 632,539.72   |
| 20    | 28-Oct-2021 | 64,475.00    | 49,244.64    | 15,230.36  | 581,817.75   |
| 21    | 28-Apr-2022 | 64,475.00    | 50,465.92    | 14,009.08  | 529,837.84   |
| 22    | 28-Oct-2022 | 64,475.00    | 51,717.50    | 12,757.50  | 476,568.82   |
| 23    | 28-Apr-2023 | 64,475.00    | 53,000.12    | 11,474.88  | 421,978.69   |
| 24    | 28-Oct-2023 | 64,475.00    | 54,314.55    | 10,160.45  | 366,034.71   |
| 25    | 28-Apr-2024 | 64,475.00    | 55,661.57    | 8,813.43   | 308,703.29   |
| 26    | 28-Oct-2024 | 64,475.00    | 57,042.01    | 7,432.99   | 249,950.02   |
| 27    | 28-Apr-2025 | 64,475.00    | 58,456.67    | 6,018.33   | 189,739.64   |
| 28    | 28-Oct-2025 | 64,475.00    | 59,906.43    | 4,568.57   | 128,036.03   |
| 29    | 28-Apr-2026 | 64,475.00    | 61,392.13    | 3,082.87   | 64,802.13    |
| 30    | 28-Oct-2026 | 64,475.00    | 62,914.69    | 1,560.31   | 0.00         |
| Total |             | 1,934,250.00 | 1,353,078.00 | 581,172.00 | 0.00         |

**PURCHASER:  
CITY OF BILLINGS, MONTANA**

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

Name: Thomas Hanel

Title: Mayor

Attest:

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

Name: Cari Martin

Title: City Clerk

EXHIBIT A  
Description of Property

| <u>PROJECT</u>                                      | <u>LOCATION</u>           | <u>BUDGET</u>      |
|-----------------------------------------------------|---------------------------|--------------------|
| Lighting Upgrade                                    | Airport Hwy 3 Office      | \$ 14,834          |
| Lighting Upgrade                                    | Airport Operations Center | 92,420             |
| Comprehensive Systems<br>Commissioning & Balancing  | Airport Operations Center | 20,299             |
| Centralized Comprehensive<br>Digital Control System | Airport Terminal Building | 568,429            |
| Variable Frequency Drive Install                    | Airport Terminal Building | 85,464             |
| Lighting Upgrade                                    | Airport Terminal Building | 594,274            |
| Comprehensive Systems<br>Commissioning & Balancing  | Airport Terminal Building | <u>23,358</u>      |
| Total Project Budget                                |                           | \$1,399,078        |
| Less Utility Upgrade Incentives                     |                           | <u>(\$ 46,000)</u> |
| TOTAL PROPERTY SCHEDULE PURCHASE AMOUNT             |                           | \$1,353,078        |

**EXHIBIT 2**  
**Opinion of Dorsey & Whitney LLP**

October 28, 2011

City of Billings  
Billings, Montana

U.S. Bancorp Equipment Finance, Inc.  
Denver, Colorado

Re: Master Tax-Exempt Installment Purchase Agreement  
City of Billings, Montana

Ladies and Gentlemen:

We have acted as special counsel to the City of Billings, Montana (the “City”), in connection with the authorization, execution and delivery by the City of the Master Tax-Exempt Installment Purchase Agreement, dated as of October 28, 2011 (the “Lease-Purchase Agreement”), between the City and U.S. Bancorp Equipment Finance, Inc. (“U.S. Bancorp”) and Property Schedule No. 1 thereto, dated as of October 28, 2011 (the “Airport Property Schedule”). In that capacity, we have examined executed counterparts, or copies otherwise identified to our satisfaction, of the Lease-Purchase Agreement, the Airport Property Schedule and the Escrow Agreement dated as of October 28, 2011 (the “Escrow Agreement”), between the City, U.S. Bancorp and U.S. Bank National Association, as Escrow Agent, together with certified copies of certain proceedings taken and certain certificates and affidavits furnished by the City in the authorization, execution and delivery of the Lease-Purchase Agreement and the Airport Property Schedule, including a certified copy of Resolution No. [ ] adopted by the City Council of the City on October 11, 2011. As to questions of fact material to our opinion, we have assumed the authenticity of and relied upon the proceedings, affidavits and certificates furnished to us without undertaking to verify the same by independent investigation.

The installment payments payable by the City under the Airport Property Schedule (the “Installment Payments”) are payable solely from the current revenues of the City which are budgeted and appropriated solely from the City’s Airport Enterprise Fund and are subject to annual appropriation in accordance with the provisions of the Lease-Purchase Agreement and the Airport Property Schedule. The Lease-Purchase Agreement and the Airport Property Schedule are not general obligations of the City and the general credit and taxing powers of the City are not pledged to the payment of the Installment Payments. U.S. Bancorp is selling to the City energy efficiency improvements described in the Airport Property Schedule (the “Airport Improvements”) to be constructed and installed in various buildings and facilities at the City’s Airport. The Airport Property Schedule will be in effect for a term commencing as provided therein and ending on October 28, 2026, unless earlier terminated in accordance with its terms. The Installment Payments will be payable at such times and in such amounts and

will comprise principal payments and interest payments as set forth in the Airport Property Schedule. In the sole event that moneys are not appropriated and provided from the City's Airport Enterprise Fund with respect to the Installment Payments, the City may, by written notice to U.S. Bancorp, discontinue the Airport Property Schedule at the end of any fiscal year of the City then in effect. If the City should discontinue the Airport Property Schedule at the end of any such fiscal year in the manner provided therein, the Airport Property Schedule is terminated without penalty or liability on the part of the City to pay any Installment Payments coming due after the fiscal year then in effect, but in such event the City has the obligation to deliver possession of the Airport Improvements to U.S. Bancorp at the time and in the manner provided in the Lease-Purchase Agreement. In the event the City should not discontinue the Airport Property Schedule and does pay all Installment Payments, the rights of U.S. Bancorp in the Airport Improvements will be terminated and U.S. Bancorp must transfer legal title to the Airport Improvements to the City. The City will have an option to purchase U.S. Bancorp's interest in the Airport Improvements on each Installment Payment date in the amount set forth in the Airport Property Schedule.

From our examination of such proceedings, certificates and affidavits, and on the basis of existing law, it is our opinion that:

1. The Lease-Purchase Agreement, the Airport Property Schedule and the Escrow Agreement are each valid and binding instruments of the City, enforceable in accordance with their respective terms.

2. The portion of the Installment Payments designated as interest: (a) is not includable in gross income for federal income tax purposes; (b) is an item of tax preference includable in alternative minimum taxable income for purposes of the federal alternative minimum tax applicable to all taxpayers; and (c) is includable in adjusted current earnings of corporations in determining alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations; provided, however, that we express no opinion as to the portion of the Installment Payments designated specifically as interest for any period during which an interest in the Airport Property Schedule is owned by a person who is a "substantial user" of the City-owned Billings Logan International Airport facilities financed with proceeds of the Airport Property Schedule or by a "related person" of such substantial user, as defined in Section 147(a) of the Internal Revenue Code of 1986, as amended (the "Code").

3. The portion of the Installment Payments designated as interest is not includable in gross income for State of Montana individual income tax purposes, but is includable in the computation of income for purposes of the Montana corporate income tax and the Montana corporate license tax.

The opinions expressed in paragraph 1 above are subject, as to enforceability, to the effect of any state or federal laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors' rights and the exercise of judicial discretion.

The opinions expressed in paragraphs 2 and 3 above are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Airport Property Schedule in order that the portion of the Installment Payments that are specifically designated as interest may be, and continue to be, excluded from gross income for federal income tax purposes. The City has covenanted to comply with these continuing requirements. Its failure to do so could result in the inclusion of such interest in gross income for federal income tax purposes, retroactive to the date of execution and delivery of the Airport Property Schedule. Except as stated in this opinion, we express no opinion regarding federal, state or other tax consequences with respect to the Lease-Purchase Agreement or the Airport Property Schedule.

Very truly yours,

**EXHIBIT 3**  
**Purchaser's Certificate**

Re: **Property Schedule No. 1** to Master Tax-Exempt Installment Purchase Agreement  
U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana.

The undersigned, being the duly elected, qualified and acting City Clerk of the City of Billings, Montana (the "Purchaser") do hereby certify, as of October 28, 2011 as follows:

1. Purchaser did, at a meeting of the governing body of the Purchaser held October 11, 2011 by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement") by the following named representative of Purchaser, to wit:

| NAME<br>OF EXECUTING<br>OFFICIAL | TITLE<br>OF EXECUTING<br>OFFICIAL | SIGNATURE<br>OF EXECUTING<br>OFFICIAL |
|----------------------------------|-----------------------------------|---------------------------------------|
| Thomas Hanel                     | Mayor                             | _____                                 |
| Cari Martin                      | City Clerk                        | _____                                 |

2. The above-named representative of the Purchaser held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting(s) of the governing body of the Purchaser at which the Master Agreement and the Property Schedule were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Master Agreement and the Property Schedule and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Purchaser relating to the authorization and delivery of Master Agreement and the Property Schedule have been: (a) held within the geographic boundaries of the Purchaser; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Purchaser, if any, and the laws of the State.

4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Nonappropriation Event (as such terms are defined in the Master Agreement) exists at the date hereof with respect to this Property Schedule or any other Property Schedules under the Master Agreement.

5. The acquisition of all of the Property under the Property Schedule has been duly authorized by the governing body of Purchaser.

6. Purchaser will, in accordance with the requirements of law, fully budget and appropriate sufficient funds for the current fiscal year to make the Installment Payments scheduled to come due during the current fiscal year under the Property Schedule and to meet its other obligations for the current fiscal year.

7. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Purchaser in any court (a) seeking to restrain or enjoy in the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Purchaser to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

**PURCHASER:  
CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

**EXHIBIT 4**  
**Payment of Proceeds Instructions**

U.S. Bancorp Equipment Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, Oregon 97223

Re: **Property Schedule No. 1** (the "Property Schedule") to Master Tax-Exempt Installment Purchase Agreement between U.S. Bancorp Equipment Finance, Inc. ("Seller") and the City of Billings, Montana ("Purchaser").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Purchaser hereby requests and authorizes Seller to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to Bank Name: U.S. Bank, National Association

Bank Address: 303 North Broadway  
PO Box 30678  
Billings, MT 59101

Bank Phone #: (406) 447-5251

For Account of: City of Billings General Depository

Account No.: 1-500-9559-2021

ABA No.: 092900383

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

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

Name:

Title:

**EXHIBIT 5**  
**Acceptance Certificate**

U.S. Bancorp Equipment Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, Oregon 97223

Re: **Property Schedule No. 1** to Master Tax-Exempt Installment Purchase Agreement  
between U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), the undersigned ("Purchaser") hereby certifies and represents to, and agrees with, U.S. Bancorp Equipment Finance, Inc. ("Seller"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Purchaser has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as such term is defined in the Master Agreement) exists at the date hereof.

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

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 6**  
**Tax Certificate**

**Master Tax-Exempt Installment Purchase Agreement**  
**Property Schedule No. 1**

**City of Billings, Montana**

**ARBITRAGE AND REBATE CERTIFICATE AND**  
**AGREEMENT**

This Arbitrage and Rebate Certificate and Agreement (this “Certificate”) is given for the purpose of establishing and maintaining the tax-exempt status of interest payments required to be made by the City of Billings, Montana (the “City”), under the Master Tax-Exempt Installment Purchase Agreement dated as of October 28, 2011 (the “Lease-Purchase Agreement”) between the City and U.S. Bancorp Equipment Finance, Inc., as lessor (the “Lessor”), and Property Schedule No. 1 thereto (the “Airport Property Schedule”). The representations and covenants of the City herein are for the benefit of the owner or owners from time to time of the interest of the Lessor under the Airport Property Schedule.

I. General Provisions and Definitions.

*1.1. The Airport Property Schedule will be entered into by the City pursuant to Resolution No. [\_\_\_], adopted by the City Council of the City on October 11, 2011 ( the “Resolution”). Terms used with initial capital letters but undefined herein shall have the meanings given them in the Lease Purchase Agreement, the Internal Revenue Code of 1986, as amended (the “Code”), or in the Regulations (as hereinafter defined), unless the context hereof clearly requires otherwise.*

*This Certificate is intended to be, and may be relied upon as, among other things, a certification described in the Regulations, Section 1.148-2(b) and Section 148 of the Code, and is delivered as a part of the transcript of proceedings relating to the Airport Property Schedule. We are among the officers of the City responsible for the issuance of the Airport Property Schedule.*

*1.2. We have investigated the facts, estimates and circumstances surrounding the execution and delivery of the Airport Property Schedule, which are described summarily in this Certificate. To the best of our knowledge and belief, such facts, estimates and circumstances are correct and complete and the City’s expectations as to future events, which are based thereon, are in all respects reasonable and made in good faith. To the extent that the expectations of the City are based upon estimates and representations made by others, including the Lessor, we have examined such estimates and representations and consider them to be reasonable and correct. Any statements in this Certificate involving future events, whether or not expressly so stated, are intended*

*as expectations of the City and not as representations of fact. On the basis of such facts, estimates and circumstances, it is expected that the proceeds of the Airport Property Schedule will be used in a manner that would not cause the Airport Property Schedule to be considered an “arbitrage bond” within the meaning of Section 148 of the Code.*

1.3. *The following terms have the following meanings when used in this Certificate:*

Bond Counsel shall mean nationally recognized municipal bond counsel selected by the City.

Bond Year shall mean each one-year period (or shorter period from the Closing Date) that ends at the close of business on each September 15 or, if the last Installment Payment owing under the Airport Property Schedule is not paid on a September 15, such shorter period from the last preceding September 15 to the date on which such last Installment Payment is made.

Closing Date shall mean October 28, 2011, the date of execution and delivery of the Airport Property Schedule.

Computation Date shall mean an installment computation date (the last day of the fifth and each succeeding fifth Bond Year) and the final computation date (the date the last Bond is discharged). If the Installment Payments owing under the Airport Property Schedule are paid when due, the installment computation dates for the Airport Property Schedule shall be September 15, 2016 and September 15, 2021, September 15, 2026 and the final computation date shall be October 28, 2026.

Construction Account shall mean the Construction Account created in the Escrow Fund established under the Escrow Agreement.

Escrow Agreement shall mean the Escrow Agreement referred to in the Airport Property Schedule, dated as of October 28, 2011, by and between the City and the Lessor, as amended or supplemented from time to time.

Escrow Fund shall mean the Escrow Fund established under the Escrow Agreement.

Gross Proceeds shall mean, with respect to the Airport Property Schedule, all proceeds of the Airport Property Schedule (including sale proceeds and transferred proceeds) and any funds (other than proceeds) that are part of any reserve or replacement fund for the Airport Property Schedule.

Investment Property shall mean any security, obligation (other than a Non-AMT Obligation), annuity contract or investment-type property.

Non-AMT Obligation means any obligation the interest on which is not includible in gross income under Section 103 of the Code and which is not a “specified private activity bond” (within the meaning of Section 57(a)(5)(C) of the Code).

Nonpurpose Investment shall mean any Investment Property that is not a purpose investment in which Gross Proceeds of the Airport Property Schedule are invested.

Project shall mean the construction and installation of energy efficiency improvements to various buildings and facilities at the City-owned Billings Logan International Airport (the “Airport”) and related fees and expenses.

Rebatable Arbitrage shall mean, as of any Computation Date, the excess of the future value of all nonpurpose receipts with respect to the Airport Property Schedule, over the future value of all nonpurpose payments with respect to the Airport Property Schedule, or with respect to a Voluntary Computation Date, the amount of the payment that would be payable to the United States under Section 148(f) of the Code if such date were a “Computation Date.”

Regulations shall mean the Treasury Regulations applicable to the Lease Purchase Agreement and the Airport Property Schedule and promulgated under the Code, including, without limitation, Treasury Regulations, Sections 1.148-0 through 1.148-11, and Sections 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2.

Voluntary Computation Date means September 15, 2012, and each September 15 thereafter, excluding Computation Dates.

Yield, with reference to any obligation, means that discount rate which, when computing the present value of all unconditionally payable payments of principal and interest paid and to be paid on such obligation and taking into account payments made for qualified guarantees, produces an amount equal to the present value of the issue price of the obligation.

Yield of the Airport Property Schedule shall mean 4.96000%.

II. The Purpose of the Airport Property Schedule.

2.1. *The Airport Property Schedule is entered into pursuant to the Resolution for the purposes of providing funds to be used to finance costs of the Project. The City expects to expend the following sums from the proceeds of the Airport Property Schedule for the Project:*

|                                                                              |           |
|------------------------------------------------------------------------------|-----------|
| Lighting Upgrade — Airport Hwy 3 Office                                      | \$ 14,834 |
| Lighting Upgrade — Airport Operations Center                                 | 92,420    |
| Comprehensive Systems Commissioning & Balancing — Airport Operations Center  | 20,299    |
| Centralized Comprehensive Digital Control System — Airport Terminal Building | 568,429   |

|                                                                             |                 |
|-----------------------------------------------------------------------------|-----------------|
| Variable Frequency Drive Install — Airport Terminal Building                | 85,464          |
| Lighting Upgrade — Airport Terminal Building                                | 594,274         |
| Comprehensive Systems Commissioning & Balancing — Airport Terminal Building | 23,358          |
| Less Utility Upgrade Incentives                                             | <u>(46,000)</u> |
| Total:                                                                      | \$1,353,078.00  |

2.2. *Any costs in excess of the proceeds of the Airport Property Schedule will be paid from other funds of the City available therefor.*

III. Sources and Disbursements of Funds.

3.1. *The aggregate amount of the principal components payable by the City pursuant to the Airport Property Schedule equals \$1,353,078.00. The City is executing and delivering the Airport Property Schedule to the Lessor in exchange for proceeds in the amount of \$1,353,078.00. The issue price of the Airport Property Schedule, as defined in Section 1.148-1(b) of the Regulations and Sections 1273(b)(1) and (2) of the Code, is \$1,353,078.00, equal to the principal amount thereof.*

3.2. *\$1,353,078.00 of the proceeds of the Airport Property Schedule are expected to be deposited in the Construction Account to pay the costs of the Project. Costs of entering into the Airport Property Schedule will be paid from other available funds of the City.*

3.3. *The Airport Property Schedule is not a hedge bond (as defined in Section 149(g) of the Code) since at least 85% of the spendable proceeds of the Airport Property Schedule are to be used to pay costs of the Project within three years after the date hereof and less than 50% of the proceeds of the Airport Property Schedule are to be invested in nonpurpose investments having a substantially guaranteed yield for four years or more.*

IV. Yield of the Airport Property Schedule.

4.1. *No other obligations of the City are being (a) issued at substantially the same time as the Airport Property Schedule, (b) sold pursuant to the same plan of financing as the Airport Property Schedule, and (c) paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as will be used to pay the Airport Property Schedule, within the meaning of Section 1.150-1(c) of the Regulations. Contemporaneous with the execution and delivery of the Airport Property Schedule, the City is entering into Property Schedule No. 2 to the Lease-Purchase Agreement (the "Parking Property Schedule"). The installment payments payable by the City pursuant*

*to the Airport Property Schedule and the Parking Property Schedule shall be payable, as specified in the Resolution, only from current funds which are budgeted and appropriated solely from the City's Airport Enterprise Fund and the City's Parking Enterprise Fund, respectively, for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated.*

*4.2. The Yield of the Airport Property Schedule computed in accordance with Section 148 of the Code and applicable Regulations, is 4.96000% per annum.*

V. Temporary Investments.

*5.1. Except as described in Section 5.2 hereof, none of the proceeds of the Airport Property Schedule will be invested at a materially higher yield.*

*5.2. Proceeds of the Airport Property Schedule deposited in the Construction Account are to be used to finance the costs of the Project. The estimated total cost of the Project, including implementation, administration, construction management and contingencies, excluding costs of entering into the Airport Property Schedule, is not less than \$1,353,078.00.*

(a) The City has incurred or will incur within six months after the date hereof substantial binding obligations to undertake the Project (in the form of binding contracts or commitments) in an aggregate amount not less than five percent of the net sale proceeds of the Airport Property Schedule (i.e., \$67,654).

(b) Work on the Project and allocation of the net sale proceeds and investment proceeds of the Airport Property Schedule to expenditures will proceed with due diligence to completion and it is reasonably expected the Project will be completed and all net sale proceeds of the Airport Property Schedule will be so allocated by March 28, 2013.

(c) The net sale proceeds of the Airport Property Schedule, plus investment earnings thereon, do not exceed the amount to be spent by the City to acquire and construct the Project.

(d) The City expects to spend on the Project, within not more than three years from the date hereof, all of the net sale and investment proceeds to be derived by the City from the issuance of the Airport Property Schedule.

Therefore, the City may invest said amounts deposited in the Construction Account without yield restriction for a temporary period ending three years from the Closing Date pursuant to Section 1.148-2(e)(2) of the Regulations. Should any of the proceeds of the Airport Property Schedule not be so expended by the end of such period, the City may either (i) invest such amounts at a yield which does not exceed the Yield of the Airport Property Schedule, or (ii) comply with the provisions of Section 1.148-5(c) of the Regulations and make such payments at such times as are required pursuant to Section 1.148-5(c) to reduce the Yield on any investments made subsequent to expiration of the

temporary period to a Yield not materially higher than the Yield of the Airport Property Schedule.

VI. No Sinking Fund.

6.1. *The City has not created or established, and does not expect to create or establish, any sinking or similar fund which is reasonably expected to be used to pay debt service on the Airport Property Schedule or which is pledged as collateral to secure the Airport Property Schedule. No amounts in any other funds or accounts of the City are reserved for or pledged to the payment of debt service on the Airport Property Schedule or will be used to replace funds that will be used to pay debt service on the Airport Property Schedule.*

VII. Sale Proceeds.

7.1. *The sale proceeds of the Airport Property Schedule do not exceed the amount necessary to achieve the purposes described in Section II hereof. No portion of the Airport Property Schedule is issued solely for the purpose of investing the proceeds at a materially higher yield than the Yield of the Airport Property Schedule. None of the proceeds of the Airport Property Schedule will be used directly or indirectly to replace funds which were used directly or indirectly to acquire obligations with a yield that is materially higher than the Yield of the Airport Property Schedule.*

7.2. *In connection with the execution and delivery of the Airport Property Schedule, except as specifically provided in Sections 148(c) and (d) of the Code, the City has not engaged and will not engage in any transaction or series of transactions (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (ii) increasing the burdens on the market for tax-exempt obligations in any manner including, without limitation, by selling any obligation that would not otherwise be sold, or by selling more obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.*

XIII. Miscellaneous.

8.1. *The City will fulfill all conditions specified in Sections 141(e) and 142 of the Code to qualify the Airport Property Schedule as “qualified exempt facility bonds” thereunder.*

8.2. *The facilities financed with proceeds of the Airport Property Schedule (the “Financed Facilities”) will in their entirety qualify as “airport facilities” within the meaning of Section 142(a)(1). The portion of the Financed Facilities that constitutes an office is not more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations of Financed Facilities within the meaning of Section 142(b)(2) of the Code.*

8.3. *The Project is treated as serving a general public use within the meaning of Sections 1.103-8(a)(2) and 1.103-8(e) of the Regulations. The Financed Facilities*

*consist entirely of airport facilities and property functionally related and subordinate thereto within the meaning of Section 1.103-8(a)(3) of the Regulations. The Airport Property Schedule is not a deep discount obligation within the meaning of Section 1.103-8(a)(6) and (7) of the Regulations.*

*8.4. The Financed Facilities are owned by the City. The City has no present intention to sell or otherwise dispose of the Financed Facilities before the termination of the Airport Property Schedule. The City expects that such property will continue to be owned and operated by the City substantially in the manner in which similar property is now owned and operated for an indefinite period concluding not earlier than the final stated termination date of the Airport Property Schedule.*

*8.5. The City has not and will not enter into a lease or use agreement relating to Airport facilities constituting or comprising the Financed Facilities for a period in excess of five years unless the lease contains a provision to the effect that (1) the lessee has made an irrevocable election not to claim depreciation or an investment credit under the Code with respect to the leased premises and (2) the term of the lease is not more than eighty percent of the reasonably expected economic life of such Airport facilities.*

*8.6. The City covenants that none of the proceeds of the Airport Property Schedule shall be used to provide any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.*

*8.7. Not less than 95% of the proceeds of the Airport Property Schedule have been or will be applied to capital costs of "airport" facilities, within the meaning of Section 142(a) of the Code and Section 1.103-8(e) of the Regulations.*

*8.8. In order to comply with Section 147(g) of the Code, the City covenants and agrees that not more than \$27,062 of proceeds of the Airport Property Schedule will be used to pay issuance costs of entering into the Airport Property Schedule.*

*8.9. The weighted average maturity of the Airport Property Schedule (8.660 years) does not exceed 120 percent of the average reasonably expected economic life of the Project. Such average reasonably expected economic life is not less than 15 years. It is not expected that any replacement proceeds of the Airport Property Schedule will arise subsequent to the execution and delivery of the Airport Property Schedule.*

*8.10. A public hearing was held on October 11, 2011 for which at least 14 days published notice was given in the official newspaper of the City, satisfying the requirements of Section 147(f) of the Code.*

**IX. Minor Portion.**

9.1. An aggregate amount not to exceed the "minor portion" amount for the Airport Property Schedule (\$67,654) may be invested pursuant to Section 148(e) of the Code and Section 1.148-2(g) of the Regulations without restriction as to Yield. To the extent the amount on hand in the Construction Account has been credited thereto longer

than the period described in Section 5.2 hereof, such amount may be invested up to the minor portion amount at a yield greater than the Yield of the Airport Property Schedule. Such amounts are Gross Proceeds of the Airport Property Schedule, however, and subject to the rebate requirements set forth in Sections X and XI hereof.

X. Rebate.

*10.1. The City, in the Resolution, has covenanted to comply with the requirements of Section 148(f) of the Code with respect to the Airport Property Schedule. The City covenants that it will consult with Bond Counsel and undertake to determine what is required with respect to the rebate provisions contained in Section 148(f) of the Code from time to time and will comply with any requirements that may be applicable to the Airport Property Schedule. The methodology described in this Certificate will be followed, except to the extent inconsistent with any requirements of future regulations or written advice received from Bond Counsel.*

*10.2. Subject to any applicable exceptions or exemptions available under the Code or regulations, detailed records with respect to each and every Nonpurpose Investment attributable to Gross Proceeds of the Airport Property Schedule will be maintained by the City including: (i) purchase date, (ii) purchase price, (iii) brokerage or other transaction costs of purchase, (iv) information establishing fair market value on the date such investment became a Nonpurpose Investment, (v) any accrued interest paid, (vi) face amount, (vii) coupon or Stated interest rate, (viii) periodicity of interest payments, (ix) disposition price, (x) any accrued interest received, (xi) disposition date, and (xii) brokerage or other transaction costs of disposition. Such detailed recordkeeping is required for the calculation of the Rebatable Arbitrage.*

XI. Rebatable Arbitrage Calculation and Payment.

*11.1. The City, in the Resolution, has covenanted to comply with the requirements of Section 148(f) of the Code with respect to the Airport Property Schedule. The City covenants that it will consult with Bond Counsel and undertake to determine what is required with respect to the rebate provisions contained in Section 148(f) of the Code from time to time and will comply with any requirements that may be applicable to the Airport Property Schedule. The methodology described in this Certificate will be followed, except to the extent inconsistent with any requirements of future regulations or written advice received from Bond Counsel.*

*11.2. Subject to any applicable exceptions or exemptions available under the Code or regulations, the City shall pay to the United States Department of the Treasury from funds legally available therefor: (A) not later than 60 days after each Computation Date, an amount which, when added to the future value as of the Computation Date of all previous rebate payments, equals at least 90% of the Rebatable Arbitrage calculated as of such Computation Date; and (B) not later than 60 days after the final Computation Date, an amount which, when added to the future value as of the Computation Date of all previous rebate payments, equals 100% of the Rebatable Arbitrage.*

11.3. Any payment required to be made pursuant hereto shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201 (or at such other address as the Internal Revenue Service may from time to time designate), on or before the date such payment is due, and shall be accompanied by a completed and executed Internal Revenue Service Form 8038-T. The City shall retain records of the calculations required by this Section XI until six years after the final Computation Date for the Airport Property Schedule.

11.4. The City shall file or cause to be filed such reports or other documents with the Internal Revenue Service as required by Section 148(f) of the Code.

11.5. Notwithstanding anything in this Certificate or any other provisions of the Resolution to the contrary, the obligation to remit the Rebatable Arbitrage with respect to the Airport Property Schedule to the United States Department of the Treasury and to comply with all other requirements contained in this Certificate shall survive the defeasance of the Airport Property Schedule.

11.6. The Project will be owned and operated by the City and used for governmental purposes. All of the Gross Proceeds qualify for the temporary period under Section 1.148-2(e)(2) of the Regulations. Apart from the sale proceeds of the Airport Property Schedule and investment proceeds derived therefrom, the City does not expect that any other Gross Proceeds will arise. Thus, if the expenditure tests set forth in Section 1.148-7(d)(1)(i) of the Regulations are met (i.e., the following percentages of Gross Proceeds are spent within the following periods beginning on the date of issuance: at least 15% within six months (April 28, 2012); 60% within one year (October 28, 2012), and 100% within eighteen months (April 28, 2013) (subject to a reasonable contractual retainage amount not exceeding five percent of the net sale proceeds of the Airport Property Schedule as of October 28, 2011 to be spent within 30 months after the date hereof, as defined in Section 1.148-7(h) of the Regulations)), then the City may elect to treat the Gross Proceeds as exempt from the rebate requirements of Section 148(f) of the Code pursuant to the "18 month" spending exception provided under Section 1.148-7(d) of the Regulations.

11.7. If Gross Proceeds subject to arbitrage rebate arise, either as a result of the failure to expend all Gross Proceeds as provided in Section 11.6 hereof, or from another cause, for purposes of complying with Section 148(f), the City will prepare or have prepared a calculation of the Rebatable Arbitrage for the Airport Property Schedule consistent with the rules described in this Section XI.

11.8. The City will prepare the calculation of the Rebatable Arbitrage within 30 days after each Computation Date and will, within 30 days after each Voluntary Computation Date, calculate the Rebatable Arbitrage on the assumption such Voluntary Computation Date is a Computation Date and file a copy of such calculations in the office of the City Clerk.

11.9. The City agrees to retain detailed records and documents relating to the expenditure of Gross Proceeds, the use of the facilities financed thereby and the

*investment of Gross Proceeds until three years following the retirement of the Airport Property Schedule to the extent required by applicable IRS rules and the Regulations and shall consult with counsel regarding such retention as appropriate.*

XII. Amendments.

12.1. The City may amend or supplement the provisions of Sections X or XI hereof by filing an executed copy of such amendment or supplement with the City Finance Director accompanied by an opinion of Bond Counsel to the effect that such amendment or supplement is required by, or better complies with, the provisions of Section 148 and applicable Regulations.

WITNESS our hands, on behalf of the City, officially as Mayor, City Finance Director and City Clerk of the City of Billings, Montana as of this 28th day of October, 2011.

CITY OF BILLINGS, MONTANA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Finance Director

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

**Language for UCC Financing Statements**

**Schedule 1**

SECURED PARTY: U.S. Bancorp Equipment Finance, Inc.

DEBTOR: City of Billings, Montana

This financing statement covers all of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to the equipment sold to Debtor under Property Schedule No. 1 dated October 28, 2011 to that certain Master Tax-Exempt Installment Purchase Agreement dated as of October 28, 2011, in each case between Debtor, as Purchaser, and Secured Party, as Seller, together with all accessions, substitutions and replacements thereto and therefor, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof, including without limiting, all equipment described on Exhibit A attached hereto and made a part hereof.

EXHIBIT A  
Description of Property

PROJECT

LOCATION

Lighting Upgrade

Airport Hwy 3 Office

Lighting Upgrade

Airport Operations Center

Comprehensive Systems  
Commissioning & Balancing

Airport Operations Center

Centralized Comprehensive  
Digital Control System

Airport Terminal Building

Variable Frequency Drive Install

Airport Terminal Building

Lighting Upgrade

Airport Terminal Building

Comprehensive Systems  
Commissioning & Balancing

Airport Terminal Building

**INSURANCE AUTHORIZATION AND VERIFICATION**

Date: October 28, 2011

Property Schedule No. 1

|                                                                                                                                |                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| To: City of Billings, Montana<br>("Purchaser")<br>P.O. Box 1178<br>Billings, Montana 59103<br>Attention: City Finance Director | From: U.S. Bancorp Equipment Finance,<br>Inc. (the "Seller")<br>13010 SW 68th Parkway, Suite 100<br>Portland, Oregon 97223<br>Attn: Chris Jones |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|

**TO THE PURCHASER:** In connection with the above-referenced Property Schedule, Seller requires proof in the form of this document, executed by both Purchaser\* and Purchaser's agent, that Purchaser's insurable interest in the financed property (the "Property") meets Seller's requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Seller, AND ITS SUCCESSORS AND ASSIGNS, shall be covered as both ADDITIONAL INSURED and LENDER'S LOSS PAYEE with regard to all equipment financed or leased by policy holder through or from Seller. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification.

Purchaser must carry GENERAL LIABILITY (and/or, for vehicles, Automobile Liability) in the amount of no less than \$1,000,000.00 (one million dollars).

Purchaser must carry PROPERTY Insurance (or, for vehicles, Physical Damage Insurance) in an amount no less than the 'Insurable Value' \$1,353,078.00, with deductibles no more than \$25,000.00.

*\*Purchaser: Please execute this form and return with your document package. Seller will fax this form to your insurance agency for endorsement. In lieu of agent endorsement, Purchaser's agent may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Purchaser-executed form plus certificates) is not provided within 15 days, we have the right to purchase such insurance at your expense. Should you have any questions, please contact Chris Jones at (303) 862-1201.*

**By signing, Purchaser authorizes the Agent named below: (1) to complete and return this form as indicated; and (2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.**

Agency/Agent: Hoiness LaBar Insurance  
A Member of Payne Financial Group  
Address: P.O. Box 30638

Phone: Billings, Montana 59107-0638  
(406) 238-1900

**PURCHASER:  
CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

**TO THE AGENT:** *In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Seller at (406) 657-8363. This fully endorsed form shall serve as proof that Purchaser's insurance meets the above requirements.*

**Agent hereby verifies that the above requirements have been met in regard to the Property listed below.**

Print Name Of Agency: **X** \_\_\_\_\_

By: **X** \_\_\_\_\_  
(Agent's Signature)

Print Name: **X** \_\_\_\_\_

Date: **X** \_\_\_\_\_

**Insurable Value:** \$1,353,078.00.

**ATTACHED: PROPERTY DESCRIPTION FOR PROPERTY SCHEDULE NO. 1.**

EXHIBIT A  
Description of Property

| <u>PROJECT</u>                                      | <u>LOCATION</u>           | <u>BUDGET</u>      |
|-----------------------------------------------------|---------------------------|--------------------|
| Lighting Upgrade                                    | Airport Hwy 3 Office      | \$ 14,834          |
| Lighting Upgrade                                    | Airport Operations Center | 92,420             |
| Comprehensive Systems<br>Commissioning & Balancing  | Airport Operations Center | 20,299             |
| Centralized Comprehensive<br>Digital Control System | Airport Terminal Building | 568,429            |
| Variable Frequency Drive Install                    | Airport Terminal Building | 85,464             |
| Lighting Upgrade                                    | Airport Terminal Building | 594,274            |
| Comprehensive Systems<br>Commissioning & Balancing  | Airport Terminal Building | <u>23,358</u>      |
| Total Project Budget                                |                           | \$1,399,078        |
| Less Utility Upgrade Incentives                     |                           | <u>(\$ 46,000)</u> |
| TOTAL PROPERTY SCHEDULE PURCHASE AMOUNT             |                           | \$1,353,078        |

**PROPERTY SCHEDULE NO. 2**  
**MASTER TAX-EXEMPT INSTALLMENT PURCHASE AGREEMENT**

This Property Schedule No. 2 is entered into as of the Commencement Date set forth below, pursuant to that certain Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), dated as of October 28, 2011, between U.S. Bancorp Equipment Finance, Inc. (the "Seller") and the City of Billings, Montana (the "Purchaser").

1. Interpretation. The terms and conditions of the Master Agreement are incorporated herein by reference as if fully set forth herein. Reference is made to the Master Agreement for all representations, covenants and warranties made by Purchaser in the execution of this Property Schedule, unless specifically set forth herein. In the event of a conflict between the provisions of the Master Agreement and the provisions of this Property Schedule, the provisions of this Property Schedule shall control. All capitalized terms used herein but not otherwise defined shall have the meanings provided in the Master Agreement.
2. Commencement Date. The Commencement Date for this Property Schedule is October 28, 2011.
3. Property Description and Payment Schedule. The Property subject to this Property Schedule is described in Exhibit 1 hereto. It includes all replacements, parts, repairs, additions, accessions and accessories incorporated therein or affixed or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries. Purchaser shall not remove such property from the locations set forth therein without giving prior written notice, including the new location of such property, to Seller. The Installment Payment Schedule for this Property Schedule is set forth in Exhibit 1 hereto.
4. Opinion. The Opinion of Purchaser's Counsel is attached as Exhibit 2 hereto.
5. Purchaser's Certificate. The Purchaser's Certificate is attached as Exhibit 3 hereto.
6. Proceeds. Seller shall disburse the proceeds of this Property Schedule in accordance with the instructions attached as Exhibit 4 hereto.
7. Acceptance Certificate. The form of Acceptance Certificate is attached as Exhibit 5 hereto.
8. Additional Purchase Option Provisions. Installment Payments payable under this Property Schedule shall be subject to prepayment in whole at any time at the option of the Purchaser by payment of the applicable Prepayment Balance set forth in Exhibit 1 hereto and payment of all accrued and unpaid interest through the date of prepayment.

9. Tax Certificate. Attached as Exhibit 6 hereto.
10. Expiration. Seller, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Master Agreement (including this Property Schedule and all ancillary documents) is not received by Seller at its place of business by November 11, 2011.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Property Schedule to be executed in their names by their duly authorized representatives as of the Commencement Date above.

**SELLER:**  
**U.S. BANCORP EQUIPMENT**  
**FINANCE, INC.**

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name: Thomas Hanel  
Title: Mayor

Attest:

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

**EXHIBIT 1**  
**Property Description and Payment Schedule**

Re: **Property Schedule No. 2** to Master Tax-Exempt Installment Purchase Agreement  
U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana.

The Property is as follows: The Property as more fully described in Exhibit A  
incorporated herein by reference and attached hereto.

PROPERTY LOCATION: Park One Garage – 2912 3rd Avenue North, Billings,  
Montana – Lighting Upgrades; Park Two Garage and Park Two Addition – 2651 1st  
Avenue North, Billings, Montana – Lighting Upgrades; Park Three Garage – 210 N.  
27th, Billings, Montana – Lighting Upgrades.

USE: Energy Efficiency Improvements. This use is essential to the proper, efficient and  
economic functioning of Purchaser or to the services that Purchaser provides; and  
Purchaser has immediate need for and expects to make immediate use of substantially all  
of the Property, which need is not temporary or expected to diminish in the foreseeable  
future.

ACCOUNT: Installment Payments payable by the Purchaser pursuant to this Property  
Schedule shall constitute current expenses of the Purchaser’s Parking Enterprise Fund  
and shall not in any way be construed to be debts of the Purchaser in contravention of any  
applicable constitutional or statutory limitation or requirements concerning the creation  
of indebtedness by the Purchaser, nor shall anything contained therein constitute a pledge  
of the general tax revenues, funds or money of the Purchaser. Installment Payments  
payable by the Purchaser pursuant to this Property Schedule shall be payable only from  
current funds which are budgeted and appropriated solely from the Purchaser’s Parking  
Enterprise Fund for such purpose during the fiscal year of the Purchaser for which such  
funds were budgeted and appropriated. The Purchaser has not pledged the full faith and  
credit of the Purchaser, Yellowstone County or the State of Montana to the payment of  
amounts due under the Lease-Purchase Agreement.

Installment Payment Schedule

Total Principal Amount: \$578,311.00

| <u>Pay #</u> | <u>Date</u> | <u>Payment</u> | <u>Principal</u> | <u>Interest</u><br><u>(4.96%)</u> | <u>Prepayment</u><br><u>Balance</u> |
|--------------|-------------|----------------|------------------|-----------------------------------|-------------------------------------|
| 1            | 28-Apr-2012 | 26,909.64      | 13,591.24        | 13,318.40                         | 581,661.35                          |
| 2            | 28-Oct-2012 | 26,909.64      | 13,904.24        | 13,005.39                         | 567,339.98                          |
| 3            | 28-Apr-2013 | 26,909.64      | 14,224.46        | 12,685.18                         | 552,688.79                          |
| 4            | 28-Oct-2013 | 26,909.64      | 14,552.04        | 12,357.59                         | 537,700.19                          |
| 5            | 28-Apr-2014 | 26,909.64      | 14,887.17        | 12,022.46                         | 522,366.40                          |
| 6            | 28-Oct-2014 | 26,909.64      | 15,230.02        | 11,679.62                         | 506,679.48                          |
| 7            | 28-Apr-2015 | 26,909.64      | 15,580.77        | 11,328.87                         | 490,631.29                          |
| 8            | 28-Oct-2015 | 26,909.64      | 15,939.59        | 10,970.05                         | 474,213.51                          |

|       |             |            |            |            |            |
|-------|-------------|------------|------------|------------|------------|
| 9     | 28-Apr-2016 | 26,909.64  | 16,306.67  | 10,602.96  | 457,417.64 |
| 10    | 28-Oct-2016 | 26,909.64  | 16,682.21  | 10,227.42  | 440,234.96 |
| 11    | 28-Apr-2017 | 26,909.64  | 17,066.40  | 9,843.23   | 422,656.56 |
| 12    | 28-Oct-2017 | 26,909.64  | 17,459.44  | 9,450.20   | 404,673.34 |
| 13    | 28-Apr-2018 | 26,909.64  | 17,861.53  | 9,048.11   | 386,275.97 |
| 14    | 28-Oct-2018 | 26,909.64  | 18,272.87  | 8,636.76   | 367,454.91 |
| 15    | 28-Apr-2019 | 26,909.64  | 18,693.70  | 8,215.94   | 348,200.40 |
| 16    | 28-Oct-2019 | 26,909.64  | 19,124.21  | 7,785.43   | 328,502.47 |
| 17    | 28-Apr-2020 | 26,909.64  | 19,564.63  | 7,345.00   | 308,350.89 |
| 18    | 28-Oct-2020 | 26,909.64  | 20,015.20  | 6,894.43   | 287,735.23 |
| 19    | 28-Apr-2021 | 26,909.64  | 20,476.15  | 6,433.49   | 266,644.80 |
| 20    | 28-Oct-2021 | 26,909.64  | 20,947.71  | 5,961.92   | 245,068.65 |
| 21    | 28-Apr-2022 | 26,909.64  | 21,430.14  | 5,479.50   | 222,995.61 |
| 22    | 28-Oct-2022 | 26,909.64  | 21,923.67  | 4,985.97   | 200,414.24 |
| 23    | 28-Apr-2023 | 26,909.64  | 22,428.57  | 4,481.07   | 177,312.81 |
| 24    | 28-Oct-2023 | 26,909.64  | 22,945.09  | 3,964.55   | 153,679.37 |
| 25    | 28-Apr-2024 | 26,909.64  | 23,473.51  | 3,436.12   | 129,501.65 |
| 26    | 28-Oct-2024 | 26,909.64  | 24,014.10  | 2,895.53   | 104,767.13 |
| 27    | 28-Apr-2025 | 26,909.64  | 24,567.14  | 2,342.49   | 79,462.97  |
| 28    | 28-Oct-2025 | 26,909.64  | 25,132.92  | 1,776.72   | 53,576.06  |
| 29    | 28-Apr-2026 | 26,909.64  | 25,711.73  | 1,197.91   | 27,092.98  |
| 30    | 28-Oct-2026 | 26,909.64  | 26,303.86  | 605.77     | 0.00       |
| Total |             | 807,289.11 | 578,311.00 | 228,978.11 | 0.00       |

**PURCHASER:  
CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: Thomas Hanel  
Title: Mayor

Attest:

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

EXHIBIT A  
Description of Property

| <u>PROJECT</u>                          | <u>LOCATION</u>           | <u>BUDGET</u>  |
|-----------------------------------------|---------------------------|----------------|
| Lighting Upgrade                        | Park One Parking Garage   | \$209,433      |
| Lighting Upgrade                        | Park Two Parking Garage   | 163,827        |
| Lighting Upgrade                        | Park Two Garage Addition  | 84,784         |
| Lighting Upgrade                        | Park Three Parking Garage | <u>120,267</u> |
| TOTAL PROPERTY SCHEDULE PURCHASE AMOUNT |                           | \$578,311      |

**EXHIBIT 2**  
**Opinion of Dorsey & Whitney LLP**

October 28, 2011

City of Billings  
Billings, Montana

U.S. Bancorp Equipment Finance, Inc.  
Denver, Colorado

Re: Master Tax-Exempt Installment Purchase Agreement  
City of Billings, Montana

Ladies and Gentlemen:

We have acted as special counsel to the City of Billings, Montana (the “City”), in connection with the authorization, execution and delivery by the City of the Master Tax-Exempt Installment Purchase Agreement, dated as of October 28, 2011 (the “Lease-Purchase Agreement”), between the City and U.S. Bancorp Equipment Finance, Inc. (“U.S. Bancorp”) and Property Schedule No. 2 thereto, dated as of October 28, 2011 (the “Parking Property Schedule”). In that capacity, we have examined executed counterparts, or copies otherwise identified to our satisfaction, of the Lease-Purchase Agreement, the Parking Property Schedule and the Escrow Agreement dated as of October 28, 2011 (the “Escrow Agreement”), between the City, U.S. Bancorp and U.S. Bank National Association, as Escrow Agent, together with certified copies of certain proceedings taken and certain certificates and affidavits furnished by the City in the authorization, execution and delivery of the Lease-Purchase Agreement and the Parking Property Schedule, including a certified copy of Resolution No. [ ] adopted by the City Council of the City on October 11, 2011. As to questions of fact material to our opinion, we have assumed the authenticity of and relied upon the proceedings, affidavits and certificates furnished to us without undertaking to verify the same by independent investigation.

The installment payments payable by the City under the Parking Property Schedule (the “Installment Payments”) are payable solely from the current revenues of the City which are budgeted and appropriated solely from the City’s Parking Enterprise Fund and are subject to annual appropriation in accordance with the provisions of the Lease-Purchase Agreement and the Parking Property Schedule. The Lease-Purchase Agreement and the Parking Property Schedule are not general obligations of the City and the general credit and taxing powers of the City are not pledged to the payment of the Installment Payments. U.S. Bancorp is selling to the City energy efficiency improvements described in the Parking Property Schedule (the “Parking Improvements”) to be constructed and installed within certain City parking garages. The Parking Property Schedule will be in effect for a term commencing as provided therein and ending on October 28, 2026, unless earlier terminated in accordance with its terms. The Installment

Payments will be payable at such times and in such amounts and will comprise principal payments and interest payments as set forth in the Parking Property Schedule. In the sole event that moneys are not appropriated and provided from the City's Parking Enterprise Fund with respect to the Installment Payments, the City may, by written notice to U.S. Bancorp, discontinue the Parking Property Schedule at the end of any fiscal year of the City then in effect. If the City should discontinue the Parking Property Schedule at the end of any such fiscal year in the manner provided therein, the Parking Property Schedule is terminated without penalty or liability on the part of the City to pay any Installment Payments coming due after the fiscal year then in effect, but in such event the City has the obligation to deliver possession of the Parking Improvements to U.S. Bancorp at the time and in the manner provided in the Lease-Purchase Agreement. In the event the City should not discontinue the Parking Property Schedule and does pay all Installment Payments, the rights of U.S. Bancorp in the Parking Improvements will be terminated and U.S. Bancorp must transfer legal title to the Parking Improvements to the City. The City will have an option to purchase U.S. Bancorp's interest in the Parking Improvements on each Installment Payment date in the amount set forth in the Parking Property Schedule.

From our examination of such proceedings, certificates and affidavits, and on the basis of existing law, it is our opinion that:

1. The Lease-Purchase Agreement, the Parking Property Schedule and the Escrow Agreement are each valid and binding instruments of the City, enforceable in accordance with their respective terms.
2. The portion of the Installment Payments designated as interest: (a) is not includable in gross income for federal income tax purposes; (b) is not an item of tax preference includable in alternative minimum taxable income for purposes of the federal alternative minimum tax applicable to all taxpayers; and (c) is includable in adjusted current earnings of corporations in determining alternative minimum taxable income for purposes of the federal alternative minimum tax imposed on corporations.
3. The portion of the Installment Payments designated as interest is not includable in gross income for State of Montana individual income tax purposes, but is includable in the computation of income for purposes of the Montana corporate income tax and the Montana corporate license tax.
4. The City has designated the Parking Property Schedule as a "qualified tax-exempt obligation," within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and financial institutions described in Section 265(b)(5) of the Code may treat the Parking Property Schedule for purposes of Sections 265(b)(2) and 291(e)(1)(B) of the Code as if it was acquired on August 7, 1986.

The opinions expressed in paragraph 1 above are subject, as to enforceability, to the effect of any state or federal laws relating to bankruptcy, insolvency, reorganization, moratorium or creditors' rights and the exercise of judicial discretion.

The opinions expressed in paragraphs 2 and 3 above are subject to the condition that the City comply with all requirements of the Code that must be satisfied subsequent to the execution and delivery of the Parking Property Schedule in order that the portion of the Installment Payments that are specifically designated as interest may be, and continue to be, excluded from gross income for federal income tax purposes, and that the Parking Property Schedule be and continue to be a qualified tax-exempt obligation, within the meaning of Section 265(b)(3) of the Code. The City has covenanted to comply with these continuing requirements. Its failure to do so could result in the inclusion of such interest in gross income for federal income tax purposes, retroactive to the date of execution and delivery of the Parking Property Schedule. Except as stated in this opinion, we express no opinion regarding federal, state or other tax consequences with respect to the Lease-Purchase Agreement or the Parking Property Schedule.

Very truly yours,

**EXHIBIT 3**  
**Purchaser's Certificate**

Re: **Property Schedule No. 2** to Master Tax-Exempt Installment Purchase Agreement  
U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana.

The undersigned, being the duly elected, qualified and acting City Clerk of the City of Billings, Montana (the "Purchaser") do hereby certify, as of October 28, 2011 as follows:

1. Purchaser did, at a meeting of the governing body of the Purchaser held October 11, 2011 by resolution or ordinance duly enacted, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Property Schedule (the "Property Schedule") and the Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement") by the following named representative of Purchaser, to wit:

| NAME<br>OF EXECUTING<br>OFFICIAL | TITLE<br>OF EXECUTING<br>OFFICIAL | SIGNATURE<br>OF EXECUTING<br>OFFICIAL |
|----------------------------------|-----------------------------------|---------------------------------------|
| Thomas Hanel                     | Mayor                             | _____                                 |
| Cari Martin                      | City Clerk                        | _____                                 |

2. The above-named representative of the Purchaser held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting(s) of the governing body of the Purchaser at which the Master Agreement and the Property Schedule were approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite quorum of the members thereof, and the enactment approving the Master Agreement and the Property Schedule and authorizing the execution thereof has not been altered or rescinded. All meetings of the governing body of Purchaser relating to the authorization and delivery of Master Agreement and the Property Schedule have been: (a) held within the geographic boundaries of the Purchaser; (b) open to the public, allowing all people to attend; (c) conducted in accordance with internal procedures of the governing body; and (d) conducted in accordance with the charter of the Purchaser, if any, and the laws of the State.

4. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default or a Nonappropriation Event (as such terms are defined in the Master Agreement) exists at the date hereof with respect to this Property Schedule or any other Property Schedules under the Master Agreement.

5. The acquisition of all of the Property under the Property Schedule has been duly authorized by the governing body of Purchaser.

6. Purchaser will, in accordance with the requirements of law, fully budget and appropriate sufficient funds for the current fiscal year to make the Installment Payments scheduled to come due during the current fiscal year under the Property Schedule and to meet its other obligations for the current fiscal year.

7. As of the date hereof, no litigation is pending, (or, to my knowledge, threatened) against Purchaser in any court (a) seeking to restrain or enjoy in the delivery of the Master Agreement or the Property Schedule or of other agreements similar to the Master Agreement; (b) questioning the authority of Purchaser to execute the Master Agreement or the Property Schedule, or the validity of the Master Agreement or the Property Schedule, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Master Agreement and the Property Schedule; or (d) affecting the provisions made for the payment of or security for the Master Agreement and the Property Schedule.

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: Cari Martin  
Title: City Clerk

**EXHIBIT 4**  
**Payment of Proceeds Instructions**

U.S. Bancorp Equipment Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, Oregon 97223

Re: **Property Schedule No. 2** (the "Property Schedule") to Master Tax-Exempt Installment Purchase Agreement between U.S. Bancorp Equipment Finance, Inc. ("Seller") and the City of Billings, Montana ("Purchaser").

Ladies and Gentlemen:

The undersigned, an Authorized Representative of the Purchaser hereby requests and authorizes Seller to disburse the net proceeds of the Property Schedule as follows:

Name of Payee: \_\_\_\_\_

By check \_\_\_\_\_ By wire transfer \_\_\_\_\_

If by check, Payee's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If by wire transfer, instructions as follows:

Pay to Bank Name: U.S. Bank, National Association

Bank Address: 303 North Broadway  
PO Box 30678  
Billings, MT 59101

Bank Phone #: (406) 447-5251

For Account of: City of Billings General Depository

Account No.: 1-500-9559-2021

ABA No.: 092900383

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

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

Name:

Title:

**EXHIBIT 5**  
**Acceptance Certificate**

U.S. Bancorp Equipment Finance, Inc.  
13010 SW 68th Parkway, Suite 100  
Portland, Oregon 97223

Re: **Property Schedule No. 2** to Master Tax-Exempt Installment Purchase Agreement between U.S. Bancorp Equipment Finance, Inc. and the City of Billings, Montana

Ladies and Gentlemen:

In accordance with the above-referenced Master Tax-Exempt Installment Purchase Agreement (the "Master Agreement"), the undersigned ("Purchaser") hereby certifies and represents to, and agrees with, U.S. Bancorp Equipment Finance, Inc. ("Seller"), as follows:

- (1) The Property, as such terms are defined in the above-referenced Property Schedule, has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Purchaser has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.
- (3) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as such term is defined in the Master Agreement) exists at the date hereof.

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

**PURCHASER:**  
**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 6**  
**Tax Certificate**

**Master Tax-Exempt Installment Purchase Agreement**  
**Property Schedule No. 2**

**City of Billings, Montana**

**ARBITRAGE AND REBATE CERTIFICATE AND**  
**AGREEMENT**

This Arbitrage and Rebate Certificate and Agreement (this “Certificate”) is given for the purpose of establishing and maintaining the tax-exempt status of interest payments required to be made by the City of Billings, Montana (the “City”), under the Master Tax-Exempt Installment Purchase Agreement dated as of October 28, 2011 (the “Lease-Purchase Agreement”) between the City and U.S. Bancorp Equipment Finance, Inc., as lessor (the “Lessor”), and Property Schedule No. 2 thereto (the “Parking Property Schedule”). The representations and covenants of the City herein are for the benefit of the owner or owners from time to time of the interest of the Lessor under the Parking Property Schedule.

I. General Provisions and Definitions.

1.1. The Parking Property Schedule will be entered into by the City pursuant to Resolution No. [\_\_\_], adopted by the City Council of the City on October 11, 2011 ( the “Resolution”). Terms used with initial capital letters but undefined herein shall have the meanings given them in the Lease Purchase Agreement, the Internal Revenue Code of 1986, as amended (the “Code”), or in the Regulations (as hereinafter defined), unless the context hereof clearly requires otherwise.

This Certificate is intended to be, and may be relied upon as, among other things, a certification described in the Regulations, Section 1.148-2(b) and Section 148 of the Code, and is delivered as a part of the transcript of proceedings relating to the Parking Property Schedule. We are among the officers of the City responsible for the issuance of the Parking Property Schedule.

1.2. We have investigated the facts, estimates and circumstances surrounding the execution and delivery of the Parking Property Schedule, which are described summarily in this Certificate. To the best of our knowledge and belief, such facts, estimates and circumstances are correct and complete and the City’s expectations as to future events, which are based thereon, are in all respects reasonable and made in good faith. To the extent that the expectations of the City are based upon estimates and representations made by others, including the Lessor, we have examined such estimates and representations and consider them to be reasonable and correct. Any statements in this Certificate involving future events, whether or not expressly so stated, are intended

as expectations of the City and not as representations of fact. On the basis of such facts, estimates and circumstances, it is expected that the proceeds of the Parking Property Schedule will be used in a manner that would not cause the Parking Property Schedule to be considered an “arbitrage bond” within the meaning of Section 148 of the Code.

1.3. The following terms have the following meanings when used in this Certificate:

Bond Counsel shall mean nationally recognized municipal bond counsel selected by the City.

Bond Year shall mean each one-year period (or shorter period from the Closing Date) that ends at the close of business on each September 15 or, if the last Installment Payment owing under the Parking Property Schedule is not paid on a September 15, such shorter period from the last preceding September 15 to the date on which such last Installment Payment is made.

Closing Date shall mean October 28, 2011, the date of execution and delivery of the Parking Property Schedule.

Computation Date shall mean an installment computation date (the last day of the fifth and each succeeding fifth Bond Year) and the final computation date (the date the last Bond is discharged). If the Installment Payments owing under the Parking Property Schedule are paid when due, the installment computation dates for the Parking Property Schedule shall be September 15, 2016 and September 15, 2021, September 15, 2026 and the final computation date shall be October 28, 2026.

Construction Account shall mean the Construction Account created in the Escrow Fund established under the Escrow Agreement.

Escrow Agreement shall mean the Escrow Agreement referred to in the Parking Property Schedule, dated as of October 28, 2011, by and between the City and the Lessor, as amended or supplemented from time to time.

Escrow Fund shall mean the Escrow Fund established under the Escrow Agreement.

Gross Proceeds shall mean, with respect to the Parking Property Schedule, all proceeds of the Parking Property Schedule (including sale proceeds and transferred proceeds) and any funds (other than proceeds) that are part of any reserve or replacement fund for the Parking Property Schedule.

Investment Property shall mean any security, obligation (other than a Non-AMT Obligation), annuity contract or investment-type property.

Non-AMT Obligation means any obligation the interest on which is not includible in gross income under Section 103 of the Code and which is not a “specified private activity bond” (within the meaning of Section 57(a)(5)(C) of the Code).

Nonpurpose Investment shall mean any Investment Property that is not a purpose investment in which Gross Proceeds of the Parking Property Schedule are invested.

Project shall mean the construction and installation of energy efficiency improvements certain City-owned parking garages and related fees and expenses.

Rebatable Arbitrage shall mean, as of any Computation Date, the excess of the future value of all nonpurpose receipts with respect to the Parking Property Schedule, over the future value of all nonpurpose payments with respect to the Parking Property Schedule, or with respect to a Voluntary Computation Date, the amount of the payment that would be payable to the United States under Section 148(f) of the Code if such date were a “Computation Date.”

Regulations shall mean the Treasury Regulations applicable to the Lease Purchase Agreement and the Parking Property Schedule and promulgated under the Code, including, without limitation, Treasury Regulations, Sections 1.148-0 through 1.148-11, and Sections 1.149(b)-1, 1.149(d)-1, 1.149(g)-1, 1.150-1 and 1.150-2.

Voluntary Computation Date means September 15, 2012, and each September 15 thereafter, excluding Computation Dates.

Yield, with reference to any obligation, means that discount rate which, when computing the present value of all unconditionally payable payments of principal and interest paid and to be paid on such obligation and taking into account payments made for qualified guarantees, produces an amount equal to the present value of the issue price of the obligation.

Yield of the Parking Property Schedule shall mean 4.86000%.

## II. The Purpose of the Parking Property Schedule.

1.1. The Parking Property Schedule is entered into pursuant to the Resolution for the purposes of providing funds to be used to finance costs of the Project. The City expects to expend the following sums from the proceeds of the Parking Property Schedule for the Project:

|                                              |                  |
|----------------------------------------------|------------------|
| Lighting Upgrade — Park One Parking Garage   | \$209,433        |
| Lighting Upgrade — Park Two Parking Garage   | \$163,827        |
| Lighting Upgrade — Park Three Parking Garage | \$ 84,784        |
| Lighting Upgrade — Park Four Parking Garage  | <u>\$120,267</u> |
| Total:                                       | \$578,311        |

2.2 Any costs in excess of the proceeds of the Parking Property Schedule will be paid from other funds of the City available therefor.

### III. Sources and Disbursements of Funds.

3.1. The aggregate amount of the principal components payable by the City pursuant to the Parking Property Schedule equals \$578,311.00. The City is executing and delivering the Parking Property Schedule to the Lessor in exchange for proceeds in the amount of \$578,311.00. The issue price of the Parking Property Schedule, as defined in Section 1.148-1(b) of the Regulations and Sections 1273(b)(1) and (2) of the Code, is \$578,311.00, equal to the principal amount thereof.

3.2. \$578,311.00 of the proceeds of the Parking Property Schedule are expected to be deposited in the Construction Account to pay the costs of the Project. Costs of entering into the Parking Property Schedule will be paid from other available funds of the City.

3.3. The Parking Property Schedule is not a hedge bond (as defined in Section 149(g) of the Code) since at least 85% of the spendable proceeds of the Parking Property Schedule are to be used to pay costs of the Project within three years after the date hereof and less than 50% of the proceeds of the Parking Property Schedule are to be invested in nonpurpose investments having a substantially guaranteed yield for four years or more.

### IV. Yield of the Parking Property Schedule.

4.1. No other obligations of the City are being (a) issued at substantially the same time as the Parking Property Schedule, (b) sold pursuant to the same plan of financing as the Parking Property Schedule, and (c) paid out of substantially the same source of funds (or which will have substantially the same claim to be paid out of substantially the same source of funds) as will be used to pay the Parking Property Schedule, within the meaning of Section 1.150-1(c) of the Regulations. Contemporaneous with the execution and delivery of the Parking Property Schedule, the City is entering into Property Schedule No. 1 to the Lease-Purchase Agreement (the "Airport Property Schedule"). The installment payments payable by the City pursuant to the Parking Property Schedule and the Airport Property Schedule shall be payable, as specified in the Resolution, only from current funds which are budgeted and appropriated solely from the City's Parking Enterprise Fund and the City's Airport Enterprise Fund, respectively, for such purpose during the fiscal year of the City for which such funds were budgeted and appropriated.

4.2. The Yield of the Parking Property Schedule computed in accordance with Section 148 of the Code and applicable Regulations, is 4.86000% per annum.

### V. Temporary Investments.

5.1 Except as described in Section 5.2 hereof, none of the proceeds of the Parking Property Schedule will be invested at a materially higher yield.

5.2. Proceeds of the Parking Property Schedule deposited in the Construction Account are to be used to finance the costs of the Project. The estimated total cost of the Project, including implementation, administration, construction management and

contingencies, excluding costs of entering into the Parking Property Schedule, is not less than \$578,311.00.

(a) The City has incurred or will incur within six months after the date hereof substantial binding obligations to undertake the Project (in the form of binding contracts or commitments) in an aggregate amount not less than five percent of the net sale proceeds of the Parking Property Schedule (i.e., \$28,916).

(b) Work on the Project and allocation of the net sale proceeds and investment proceeds of the Parking Property Schedule to expenditures will proceed with due diligence to completion and it is reasonably expected the Project will be completed and all net sale proceeds of the Parking Property Schedule will be so allocated by March 28, 2013.

(c) The net sale proceeds of the Parking Property Schedule, plus investment earnings thereon, do not exceed the amount to be spent by the City to acquire and construct the Project.

(d) The City expects to spend on the Project, within not more than three years from the date hereof, all of the net sale and investment proceeds to be derived by the City from the issuance of the Parking Property Schedule.

Therefore, the City may invest said amounts deposited in the Construction Account without yield restriction for a temporary period ending three years from the Closing Date pursuant to Section 1.148-2(e)(2) of the Regulations. Should any of the proceeds of the Parking Property Schedule not be so expended by the end of such period, the City may either (i) invest such amounts at a yield which does not exceed the Yield of the Parking Property Schedule, or (ii) comply with the provisions of Section 1.148-5(c) of the Regulations and make such payments at such times as are required pursuant to Section 1.148-5(c) to reduce the Yield on any investments made subsequent to expiration of the temporary period to a Yield not materially higher than the Yield of the Parking Property Schedule.

#### VI. No Sinking Fund.

6.1. The City has not created or established, and does not expect to create or establish, any sinking or similar fund which is reasonably expected to be used to pay debt service on the Parking Property Schedule or which is pledged as collateral to secure the Parking Property Schedule. No amounts in any other funds or accounts of the City are reserved for or pledged to the payment of debt service on the Parking Property Schedule or will be used to replace funds that will be used to pay debt service on the Parking Property Schedule.

#### VII. Sale Proceeds.

7.1. The sale proceeds of the Parking Property Schedule do not exceed the amount necessary to achieve the purposes described in Section II hereof. No portion of the Parking Property Schedule is issued solely for the purpose of investing the proceeds

at a materially higher yield than the Yield of the Parking Property Schedule. None of the proceeds of the Parking Property Schedule will be used directly or indirectly to replace funds which were used directly or indirectly to acquire obligations with a yield that is materially higher than the Yield of the Parking Property Schedule.

7.2. In connection with the execution and delivery of the Parking Property Schedule, except as specifically provided in Sections 148(c) and (d) of the Code, the City has not engaged and will not engage in any transaction or series of transactions (i) enabling the City to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage, and (ii) increasing the burdens on the market for tax-exempt obligations in any manner including, without limitation, by selling any obligation that would not otherwise be sold, or by selling more obligations, or issuing them sooner, or allowing them to remain outstanding longer, than would otherwise be necessary.

#### VIII. Miscellaneous.

8.1. The City has no present intention to sell or otherwise dispose of the facilities financed with proceeds of the Parking Property Schedule before the termination of the Parking Property Schedule. The City expects that such property will continue to be owned and operated by the City substantially in the manner in which similar property is now owned and operated for an indefinite period concluding not earlier than the final stated termination date of the Parking Property Schedule.

8.2. The City reasonably expects that during the term of the Parking Property Schedule no private business use will be made of the facilities financed with proceeds thereof and that no private payments or security will be made or furnished that would cause the Parking Property Schedule to consist of “private activity bonds”, within the meaning of Section 141 of the Code and applicable Regulations. No proceeds of the Parking Property Schedule are being or will be loaned to any nongovernmental person. The City reasonably expects that the Parking Property Schedule will not consist of private activity bonds within the meaning of Section 141 of the Code.

8.3. The weighted average maturity of the Parking Property Schedule (8.642 years) does not exceed 120 percent of the average reasonably expected economic life of the Project. Such average reasonably expected economic life is not less than 15 years. It is not expected that any replacement proceeds of the Parking Property Schedule will arise subsequent to the execution and delivery of the Parking Property Schedule.

#### IX. Minor Portion.

9.1. An aggregate amount not to exceed the “minor portion” amount for the Parking Property Schedule (\$28,916) may be invested pursuant to Section 148(e) of the Code and Section 1.148-2(g) of the Regulations without restriction as to Yield. To the extent the amount on hand in the Construction Account has been credited thereto longer than the period described in Section 5.2 hereof, such amount may be invested up to the minor portion amount at a yield greater than the Yield of the Parking Property Schedule.

Such amounts are Gross Proceeds of the Parking Property Schedule, however, and subject to the rebate requirements set forth in Sections X and XI hereof.

X. Rebate.

10.1 The City, in the Resolution, has covenanted to comply with the requirements of Section 148(f) of the Code with respect to the Parking Property Schedule. The City covenants that it will consult with Bond Counsel and undertake to determine what is required with respect to the rebate provisions contained in Section 148(f) of the Code from time to time and will comply with any requirements that may be applicable to the Parking Property Schedule. The methodology described in this Certificate will be followed, except to the extent inconsistent with any requirements of future regulations or written advice received from Bond Counsel.

10.2. Subject to any applicable exceptions or exemptions available under the Code or regulations, detailed records with respect to each and every Nonpurpose Investment attributable to Gross Proceeds of the Parking Property Schedule will be maintained by the City including: (i) purchase date, (ii) purchase price, (iii) brokerage or other transaction costs of purchase, (iv) information establishing fair market value on the date such investment became a Nonpurpose Investment, (v) any accrued interest paid, (vi) face amount, (vii) coupon or Stated interest rate, (viii) periodicity of interest payments, (ix) disposition price, (x) any accrued interest received, (xi) disposition date, and (xii) brokerage or other transaction costs of disposition. Such detailed recordkeeping is required for the calculation of the Rebatable Arbitrage.

XI. Retabable Arbitrage Calculation and Payment.

11.1. Subject to any applicable exceptions or exemptions available under the Code or regulations, the City shall pay to the United States Department of the Treasury from funds legally available therefor: (A) not later than 60 days after each Computation Date, an amount which, when added to the future value as of the Computation Date of all previous rebate payments, equals at least 90% of the Rebatable Arbitrage calculated as of such Computation Date; and (B) not later than 60 days after the final Computation Date, an amount which, when added to the future value as of the Computation Date of all previous rebate payments, equals 100% of the Rebatable Arbitrage.

11.2. Any payment required to be made pursuant hereto shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201 (or at such other address as the Internal Revenue Service may from time to time designate), on or before the date such payment is due, and shall be accompanied by a completed and executed Internal Revenue Service Form 8038-T. The City shall retain records of the calculations required by this Section XI until six years after the final Computation Date for the Parking Property Schedule.

11.3. The City shall file or cause to be filed such reports or other documents with the Internal Revenue Service as required by Section 148(f) of the Code.

11.4. Notwithstanding anything in this Certificate or any other provisions of the Resolution to the contrary, the obligation to remit the Rebatale Arbitrage with respect to the Parking Property Schedule to the United States Department of the Treasury and to comply with all other requirements contained in this Certificate shall survive the defeasance of the Parking Property Schedule.

11.5. The Project will be owned and operated by the City and used for governmental purposes. All of the Gross Proceeds qualify for the temporary period under Section 1.148-2(e)(2) of the Regulations. Apart from the sale proceeds of the Parking Property Schedule and investment proceeds derived therefrom, the City does not expect that any other Gross Proceeds will arise. Thus, if the expenditure tests set forth in Section 1.148-7(d)(1)(i) of the Regulations are met (i.e., the following percentages of Gross Proceeds are spent within the following periods beginning on the date of issuance: at least 15% within six months (March 28, 2012); 60% within one year (October 28, 2012), and 100% within eighteen months (March 28, 2013) (subject to a reasonable contractual retainage amount not exceeding five percent of the net sale proceeds of the Parking Property Schedule as of October 28, 2011 to be spent within 30 months after the date hereof, as defined in Section 1.148-7(h) of the Regulations)), then the City may elect to treat the Gross Proceeds as exempt from the rebate requirements of Section 148(f) of the Code pursuant to the "18 month" spending exception provided under Section 1.148-7(d) of the Regulations.

11.6. If Gross Proceeds subject to arbitrage rebate arise, either as a result of the failure to expend all Gross Proceeds as provided in Section 11.6 hereof, or from another cause, for purposes of complying with Section 148(f), the City will prepare or have prepared a calculation of the Rebatale Arbitrage for the Parking Property Schedule consistent with the rules described in this Section XI.

11.7. The City will prepare the calculation of the Rebatale Arbitrage within 30 days after each Computation Date and will, within 30 days after each Voluntary Computation Date, calculate the Rebatale Arbitrage on the assumption such Voluntary Computation Date is a Computation Date and file a copy of such calculations in the office of the City Clerk.

11.8. The City agrees to retain detailed records and documents relating to the expenditure of Gross Proceeds, the use of the facilities financed thereby and the investment of Gross Proceeds until three years following the retirement of the Parking Property Schedule to the extent required by applicable IRS rules and the Regulations and shall consult with counsel regarding such retention as appropriate.

## XII. Amendments.

12.1 The City may amend or supplement the provisions of Sections X or XI hereof by filing an executed copy of such amendment or supplement with the City Finance Director accompanied by an opinion of Bond Counsel to the effect that such amendment or supplement is required by, or better complies with, the provisions of Section 148 and applicable Regulations.

WITNESS our hands, on behalf of the City, officially as Mayor, City Finance Director and City Clerk of the City of Billings, Montana as of this 28th day of October, 2011.

CITY OF BILLINGS, MONTANA

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Finance Director

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

Language for UCC Financing Statements

Schedule 1

SECURED PARTY: U.S. Bancorp Equipment Finance, Inc.

DEBTOR: City of Billings, Montana

This financing statement covers all of Debtor's right, title and interest, whether now owned or hereafter acquired, in and to the equipment sold to Debtor under Property Schedule No. 2 dated October 28, 2011 to that certain Master Tax-Exempt Installment Purchase Agreement dated as of October 28, 2011, in each case between Debtor, as Purchaser, and Secured Party, as Seller, together with all accessions, substitutions and replacements thereto and therefor, and proceeds (cash and non-cash), including, without limitation, insurance proceeds, thereof, including without limiting, all equipment described on Exhibit A attached hereto and made a part hereof.

EXHIBIT A  
Description of Property

PROJECT

LOCATION

Lighting Upgrade

Park One Parking Garage

Lighting Upgrade

Park Two Parking Garage

Lighting Upgrade

Park Two Garage Addition

Lighting Upgrade

Park Three Parking Garage

## INSURANCE AUTHORIZATION AND VERIFICATION

Date: October 28, 2011  
No. 2

Property Schedule

|                                                                                                                                |                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| To: City of Billings, Montana<br>("Purchaser")<br>P.O. Box 1178<br>Billings, Montana 59103<br>Attention: City Finance Director | From: U.S. Bancorp Equipment Finance,<br>Inc. (the "Seller")<br>13010 SW 68th Parkway, Suite 100<br>Portland, Oregon 97223<br>Attn: Chris Jones |
|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------|

**TO THE PURCHASER:** In connection with the above-referenced Property Schedule, Seller requires proof in the form of this document, executed by both Purchaser\* and Purchaser's agent, that Purchaser's insurable interest in the financed property (the "Property") meets Seller's requirements as follows, with coverage including, but not limited to, fire, extended coverage, vandalism, and theft:

Seller, AND ITS SUCCESSORS AND ASSIGNS, shall be covered as both ADDITIONAL INSURED and LENDER'S LOSS PAYEE with regard to all equipment financed or leased by policy holder through or from Seller. All such insurance shall contain a provision to the effect that such insurance shall not be canceled or modified without first giving written notice thereof to Seller and Purchaser at least thirty (30) days in advance of such cancellation or modification.

Purchaser must carry GENERAL LIABILITY (and/or, for vehicles, Automobile Liability) in the amount of no less than \$1,000,000.00 (one million dollars).

Purchaser must carry PROPERTY Insurance (or, for vehicles, Physical Damage Insurance) in an amount no less than the 'Insurable Value' \$578,311.00 with deductibles no more than \$25,000.00.

\*Purchaser: Please execute this form and return with your document package. Seller will fax this form to your insurance agency for endorsement. In lieu of agent endorsement, Purchaser's agent may submit insurance certificates demonstrating compliance with all requirements. If fully executed form (or Purchaser-executed form plus certificates) is not provided within 15 days, we have the right to purchase such insurance at your expense. Should you have any questions, please contact Chris Jones at (303) 862-1201.

**By signing, Purchaser authorizes the Agent named below: (1) to complete and return this form as indicated; and (2) to endorse the policy and subsequent renewals to reflect the required coverage as outlined above.**

Agency/Agent: Hoiness LaBar Insurance

Address: A Member of Payne Financial Group  
P.O. Box 30638  
Billings, Montana 59107-0638  
Phone: (406) 238-1900

**PURCHASER:  
CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name:  
Title:

**TO THE AGENT:** *In lieu of providing a certificate, please execute this form in the space below and promptly fax it to Seller at (406) 657-8363. This fully endorsed form shall serve as proof that Purchaser's insurance meets the above requirements.*

**Agent hereby verifies that the above requirements have been met in regard to the Property listed below.**

Print Name Of Agency: X \_\_\_\_\_

By: X \_\_\_\_\_  
(Agent's Signature)

Print Name: X \_\_\_\_\_

Date: X \_\_\_\_\_

**Insurable Value: \$578,311.00**

**ATTACHED: PROPERTY DESCRIPTION FOR PROPERTY SCHEDULE NO. 2**

EXHIBIT A  
Description of Property

| <u>PROJECT</u>                          | <u>LOCATION</u>           | <u>BUDGET</u>  |
|-----------------------------------------|---------------------------|----------------|
| Lighting Upgrade                        | Park One Parking Garage   | \$209,433      |
| Lighting Upgrade                        | Park Two Parking Garage   | 163,827        |
| Lighting Upgrade                        | Park Two Garage Addition  | 84,784         |
| Lighting Upgrade                        | Park Three Parking Garage | <u>120,267</u> |
| TOTAL PROPERTY SCHEDULE PURCHASE AMOUNT |                           | \$578,311      |