

CITY OF BILLINGS

**CITY OF BILLINGS MISSION STATEMENT:
TO DELIVER COST EFFECTIVE PUBLIC SERVICES
THAT ENHANCE OUR COMMUNITY'S QUALITY OF LIFE**

REVISED AGENDA

COUNCIL CHAMBERS

October 11, 2005

6:30 P.M.

CALL TO ORDER – Mayor Tooley

PLEDGE OF ALLEGIANCE – Mayor Tooley

INVOCATION – Councilmember Vince Ruegamer

ROLL CALL

MINUTES – September 26, 2005

COURTESIES

PROCLAMATIONS

- October 15: White Cane Awareness and Safety Day

BOARD & COMMISSION REPORTS

ADMINISTRATOR REPORTS – Tina Volek

PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: #1, #4, & #5

ONLY. Speaker sign-in required. (Comments offered here are limited to 1 minute per speaker. 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.)

(NOTE: For Items not on this agenda, public comment will be taken at the end of the agenda. Please sign up on the clipboard located at the back of the room.)

CONSENT AGENDA:

1. A. **Bid Awards:**

(1) **W.O.99-07* Lake Elmo Road – Main Street to Hansen Lane, *Includes Federal Aid Project No. STPE 1099(41), CN5292.** (Opened 10/11/05). Recommend delaying award to 10/24/05.

(Corresponding Staff Memo A1)

(2) **SID 1370 Interlachen Drive (Phase 1).** (Opened 9/27/05). Recommend HL Ostermiller Construction, Inc., \$153,481.50 and 60 calendar days.

(Corresponding Staff Memo A2)

(3) Terminal Window Cleaning Services for Billings Logan International Airport. (Opened 9/27/05). Recommend Skyline Services, \$54,000.00.
[Corresponding Staff Memo A3](#)

(4) Cascade Pump 20MF and 200 HP Motor for Wastewater Treatment Plant. (Opened 9/27/05). Recommend delaying award to 10/24/05.
[Corresponding Staff Memo A4](#)

(5) Hazardous Material Abatement, Building Demolition, Underground Storage Tank Removal and related Construction Activities for the Properties located at 114-116 and 120 N. 26th St. (formerly Darryll Apartments & Commercial Space). (Opened 10/11/05). Recommend delaying award to 10/24/05.
[Corresponding Staff Memo A5](#)

B. Amendment #2, Professional Services Contract with HDR Engineering, Inc., for additional tasks required by the State Revolving Fund to secure funding via an SRF loan for W.O. 04-14: the Wastewater Treatment Plant Headworks Building Replacement and Improvements Project, \$45,778.00.
[\(Corresponding Staff Memo B\)](#)

C. Construction Agreement with Montana Dept of Transportation (MDOT) for the West Billings-King Avenue Bridge - Federal Aid Project No. BR1010(1).
[\(Corresponding Staff Memo C\)](#)

D. Software Purchase & Maintenance Agreement with JP Morgan Sympro Inc for investment management software, \$23,600.00 (\$20,900.00 purchase with \$2,700.00 annual maintenance).
[\(Corresponding Staff Memo D\)](#)

E. Agreements with Wells Fargo Bank: (Delayed from 9/26/05)

- (1) Sale and Purchase Agreement of existing automatic teller (ATM) site of the City of Billings, \$975,000.00.
- (2) Temporary Leaseback Agreement from the City to Wells Fargo, \$1,625.00/month.
- (3) Wells Fargo ATM Site Lease of the Park II Garage Space from the City to Wells Fargo, \$2,850.00/month with a 2.5%/year inflator; term: 13 years with an option to renew for two 10-year terms.

[\(Corresponding Staff Memo E\)](#)

F. Authorization to solicit bids for eleven (11) used MET Transit buses.
[\(Corresponding Staff Memo F\)](#)

G. Approval of Operating Permit for the operation of a flight school by Yellowstone Valley Aviation.
[\(Corresponding Staff Memo G\)](#)

H. Second/Final reading ordinance for Zone Change #766: a text amendment to the Unified Zoning Regulations, amending BMCC Sections 27-201 and 27-

306, adding a definition of limited pharmaceutical manufacturing and setting limited pharmaceutical manufacturing uses allowed in Highway Commercial and Controlled Industrial Zoning Districts.

[\(Corresponding Staff Memo H\)](#)

I. Second/Final reading ordinance expanding the boundaries of Ward II to include recently annexed property in Annex #05-08, described as: a 33.71 acre parcel described as Tracts 1 and 2, C/S 3190, located at 120 Wicks Lane, Ernest and Francisca Shaw, petitioners.

[\(Corresponding Staff Memo I\)](#)

J. Second/Final reading ordinance amending Section 11-102; providing for new Council Ward boundaries, establishing an effective date, repealing all previous ward boundaries and providing a severability clause.

[\(Corresponding Staff Memo J\)](#)

K. Bills and Payroll.

(1) September 9, 2005

[\(Corresponding Staff Memo K1\)](#)

(2) September 16, 2005

[\(Corresponding Staff Memo K2\)](#)

(3) September 15, 2005 (Municipal Court)

[\(Corresponding Staff Memo K3\)](#)

(Action: approval or disapproval of Consent Agenda.)

REGULAR AGENDA:

2. PUBLIC HEARING AND FIRST READING ORDINANCE expanding the boundaries of Ward V to include recently annexed property in Annex #05-09: Grand Acre Park and right-of-way, an undeveloped 0.363-acre parcel located on Broadwater Avenue, west of 52nd St. W, DC Capital Real Estate, LLC petitioner. Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 2\)](#)

3. PUBLIC HEARING AND RESOLUTIONS regarding the respread for refunding of assessments on the following Special Improvement Districts:

(A) **SID 1327**: street and utility improvements in Cenex Park Sub. Claimstake Sub. and C/S 2158, Tr. 1 and 2B.

(B) **SID 1332**: street and utility improvements in Circle 50 Sub.

(C) **SID 1334**: Historic District Streetscape - Montana Ave.: N. 21st to N. 29th.

(D) **SID 1335**: 38th St. W adjacent to parkland West.

(E) **SID 1340**: Storm drain, water and sewer in Cenex Park Sub.

Staff recommends approval. **(Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 3\)](#)

4. **RESOLUTION** creating the Downtown Business Improvement District Board of Trustees, naming the initial members, establishing their terms and specifying their powers and duties. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 4\)](#)

5. **RESOLUTION** designating an ADA Coordinator, establishing a grievance procedure to be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability and repealing Resolution 98-17429. Staff recommends approval. (**Action:** approval or disapproval of Staff recommendation.)

[\(Corresponding Staff Memo 5\)](#)

6. **BID AWARD: Gasoline, Diesel Fuel and Lubrication Products.** (Opened 10/4/05). Recommendation to be made at meeting.

[\(Corresponding Staff Memo 6\)](#)

7. **PUBLIC COMMENT on Non-Agenda Items -- Speaker sign-in required.** (Restricted to ONLY items not on the printed agenda; comments limited to 3 minutes per speaker. Please sign up on the clipboard located at the back of the Council Chambers.)

COUNCIL INITIATIVES

ADJOURN

(NOTE: Additional information on any of these items is available in the City Clerk's Office)

CALENDAR

(Council AND Boards & Commissions)

OCTOBER:

10/11/2005	Parking Advisory Board Planning Board REGULAR Council Meeting	4:00 p.m. 6:00 p.m. 6:30 p.m.	CH Conference Room 4 th Floor Library Council Chambers
10/12/2005	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.
10/13/2005	Library Board	NOON	Library
10/17/2005	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
10/18/2005	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
10/20/2005	Public Utilities Board	7:30 p.m.	Public Works-Belknap 2251 Belknap Ave
10/24/2005	REGULAR Council Meeting	6:30 p.m.	Council Chambers
10/25/2005	Traffic Control Board Planning Board	NOON 6:00 p.m.	4 th Floor Library 4 th Floor Library
10/26/2005	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 st Avenue North CH Conference Room
10/27/2005	Yellowstone County Board of Health (Note: November and December meetings to be combined at a date decided in October)	7:00 a.m.	Community Health Center

NOVEMBER:

11/01/2005	Community Development Board Zoning Commission Aviation & Transit Commission Board of Adjustment	3:00 p.m. 4:30 p.m. 5:30 p.m. 6:00 p.m.	4 th Floor Conf. Rm. Council Chambers Airport Terminal Council Chambers
11/04/2005	Human Relations Commission	NOON	CH Conference Room
11/07/2005	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
11/08/2005	Planning Board	6:00 p.m.	4 th Floor Library
11/09/2005	Parks/Recreation/Cemetery Bd	11:30 a.m.	Community Center 360 N. 23 rd St.

11/10/2005	Library Board	NOON	Library
11/11/2005	VETERAN'S DAY – CITY OFFICES CLOSED		
11/14/2005	Parking Advisory Board REGULAR Council Meeting	4:00 p.m. 6:30 p.m.	CH Conference Room Council Chambers
11/15/2005	Yellowstone Historic Preservation Board	8:00 a.m.	4 th Floor Library
11/21/2005	Council WORK SESSION	5:30 p.m.	Community Center 360 N. 23 rd St
11/22/2005	Planning Board	6:00 p.m.	4 th Floor Library
11/23/2005	Housing Authority Development Process Advisory Review Board (DPARB)	NOON 1:00 p.m.	2415 1 st Avenue North CH Conference Room
11/24/2005	THANKSGIVING DAY – CITY OFFICES CLOSED		
11/28/2005	REGULAR Council Meeting	6:30 p.m.	Council Chambers
11/30/2005	Housing Authority	NOON	2415 1 st Avenue North

A1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 11, 2005

TITLE: W.O. 99-07* – Lake Elmo Road (Main Street to Hansen Lane), *Includes Federal Aid Project STPE 1099(41) Lake Elmo Ped/Bike, Contract Award

DEPARTMENT: Public Works

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: This project will reconstruct Lake Elmo Road from Main Street to Hansen Lane. The project includes new street section, curb & gutter, drive approaches, sidewalks, accessibility ramps, storm drain improvements, and irrigation lateral relocation. The bid opening was delayed from September 27, 2005 to October 11, 2005 in order to give prospective bidders more time to prepare their bids. Bids were opened on October 11, 2005, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Funding for the project is available from the sources listed below.

Location of Work: Lake Elmo Road between Main Street to Hansen Lane

Funding Sources: CTEP Grant (\$176,000), Gas Tax (\$400,000), Assessments (\$160,000), Storm Drain (\$75,000)

Approved Dollar Amount for Project: **\$811,000**

Spent (and obligated) to date: **\$ 2,500**

Funding available: **\$808,500**

RECOMMENDATION

Staff recommends that Council delay award of a construction contract for W.O. 99-07* -- Lake Elmo Road (Main Street to Hansen Lane), *Includes Federal Aid Project STPE 1099(41), until the October 24, 2005 Council meeting.

Approved By: **City Administrator** **City Attorney**
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A2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 11, 2005

TITLE: SID 1370 Interlachen Drive (Phase 1), Contract Award

DEPARTMENT: Public Works

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: SID 1370 provides for the construction of missing sidewalks, drive approaches, accessibility ramps, curb & gutter, street widening, and storm drainage improvements on Interlachen Drive between River Oaks Drive and Skyview Drive (South) and on Lakewood Drive between Interlachen Drive and the East end of Lakewood Drive. Council passed Resolution No. 04-18195 on July 26, 2004, creating SID 1370, and Council passed Resolution No. 04-18221 on November 8, 2004, authorizing construction bids. Bids were opened on September 27, 2005, and, by law, Council must act on the bid opening at this meeting.

FINANCIAL IMPACT: Funding for the project is available from SID bonds and City contribution (\$20,000: Storm drain \$10,000 & Gas tax \$10,000).

Location of Work: Interlachen Drive between River Oaks Drive and Skyview Drive
Funding Sources: SID Bonds and City contribution (\$20,000)

Approved Dollar Amount for Project: **\$333,000**

Spent (and obligated) to date: \$ 4,000

Funding available: **\$329,000**

Bids were opened on September 27, 2005 with the following results:

Firm	Bid Amount
HL Ostermiller Construction, Inc.	\$153,481.50
CMG Construction, Inc.	\$156,775.00
J&J Concrete, Inc.	\$159,035.00
JTL Group, Inc.	\$231,550.00
<i>Engineer's Estimate</i>	<i>\$156,060.00</i>

RECOMMENDATION

Staff recommends that Council award a construction contract for SID 1370 Interlachen Drive (Phase 1) to HL Ostermiller Construction, Inc. for \$153,481.50 and 60 calendar days, with a substantial completion date not later than June 30, 2006.

Approved By: **City Administrator** **City Attorney**

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 11, 2005

TITLE: Award of the Window Cleaning Services for the Airport Terminal Building

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: The Billings Logan International Airport currently uses a contractor to provide the weekly, monthly, and quarterly window cleaning services for the main Terminal Building. Due to the height and location of many of these windows, we have found that a professional window-cleaning contractor can provide this service more efficiently. The current window-cleaning contract expires on October 31, 2005. A Request for Proposals was recently issued to provide this service for a period of three years beginning November 1, 2005. The contractor is required to provide all supplies, materials, equipment, and personnel, and must be properly insured. We received the following bids on this project:

<u>CONTRACTOR</u>	<u>BID</u>
Sparkle Plenty, Inc.	\$54,000
Skyline Services	\$54,000
Estimate	\$53,000

The procedure for the receipt of identical bids is addressed in the City of Billings, Montana Purchasing Manual, Section 3, and states "In the event two (2) or more bidders offer identical bids, all factors considered, new bids may be invited or award made by the drawing of lots, witnessed by the City Purchasing Agent and the applicable bidders." On Wednesday, September 28, 2005 at 3:00 p.m., lots were drawn in accordance with the approved procedure and Skyline Services' name was drawn.

FINANCIAL IMPACT: The total cost of this project will be \$54,000 over the next three years. We have sufficient funds budgeted in our Operations and Maintenance account for the cost of this three year contract.

RECOMMENDATION

Staff recommends that the City Council award the Service Agreement for Window Cleaning Services for the Airport Terminal Building to Skyline Services in the amount of \$54,000.

Approved By: **City Administrator** **City Attorney**

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A4

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, October 11, 2005

TITLE: Cascade Pump 20 MF and 200 HP Motor – Wastewater Plant
DEPARTMENT: Public Works Department
PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: In order to move primary treated wastewater to the secondary treatment process, large pumps are required. This pump has been identified as being in need of replacement to ensure uninterrupted operation at the wastewater plant.

FINANCIAL IMPACT: Bids were publicly advertised for the replacement of this pump on September 15 and 22, 2005. Bids were opened on September 27, 2005. There is adequate funding in the wastewater plant budget for this expenditure. The bid results are:

Cascade Pump Company	\$75,100.00
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The bidder is able to supply equipment matching the existing pumping equipment, which is deemed desirable for standardization.

RECOMMENDATION

Staff recommends that Council delay the bid award for the replacement of the Cascade Pump 20 MF and 200 HP Motor to October 24, 2005.

Approved By: **City Administrator** **City Attorney**

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A5

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Delay of Award of Abatement/Demolition Bid

DEPARTMENT: Administrative Services – Parking Division

PRESENTED BY: Liz Kampa-Weatherwax, Parking Division Director

PROBLEM/ISSUE STATEMENT: The Parking Division acquired the property at 114-116 and 120 North 26th Street (formerly the Daryll Apartments, commercial space and Smith's Funeral Chapel) for future expansion of the Park II facility. Hazardous material abatement, underground storage tank removal, building demolition and related construction activities must be completed at these property locations prior to construction. An invitation to bid was advertised on September 29 and October 6, 2005, for the project. Bids will be opened on October 11, 2005, will be analyzed and a contract award recommendation will be sent to the Council for the October 24, 2005, meeting.

ALTERNATIVES ANALYZED:

- Approve a contract to complete the abatement, storage tank removal and demolition needed to move forward with the Park II expansion project.
- Re-advertise the invitation to bid this project.

FINANCIAL IMPACT: The Parking Enterprise Fund has included the costs of necessary abatement and demolition as a portion of the approved Park II Expansion budget.

RECOMMENDATION

Staff recommends delaying award of bid until the October 24, 2005, City Council meeting.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

B**AGENDA ITEM:**

CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Professional Services Contract with HDR Engineering, Inc.—
Amendment No. 2

DEPARTMENT: Public Works Department

PRESENTED BY: David D. Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The City of Billings has recommended an amendment to the Professional Services Contract with HDR Engineering, Inc. This contract, dated February 23, 2004, is for professional design services for the Wastewater Treatment Plant Headworks Building Replacement and Improvements project (W.O. 04-14). Amendment No. 1, adding bidding and construction administration services to the scope of work, was approved by Council January 24, 2005. The changes in Amendment No. 2 will add tasks required by State Revolving Fund (SRF) to secure funding via a SRF loan. The tasks include compiling information and documentation to create a One-Year Performance Standards Certification and an overall Operations and Maintenance Manual, as well as making numerous submittals to SRF. Complete copies of Amendment No. 2 are on file in the City Clerk's office.

FINANCIAL IMPACT: Amendment No. 2 represents an increase in the amount of the contract by \$45,778.00. This increase is covered in the FY 06 budget.

Funds are available from the Utilities Wastewater Building and Operation Facilities Fund, account number 421-8493-623-92-20.

Original Professional Service Contract	\$ 385,500	<u>% Of Contract</u>	<u>Cumulative % Of Contract</u>
Amendment No. 1	\$ 398,841	103.5%	103.5%
Amendment No. 2	\$ 45,778	11.9%	115.3%
Total to Date	\$ 830,119		

RECOMMENDATION

Staff recommends that Council authorize the Mayor to execute Amendment No. 2 to the Professional Services Contract with HDR Engineering, Inc., resulting in a net increase of \$45,778.

Approved By: City Administrator City Attorney [\(Back to Consent Agenda\)](#)

C

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: West Billings-King Avenue Bridge Construction Agreement with Montana Department of Transportation - Federal Aid Project No. BR 1010(1)

DEPARTMENT: Public Works

PRESENTED BY: David Mumford, P.E., Public Works Director

PROBLEM/ISSUE STATEMENT: The Montana Department of Transportation is requesting that the City approve a Construction Agreement between the State of Montana and the City of Billings for construction on the West Billings-King Avenue Bridge located over and upon the Old Laurel Road and King Avenue West. This Construction Agreement is a standard form agreement from MDT and is required before Federal Aid funds can be expended on the project.

FINANCIAL IMPACT: The improvements being made under this project will be paid for by the State of Montana at no cost to the City.

RECOMMENDATION

Staff recommends that Council approve the Construction Agreement between the State of Montana and the City of Billings for construction on the West Billings-King Avenue Bridge.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A. Construction Agreement

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D

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Tuesday, October 11, 2005

TITLE: Consideration of Software Purchase from Qualified Software Provider for the City of Billings.

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The City of Billings has requested proposals from qualified software vendors to provide investment management software. The RFP was advertised September 1st and the 8th. The RFP was also emailed to several software vendors located by using the internet.

A review committee comprised of four City employees was present to evaluate the one proposal received. The proposal was rated on the companies' software cost, how well the software meets the City's needs, the companies qualifications and approach to implementation.

FINANCIAL IMPACT: The software will cost \$20,900 with annual maintenance of \$2,700. The software purchase and maintenance amount were approved through a supplemental budget request in the FY06 budget.

RECOMMENDATION

Staff recommends that Council award the software purchase to JP Morgan Sympro Inc.

Approved By: **City Administrator** **City Attorney**

ATTACHMENT

A- Copies of the Agreement

AGENDA ITEM:

**CITY COUNCIL AGENDA ITEM****CITY OF BILLINGS, MONTANA****Tuesday, October 11, 2005**

TITLE:	Approval of the Following Three Agreements with Wells Fargo Bank; (1) Sale and Purchase Agreement of Existing Automatic Teller Site to the City, (2) the Temporary Leaseback Agreement from the City to Wells Fargo, and (3) the Wells Fargo ATM Site Lease of the Park II Garage Space from the City to Wells Fargo
DEPARTMENTS:	Aviation and Transit/Administration
PRESENTED BY:	J. Bruce Putnam, A.A.E., Director of Aviation and Transit Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City staff has been working diligently and cooperatively with Wells Fargo Bank staff to negotiate a sale of their current drive up facility on Second Avenue and 26th; a leaseback of this site to Wells Fargo for their temporary use; and a lease to Wells Fargo for new drive up facilities that will be constructed on the ground level of the Park II expansion. These negotiations have been successfully completed and the Council will consider approving them. The execution by both parties will bring significant benefit to both in the form of constructing a much needed new MET Transit Operations Center and a new drive up banking facility for Wells Fargo, tied to their downtown branch bank. The Council reviewed these agreements at its August 26th meeting and tabled action until this meeting.

FINANCIAL IMPACT: The impacts are as follows:

- The MET Operations Center site will be purchased for the accepted appraisal value of \$975,000. All Transit Center site acquisition and construction costs will be funded from a combination of FTA Federal Discretionary Funds that will be received in two increments (\$4.383 million). These funds were secured for the City by Senator Burns. The local share Transit funding totals about \$1.1 million and is included in the 2006-11 CIP and the Transit budget. These funds will be expended over about a two-year period as the construction occurs following the Park II expansion and relocating the drive up banking function to that site.
- The leaseback Agreement will provide payments from Wells Fargo to the Aviation and Transit Department of \$1,625 per month during the period of their continued occupancy of the purchased site, pending the completion of their new facilities under Park II.
- The Park II drive up bank lease will generate \$2,850 per month for the Parking Division.

RECOMMENDATION

Staff recommends that the City Council approve the Purchase, Leaseback and ATM lease agreements with Wells-Fargo Bank.

Approved By: **City Administrator** **City Attorney**

INTRODUCTION

The City Council will consider approving three agreements with Wells Fargo Bank: (1) purchasing the bank's drive up banking facility at 203 N. 26th Street; (2) leasing that property to Wells Fargo while new drive up facilities are being constructed; and (3) leasing ground floor space in the Park II expansion to Wells Fargo for their new drive up bank facilities.

BACKGROUND

The City MET Transit Division has been searching for several years for a new off-street location for its downtown Operations Center. Recent committees comprised of downtown business persons, citizens, and staff recommended the Wells Fargo drive up bank located at 203 N. 26th Street and the Council accepted it. Wells Fargo is willing to sell its property and relocate its drive up banking facility to nearer their downtown branch bank. Negotiations were successful and the three Agreements that embody the business deals are being brought forward for Council approval.

The City is using 80% FTA grant funding to purchase the 41,000 square foot site and construct the Operations Center. Construction of the much needed, new facilities will begin 12–18 months from now, following completion of the Park II improvements. The recommended purchase price of \$975,000 is based on two (2) appraisals and a review appraisal that confirmed that price. A written offer was sent to Wells Fargo in August after the appraisals were approved by the FTA.

If the bank sells its drive up property to the City, it must remain in that location until its replacement facilities are ready for occupancy. A property lease from the City to Wells Fargo for that interim occupancy has been negotiated. The proposed lease rate is based on the purchase price and a 2% ROI, which equals \$1,625 per month. The lease term is flexible, but the bank must vacate the property within 30 days after opening the new drive-up facility.

The City is constructing a Park II expansion and the ground floor area is proposed for the new drive up. The City's designer is working cooperatively with Wells Fargo to accommodate the drive up, while ensuring that the parking operations can be effectively conducted on the upper floors. The triple-net lease has an initial term of 2018 and has two, ten-year extensions. The lease rate of \$2,850/month is equivalent to the revenue that the City would receive if the space were used for leased parking, but that amount is supported by other indicators of leased property value. The lease contains an annual lease payment inflator of 2.5%/year and establishes a method to determine the appropriate lease rate during the term extension periods.

RECOMMENDATION

Staff recommends that the City Council approve the Purchase, Leaseback and ATM lease agreements with Wells-Fargo Bank.

PURCHASE AND SALE AGREEMENT

SELLER:
WELLS FARGO BANK, N.A.

BUYER:
THE CITY OF BILLINGS, MONTANA

DATE: _____, 2005

AGREEMENT OF PURCHASE AND SALE

SELLER: WELLS FARGO BANK, N.A., a national banking association

BUYER: THE CITY OF BILLINGS, MONTANA, a Montana municipal corporation

PROPERTY: SWC, 2nd Ave. N. & North 26th Street, Billings, MT.
_____ [Block and Lot Legal Description]

PURCHASE PRICE: \$975,000.00

DUE DILIGENCE
PERIOD: From the Effective Date until _____, 2005 [Due
Diligence Deadline]

LATEST
CLOSING DATE: _____, 2005

EFFECTIVE
DATE: _____, 2005

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT OF PURCHASE AND SALE (this "Agreement"), dated as of _____, 2005 [Effective Date], is made between **WELLS FARGO BANK, N.A.**, a national banking association ("Seller"), and **THE CITY OF BILLINGS, MONTANA**, a Montana municipal corporation ("Buyer"), who for valuable consideration received, agree as follows:

Definitions.

For the purposes of this Agreement the following terms shall be defined as follows:

Buyer Inspection. The term "Buyer Inspection" shall have the meaning given thereto in Section 5.2, below.

Closing; Close of Escrow; Closing Date. The "Closing" or the "Close of Escrow" shall mean the consummation of the purchase and sale of the Property in accordance with this Agreement, as evidenced by the recording of the Deed in the official records of the county in which the Property is located. Closing and Close of Escrow are terms used interchangeably in this Agreement. The "Closing Date" shall be the date that Close of Escrow occurs, which shall not be later than _____, 2005. The Closing Date may not be extended beyond _____, 2005 [unless agreed to in writing by Seller in its sole and absolute discretion].

Deed. The term "Deed" shall have the meaning given thereto in Section 7, below.

Due Diligence Materials. The term "Due Diligence Materials" means the reports, surveys and other materials listed on Exhibit C, attached hereto.

Due Diligence Period. The "Due Diligence Period" is the period commencing on the Effective Date and ending on _____, 2005, during which Buyer must complete its due diligence as described in Section 5, below.

Effective Date. The "Effective Date" is the date set forth below the signature(s) of the party which is the last to sign this Agreement.

Environmental Law. The term "Environmental Law" means any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, and the Resources Conservation and Recovery Act of 1976, as amended.

Escrow. The term "Escrow" shall have the meaning given thereto in Section 3.1, below.

Escrow Holder. The "Escrow Holder" is:

American Title & Escrow
Attn: Sandi Sweeney
1001 South 24th Street West, #21
Billings, MT 59102
Telephone: (406) 248-7877
Facsimile: (406) 248-7875

Exhibits. The term "Exhibits" means the following, each of which is attached hereto and incorporated herein by this reference:

Exhibit A - Legal Description of Real Property
Exhibit B - Form of Deed
Exhibit C - Due Diligence Materials
Exhibit D - Form of WFB Garage Drive-Through Lease

Hazardous Substance. The term "Hazardous Substance" means any substance, material or waste which is or becomes designated, classified or regulated as being "toxic" or "hazardous" or a "pollutant" or which is or becomes similarly designated, classified or regulated, under any Environmental Law, including asbestos, petroleum and petroleum products.

Non-Foreign Certificate. The term "Non-Foreign Certificate" shall have the meaning given thereto in Section 9.2.1.3, below.

Notices. The term "Notices" means all notices or other communications required or permitted hereunder, which Notices shall be sent as follows to:

Seller: Wells Fargo Bank, N.A.
Corporate Properties Group
633 Folsom Street, 6th Floor
San Francisco, California 94107
Attn: Mr. Jeff Rader
Telephone: (415) 396-3115
Facsimile: (415) 396-7659

with a copy to:

MBV LAW LLP
855 Front Street
San Francisco, California 94111
Attn: Christopher Arnold, Esq.
Telephone: (415) 781-4400
Facsimile: (415) 989-5143

With a copy to: Wells Fargo Bank, N.A.
Attn: Dan Majeski, Regional Property Manager
175 North 27th Street
Billings, MT 59101

Telephone: (406) 657-3466
Facsimile: (406) 657-3410

Buyer: The City of Billings, Montana
P.O. Box 1178
Billings, MT 59103
Attn: Christina Volek, Interim City Administrator
Telephone: (406) 657-8433
Facsimile: (406) 657-8390

With a copy to: The City of Billings, MT
Attn: Brent Brooks, City Attorney
PO Box 1178
Billings, MT 59103
Telephone: (406) 657-8205
Facsimile: (406) 657-3067

Permitted Exceptions. The term "Permitted Exceptions" shall have the meaning given thereto in Section 8.2.1.2, below, and as shown on the Warranty Deed (Exhibit B hereto).

Property. The term "Property" shall have the meaning given thereto in Section 2, below.

Proration Date. The term "Proration Date" shall have the meaning given thereto in Section 9.5.2, below.

Purchase Price. The "Purchase Price" for the Property is \$975,000.00.

Real Property. The term "Real Property" means _____ [Block and Lot Legal Description]. The Real Property is more particularly described in Exhibit A, attached hereto.

Seller's Account. The term "Seller's Account" means the account to which the Purchase Price (less Seller's share of closing costs and prorations) shall be wired pursuant to written instructions to be furnished to Escrow Holder by Seller prior to Close of Escrow.

Termination Notice. The term "Termination Notice" shall have the meaning given thereto in Section 5.3, below.

Title Company. The "Title Company" is:

American Title & Escrow
Attn: Sandi Sweeney
1001 South 24th Street West #21
Billings, MT 59102
Telephone: (406) 248-7877
Facsimile: (406) 248-7875

Email: _____

Title Policy. The term "Title Policy" shall have the meaning given thereto in Section 7, below.

WFB Garage Drive-Through Lease. The term "WFB Garage Drive-Through Lease" shall mean the Lease of Seller's bank branch premises, between Buyer, as lessor, and Seller, as lessee, the form of which is attached hereto as Exhibit D.

Purchase and Sale of Property.

Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller on the terms hereinafter set forth all of Seller's right, title and interest in the Real Property, including all improvements located on the Real Property, together with all rights and appurtenances pertaining thereto (collectively, the "Property").

Purchase Price.

Not later than two (2) days immediately prior to Close of Escrow, Buyer shall deposit with Escrow Holder, by immediately available federal wire transfer or cashier's check, the Purchase Price of \$975,000.00, plus or minus the closing adjustments and prorations described in Section 9.5. Buyer shall also pay to Seller up to an additional Twenty Thousand Dollars (\$20,000) for Seller's documented relocation costs. Seller shall provide a written report to Buyer documenting Seller's relocation costs. Buyer shall reimburse Seller for Seller's relocation costs up to Twenty Thousand Dollars (\$20,000) within thirty (30) days of Buyer's receipt of Seller's report.

Remedies.

SELLER DEFAULT. IF THE TRANSACTION CONTEMPLATED BY THIS AGREEMENT DOES NOT CLOSE SOLELY AS A RESULT OF A DEFAULT BY SELLER, BUYER MAY PURSUE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND EQUITY AND MAY IMMEDIATELY TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO SELLER AND WITHOUT FURTHER OBLIGATION TO SELLER.

BUYER DEFAULT. IF THE TRANSACTION CONTEMPLATED HEREUNDER IS NOT CONSUMMATED DUE TO A DEFAULT BY BUYER, SELLER MAY PURSUE ALL RIGHTS AND REMEDIES AVAILABLE TO IT IN LAW AND IN EQUITY, AND IN ADDITION, SELLER MAY IMMEDIATELY TERMINATE THIS AGREEMENT BY WRITTEN NOTICE TO BUYER AND WITHOUT FURTHER OBLIGATION TO BUYER.

Due Diligence.

Due Diligence Materials. To the extent Seller has not already done so, Seller shall make available to Buyer the Due Diligence Materials for use by Buyer in connection with Buyer's investigation of the Property. Notwithstanding the foregoing, Seller shall not make available to Buyer (i) any appraisals of the Real Property, (ii) any financial projections relating to the Real Property, (iii) correspondence relating to routine management and maintenance matters, and (iv) any reports or studies prepared or commissioned by Seller concerning the extent to

which the improvements located on the Real Property are in compliance with the Americans With Disabilities Act.

Buyer Inspections. During the Due Diligence Period, provided that Buyer is not in default hereunder, Buyer shall have the right to enter and inspect the Real Property (each, a "Buyer Inspection") pursuant to the following terms and conditions:

Expenses. Each Buyer Inspection shall be at Buyer's sole cost and expense.

License; Insurance. The persons or entities performing the Buyer Inspection shall be properly licensed and qualified, shall have obtained all of the appropriate permits for performing relevant tests and shall have delivered to Seller, prior to performing any tests or entering the Real Property, evidence of proper and adequate insurance reasonably satisfactory to Seller. In addition, if a Buyer Inspection requires more than a visual inspection of the Real Property, then before undertaking such Buyer Inspection, Buyer shall arrange for Seller to be named as an additional insured on Buyer's commercial public liability insurance policy covering liability to property or persons for Buyer's activities on or about the Real Property in an amount not less than Two Million Dollars (\$2,000,000.00).

No Interference. Buyer and its representatives, agents or designees shall not interfere with Seller's or its tenants' business operations on, or use of, the Real Property.

Liens. Buyer shall not cause or suffer any lien or other encumbrance to be recorded against the Real Property, and shall promptly cause any lien or other encumbrance caused or suffered by Buyer (including mechanics' liens arising out of Buyer's activities under this Section 5.2) to be immediately discharged or bonded over, to Seller's satisfaction.

Restoration. If any portion of the Real Property is damaged due to Buyer's entry on the Real Property, Buyer shall, at its sole cost and expense, immediately repair and restore the Real Property to the same condition the Real Property was in immediately prior to the date the damage occurred.

Indemnity. Buyer shall indemnify, protect and defend (by counsel reasonably acceptable to Seller) and hold harmless Seller for, from and against any and all claims, damages, costs, liabilities and losses and expenses arising out of any entry, investigations, inspections, tests and other activities undertaken by Buyer or its agents, designees or representatives, including (A) reasonable attorneys' fees and expenses and other reasonable costs and expenses incurred by Seller in connection with investigating or defending any such matters, (B) any and all costs or expenses incurred by Seller resulting from or arising out of the aggravation of physical defects or conditions regarding hazardous, toxic or contaminated substances or materials and (C) any and all costs or expenses incurred by Seller in defending, discharging or bonding over any liens or encumbrances against the Property resulting from Buyer's activities with respect thereto.

Assessment for Environmental Hazards and Building Condition. Purchase is contingent on a favorable environmental assessment. Seller shall allow and cooperate with the City in securing an environmental hazards/assessment and building condition report on the property. The City will pay for the full cost of the environmental hazards assessment and building condition report. After completion of and review of the environmental assessment, if any further analysis or

remediation of the property is recommended, either party may request negotiations of the terms and conditions of this Agreement. However, Buyer may in its discretion withdraw from any further negotiations and terminate this agreement

Disapproval of Due Diligence Materials or Buyer Inspections. Buyer shall have the right, at any time during the Due Diligence Period, to reasonably disapprove the results of (i) Buyer's review of the Due Diligence Materials, or (ii) the Buyer Inspections of the Real Property, or (iii) Buyer's investigation and review of all other physical, environmental, legal and any other matters relating to the Property as Buyer may elect to investigate and review. If Buyer disapproves of any of the foregoing, Buyer may terminate this Agreement by providing Seller and Escrow Holder with written notice thereof (a "Termination Notice") on or prior to the last day of the Due Diligence Period. If Buyer delivers a Termination Notice to Seller and Escrow Holder during the Due Diligence Period, then (a) this Agreement, and all of the obligations, rights and liabilities of the parties to each other hereunder (except for Buyer's indemnification obligations under Section 5.2.6, Buyer's restoration obligations under Section 5.2.5 shall terminate and be of no further effect, and (b) Buyer shall immediately return to Seller the Due Diligence Materials and, if requested by Seller, deliver to Seller any written reports, tests or memoranda in Buyer's possession relating to the Buyer Inspections of the Real Property. If Buyer fails to provide Seller and Escrow Holder with a Termination Notice prior to the expiration of the Due Diligence Period, then (i) Buyer shall be deemed to have approved the results of Buyer's review of the Due Diligence Materials and the Buyer Inspections of the Real Property and waived Buyer's right to terminate this Agreement due to a failure of the conditions precedent described in Section 8.2.1 of this Agreement, and (ii) the parties shall proceed with Close of Escrow in accordance with the terms of this Agreement. If Buyer objects to any exceptions to title shown in the preliminary report referred to in Section 8.2.1.2, then unless such exception is of the type described in Section 8.2.2.1 (other than a "Permitted Exception"), Buyer may deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period that will be effective unless Seller commits to Buyer, before ten (10) days following expiration of the Due Diligence Period, to removing the exceptions or defects objected to by Buyer at Close of Escrow. In any event, the parties' participation in Close of Escrow shall be deemed a waiver of (i) each party's ability to terminate this Agreement on the basis of any failure of any conditions precedent and (ii) each party's right to seek damages from the other party for the breach of any representations, warranty or covenant of which the non-breaching party had actual knowledge prior to Close of Escrow.

Status.

As Is Purchase. Buyer shall examine, inspect and conduct its own investigation of all matters with respect to taxes, bonds, environmental conditions, the availability of permits, variances and other governmental approvals for any demolition and improvements contemplated by Buyer, the condition of improvements, tax and utility costs, permissible uses, title, zoning, covenants, conditions and restrictions and all other matters which, in Buyer's judgment, bear upon the value and suitability of the Property for Buyer's purposes. Except as otherwise specifically stated in Section 11.2, Seller hereby specifically disclaims any warranty, guaranty or representation, oral or written, past, present or future, of, as to or concerning: (i) the nature and condition of the Property, including the water, soil, geology, environmental conditions (including the presence or absence of any Hazardous Substance), and the suitability thereof for any and all

activities and uses which Buyer may elect to conduct thereon; (ii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise; (iii) the compliance of the Property or its operation with any laws, ordinances or regulations of any government or other body (including the Americans With Disabilities Act); (iv) the availability of permits, variances and other governmental approvals for any demolition and improvements contemplated by Buyer; or (v) the status of any of the Leases. The sale of the Property as provided for herein is made on an "AS IS" basis, and Buyer expressly acknowledges that, in consideration of the agreements of Seller herein, except as otherwise expressly specified in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF CONDITION, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY.

Release. Except for any breach by Seller of any representation or warranty of Seller contained in Section 11.2, Buyer, for itself and its successors and assigns, hereby releases and for-ever discharges Seller and its successors and assigns from, and waives any right to proceed against Seller and its successors or assigns for, any and all cost, expense, claim (including claims for rescission or reformation), liabilities and demands (including reasonable attorneys' and consultants' fees) at law or in equity, whether known or unknown, arising out of the physical, , economic, or legal condition of the Property. Buyer hereby specifically acknowledges that Buyer has carefully reviewed this Section, and discussed its import with legal counsel, is fully aware of its consequences, and that the provisions of this Section are a material part of this Agreement.

Indemnity.

Seller's Indemnity. Seller shall indemnify, protect and defend by counsel reasonably acceptable to Buyer and hold harmless Buyer from and against any and all claims, damages, losses, costs, expenses and liabilities (including all reasonable attorneys' fees and court costs paid or incurred by Buyer) which arise out of or are in any way connected with any misrepresentation or breach of warranty or covenant by Seller in this Agreement. This indemnity does not apply, however, to any item, matter, occurrence or condition which was known to or reasonably discoverable by Buyer prior to the Closing Date.

Buyer's Indemnity. Buyer shall indemnify, protect and defend by counsel reasonably acceptable to Seller and hold harmless Seller from and against any and all claims, damages, losses, costs, expenses and liabilities (including all reasonable attorneys' fees and court costs paid or incurred by Seller) which arise out of or are in any way connected with the ownership and/or operation of the Property after the Closing Date or any misrepresentation or breach of warranty or covenant by Buyer in this Agreement or any document delivered to Seller pursuant to this Agreement. However, any future or pending claim, damage, loss, costs, expenses and liabilities which arise, solely or in part, from sellers previous and exclusive ownership and/or operation of the property shall not be covered by buyer's indemnity.

Indemnified Parties. For purposes of this Section 6.3, all references to "Buyer" or "Seller" as an indemnified party shall include (A) their parent, subsidiary or affiliate corporations and (B) their directors, officers, shareholders, employees and agents.

Survival. The provisions of this Section 6 shall survive the Closing Date.

Warranty Deed.

Seller shall convey the Real Property to Buyer by a warranty deed (the "Deed"), in the form of Exhibit B, attached hereto. The conclusive evidence of delivery of title to the Real Property by Seller to Buyer shall be the willingness of Title Company to issue, upon payment of Title Company's regularly scheduled premium, an owner's standard form title insurance policy (the "Title Policy") in the amount of the Purchase Price, showing title to the Real Property vested of record in Buyer, subject only to such exceptions as are recited in Section 8.2.2.1 below, and as shown on the Warranty Deed (Exhibit B hereto).

Conditions Precedent to Close of Escrow.

In addition to the documents and funds that must be deposited into Escrow prior to Close of Escrow as detailed in Section 9.2, the following are conditions precedent to Close of Escrow:

Seller. Seller's obligation to proceed with Close of Escrow is conditioned on the satisfaction of each of the following by not later than the Closing Date:

No Suit. As of Close of Escrow, no suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Property.

Buyer's Representations. Buyer's representations and warranties set forth herein shall be true and correct as of Close of Escrow.

Buyer's Covenants. Buyer shall have performed all of Buyer's covenants and agreements contained herein which are required to be performed by Buyer on or prior to Close of Escrow.

Buyer. Buyer's conditions precedent to Close of Escrow are the following:

Due Diligence Period. During the Due Diligence Period:

Inspection. Buyer's approval of the Buyer Inspections, the Due Diligence Materials, and all other physical, environmental, legal and any other matters relating to the Property as Buyer may elect to investigate.

Preliminary Report. Buyer's inspection and approval of a current preliminary report issued by Title Company for the Real Property and all of the exceptions contained in such report. All of the exceptions contained in the preliminary report which are

approved or deemed approved by Buyer (as provided in Section 5.3) are hereinafter referred to as the "Permitted Exceptions."

Close of Escrow. As of Close of Escrow:

Title Policy. The willingness of Title Company to issue, upon the payment of its regularly scheduled premium, a Title Policy for the Real Property, subject only to (i) a lien for real property taxes and assessments not then delinquent; (ii) the Permitted Exceptions; (iii) matters affecting the condition of title to the Real Property created by or with the written consent of Buyer; (iv) any matters that would be shown by any survey of the Real Property or by inquiry of persons in possession of the Real Property; (v) the Leases; (vi) the WFB Garage Drive-Through Lease; (vii) any covenants, conditions, declarations, and restrictions recorded as an interest affecting the Real Property; (viii) reservations and exceptions and patents from the United States or the State of Montana; (ix) all building, use, zoning restrictions and ordinances, and sanitary and environmental restrictions; and (x) all minerals and prior conveyances, leases, transfers of any interest in minerals, including oil, gas, and other hydrocarbons.

No Suit. No suit, action or other proceeding shall be pending or threatened which seeks, nor shall there exist any judgment the effect of which is, to restrain the purchase and sale of the Property.

Seller's Representations. Seller's representations and warranties set forth herein shall be true and correct.

Seller's Covenants. Seller shall have performed all of Seller's covenants and agreements contained herein which are required to be performed by Seller on or prior to Close of Escrow.

Failure of Conditions. If any of the conditions set forth above in Section 8.1 remain unsatisfied as of the deadline for Close of Escrow, then Seller may terminate this Agreement by giving written notice of termination to Buyer within ten (10) days following such deadline, whereupon all rights and obligations of the parties one to the other shall cease and terminate (except for Buyer's indemnification obligations under Section 5.2.6, and Buyer's restoration obligations under Section 5.2.5. If any of the conditions set forth above in Section 8.2.2 remain unsatisfied as of the deadline for Close of Escrow, then this Agreement shall terminate automatically, unless Buyer immediately waives the condition(s) precedent that remain unsatisfied and immediately proceeds to Close Escrow. If this Agreement terminates for failure of one or more conditions set forth in Section 8.2.2, all rights and obligations of the parties one to the other under this Agreement shall cease and terminate (except for Buyer's indemnification obligations under Section 5.2.6, and Buyer's restoration obligations under Section 5.2.5.

Buyer's Pre-Closing Planning and Development Efforts. If Buyer intends, prior to Close of Escrow, to apply for use permits, zoning variances or other governmental approvals for new uses of prospective tenants of the Property, Buyer hereby acknowledges that Seller shall be under no obligation to render assistance to Buyer in such efforts, and all such undertakings shall be commenced and prosecuted without obligating Seller or encumbering the Property in any

manner. Without limiting the generality of the foregoing, Seller shall have no obligation to submit or sign applications for use permits, zoning variances or similar governmental approvals sought by Buyer, and Buyer shall not represent itself as authorized to speak on behalf of Seller in connection with Buyer's planning or development efforts for the Property. Notwithstanding the foregoing, upon request from Buyer, Seller shall sign and deliver a letter to any applicable governmental authority or lending institution confirming that this Agreement is in effect and the anticipated Closing Date.

Closing.

Time. Escrow shall close ("Close of Escrow") when all documents and funds specified in this Section 9 have been deposited into Escrow. The failure of Seller or Buyer to be in a position to close Escrow by the Closing Date shall constitute a default under this Agreement.

Documents. Not less than two (2) days prior to Close of Escrow, which shall occur on or before _____, 2005 [Closing Deadline], the parties shall deposit into Escrow the funds and the documents described below.

Seller. Seller shall deposit the following:

Deed. The duly executed and acknowledged Deed, conveying the Real Property to Buyer; along with a duly executed Montana Realty Transfer Certificate.

Non-Foreign Certificate. A duly executed certificate (the "Non-Foreign Certificate") from Seller certifying that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code;

WFB Garage Drive-Through Lease. A duly executed counterpart or counterparts of the WFB Garage Drive-Through Lease;

Lease Memorandum. A duly executed and acknowledged counterpart of a memorandum of the WFB Garage Drive-Through Lease (the "Lease Memorandum"), suitable for recording in the Official Records of the County in which the Real Property is located; and

Additional Documents. Such other documents, including escrow instructions, as may be reasonably required of Seller to close the transaction in accordance with this Agreement.

Buyer. Buyer shall deposit the following:

Remainder of Purchase Price. The remainder of the Purchase Price;

Additional Funds. Additional cash in the amount necessary to pay Buyer's share of the closing costs and prorations, as hereinafter set forth; and

WFB Garage Drive-Through Lease. A duly executed counterpart or counterparts of the WFB Garage Drive-Through Lease;

Lease Memorandum. A duly executed and acknowledged counterpart of the Lease Memorandum;

Repurchase Right. A duly executed and acknowledged Right to Repurchase in the form of Exhibit "E".

Additional Documents. Such other documents and funds, including escrow instructions, as may be reasonably required of Buyer to close the transaction in accordance with this Agreement.

Procedure. Escrow Holder shall close Escrow as follows:

Deed and Lease Memorandum. Record the Deed and the Lease Memorandum in the Official Records of the County in which the Real Property is located and deliver conformed copies thereof to Buyer and Seller.

Purchase Price. Deliver the Purchase Price to Seller (less Seller's share of the closing costs and prorations) via wire transfer of U.S. federal funds to Seller's Account, or as otherwise directed by Seller, in accordance with Seller's instructions provided to Escrow Holder prior to Close of Escrow:

Deliveries to Buyer. Deliver to Buyer (i) the original Non-Foreign Certificate, (ii) conformed copies of the recorded Deed and Lease Memorandum, (iii) a counterpart original of the WFB Garage Drive-Through Lease; (iv) the original Title Policy, and (v) Buyer's closing statement.

Deliveries to Seller. Deliver to Seller (i) conformed copies of the recorded Deed and Lease Memorandum; (ii) a counterpart original of the WFB Garage Drive-Through Lease; and (iii) Seller's closing statement.

Escrow Instructions. This Agreement shall serve as escrow instructions and an executed copy of this Agreement shall be deposited by Seller and Buyer with Escrow Holder following the execution and delivery hereof. The parties agree to execute for the benefit of Escrow Holder such additional escrow instructions as are necessary to close the Escrow, provided that the additional escrow instructions do not change the terms of this Agreement but merely offer protection to Escrow Holder. Seller and Buyer hereby designate Escrow Holder as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Internal Revenue Code.

Closing Costs and Prorations.

Closing Costs.

Seller's Responsibility. Seller shall be responsible for the following closing costs: (i) fifty percent (50%) of the standard insurance premium for the Title Policy; and (ii) Seller's attorneys' fees. In addition, Seller shall pay the Real Estate Compensation described in Section 10.

Buyer's Responsibility. Buyer shall be responsible for the following closing costs: (i) fifty percent (50%) of the standard insurance premium for the Title Policy;

(ii) costs for any endorsements to the Title Policy requested by Buyer; (iii) all costs associated with any financing obtained by Buyer; and (iv) Buyer's attorneys' fees.

Other Charges. Other charges of the Closing, including any governmental impositions incurred as a result of the transfer of title to Buyer (e.g., transfer, sales or excise taxes), Escrow fees and recording costs, shall be apportioned between Buyer and Seller in accordance with the usual custom and practice of the County in which the Real Property is located.

Prorations. The adjustments and prorations set forth below shall be made at Close of Escrow. For purposes of this Section 9.5.2, the term "Proration Date" shall be defined as 11:59 p.m. on the day preceding Close of Escrow.

Rents. All rents from Leases shall be prorated as of the Proration Date based on a 30-day month.

Real Estate Taxes. All real and personal property taxes, installments of bonds and special taxes and assessments attributable to the Property shall be prorated as of the Proration Date based on a 365-day year and the assessed value of the Property in effect at Close of Escrow. Seller shall pay all such real estate taxes which are due for the period of Seller's ownership of the Property through and including the Proration Date.

Re-proration of Real Estate Taxes. If at any time after Close of Escrow additional or supplemental real estate taxes are assessed against the Real Property by reason of any event occurring prior to or including Close of Escrow, or there is any rebate of such taxes, Buyer and Seller shall promptly re-prorate such taxes, and any amounts due from one party to the other shall be paid in cash at that time.

Utilities. Buyer shall arrange with all utility services and companies serving the Real Property to have accounts started in the name of Buyer or its property manager beginning as of the Proration Date. Seller shall not assign to Buyer any deposits Seller has with any utility services or companies. Buyer and Seller shall cooperate to have the utility services and companies make utility readings as of the Proration Date. If readings cannot be made, utility charges shall be prorated as of the Proration Date based on estimates from the latest bills available; provided, in any event, Seller shall pay, through and including the Proration Date, all utility charges attributable to the Property.

Refunds of Real Estate Taxes. Buyer specifically acknowledges that Seller shall be entitled to any refund of real and personal property taxes, installments of bonds and special taxes and assessments attributable to the Property and allocable to the period prior to Close of Escrow. Any such refunds shall be paid to Seller regardless of when they are received.

Additional Costs. Buyer and Seller each shall pay their own legal, lending and other fees and expenses incurred in connection with the negotiation, documentation and closing of the transactions contemplated by this Agreement.

Seller's Repurchase Rights. Buyer intends to develop the Property as a bus transit center. In the event that Buyer fails to develop the Property as a bus transit center (or related transportation facility), or subsequently ceases to use the property as a bus transit center (or related transportation facility) or another public use, then Seller shall have the right and option to repurchase the property from Buyer at its then fair market value. Seller's repurchase rights shall continue and survive so long as Seller or its successors and assigns maintain a banking facility located at 175 North 27th Street, Billings, Montana. Contemporaneously herewith, Buyer shall execute a recordable instrument memorializing Seller's repurchase rights in the form of Exhibit E hereto.

Brokerage Commission.

Each party to this Agreement warrants to the other that no person or entity can properly claim a right to a real estate commission, finder's fee or other real estate brokerage-type commission based upon the acts of that party with respect to the transactions contemplated with respect to this Agreement. Each party hereby agrees to indemnify, protect and defend the other (by counsel acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all damages, liabilities, loss, cost and expense, including, but not limited to, reasonable attorneys' fees and court costs, resulting from any claims for a real estate commission, finder's fee or other real estate brokerage-type commission by any person or entity based upon such acts. This indemnity shall survive Close of Escrow or any earlier termination of this Agreement.

Representations and Warranties.

Buyer. Buyer represents and warrants to Seller, which representations and warranties shall survive the execution of this Agreement and Close of Escrow, the following:

Binding. This Agreement constitutes a valid and legally binding obligation of Buyer, enforceable in accordance with its terms.

Authority. Buyer has the full power and authority to execute and deliver and fully perform its obligations under this Agreement.

Buyer's Independent Investigation. Buyer warrants and represents to Seller that Buyer is purchasing the Property based exclusively upon Buyer's independent investigation, analysis, and due diligence. Buyer warrants and represents that (a) Buyer has had the opportunity to consult with appraisers, experts, lawyers, environmental consultants, accountants, and others as Buyer deemed prudent and advisable; (b) that Buyer enters into this Agreement based upon Buyer's own investigation and knowledge; and (c) that Buyer is not relying upon any statement or representation of Seller (or anyone on behalf of Seller), except as expressly set forth in this Agreement. Buyer acknowledges receipt of a Phase I Environmental Assessment of the Property and accepts the Property "AS IS". Buyer acknowledges that Buyer is purchasing the Property **WITHOUT ANY WARRANTY OR REPRESENTATION** from Seller, of any kind whatsoever, except as expressly set forth in this agreement. Buyer acknowledges that Seller is making no warranties **EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

Bus Transit Center. Buyer warrants and represents to Seller that Buyer intends to develop the Property as a Bus Transit Center or another public use. Buyer further warrants and represents to Seller that Buyer shall not use, lease, or sell the Property to another bank, credit union, or financial institution.

Seller. Whenever the existence or absence of facts or circumstances is qualified by the expression “to be best of Seller’s actual knowledge” or “to Seller’s knowledge”, or words to like effect, it is based solely on the actual knowledge of Seller’s employees who have direct involvement in this transaction. Seller has not undertaken any other investigation except as expressly stated herein, and is relying upon Buyer to complete Buyer’s own due diligence investigation. Subject to the foregoing, Seller represents and warrants to Buyer, which representations and warranties shall survive the execution of this Agreement and Close of Escrow, the following:

Binding. This Agreement constitutes a valid and legally binding obligation of Seller, enforceable in accordance with its terms.

Authority. Seller has the full power and authority to execute and deliver and fully perform its obligations under this Agreement.

Encumbrances

No Liens. To the best of Seller’s actual knowledge, there are no unrecorded liens, financing statements, encumbrances or agreements affecting the Property that will survive the closing, and Seller has committed no acts which would result in the creation of such liens, financing statements, encumbrances or agreements affecting the Property. No work has been done on, and no materials have been furnished to, the Property for which full payment has not been made and for which a lien could be filed against the Property.

Encroachments. To the best of Seller’s actual knowledge, there are no encroachments upon the Property, nor does any improvement on the Property encroach upon any property owned by others.

Easements. To the best of Seller’s actual knowledge, there are no easements, rights-of-way, or claims thereof over or across the Property which are not recorded in the office of the Clerk and Recorder of Yellowstone County, Montana.

Disputes: Use of Property. Seller, to the best of Seller’s actual knowledge, knows of no existing disputes concerning the Property, and no portion of the Property is possessed by any third party, nor does any third party have any right to use the Property.

Hazardous Substances. To the best of Seller’s actual knowledge, the Property has not been used as a landfill or dump and has not been used for the production, release, or disposal of petroleum, asbestos, or hazardous wastes or substances, as defined under federal, state, and local laws, regulations, and ordinances affecting the Property (referred to collectively herein as “Hazardous Substances”). To the best of Seller’s actual knowledge, Seller has no records revealing

that any Hazardous Substances have been dumped, deposited, spilled, leaked, discharged, or disposed of on, or escaped from, the Property.

Miscellaneous.

Successors and Assigns. This Agreement shall be binding upon the heirs, executors, administrators, and successors and assigns of Seller and Buyer; provided, however, Buyer shall not assign any or all of Buyer's rights and obligations hereunder to any party without the prior written consent of Seller, which consent Seller shall have the right to withhold in its sole discretion. Any such assignment in violation of this provision shall be void. If Seller consents to an assignment, the assignment will not be effective against Seller until Buyer delivers to Seller a fully executed copy of the assignment instrument, which instrument must be satisfactory to Seller in both form and substance and pursuant to which the assignee assumes and agrees to perform for the benefit of Seller the obligations of Buyer under this Agreement, and pursuant to which the assignee makes the warranties and representations required of Buyer under this Agreement.

Entire Agreement. This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both oral and written.

Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for breach of this Agreement, or to enforce any judgment relating to this Agreement and the transaction contemplated hereby, the prevailing party shall be entitled to attorneys' fees (including in-house attorney's fees) and court costs, including those incurred with respect to bankruptcy, insolvency, and receivership proceedings.

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. The parties expressly agree that venue for any legal proceedings shall be in the Montana Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

Further Assurances. Seller or Buyer shall promptly perform, execute and deliver or cause to be performed, executed and/or delivered at or after Close of Escrow any and all acts, deeds and assurances as either party or Escrow Holder may reasonably require in order to carry out the intent and purpose of this Agreement.

Severability. In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Notices. All notices required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, national overnight courier service or facsimile to the addresses stated above. Notices

and other communications shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the posting by the United States Post Office, (iii) if sent by national overnight courier service, one (1) business day after delivery to such courier service, or (iv) if given by facsimile, when sent and receipt is confirmed. Any notice, request, demand, direction or other communication sent by facsimile must be confirmed within twenty-four (24) hours by a letter mailed or delivered in accordance with the foregoing.

Counterparts. This Agreement may be executed in one (1) or more counterparts, and all of the counterparts shall constitute but one and the same agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.

Time. Time is of the essence of every provision herein contained.

Nonwaiver. Unless otherwise expressly provided herein, no waiver by a party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the party waiving the provision. No delay or omission in the exercise of any right or remedy accruing to a party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition. All rights or remedies afforded to a party hereunder or by law shall be cumulative and not alternative, and the exercise of one right or remedy shall not bar other rights or remedies allowed herein or by law.

Captions. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement.

Survival. Except as expressly set forth in this Agreement, upon Close of Escrow, each of the terms, covenants and conditions of this Agreement shall be deemed to have merged into the Deed.

Exhibits. All exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.

Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

Not Offer. The submission of this Agreement to Buyer shall not constitute an offer and neither Buyer nor Seller shall be obligated to purchase or sell the Property until this Agreement is executed by Buyer and Seller. Prior to execution of this Agreement by Buyer and Seller, Seller expressly reserves the right to negotiate with other prospective buyers of the Property or to decline to sell or dispose of the Property without penalty or any obligation to Buyer.

Delivery of Possession.

Seller shall deliver possession of the Real Property to Buyer at Closing; provided, however, that Seller may retain possession of the Real Property pursuant to a lease from Buyer if, at Closing, Buyer has not then delivered the premises to Seller pursuant to the WFB Garage Drive-Through Lease. Such lease shall be at a rental equal to \$1,625.00 per month and shall have a term commencing on the Closing Date and expiring 60 days following the “Rent Commencement Date” under the WFB Garage Drive-Through Lease (except that Seller shall not be required to pay rental under both leases for any period of overlap in the terms of said leases).

Condition of Real Property. Seller warrants and represents to Buyer that the plumbing, HVAC and electrical systems in the building located on the real property described on Exhibit “A” is in good working condition, reasonable wear and tear excepted, and that Seller has not deferred any substantial maintenance on the building.

Alternative Dispute Resolution. All matters involving disputes in this Agreement shall be referred to the City Administrator, City of Billings, for attempted resolution prior to commencement of legal action to resolve any dispute.

This Agreement is contingent upon the approval of the City Council and the signature of the Mayor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in one or more counterparts, on the date(s) set forth below, effective as of the Effective Date.

Seller:

WELLS FARGO BANK, N.A., a national
banking association

Buyer:

The City of Billings, Montana

By _____
Name: _____
Title: _____

Date: _____, 2005

Date: _____, 2005

EXHIBIT A

Real Property

The land referred to herein is situated in the State of Montana, and is more particularly described as follows:

_____ [Block and Lot Legal Description]

EXHIBIT B

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

The City of Billings, Montana
Attn: Marita Herold, City Clerk
PO Box 1178
Billings, MT 59103

MAIL ALL TAX STATEMENTS TO:

Same as above.

FOR RECORDER'S USE ONLY

APN: _____
Transfer Tax: See separate statement not for public record

After recording return to:
City of Billings, MT
Attn: Marita Herold, City Clerk
PO Box 1178
Billings, MT 59103

WARRANTY DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, **WELLS FARGO BANK, N.A.**, a national banking association ("Grantor"), hereby grants unto to **THE CITY OF BILLINGS, MONTANA** of PO Box 1178, Billings, MT 59103 ("Grantee"), that certain real property located in the City of Billings, County of Yellowstone, State of Montana, more particularly described below:

_____ [Block and Lot Legal Description]

TO HAVE AND TO HOLD unto the Grantee, its personal representatives, heirs, and assigns forever, subject to the following:

- (a) Reservations and exceptions in patents from the United States or the State of Montana;
- (b) Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose, and which are not shown by the public records;
- (c) All declarations, restrictions, covenants, and conditions of record;
- (d) All existing easements or claims of easements and rights-of-way of record and apparent from an examination of the property;
- (e) All building, use, zoning restrictions and ordinances, and sanitary and environmental restrictions;
- (f) Taxes and assessments for 2005 and subsequent years (pro-rated as of the closing date);

(g) All mineral rights and prior conveyances, leases, transfers of any interest in minerals, including oil, gas and other hydrocarbons;

EXCEPT with reference to the items referred to in paragraphs (a) through (g), inclusive, this Deed is given with the usual covenants expressed in Section 30-11-110, Mont. Code Ann.

DEED RESTRICTION: THIS DEED IS GIVEN ON CONDITION THAT AND SUBJECT TO THE REQUIREMENT THAT THE PROPERTY DESCRIBED HEREIN ABOVE SHALL NOT BE SOLD OR LEASED, OR OTHERWISE TRANSFERRED, TO ANY BANK, CREDIT UNION, OR FINANCIAL INSTITUTION TO PROVIDE FINANCIAL SERVICES TO THE PUBLIC SO LONG AS WELLS FARGO BANK, N.A. OR ITS SUCCESSORS AND ASSIGNS OCCUPY THE PROPERTY LOCATED AT 175 NORTH 27TH STREET, BILLINGS, MONTANA.

IN WITNESS WHEREOF, this the Grantor has executed this Warranty Deed this _____ day of _____, 2005.

**WELLS FARGO BANK, N.A., a national
banking association**

By _____
Name: _____
Title: _____

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public for the State of _____, personally appeared _____, known to me to be _____ of the entity executing the within instrument, and acknowledged to me that he/she executed the same in upon behalf of said entity, having first been authorized so to do.

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

(signature)

Printed name:

(SEAL)

Notary Public, State of

Residing at

My commission expires:

Mm/dd/yyyy

EXHIBIT C

DUE DILIGENCE MATERIALS

A commitment for title insurance.

EXHIBIT D

FORM OF WFB DRIVE-THROUGH LEASE

To be attached

1.	<u>Definitions</u>	1
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Exhibits

Exhibit A - Real Property

Exhibit B - Warranty Deed

Exhibit C - Due Diligence Materials

Exhibit D - Form of WFB Garage Drive-Through Lease

LEASE

CITY OF BILLINGS
Landlord

WELLS FARGO BANK, N.A.
Tenant

ATM Drive-Through

Billings Municipal Garage No. 4, Billings, Montana

THIS LEASE is made as of [Month] _____, 2005, between The **CITY OF BILLINGS**, Montana, a Montana municipal corporation ("Landlord"), and **WELLS FARGO BANK, N.A.**, a national banking association ("Tenant").

Premises. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, certain premises ("Premises") comprising a drive-through teller facility that will be part of the Billings Municipal Garage No. 2 (the "Garage") located at 2651 1st Avenue North, Billings, Montana. The Premises shall comprise an approximately 21,420 square foot parcel of land, suitable for up to ten drive-through lanes, and facilities housing up to ten automated teller windows (remote teller or fully automated) ("ATMs"), all as shown on Exhibit "A".

Delivery. Landlord shall deliver exclusive possession of the Premises to Tenant, with all of Landlord's Work (as defined below) then completed and otherwise in a condition suitable for Tenant to commence Tenant's Work (as defined below), by not later than _____, 2006. Landlord's Work shall comprise all improvements, alterations and additions to the Premises described in Exhibit "B."

Access. Landlord shall provide Tenant and its agents, employees, representatives and customers with unobstructed access to the Premises at all hours of the day and night, seven days per week. Landlord agrees not to install, construct, stack, place, store or otherwise locate any improvements, barriers, tire stops, signs, displays, fixtures, merchandise or other obstructions (nor allow any of Landlord's other tenants to do so) in such close proximity to the Premises as to obstruct the visibility or accessibility of the ATMs to users or servicers. Provided, however, that nothing in this provision will prevent the Landlord from façade and structural work that are part of the garage structure or place an obligation upon the Landlord to create, permit, or construct vehicle access across public right-of-way or façade openings different from those depicted in Exhibit B. In the event of any construction, remodeling or other activity at the Garage by Landlord (or other persons acting with Landlord's consent), Landlord shall undertake such activities (or cause them to be undertaken, if done by others) so as to facilitate continued access to the ATMs to the fullest extent possible and so as to prevent the closure of the ATMs.

Electrical and Communications Hookups. This Lease shall also grant and authorize Tenant's non-exclusive use of (and power and communications hook-ups to) utility connection points within the Garage or Premises. In addition, as an easement appurtenant to this Lease, Tenant shall have a non-exclusive easement for a pneumatic or similar mechanical chase connecting the Premises to the bank facility located at 175 N. 27th Street, presently owned by Tenant and more particularly described in Exhibit "C"; provided that such easement must not impede normal vehicular traffic into, out of and throughout the Garage or normal vehicular traffic in the alleys and streets that surround the Garage.

Term. The term of this Lease shall commence on the Term Commencement Date (as defined below), and subject to Section 0 below, shall extend through December 31, 2018. Tenant shall have the right to extend the Lease Term beyond December 31, 2018 pursuant to Section 7 below.

The Term Commencement Date. The Term Commencement Date shall be the latest of the following dates: (A) the date Landlord delivers exclusive possession of the Premises to Tenant, with all Landlord's Work then completed and otherwise in a condition suitable for Tenant to commence Tenant's Work, (B) the date Landlord estimates the Premises will be ready for delivery to Tenant in a written notice given to Tenant at least fourteen (14) days in advance of said estimated delivery date, and (C) the date that Landlord acquires title (as evidenced by a recorded deed) to Tenant's existing

41,000 square-foot parcel of land located at the southwest corner of 2nd Avenue N. and North 26th Street.

Renewal Options. Tenant shall have the options of extending the term for two (2) periods of ten (10) years (each an "Extension Term") by giving written notice of Tenant's exercise to Landlord at least three (3) months prior to the expiration of the term, as it may previously have been extended. Upon exercise of each such option by Tenant, the term shall automatically be extended for the Extension Term upon the same terms, covenants and conditions of this Lease.

Rent.

- a. **Rental rate.** On the first day of each calendar month during the initial term of this Lease following the Rent Commencement Date, Tenant shall pay to Landlord, without billing, a fixed rent of Two Thousand Eight Hundred Fifty Dollars (\$2,850.00). The Rent Commencement Date shall be the earlier of the date Tenant commences banking transactions at the Premises or sixty (60) days following the Term Commencement Date.
- b. **Annual Rent Increase.** During the initial term as described in Section 5 above, the monthly rental rate will be adjusted annually on the anniversary of the Rent Commencement Date by increasing the monthly rental by 2.5% annually.
- c. **Extension Rent.** Monthly Base Rent during the Extension Terms (if applicable) shall equal the "Fair Market Rent" of the Premises, as defined below, determined as of the first day of each Extension Period, except that in no event may Monthly Base Rent for the Extension Period be less than the amount of Monthly Base Rent for the last lease year of the Original Term.
- d. **Fair Market Rent.** The term "Fair Market Rent" shall mean the going market rental as of the date of the commencement of the extension for a tenant proposing to sign a 10-year triple net lease, giving due regard for the location, size, use, and general condition of the Premises and Building.
- e. **Negotiation Period.** Commencing from the date that notice of Tenant's exercise of the option to extend the Lease Term is delivered to Landlord, and continuing thereafter for ninety (90) days ("Negotiation Period"), the parties shall negotiate in good faith to agree upon the Fair Market Rent. If the parties are unable to agree on the Fair Market Rent prior to the expiration of the Negotiation Period, the matter shall be submitted into appraisal, pursuant to the terms and conditions set forth in Section 2c below.
- f. Within fifteen (15) days after the expiration of the Negotiation Period, each party, at its own cost and by giving written notice to the other party, shall appoint a qualified real estate appraiser with a membership in the Appraisal Institute and at least five (5) years' full-time commercial appraisal experience in the area where the Premises is located, to appraise and determine the Fair Market Rent. If, in the time provided, only one (1) party shall give written notice of the appointment of an appraiser, the single appraiser appointed shall determine the Fair Market Rent. If two (2) appraisers are appointed by the parties, the two (2) appraisers shall independently and without consultation prepare an appraisal of Fair Market Rent within thirty (30) days after

their appointment. Each appraiser shall seal its respective appraisal after completion. After both appraisals are completed, the resulting appraisals of the Fair Market Rent shall be opened and compared. If the value of the appraisals differ than by no more than ten (10) percent of the value of the higher value, then the Fair Market Rent shall be the average of the two appraisals.

- g. If the values of the appraisals differ by more than ten (10) percent of the value of the higher appraisal, then within ten (10) days after the date the appraisals are compared, the two appraisers selected by the parties shall appoint a third similarly-qualified appraiser. The two appraisers shall then submit his or her independent appraisal in simple letter form to the third appraiser, stating his or her determination of the Fair Market Rent, which determination may not be changed from that which was set forth in such appraiser's seal appraisal. The sole responsibility of the third appraiser shall be to determine which of the determinations made by the first two appraisers is most accurate. The third appraiser shall have no right to propose a middle ground or any modification of either of the determinations made by the first two appraisers. The third appraiser's choice shall be submitted to Landlord and Tenant within fifteen (15) days after the third appraiser has received the written determination from each of the first two appraisers. The Fair Market Rent shall be determined by the selection made by the third appraiser from the determinations submitted by the first two appraisers.
- h. Each party shall pay the fees and expenses of their own appraiser, and fifty (50) percent of the fees and expenses of, and cost of appointing the third appraiser.
- i. Subject to the criteria set forth hereinabove, the Fair Market Rent shall be determined using the "market comparison approach". The appraisers shall use their best efforts to fairly and reasonably appraise and determine the Fair market Rent in accordance with the terms of this Lease, and shall not act as advocates for either Landlord or Tenant.

i. The appraisers shall have no power to modify the provisions of this Lease, and their sole function shall be to determine the Fair Market Rent in accordance with the terms of this section.

Triple-Net Lease. This is a Triple-Net Lease. Tenant shall be responsible for paying all operating and maintenance expenses associated with the Premises, including all utilities, water, electricity, gas, janitorial services, and garbage removal. Tenant shall be responsible for paying one hundred percent of all Tenant's costs associated with the Premises. Tenant shall be responsible for paying all personal property taxes levied upon Tenant's improvements to the Premises. Landlord shall be responsible for paying all real property taxes levied against the real property.

Use. The Premises may be used by Tenant for any lawful purpose, including but not limited to the construction and operation of an automated teller drive-through facility with drive aisles for up to ten (10) lanes of motor vehicles, substantially as depicted on Exhibit "A." The following uses of the Premises are hereby expressly authorized by Landlord: the construction and operation of automated teller drive-through facility, with drive aisles for up to ten (10) lanes of motor vehicles, a laundry drop-off facility, a drive-through bill pay or collection center, and/or parking. The Premises may be used for other legally permissible business or commercial ventures, with Landlord's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned; it being agreed and understood that Landlord shall grant its consent to a change in use, provided that the proposed use

does not violate the applicable zoning for the central business district and is not otherwise prohibited herein. Landlord and Tenant agreed that in the event in any change in use of the Premises, the following uses shall be expressly prohibited:

- a.** Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside the building on the Property; provided that this provision shall not be applicable to the normal operation of a drive-through facility;
- b.** An operation primarily used as a storage warehouse operation in any assembling, manufacturing, distilling, refining, smelting, agriculture or mining operation;
- c.** Any flea market or "second-hand" store;
- d.** Any bankruptcy or auction house operation;
- e.** Any central laundry, dry cleaning plan, or laundromat (provided, however, that this shall not prohibit the operation of a laundry or dry cleaning drop-off center);
- f.** Any automobile, truck, trailer or recreational vehicle sales, leasing, display, or body repair operation;
- g.** Any live performance theater;
- h.** Any residential use;
- i.** Any veterinary hospital or animal raising or boarding operation;
- j.** Any mortuary, crematorium, or funeral home;
- k.** Any establishment selling or exhibiting pornographic materials, or which sells drug-related paraphernalia or which exhibits (either live or by any other means to any degree) nude or partially-clothed dancers or waitress staff and/or massage parlors or similar establishments;
- l.** Any bar, tavern, or other establishment selling alcoholic beverages for on-premises or off-premises consumption;
- m.** Any health spa, fitness, or workout facility;
- n.** Any amusement or video arcade, pool or billiard hall, or dance hall;
- o.** Any training or educational facility, including but not limited to beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees;
- p.** Any gambling facility or operation;
- q.** Any auditorium, meeting hall, or other place or public assembly.

Tenant's Work. All improvements, alterations and additions to the Premises outlined on Exhibit "D" hereto (including indicated curb cuts and drive aisles), together with all further improvements, alterations and additions improvements, additions that may be agreed upon by the parties hereafter but prior to the Rent Commencement Date (including lighting and signage), are hereinafter referred to collectively as "Tenant's Work." All of Tenant's Work shall be undertaken and completed at Tenant's sole cost and expense. Landlord hereby consents to all of Tenant's Work shown on Exhibit "D," and agrees not to unreasonably withhold, condition or delay its consent to all other parts of Tenant's Work shown in plans hereafter submitted to Landlord by Tenant (it being specifically agreed that Tenant shall have final authority with regard to the adequacy of all lighting for the Premises). All of Tenant's Work shall conform to all safety requirements set forth any applicable governmental law. Landlord agrees to cooperate in good faith to facilitate Tenant's Work. In addition, Landlord shall provide Tenant with access to perform the necessary site preparation (including the removal or rearrangement of equipment, and the installation of the conduit and mechanical chases to provide electrical power, telephone lines and pneumatic tube transport to the ATMs). From time to time and upon Tenant's request, Landlord shall provide Tenant with the as-built plans for the Garage and with such other information regarding the Garage or the Premises which may be necessary or useful for the installation, construction or operation of the ATMs and all related equipment. The ATMs, all

related equipment, and all of Tenant's trade fixtures and personal property, shall be and at all times remain the property of Tenant.

Erection of Signs. All Tenant signage shall be fabricated, installed and maintained by Tenant at Tenant's sole cost and expense. Original signage for the Premises shall include Tenant's overhead blade and slab sign placards, substantially similar to the signage typified in Exhibit "E." All contractual approvals for Tenant's signage required from owners' associations, architectural review boards and the like (if any) shall be obtained by Landlord. Tenant shall obtain, at Tenant's sole cost and expense, all permits, variances, or similar governmental approvals necessary to allow Tenant's installation of Tenant's signs. Landlord shall cooperate with Tenant in obtaining such governmental approvals. "Cooperation" as used herein does not place any obligation upon the Landlord to grant variances or otherwise grant any privilege to Tenant in reviewing permit or other applications for regulatory approval. Subject to any applicable governmental laws, rules and regulations, Tenant may change its signage at any time with Landlord's prior written consent, provided, however, that Landlord's consent shall not be required to change signage based upon a change in Tenant's name or logo that does not alter the size, location, or configuration of existing signage. All Tenant signs shall at all times remain the property of Tenant.

Operation and Maintenance of Facility. Tenant shall have the right to operate and service the ATMs at all hours, day or night, seven days per week. Landlord shall provide Tenant with all necessary vehicular and pedestrian access to the Premises, and all authorizations, keys and other assistance, necessary to permit Tenant to service the ATMs at all times without prior notice to Landlord. Notwithstanding the foregoing, nothing in this Lease shall require Tenant to remain open for business in the Premises, so long as Tenant performs and observes all other obligations and conditions on Tenant's part to be performed and observed hereunder.

Removal of ATMs. Upon the expiration or other termination of this Lease, Tenant shall remove the ATMs, the ATM Improvements, Tenant's signs and Tenant's other trade fixtures and personal property from the Premises, at Tenant's sole cost and expense. Tenant shall remove all debris resulting from removal and shall leave the Premises in a clean and orderly condition. Such removal shall occur not more than thirty (30) days after the expiration or other termination of this Lease. Trade fixtures and personal property not removed within that period shall, at the Landlord's discretion, become the property of the Landlord or be removed by the Landlord at the Tenant's expense.

Maintenance of Premises and Garage. Tenant shall make all necessary repairs to the ATMs, ATM Improvements and the Premises (including drive aisles, lighting standards and fixtures and signs) and shall keep and maintain them in good condition. Landlord shall maintain and repair all electrical and telephone cabling and circuits serving the meter or junction box serving the Premises. Tenant shall maintain the Premises in safe, clean, and operational condition. The Garage, including stairs and elevator space serving the garage above the Premises, shall be maintained by the Landlord in a clean, safe, and operational condition.

Alterations, Additions and Improvements. Except for Tenant's Work and the signs described in Section 0 above, Tenant shall not make any alterations, additions or improvements to the Premises without obtaining the prior written consent of Landlord. Should Landlord consent to the making of any such alterations, additions or improvements by Tenant, such alterations, additions or improvements shall be made at the sole cost and expense of Tenant by a contractor or other person selected by Tenant and approved in writing by Landlord before the work commences. Except as provided otherwise in this Lease, any and all alterations, additions or improvements shall on termination of this Lease become the property of Landlord and shall remain on the Premises.

Services and Utilities. Landlord shall ensure that all utilities to the Premises are separately metered and billed to Tenant. Without limitation, the foregoing shall include electrical, water, sewer, natural gas, telephone, and data lines. Tenant shall pay for all telephone, data lines and other communications services dedicated to Tenant's use including operation of the ATMs and ATM

Improvements. Landlord shall reasonable and prudent measure to prevent unauthorized access by any person or entity to Tenant's telephone, data lines or other telecommunications wiring or equipment.

Taxes. Tenant shall pay all personal property taxes assessed on Tenant's fixtures, equipment and machinery as well as any other tax or assessment that is related to or resulting from its occupancy of the Premises, including but not limited to the Montana privilege tax, Business Improvement District assessments and Park Maintenance District assessments. Landlord shall be solely responsible for all taxes and/or assessments assessed by any taxing authority (including sales taxes) which are related to the Garage or to rents under this Lease or any other lease of the Garage, including, without limitation: (a) personal property, fixtures or equipment taxes assessed against Landlord's property; (b) franchise taxes assessed against Landlord; (c) taxes on Landlord's gross rents or profits; (d) inheritance, state, gift, income, transfer or excess profit taxes assessed against Landlord; (e) sales taxes payable by Landlord; and (f) real property taxes and assessments, including, but not limited to, any fees, interest and penalties arising from any such tax or assessment, assessed against all or any portion of the Garage.

Damage or Destruction. Should the Premises be damaged, the Landlord shall have an obligation to repair that portion of the Premises defined as Landlord's Work in Exhibit B within a reasonable period. Should the Premises be destroyed, which is defined as damage that impacts greater than forty percent (40%) of the Premises or a portion of the Premises that prevents the Tenant from beneficial use, then Tenant's rental obligation shall be abated and Landlord shall propose a repair schedule to the Tenant within fifteen (15) business days. If that schedule exceeds ninety (90) days, Tenant shall have the option to terminate this Lease by providing Landlord written notice of such termination not more than thirty (30) days following the occurrence of such damage or destruction, or resume the lease and rental obligation upon completion of repairs.

Eminent Domain. Should all or any part of the Premises, or any substantial part of the Garage, be taken under the power of eminent domain during the term of this Lease, Tenant may terminate this Lease by providing written notice of termination to Landlord not more than thirty (30) days following the date of such taking. All damages and compensation awarded or paid because of such taking of the Premises (other than Tenant's ATMs, ATM Improvements and Tenant's signs) shall belong to Landlord. All damages and compensation awarded or paid because of a taking of the ATMs, ATM Improvements and Tenant's signs shall belong to Tenant.

Assignment and Subletting. Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber all or any part of its interest under this Lease without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Landlord hereby consents to the assignment of this Lease by Tenant to any present or future wholly owned subsidiary or parent of Tenant or to any successor in interest of the entire business of Tenant as a result of a merger, consolidation, purchase or assignment, or by operation of law, provided such assignee has comparable financial strength and will continue to perform the obligations of Tenant under this Lease which shall be the Tenant's responsibility to demonstrate. Tenant shall not sublet the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Subject to the foregoing, this Lease shall inure to the benefit of and be binding upon each party's successors and assigns.

Insurance.

Tenant and Landlord shall each carry its own personal property insurance.

Each party shall maintain in full force and effect during the term of this Lease commercial general liability insurance, including broad form blanket coverage, against claims for bodily injury, death and/or property damage occurring within or upon the Premises, and contractual liability covering the insuring party's indemnity set forth in

Section 32 below, which insurance shall afford "single occurrence" protection of at least Three Million Dollars (\$3,000,000.00). Such commercial general liability insurance shall name the other party as an additional insured, shall provide that the other party shall receive thirty (30) days' prior written notice of any nonrenewal, cancellation or material change in coverage under such policy, and shall state that the insurance coverage provided is primary and non-contributory as regards to any other insurance carried by the other party with respect to the type of occurrences indemnified against by the insuring party as set forth in Section 32 below. Upon request, each party shall furnish the other party with a certificate of insurance evidencing the coverage required under this paragraph.

Notwithstanding anything in this Lease to the contrary, Tenant may carry insurance of the kind required of Tenant under a blanket insurance policy or policies which cover other properties owned or operated by Tenant in addition to the Premises, or may self-insure against the perils covered by such insurance. Any such self-insurance shall be deemed insurance required to be carried by Tenant under this Lease and shall be subject to the provisions hereunder pertaining to such insurance.

Notwithstanding any other provision of this Lease to the contrary (including, without limitation, Section * below), each party expressly waives every claim which arises or may arise in its favor and against the other party during the term of this Lease for any and all loss of or damage to any of its property located within or upon the Garage and/or the Premises, which loss or damage is covered by such party's insurance, whether or not such insurance is required hereunder. The waiver contained in this Section shall be effective whether such loss or damage is actually insured or self-insured pursuant to the terms of this Lease. Each party agrees to give to each insurance company which has issued to it policies of fire and extended coverage insurance written notice of the terms of this mutual waiver (if required by such policies) and to have said insurance policies properly endorsed (if necessary) to prevent the invalidation of said insurance coverage by reason of said waiver, and, if required in writing, to give to the other party a certificate from its insurance company to that effect.

Default. The occurrence of any one or more of the following events shall constitute an event of default under this Lease:

The failure by Tenant or Landlord to observe or perform any of the covenants, conditions or other provisions of this Lease required to be observed or performed by Tenant or Landlord, as the case may be, where such failure shall continue for a period of thirty (30) days after written notice thereof by the other party hereto, provided that if such failure cannot be cured within such thirty (30) day period, no default shall exist so long as the party failing to observe or perform such covenants, conditions or other provisions promptly commences cure of such failure and diligently prosecutes such cure to completion.

The making by Tenant or Landlord of any general assignment or general arrangement for the benefit of creditors; or the filing by or against Tenant or Landlord of a petition to have Tenant or Landlord adjudged a bankrupt, or a petition for

reorganization or arrangement under any law relating to bankruptcy, unless, in the case of a petition filed against Tenant or Landlord, the same is dismissed within sixty (60) days; or the appointment of a trustee or a receiver to take possession of, or the attachment, execution or other seizure of substantially all of Tenant's or Landlord's assets, as the case may be, or of Tenant's or Landlord's interest in this Lease, where such possessions, attachment, execution or other seizure is not restored to Tenant or Landlord, as the case may be, within thirty (30) days.

Remedies on Default. In the event of any default by Tenant or Landlord then, in addition to any other remedies available to the other party hereto at law or in equity, such other party may:

Continue this Lease in effect and thereby be entitled to enforce all rights and remedies under this Lease; or

Terminate this Lease by providing written notice to the defaulting party of such intention and recover from such defaulting party any amount necessary to compensate such other party for all detriment negligently or willfully caused by such defaulting party's failure to perform its obligations under this Lease (subject to Section *).

Alternative Dispute Resolution. All matters involving disputes in this Agreement shall be referred to the City Administrator, City of Billings, for attempted resolution prior to commencement of legal action to resolve any dispute.

Notices. All notices required or permitted by this Lease shall be in writing and may be delivered in person (by hand or by messenger or courier service) or may be sent by certified or registered mail, with postage prepaid, or nationally recognized overnight courier service, postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section 27. The addresses noted below shall be those for delivery or mailing of notices, except that either party may by written notice to the other specify a different address for notice purposes or add one additional address for notice purposes. Notices shall be effective upon receipt, if hand delivered; upon the following business day, if delivered by recognized overnight courier service; and on the 2nd business day after the postmark on any certified or registered mail.

If to Landlord:

The City of Billings, Montana
Attn: City Administrator
PO Box 1178
Billings, MT 59103
Tel: (406) 657-8433

With a copy to:
City Attorney
PO Box 1178
Billings, MT 59103
Tel: (406) 657-8205

If to Tenant:

Wells Fargo Bank, N.A.
Corporate Properties Group
633 Folsom Street, 6th Fl.
San Francisco, CA 94107-3617
Attn: Lease Administration
Tel: (415) 396-3115

With a copy to:
Wells Fargo Bank, N.A.
Attn: Dan Majeski, Regional Property Manager
175 North 27th Street
Billings, MT 59101
Tel: (406) 657-3466

Attorneys' Fees. In the event of any litigation between Landlord and Tenant in connection with this Lease, the prevailing party shall be entitled to recover from the other party hereto, in addition to such other relief as may be granted, such reasonable attorneys' fees incurred by the prevailing party in instituting or defending such litigation, together with such reasonable costs and expenses of litigation as may be allowed by the court.

Time of Essence. Time is expressly declared to be of the essence of this Lease.

Waivers. No waiver of either party hereto of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent breach by such party of the same or any other provision.

Entire Agreement. This Lease constitutes the entire agreement between the parties hereto with respect to the leasing of the Premises, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. In the event of a conflict between the terms and provisions of this Lease and the terms and provisions of any other agreement, instrument or document, the terms and provisions of this Lease shall prevail. No provision of this Lease may be amended except by an agreement in writing executed by the parties hereto.

Indemnity. Each party hereto agrees to indemnify, defend, protect, and hold the other party harmless from and against any and all losses, costs, expenses (including reasonable attorneys' fees), liabilities, damages, and claims, demands, liens, claims of lien, judgments, proceedings and causes of action resulting from the indemnifying party's negligence, willful misconduct, and/or breach of this Lease and/or from the negligence or willful misconduct of its employees, agents, contractors, and subcontractors.

Release from Liability. Notwithstanding any other provisions of this Lease, in no event shall either party be liable to the other for consequential damages resulting from a breach of this Lease, or incident to any personal injury or property damage occurring in, on or about the Premises or the Garage, except and unless such damages were the direct and proximate result of the grossly negligent or wilful acts of the responsible party (or its employees, agents and contractors).

Quiet Enjoyment. Landlord covenants and agrees that so long as Tenant has not committed a default under this Lease, Tenant shall have quiet and peaceful possession of the Premises and shall enjoy all of the rights herein granted without interference by Landlord or anyone claiming by, through, or under Landlord (including tenants or other occupants of the Garage), or by any mortgage lender holding a lien against the Garage or by the lessor under any master lease of the Garage.

Choice of law. This Lease shall be construed in accordance with and governed by the laws of the State of Montana. The parties expressly agree that venue shall be in the Montana Thirteenth Judicial District Court for Yellowstone County, Montana, and no other venue.

Construction. If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid, the remainder of this Lease shall not be affected thereby and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law. Both parties hereto have assisted in the drafting of this Lease and any ambiguities herein shall not be construed against either party.

Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor or materials or reasonable substitute therefore, governmental restrictions, governmental regulations, governmental controls, enemy or hostile government actions, terrorist acts, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform shall excuse the performance by such party for a period

equal to any such prevention, delay or stoppage. Both parties shall use reasonable efforts to overcome whatever may be impending their performance of any obligation hereunder.

Brokers. Each party represents and warrants to the other that it has had no dealings with any real estate broker, agent or finder in connection with the negotiation of this Lease, and that it knows of no real estate broker or agent entitled to any commission or finder's fee in connection with this Lease. Each party agrees to indemnify the other party and to hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including, without limitation, attorneys' fees and costs) with respect to any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker, agent or finder.

Third Party Approvals. Landlord represents and warrants to Tenant that Landlord has the full right, power and authority to enter into this Lease without the necessity of obtaining any third party approvals (other than those already obtained by Landlord), and that the terms of this Lease do not violate any lease, loan, condition, covenant, restriction, exclusive, or any other agreement or provisions which existed prior to the date of this Lease.

Contingent Approval. This Agreement is contingent upon the approval of the City Council and the signature of the Mayor.

Authority. Each individual executing this Lease represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the party for which he or she is executing, and that this Lease is binding upon such party in accordance with its terms.

Condition Precedent. If the Term Commencement date has not occurred by _____, 2006, then either party may terminate this Lease at any time thereafter but prior to the Term Commencement Date.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first set forth above.

TENANT	LANDLORD
WELLS FARGO BANK, N.A. , a national banking association	The City of Billings, Montana, a Montana municipal corporation
By _____ Name: _____ Title: _____	By _____ Name: Mayor Charles Tooley Title: Mayor

[Attach Site Plan of Premises and Garage as Exhibit "A"]

[Attach Description of Landlord's Work as Exhibit "B"]

[Attach Description of WFB Branch at 175 N. 27th Street as Exhibit "C"]

[Attach Description of Tenant's Work as Exhibit "D"]

[Attach typical signage examples as Exhibit "E"]

FORM OF WFB RETAIL LEASE

Billings, Montana

RETAIL LEASE

CITY OF BILLINGS, MONTANA,
a municipal corporation

LANDLORD

AND

WELLS FARGO BANK, N.A.,
a national banking association

TENANT

SWC, 2nd Ave. N. & North 26th Street
Billings, Montana

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EXHIBITS

EXHIBIT "A" - Legal Description of the Land
EXHIBIT "B" - Site Plan of the Demised Premises

RETAIL LEASE

THIS **RETAIL LEASE** ("Lease"), dated _____, 2005, is made between **CITY OF BILLINGS, MONTANA**, a municipal corporation ("Landlord"), and **WELLS FARGO BANK, N.A.**, a national banking association ("Tenant").

FUNDAMENTAL TERMS AND ATTACHMENTS.

Fundamental Terms. The following is a summary schedule of certain fundamental terms of this Lease.

Landlord: **CITY OF BILLINGS**
PO Box 1178
Billings, MT 59103
Attn: City Administrator

Tenant: WELLS FARGO BANK, N.A.
c/o Wells Fargo Bank
Corporate Properties Group
633 Folsom Street, 6th Floor
San Francisco, California 94107-3600
Attn: Lease Administration

Existing Leasehold Improvements: All improvements, alterations and additions comprising all or any part of the Demised Premises as of the Effective Date. Without limiting the foregoing, Tenant's existing drive-through

facilities, teller windows and pneumatic tubes, together with related and ancillary equipment and fixtures, shall be treated as a part of Tenant's Existing Leasehold Improvements.

Demised

Premises: The Building, the Land and the Outdoor Facilities.

Address of Demised

Premises: **SWC, 2nd Ave. N. & North 26th Street, Billings, MT**

Land: The land legally described on Exhibit "A," attached hereto.

Outdoor

Facilities: All parking areas, drive aisles, lane dividers, landscaped areas and sidewalks located on the Land outside the Building, except that Outdoor Facilities shall also exclude all fixtures and equipment comprising Tenant's existing drive-through facilities.

Building:

The building depicted on Exhibit "B," attached hereto.

Effective

Date: **The date that both Landlord and Tenant have signed this Lease as set forth on the signature pages and Tenant has received a fully executed counterpart of this Lease.**

Commencement

Date: The date that the sale of the Demised Premises, from Tenant to Landlord, is completed, as evidenced by recordation of a warranty deed.

Term: From the Commencement Date until the expiration of ten (10) Lease Years following the Commencement Date, subject to the parties' early termination rights under Sections 0 and 0.

Extensions: None.

Monthly

Fixed Rent: \$1,625.00 per month

It is understood and agreed that this is a full service lease, and Tenant shall not be responsible for any of Landlord's costs related to the ownership, operation and management of the Demised Premises.

Landlord's Employer Tax Identification Number
No.: **81-6001237**

Lease Year: The first Lease Year shall be defined as that period commencing on the Commencement Date and expiring on the last day of the

calendar month in which the first anniversary of the Commencement Date occurs; each subsequent Lease Year shall be the twelve (12) month period beginning on the day following the expiration of the previous Lease Year.

Person: Shall mean any individual, partnership, firm, association, corporation, trust or any other form of business or government entity.

Hazardous Substances: Shall mean any and all hazardous, ultra-hazardous, or toxic substances, wastes or materials regulated under any laws or regulations applicable to the environment or the protection of human health.

Legal Requirements: Shall mean all applicable federal, state and local laws, statutes, codes, acts, ordinances, directions, rules, regulations and requirements which apply to the Demised Premises or the use or occupancy thereof, including, without limitation, local and state building, electrical, mechanical, seismic, and fire and safety codes (including the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq. and comparable codes and statutes of the State of Montana), and all applicable present and future statutes, regulations, rules, ordinances, codes and orders relating to Hazardous Substances (including the reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Substances, whether into the air, surface water, groundwater or land, and including the manufacture, processing, distribution, use, treatment, storage, disposal, transport and handling of Hazardous Substances) or the protection of human health or the environment.

Default Rate: Shall mean a ten percent (10%) per annum rate of interest, compounded monthly on the first day of each calendar month.

Exhibits. The following exhibits ("Exhibits") are attached hereto and, by this reference, incorporated herein:

Exhibit "A" -- Legal Description of the Land
Exhibit "B" -- Site Plan of the Demised Premises

DESCRIPTION OF DEMISED PREMISES.

In consideration of the mutual covenants contained herein, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the land and all improvements located thereon and all appurtenances associated therewith commonly known as SWC, 2nd Ave. N. & North 26th Street, Billings, MT, which land is legally described on Exhibit "A" attached hereto. The Building,

Outdoor Facilities and Land being leased to Tenant (referred to herein collectively as the "Demised Premises") are shown on the Site Plan attached hereto as Exhibit "B," and specifically includes Tenant's existing drive-through facilities and teller counters (windows). Landlord also grants to Tenant the non-exclusive right to use for the Term as an easement appurtenant to the Demised Premises, (a) all rights, easements and appurtenances belonging or appertaining to the Land, (b) all right, title and interest of Landlord in and to any and all roads, streets, alleys and ways bounding the Demised Premises.

TERM.

The Term shall commence on the Commencement Date and shall continue for the balance of the Term, subject to early termination in accordance with Sections 0 and 0 below. Tenant is presently in occupancy of the Demised Premises, and Tenant acknowledges that possession of the Demised Premises shall have been tendered to and accepted by it as of the Commencement Date, and that the Demised Premises shall have been delivered in the condition required by this Lease, i.e., "AS IS. "

The obligation to pay Monthly Fixed Rent and other sums due under this Lease shall begin on the Commencement Date.

Upon expiration or sooner termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in good condition, reasonable wear and tear and casualty excepted. Tenant shall remove all of Tenant's Property (as defined in Section 0 below), and any of Tenant's Property not removed from the Demised Premises on or prior to the expiration of this Lease, or within ten (10) days following the earlier termination of this Lease, shall be treated as abandoned by Tenant. Tenant shall also remove any alterations or improvements made to the Demised Premises (other than the Existing Leasehold Improvements) unless Landlord made its consent to the original installation of such improvements or alterations conditioned upon such improvements and alterations not being removed on the expiration or earlier termination of this Lease. Tenant shall promptly repair any and all damage done to the Demised Premises caused by the removal of Tenant's Property and the other improvements or alterations removed by Tenant on the expiration or earlier termination of this Lease.

In the event Tenant continues to occupy the Demised Premises after the last day of the Term, as the same may have been extended, and such continued occupancy is permitted by Landlord, a tenancy from month to month only shall be created, and Monthly Fixed Rent shall be fixed at one hundred and ten percent (110%) of the Monthly Fixed Rent that was in effect on the last day of the Term.

EARLY CANCELLATION BY TENANT.

Tenant shall have the right to terminate this Lease at any time upon giving Landlord at least ninety (90) days advance written notice of Tenant's election to terminate this Lease by virtue of this Section 0. This Lease shall thereupon terminate effective on the date specified by Tenant in its notice to Landlord (provided that such date must be at least ninety (90) days thereafter).

EARLY CANCELLATION BY LANDLORD.

Landlord shall have the right to terminate this Lease upon giving Tenant at least ninety (90) days advance written notice of Landlord's election to terminate this Lease by virtue of this Section 0; provided, however, that no such written election may be given unless and until Tenant has ceased operating indefinitely in the Demised Premises; provided, however, that Tenant must vacate the leased premises described herein within one hundred eighty (180) days after Landlord delivers possession to Tenant of Tenant's new premises, pursuant to the WFB Garage Drive-through Lease. For the purposes of this provision, delivery of Tenant's new premises shall not be deemed to have occurred until Landlord has completed all of Landlord's work under the WFT Garage Drive-through Lease, including punch list items such that Tenant may complete Tenant's work on the new premises without delay or interruption. This Lease shall thereupon terminate effective on the date specified by Landlord in its notice to Tenant (provided that such date must be at least ninety (90) days thereafter).

MONTHLY FIXED RENT.

From and after the Commencement Date, during the Term, Tenant agrees to pay to Landlord "Monthly Fixed Rent," without offset, claim, or deduction, in the amount set forth in Section 0 above. All Monthly Fixed Rent installments are due in advance, the first monthly installment payment being due on the Commencement Date, and each subsequent installment thereafter on the first day of each and every calendar month during the Term.

Triple Net Lease. This is a Triple Net Lease and Tenant shall be responsible for paying all operating and maintenance expenses associated with the Premises, including all utilities, water, electricity, gas, janitorial services, and garbage removal. Tenant shall be responsible for paying one hundred percent of all of Tenant's costs associated with the Premises. Tenant shall be responsible for paying all personal property taxes levied on improvements to the real property. Landlord shall be responsible for paying all real property taxes.

USE OF DEMISED PREMISES.

Tenant's "Proposed Use" of the Demised Premises is for a full service bank with drive-through facilities for customer transactions, together with the sale of services and products provided in the ordinary course of Tenant's financial services business, including financial services not presently contemplated for the Demised Premises but which may be offered in other bank branches of Tenant, whether now or in the future. For purposes of this Lease, "financial services" shall mean products and services now or hereafter during the Term commonly offered by full service banks, credit unions, savings and loan associations, financial planners and financial investment companies (e.g., Charles Schwab & Co., Merrill Lynch etc.), which include, but are not limited to, traditional banking services (e.g., demand accounts, safe deposit), mortgage loans, business loans, insurance, stock and mortgage brokerage, financial planning and tax advice, and whether such products and services are offered for sale, rental or use by Tenant's employees at the Demised Premises or through

Tenant's drive-through teller facilities at the Demised Premises. Notwithstanding the foregoing, Tenant may conduct any lawful activity in the Demised Premises.

Nothing in this Lease shall require Tenant to remain open for business in the Demised Premises, so long as Tenant performs and observes all other obligations and conditions on Tenant's part to be performed and observed hereunder.

REAL ESTATE TAXES.

Tenant shall pay or cause to be paid, prior to delinquency, any and all taxes and assessments levied upon all trade fixtures, inventories and other personal property placed in and upon the Demised Premises by Tenant and owned by Tenant. Landlord shall be solely responsible for all taxes and/or assessments assessed by any taxing authority (including sales taxes) which are related to Landlord's ownership of the Demised Premises, including, without limitation: (a) personal property, fixtures or equipment taxes assessed against Landlord's property; (b) franchise taxes assessed against Landlord; (c) taxes on Landlord's gross rents or profits; (d) inheritance, state, gift, income, transfer or excess profit taxes assessed against Landlord; (e) sales taxes payable by Landlord; and (f) real property taxes and assessments, including, but not limited to, any fees, interest and penalties arising from any such tax or assessment, assessed against all or any portion of the Land and the improvements located thereon, including, but not limited to, any such taxes and assessments attributable to the Building or any portion thereof.

OUTDOOR FACILITIES.

Landlord shall maintain, repair, replace, restore, and repaint the Outdoor Facilities and keep them in good order and repair and in neat, clean and well maintained condition in accordance with the commercially reasonable standard of maintenance for buildings similar in size and use to the Building in the general metropolitan area in which the Building is located. Landlord's obligation shall, without limitation, include:

resurfacing, including keeping the parking surfaces and access drives in a level, smooth, and evenly covered condition with the type of surfacing material originally installed or a substitute material comparable in all respects in quality, use, and durability;

cleaning, striping, lighting, and all other tasks necessary to maintain the parking and Outdoor Facilities in a clean, safe, and orderly condition, including removal of trash, rubbish, garbage, and other refuse;

maintaining any perimeter wall in good condition and repair;

placing, keeping in repair, and replacing any directional signs, markers, and keeping in repair, and replacing when necessary such artificial lighting facilities as are required to keep the Outdoor Facilities lit, as required by Section 0;

maintaining, repairing and replacing all utility lines, mains and facilities and storm water detention areas; and

maintaining all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping those areas at all times adequately weeded, fertilized, and watered.

Landlord agrees to provide adequate lighting of the Outdoor Facilities including the parking lot from thirty (30) minutes before dusk until at least one and one-half (1-1/2) hours after Tenant closes its business in the Demised Premises, which lighting shall include the illumination of any pylon or monument sign advertising Tenant's business conducted in the Demised Premises.

SERVICES.

Landlord agrees to cause the necessary mains, conduits and other facilities to be provided to make water, sewer, gas, phone and electricity available to the Demised Premises. Landlord shall also make available to Tenant, at Landlord's expense, all water, sewer, gas and electrical power required for the normal use and occupancy of the Demised Premises for the Proposed Use.

Tenant shall be responsible for its own security arrangements.

Landlord shall provide for collection of refuse and garbage from the Demised Premises on a regular basis, in coordination with Tenant.

Landlord shall not be liable to Tenant in damages or otherwise if utilities or services are interrupted or terminated because of necessary repairs, installations, or improvements, or any cause beyond Landlord's reasonable control, nor shall any such interruption or termination relieve Tenant of the performance of any of its obligations hereunder, except that if Tenant is unable to operate its business for a period greater than forty-eight (48) hours after the occurrence of said interruption or termination, there shall be an abatement of all Rental obligations hereunder during such period.

INSURANCE.

Landlord agrees to carry, or cause to be carried, during the term hereof Commercial General Liability Insurance (hereinafter, "Landlord's Liability Insurance") on the Building, Land and Outdoor Facilities, naming Tenant as an additional insured providing coverage in the following amounts:

General Aggregate:	\$3,000,000
Products-completed Operations Aggregate:	\$3,000,000
Personal and Advertising Injury:	\$3,000,000
Each Occurrence:	\$3,000,000
Fire Damage (any one fire):	\$ 500,000

Landlord shall promptly deliver to Tenant a certificate of Landlord's Liability Insurance.

Landlord also agrees to carry, during the Term hereof, all risk property insurance (hereinafter, "Landlord's Property Insurance") covering fire and extended coverage, earthquake, vandalism and malicious mischief, sprinkler leakage and all other perils of direct physical loss or damage (other than flood) insuring the Building and Outdoor Facilities (excluding Tenant's Property) for the full replacement value thereof. Landlord shall furnish Tenant a certificate of Landlord's Property Insurance.

Landlord and Tenant and all parties claiming under them mutually release and discharge each other from all claims and liabilities arising from or caused by any casualty or hazard, covered or required hereunder to be covered in whole or in part by insurance on the Demised Premises, or in connection with property on or activities conducted on the Demised Premises, and waive any right of subrogation which might otherwise exist in or accrue to any person on account thereof. Each insurance policy required to be carried by Landlord or Tenant under this Lease shall include a clause or endorsement to the effect the waiver contained herein will not adversely affect or impair such policy or prejudice the right of the insured to recover under such policy, and each such policy shall permit this waiver of liability and contain a waiver of subrogation.

Tenant shall not keep, use, sell or offer for sale in or upon the Demised Premises any article which may be prohibited by the standard form of fire insurance policy. In the event Tenant's occupancy causes any increase of premium for the fire, and/or casualty rates on Landlord's Property Insurance, Tenant shall pay the additional premium on the fire and/or casualty insurance policies by reason thereof. Tenant also shall pay in such event, any additional premium on the rent insurance policy that may be carried by the Landlord for its protection against rent loss through fire. Bills for such additional premiums shall be rendered by Landlord to Tenant at such times as Landlord may reasonably elect, and shall be due from, and payable by, Tenant within thirty (30) days of written demand and the amount thereof shall be deemed to be, and be paid as, additional Rent.

IMPROVEMENTS, ALTERATIONS AND SIGNAGE.

Tenant shall not make any exterior or structural alterations to the Building without first obtaining the written consent of Landlord, which shall not be unreasonably withheld so long as such alterations remain in overall architectural harmony with the decorative treatment of the Building. Tenant shall be permitted to make interior, non structural alterations, additions and improvements without Landlord's prior consent. Subject to compliance with applicable municipal law, Tenant shall be permitted to affix canopies, awnings and/or flags on the exterior of the Building from time to time during the Term so long as such items remain in overall architectural harmony with the decorative treatment of the Building; and provided further, that nothing herein shall require Tenant's removal of any existing canopies, awnings and/or flags currently displayed from or upon the Building. On the expiration or earlier termination of this Lease, all alterations, additions and improvements installed by Tenant after the Commencement Date shall be removed from the Demised Premises, and Tenant shall repair any damage occasioned by such removal, except that such alterations, additions

and improvements shall not be removed if their abandonment by Tenant was an express condition to Landlord's consent to their original installation or construction.

Throughout the Term, Tenant may maintain and keep all signage currently installed within or upon the exterior of the Building, and Tenant may replace such signage, without Landlord's consent, so long as such replacement signage is of the same general size, type and location as the signage being replaced. Any additional signage desired by Tenant to be installed on the exterior of the Building shall require Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

This Section 0 shall not apply to the installation, use and removal of "Tenant's Property" (as defined in Section 0 below) nor to any Existing Leasehold Improvements.

MAINTENANCE AND REPAIRS; IMPROVEMENTS AND REPAIRS REQUIRED BY LAW.

Throughout the Term (except as otherwise specified below), Landlord shall be solely responsible for undertaking all maintenance, repairs and replacements of the following items, all without reimbursement from Tenant:

All maintenance, repairs and replacements required for the heating, ventilation and air-conditioning system serving the Demised Premises;

All maintenance, repairs and replacements required for the roof, roof covering and/or roof structure of the Building;

All maintenance, repairs and replacements required for structural elements of the Demised Premises, the Building and all Outdoor Facilities;

All maintenance, repairs and replacements required for the Building slab or foundations, floors, supporting members, structural and outside walls, and plumbing and electrical systems.

Tenant covenants and agrees that during the Term, Tenant shall, at Tenant's expense, keep, maintain and replace if necessary, the interior of the Building, trade fixtures, facial signage, and its panels on any monument sign, storefront glass, storefront doors, Tenant's Property, and all other parts of the Building not otherwise part of Landlord's responsibility under this Lease, in good condition and repair.

Tenant shall observe and comply with the requirements of all covenants, conditions and restrictions of record, and all Legal Requirements now or hereafter in effect, which apply to the Demised Premises by reason of the uses being made of the Demised Premises by Tenant (i.e., apart from general retail and office uses) or by reason of any improvements or alterations proposed or undertaken by Tenant or by reason of any repairs or maintenance required of Tenant hereunder. Landlord shall be responsible, at Landlord's sole cost and expenses and without reimbursement from Tenant, for making all repairs, replacements, improvements and alterations required in order to keep the Building, the Land and the

Outdoor Facilities in compliance with all Legal Requirements, if and to the extent that the same is not Tenant's responsibility under the preceding sentence.

DAMAGE TO OR DESTRUCTION OF IMPROVEMENTS.

If the Demised Premises or any portion thereof shall be damaged or destroyed by fire or other casualty, Tenant shall immediately notify Landlord orally and in writing and Landlord shall (except as provided below) promptly remove any resulting debris and make such repairs, restoration or rebuilding as is necessary to restore the Demised Premises substantially to their condition immediately prior to such damage or destruction with all due diligence, and this Lease shall remain in full force and effect; provided, however, notwithstanding the foregoing or anything to the contrary hereinafter provided, if any repairs, restoration or reconstruction are not commenced within sixty (60) days from the date of the casualty and are not actually repaired, restored or reconstructed to substantially the same condition in which it was immediately prior to the casualty within nine (9) months of the date of the casualty, Tenant may terminate this Lease by delivery of written notice to Landlord. Provided that Landlord's Property Insurance remains in effect and has not lapsed, Landlord shall not be required to provide funds in excess of said insurance proceeds which may be required for such repairing, restoring or rebuilding. In the event of a termination of the Lease as aforesaid, this Lease shall be null and void and of no further force or effect and the parties shall have no further rights or obligations hereunder. Notwithstanding anything to the contrary herein contained, Landlord shall have no right, title, interest or claim to insurance maintained by Tenant with respect to Tenant's Property, including, but not limited to insurance proceeds payable with respect thereto.

Tenant shall be entitled to a prorated deduction of all Rental for that period of time which the Demised Premises is untenantable, which deduction shall be based on the proportion of the space rendered untenantable bears to the space originally demised; provided, however, if Tenant is unable, in its reasonable business discretion, to operate its business in the Demised Premises, there shall be a full abatement of all Rental due hereunder.

Landlord agrees to accept the property insurance proceeds recoverable under Landlord's Property Insurance (as defined above in Section 0) as payment in full for any loss or damage to its property located in the Demised Premises, including the Existing Leasehold Improvements, and not to make any claim against or otherwise seek to recover from Tenant any additional sum for any loss or damage to the improvements located in the Demised Premises which occur and arise as a result of matters which can be covered by insurance (whether or not Landlord elects or fails to so insure), whether or not such loss or damage was caused by the acts or omissions of Tenant or Tenant's employees, agents, contractors, invitees or other person or cause which Tenant may be responsible for under law.

If damage is due to any cause other than fire or other peril covered by the insurance required to be carried by Landlord pursuant to Section 0 of this Lease ("Uninsured Casualty"), Landlord may elect to terminate this Lease upon written notice to Tenant within thirty (30) days following such casualty, provided, however, Tenant shall have the right within twenty (20) days of receipt of Landlord's notice, to notify Landlord that Tenant will

pay the amount necessary to repair and restore the Demised Premises resulting from the Uninsured Casualty, in which event Landlord's notice of termination shall be deemed withdrawn and Tenant shall promptly pay to Landlord, Landlord's estimate of the sum required to repair and restore the Demised Premises in excess of any available insurance proceeds, which sum shall be deposited in a trust account to be disbursed by Landlord only for the costs of repair and restoration resulting from the Uninsured Casualty, and Landlord shall in such event promptly proceed with such repair and restoration and use its best efforts to complete same within one hundred eighty (180) days of the receipt of such funds, subject to Force Majeure as defined in Section 0 of this Lease.

TENANT'S PROPERTY AND WAIVER OF LANDLORD'S LIEN.

"Tenant's Property" shall mean all trade fixtures, business equipment, inventory, trademarked items, decorative soffit, counters, shelving, showcases, teller lines, automated teller machines, night depositories, vaults, safe deposit boxes, security cameras, furniture, mirrors and other removable personal property installed in and removed from the Demised Premises from time to time by Tenant. All of Tenant's Property shall remain the property of Tenant. Landlord agrees that Tenant shall have the right, at any time and from time to time, to remove any and all of Tenant's Property. Tenant, at its expense, shall immediately repair any damage occasioned by the removal of Tenant's Property and upon expiration or earlier termination of this Lease. Tenant shall pay before delinquency all license fees and public charges levied, assessed or imposed upon its business operation in the Demised Premises as well as upon Tenant's Property. If any such items of property are assessed with property of Landlord, then such assessment shall be equitably divided between Landlord and Tenant.

From time to time, some or all of Tenant's Property may be financed or owned by someone other than Tenant. To the extent that any of Tenant's Property is financed or owned by someone other than Tenant, (i) Landlord agrees that such Tenant's Property is not Landlord's property no matter how the same is affixed to the Demised Premises or used by Tenant and agrees to recognize the rights of the lender or owner of Tenant's Property, and (ii) Landlord waives any claim arising by way of any Landlord's lien (whether created by statute or by contract) or otherwise with respect to Tenant's Property and agrees to sign and deliver to any lender, secured creditor or lessor a waiver of any lien Landlord may have on Tenant's Property if required by such lender, secured creditor or lessor.

TENANT ASSIGNMENT AND SUBLetting.

Tenant shall have the absolute right to sublet, assign or otherwise transfer its interest in this Lease to any parent or operating subsidiary of Tenant, or subsidiary of Tenant's parent, or to a corporation with which it may merge or consolidate ("Permitted Transfer"), without Landlord's approval, written or otherwise, as long as Tenant remains liable for full performance of all its obligations under this Lease. Provided that Tenant has not permanently discontinued nor indefinitely suspended operations in the Demised Premises providing banking and other financial services (it being understood that use of the Demised Premises that is limited to the continued operation of automated banking equipment shall not be treated as a suspension or discontinuance of banking services), Landlord's consent shall also not be required for any licensing arrangement

between Tenant and other companies that provide services or products available at or through the Demised Premises that are incidental to banking and financial services; and such licensing arrangements shall also be treated as "Permitted Transfers." The consent of Landlord to any other transfer, assignment, subletting, license or concession agreement or hypothecation may be given or withheld by Landlord in its sole and absolute discretion. If Landlord fails to respond to any request by Tenant for Landlord's consent or approval within thirty (30) days of such request, the consent or approval of Landlord shall be deemed given.

LANDLORD ASSIGNMENT.

Landlord shall have the right to transfer, assign and convey, in whole or in part, any or all of the right, title and interest to the Building shall be released of liability and obligations accruing after the effective date of the transfer, provided, such transferee or assignee shall be bound by the terms, covenants and agreements herein contained, and shall expressly assume and agree in writing to perform the covenants and agreements of Landlord herein contained and such assignment shall not be effective until notice of such assignment or transfer, together with an executed copy of such assignment or transfer instrument, is received by Tenant.

PARKING AND ACCESS.

Tenant shall have the exclusive use of all parking stalls on the Land. All parking shall be available to Tenant, its customer, invitees, employees and agents, at no cost or expense throughout the entire Term. Landlord shall not reduce or reconfigure parking spaces, nor grant rights to use such parking to other persons, without Tenant's written consent, except that Tenant shall not unreasonably withhold its consent to a reconfiguration plan that allows greater parking on the Land. Landlord shall not permit, except to the extent required by law, any fire lane, loading zone or other restrictive parking (except legally-required handicapped parking spaces) to be located in the vicinity of Tenant's entrances to the Building.

DEFAULT.

The occurrence of any of the following shall constitute a material default and breach of this Lease by Tenant (hereinafter "Event of Default"):

Any failure by Tenant to pay Monthly Fixed Rent or make any other payment required to be made by Tenant hereunder within ten (10) days after receipt of written notice from the Landlord. Notwithstanding the foregoing, Tenant shall not be in default for non-payment of Monthly Fixed Rent if (1) there exists a good faith dispute regarding the amount of such Monthly Fixed Rent or Tenant's liability therefore, and (2) Tenant has paid all Monthly Fixed Rent not in dispute, and (3) Tenant has deposited the amount of all disputed Monthly Fixed Rent into an independent escrow with instructions for such sums not to be released except upon the written concurrence of both Landlord and Tenant, and (4) Tenant thereafter takes reasonable measures to resolve the dispute with Landlord as expeditiously as possible by whatever legal means are permitted or required by this Lease.

Failure to perform any other provision of this Lease if the failure to perform is not cured within 30 days after written notice specifying the default has been given to Tenant. If the

default cannot reasonably be cured within 30 days, Tenant shall not be in default of this lease if Tenant commences to cure the default within the 30 day period and diligently and in good faith continues to cure the default.

The making by Tenant of any general assignment for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt, or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession that is not restored to Tenant within thirty (30) days, or the attachment, execution or other judicial seizure that is not discharged within thirty (30) days.

In the Event of Default by Tenant, then, in addition to all other rights and remedies available to Landlord by law or by other provisions hereof, at Landlord's option, Landlord may annul and cancel this Lease as to all future rights of Tenant. Tenant further agrees that in case of any such termination Tenant will indemnify the Landlord against all loss of Rent which Landlord may incur by reason of such termination, including, but not limited to, costs of restoring and repairing the Demised Premises and putting the same in rentable condition, costs of renting the Demised Premises to another tenant, loss or diminution of rents and other damage which Landlord may incur by reason of such termination and all reasonable attorneys fees and expenses incurred in enforcing any of the terms of this Lease. Neither acceptance of Rent by Landlord, with or without knowledge of breach, nor failure of Landlord to take action on account of any breach hereof, or to enforce its rights hereunder, shall be deemed a waiver of any breach, and absent written notice or consent, said breach shall be a continuing one.

If Tenant shall fail to pay, when the same is due and payable and after proper notice and the expiration of all cure periods, any Monthly Fixed Rent, said unpaid amounts shall bear interest from the due date thereof to the date of payment at the Default Rate. Tenant shall in addition, pay as additional Rent a fee of One Hundred Dollars (\$100.00) for processing of late payments, late payments being defined as sums overdue and unpaid after proper notice and the expiration of all cure periods.

If Landlord should be in default in the performance of any of its obligations under this Lease, which default continues for a period of more than thirty (30) days after receipt of written notice from Tenant to Landlord (and any mortgage lender of Landlord's who has executed a Non-Disturbance and Attornment Agreement acceptable to Tenant) specifying such default, or if such default is of a nature to require more than thirty (30) days for remedy, but Landlord has not undertaken procedures to cure the default within such thirty (30) day period and diligently pursued such efforts to complete cure, Tenant may incur any expense necessary to perform the obligation of Landlord specified in such notice and deduct such expense from the Monthly Fixed Rent or other charges next becoming due. If the default continues for 30 days after written notice is received by the foregoing persons, or if such default is of a nature requiring more than 30 days to cure but Landlord has not undertaken procedures to cure the default within such 30-day period and diligently pursued such efforts to complete cure, then Tenant may abate all Rental due hereunder for the duration of the continuance of the default.

If Landlord's default under Section 0 impairs Tenant's use or occupancy of the Demised Premises, and such default remains uncured or uncorrected after the notices required by Section 0 have been given and the cure periods therein provided have elapsed, or in the case of any emergency (in which event no notice or time to cure shall be required for Tenant to proceed in accordance with the further provisions of this Section 0), Tenant may, but shall not be obligated to, perform such obligations of Landlord or otherwise remedy Landlord's default(s); and Landlord shall pay to Tenant on demand the cost of Tenant's corrective action, plus interest on such costs at the Default Rate until paid; or Tenant may, at its option, deduct such corrective costs, plus interest, from the next ensuing Monthly Fixed Rent payments and all other payments due Landlord by the terms of this Lease until said amount has been paid in full.

CONDEMNATION.

If ten percent (10%) or more of the Demised Premises shall be appropriated or taken under the power of eminent domain by any public or quasi-public authority, then, at the election of either Landlord or Tenant, this Lease shall terminate and expire as of the date of such taking, and both Landlord and Tenant shall thereupon be released from any liability thereafter accruing hereunder.

Unless reasonably adequate substitute parking can be provided, if more than twenty percent (20%) of the square footage of the parking area is taken under the power of eminent domain by any public or quasi-public authority, then Tenant shall have the right to terminate this Lease as of the date of the taking. If less than twenty percent (20%) of the applicable parking is so taken by eminent domain, then this lease shall remain in full force and effect, but Landlord shall use its best efforts to provide adequate substitute parking to Tenant.

Any termination notice pursuant to this Section must be delivered within sixty (60) days after the date the applicable property is taken by the condemning authority.

Whether or not this Lease is terminated, nothing herein shall be deemed to affect Tenant's right to receive compensation for damages to Tenant's Property. Tenant shall have the right to pursue its claim for damages against the condemning authority in connection with any eminent domain proceeding. If this Lease is terminated pursuant to this Section 0, all Monthly Fixed Rent and other charges for the last month of Tenant's occupancy shall be prorated and Landlord shall refund to Tenant any Monthly Fixed Rent or other charges paid in advance.

If both Landlord and Tenant elect not to terminate this Lease, Tenant shall remain in that portion of the Demised Premises which shall not have been appropriated or taken, and Landlord agrees, at Landlord's cost and expense, as soon as reasonably possible, to restore the remaining portion of the Demised Premises to a complete unit of like quality and character as existed prior to such appropriation or taking, and, thereafter, all Monthly Fixed Rent and payment obligations of Tenant shall be adjusted on an equitable basis, taking into account the relative value of the portion taken as compared to the portion remaining. For purposes of this Section 0, a voluntary sale or conveyance in lieu of condemnation, but under

threat of condemnation, shall be deemed an appropriation or taking under the power of eminent domain.

Landlord represents and warrants that at the Effective Date, it has no actual or constructive knowledge of any proposed condemnation, road or access or visibility changes, including turn restrictions, barriers or medians, overpasses, underpasses or bypasses, that would affect the Building, the Outdoor Facilities or the Demised Premises or Tenant's Proposed Use of any part of the Building or the Demised Premises.

COSTS AND ATTORNEYS' FEES.

If Landlord or Tenant shall bring any action against the other, arising out of this Lease, the prevailing party shall be reimbursed by the other party for reasonable attorneys' fees and costs incurred in such suit, at trial and on appeal, and such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action.

NOTICES.

All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by Landlord to Tenant or by Tenant to Landlord, whether required by this Lease or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Lease. All Notices shall be legible and in writing and shall be delivered to the person to whom the Notice is directed, either in person with a receipt requested therefore or sent by a recognized overnight courier service for next day delivery or by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth in Section 0, and the same shall be effective (a) upon receipt or refusal if delivered personally, (b) one (1) business day after depositing with such an overnight courier service, or (c) three (3) business days after deposit in the mails if mailed, addressed to Landlord and Tenant. Either party hereto may change the address for Notices specified above by giving the other party ten (10) days advance written Notice of such change of address.

HAZARDOUS SUBSTANCES.

Landlord covenants that if Hazardous Substances are now or hereafter present in the Demised Premises in amounts or under circumstances that violate any Legal Requirements, or if any leak, spill, discharge, emission or disposal of Hazardous Substances has occurred or hereafter occurs, or if the soil and groundwater under the Demised Premises are now or hereafter contaminated with Hazardous Substances, that unless Tenant has responsibility therefore in accordance with Section 0 below, Landlord will investigate and remediate the environmental condition at Landlord's sole cost and expense, and without reimbursement from Tenant. Landlord agrees to indemnify, defend, protect and hold Tenant and its officers, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs, liabilities (including sums paid in settlement of claims) or loss including attorney's fees, consultants fees, and expert fees which arise during or after the Term in connection with the presence or suspected presence of Hazardous Substances in, on or under the Demised

Premises, unless such Hazardous Substances are present as the result of the negligence or willful misconduct of Tenant, its officers, employees or agents. Without limiting the generality of the foregoing, this indemnification specifically covers costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of the presence or suspected presence of Hazardous Substances in, on or under the Demised Premises, unless the Hazardous Substances are present as the result of the negligence or willful misconduct of Tenant, its officers, agents or employees.

Tenant shall not use, store, generate, transit or dispose of any Hazardous Substances upon, in about, or under the Demised Premises, except any use or storage of any such Hazardous Substances customarily used in business offices, provided that such use or storage complies with all Legal Requirements. Tenant agrees to indemnify, defend, protect and hold Landlord and its officers, employees and agents harmless from any claims, judgments, damages, fines, penalties, costs, liabilities (including sums paid in settlement of claims) or loss including attorney's fees, consultants fees, and expert fees which arise during or after the Term resulting from the discharge, dumping, spilling (accidental or otherwise) onto parts of the Demised Premises by Tenant or any of its employees, agents, contractors or invitees. Without limiting the generality of the foregoing, this indemnification specifically covers costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision.

ADJACENT AREAS.

Landlord shall not make any material change to the Outdoor Facilities within fifty (50) feet from the Demised Premises in any direction if, in Tenant's good faith business judgment, it would interfere with parking availability, visibility or access to the Building, and shall keep all access and walkways adjoining the Building free from obstructions.

SURVIVAL OF LEASE.

All representations, warranties and indemnities contained in this Lease shall survive the termination or expiration of this Lease.

ESTOPPEL CERTIFICATE.

Tenant and Landlord agree at any time and from time to time, upon not less than ten (10) business days' prior written request from the other party, to execute, acknowledge and deliver to the requesting party a statement in writing, in form and content reasonably acceptable to both parties, an estoppel certificate certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which Monthly Fixed Rent has been paid and certifying that it is not in default (or if a default is alleged, stating the nature of the alleged default), and further certifying such other matters as the requesting party shall require. It is intended that any such statement delivered pursuant to this Section may be relied upon by any prospective

purchaser, lender, subtenant, assignee or any entity which is a party to a potential merger, consolidation with or to the acquisition of substantially all of the assets or stock of Landlord, or Tenant.

INDEMNIFICATION.

Subject to Section 0 and except as to matters governed by Section 0, Tenant shall indemnify and hold Landlord harmless from and against any and all claims, demands, liabilities, and expenses, including attorney's fees, arising from Tenant's use of the Demised Premises or from any act permitted, or any omission to act, in or about the Demised Premises, by Tenant or its agents, employees, contractors, customers or invitees, or from any breach or default by Tenant of this Lease, except to the extent caused by Landlord's negligence or willful misconduct. In the event any action or proceeding shall be brought against Landlord by reason of any such claim, Tenant shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord.

Subject to Section 0 and except as to matters governed by Section 0, Landlord shall indemnify and hold Tenant harmless from and against any and all claims, demands, liabilities, and expenses, including attorney's fees, arising from Landlord's obligations or use of the Demised Premises, or parts of the Building outside of the Demised Premises, or from any act permitted, or any omission to act, in or about the Demised Premises or Land by Landlord or its agents, employees, contractors, or invitees, or from any breach or default by Landlord of this Lease, except to the extent caused by Tenant's negligence or willful misconduct. In the event any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

REPRESENTATIONS AND WARRANTIES OF LANDLORD.

To induce Tenant to execute, deliver and perform this Lease and without regard to any independent investigations made by Tenant, Landlord represents and warrants to Tenant on and as of the Effective Date as follows:

Landlord has full capacity, right, power and authority to execute, deliver and perform this Lease and all documents to be executed by Landlord pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Lease and all other documents executed or to be executed pursuant hereto on behalf of Landlord are and shall be duly authorized to sign the same on Landlord's behalf and to bind Landlord thereto. This Lease and all documents to be executed pursuant hereto by Landlord are and shall be binding upon and enforceable against Landlord in accordance with their respective terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration of maturity under, any indenture, mortgage, deed of trust, loan agreement or other agreement to which Landlord or the Demised Premises is subject or by which Landlord or the Demised Premises is bound.

There are no claims, causes of action or other litigation or proceedings pending or, to the best of Landlord's knowledge, threatened in respect to the ownership, operation or environmental condition of the Building or Demised Premises or any part thereof (including disputes with mortgagees, governmental or quasi-governmental authorities, utility companies, contractors, adjoining land owners or suppliers of goods or services), except for claims which are fully insured and as to which the insurer has accepted defense without reservation.

MISCELLANEOUS.

Any and all discussions and negotiations between Landlord and Tenant have been merged into this Lease. No rights are conferred upon Landlord until this Lease has been executed by Tenant. Any and all representations and agreements by either of the parties or their agents made during negotiations prior to execution of this Lease and which representations are not contained in this Lease shall not be binding upon either of the parties.

Landlord and Tenant represent and warrant to each other that they have not had any dealings with any real estate brokers, finders or agents in connection with this Lease.

All terms and words used in this Lease, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Lease or any portion of this Lease may require, the same as if such words had been fully and properly written in the number and gender.

This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

Landlord and Tenant are not and shall not be considered joint venturers nor partners and neither shall have power to bind or obligate the other except as set forth in this Lease.

If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

No modification, alteration or amendment of this Lease shall be binding unless in writing and executed by both parties hereto.

The headings to the Sections of this Lease are inserted only as a matter of convenience and for reference, and in no way confine, limit or proscribe the scope or intent of any Section of this Lease, nor in any way affect this Lease.

This Lease shall be binding upon and inure to the benefit of the parties and any subtenants and their heirs, administrators, executors, successors and assigns.

Time is of the essence of this Lease and each provision; provided, however, if the final (but not any interim) date of any period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of the United States of America, the final date of such period shall be extended to the next business day.

If Landlord or Tenant is delayed or prevented from performing any of its obligations under this Lease by reason of strike, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God or any other cause beyond that party's control (collectively, "Force Majeure"), the period of such delay or such prevention shall be deemed added to the time period herein provided for the performance of any such obligation by that party.

This Lease shall be governed by and construed and interpreted in accordance with the laws of the state in which the Building is located.

Each party hereto has reviewed and revised (or requested revisions of) this Lease, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Lease or any Exhibits hereto.

Whenever either party is entitled to exercise its discretion hereunder, or to give or withhold its consent to some proposed action, each party agrees that it shall act reasonably in exercise its discretion, or withholding its consent, unless the relevant provisions of this Lease permit such party to act in its absolute discretion or sole judgment.

This Agreement shall be governed by and construed in accordance with the laws of the State of Montana. The parties expressly agree that venue for any legal proceeding shall be in the Thirteenth Judicial District Court, Yellowstone County, Montana, and no other venue.

All matters involving disputes in this Agreement shall be referred to the City Administrator, City of Billings, for attempted resolution prior to commencement of legal action to resolve any dispute.

CONTINGENT APPROVAL. This Agreement is contingent upon the approval of the City Council and the signature of the Mayor.

SIGNATURES ON PAGE FOLLOWING

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed on the dates set forth below, intending the same to be effective as of the Effective Date.

LANDLORD:

CITY OF BILLINGS, MONTANA, a
municipal corporation

TENANT:

WELLS FARGO BANK, N.A., a national
banking association

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Date: _____, 2005

By _____
Name: _____
Title: _____

By _____
Name: _____
Title: _____

Date: _____, 2005

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Disposition of Eleven (11) Used MET Transit Buses

DEPARTMENT: Aviation/Transit Department

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation/Transit

PROBLEM/ISSUE STATEMENT: MET Transit has eleven used transit buses that it wishes to dispose of. The eleven buses consist of nine buses retired by the MET and two older MET buses that were transferred to the Airport and the Parks and Recreation Department for their use a number of years ago. A total of eleven MET buses were taken out of service when new replacement buses were received in the spring of 2004 and 2005. Two of the eleven retired MET buses were used to replace the older buses being used by Parks and Recreation and the Airport. Bus manufacturers do not take trade-ins on new bus purchases as the buses are traditionally sold factory direct, subsequently no dealer network is available to handle the used buses. Nine of the used buses are 1991 models and the two from Parks and Recreation and the Airport are 1979 units that do not meet ADA requirements. The MET will solicit for bids by running ads in both a national publication and the local papers.

ALTERNATIVES ANALYZED: Should the Council decide to not sell the eleven used buses, MET would be faced with a storage problem, and would also lose the potential to generate revenue from the sale of this equipment.

Another option would be to keep the equipment until the City auction, however, it would be difficult to draw the attention of potential out of town bidders without going through a national advertising effort, and MET would still be faced with the storage problem waiting for the next auction.

FINANCIAL IMPACT: It is estimated that the 1979 buses may sell for \$750 and the 1991 buses for \$1,500 each for a possible total sale of \$15,000. The buses may be difficult to sell as used bus demand is not particularly strong, especially when the buses do not meet ADA requirements and parts for these vehicles may be difficult to obtain.

RECOMMENDATION

Staff seeks Council's permission to solicit bids for eleven used transit buses.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

G

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Tuesday, October 11, 2005

TITLE: Approval of Operating Permit for the Operation of a Flight School by Yellowstone Valley Aviation

DEPARTMENT: Aviation and Transit

PRESENTED BY: J. Bruce Putnam, A.A.E., Director of Aviation and Transit

PROBLEM/ISSUE STATEMENT: For cost efficiencies and insurance reasons, the Airport's Fixed Based Operator (FBO), Edwards Jet Center, has sold the flight instruction/training portion of their business to Mr. Jim Foley who will operate a new flight instruction business as Yellowstone Valley Aviation. Mr. Foley will operate his business at the Billings Airport and will sublease space for the business from the FBO, as well as lease the aircraft from the FBO that will be used in the flight school. Since Mr. Foley is operating his business on the Airport through a sublease arrangement with an existing tenant (Edwards Jet Center), and subsequently has no direct lease with the City, he is required to enter into an operating permit, which ensures that certain operating standards are met and the proper insurance coverage is provided. Yellowstone Valley Aviation fulfills an important aviation need at the City's Airport by providing instruction and training on how to fly an airplane. Staff fully supports this type of aviation business, as it helps to promote the aviation industry and provides a needed customer service. The Operating Permit is for one year and renews annually thereafter. It also includes a thirty-day cancellation clause.

FINANCIAL IMPACT: Since this operation is taking place on existing leased property through a sublease agreement with an existing tenant, there will be no additional financial impact to the City.

RECOMMENDATION

Staff recommends that Council approve the Operating Permit for Yellowstone Valley Aviation to operate a flight school at the Billings Logan International Airport.

Approved By: **City Administrator** **City Attorney**

[\(Back to Consent Agenda\)](#)

H

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Zone Change #766, Second Reading of Ordinance

DEPARTMENT: Planning and Community Development Services

PRESENTED BY: Nicole M. Cromwell, AICP, Zoning Coordinator, Planner II

PROBLEM/ISSUE STATEMENT On July 26, 2005, at the request of All American Nutrition, the Planning Board initiated an amendment to the Unified Zoning Regulations to allow limited manufacturing of pharmaceuticals in Highway Commercial zoning districts. All American Nutrition prepares and markets nutritional supplements and is currently located at 1831 Main Street in a Highway Commercial zone. The company intends to move and expand its business into the former K-Mart shopping center. It was discovered during planning that Highway Commercial zones do not allow for the preparation of any medicinal, botanical or pharmaceutical supplies. The City Council approved the first reading of this zone change on September 26, 2005.

ALTERNATIVES ANALYZED: The City and County Zoning Commissions held public hearings on the proposed text amendments and new definition on September 6, 2005, and September 12, 2005, respectively. The Commissions held testimony before recommending approval of these changes. The City Zoning Commission forwarded a recommendation of approval. The City Council approved the text amendment on first reading on September 26, 2005.

FINANCIAL IMPACT: The proposed zone change could increase the City's tax base, when the new zoning takes effect.

RECOMMENDATION

The Zoning Commission recommends that the City Council approve Zone Change #766 on second reading and amend the Unified Zoning Regulations.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS:

- A: Ordinance
- B: Excerpts from the Standard Industrial Classification Manual, 1987.

ATTACHMENT A

ORDINANCE NO. 05-

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA CITY CODE BE AMENDED BY REVISING SECTION 27-201 AND SECTION 27-306; ADDING A DEFINITION OF LIMITED PHARMACEUTICAL MANUFACTURING AND SETTING LIMITED PHARMACEUTICAL MANUFACTURING USES ALLOWED IN HIGHWAY COMMERCIAL AND CONTROLLED INDUSTRIAL ZONING DISTRICTS.

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

Section 1. RECITALS. *Title 76, Chapter 2, Part 3, MCA*, and Section 27-1502, *BMCC*, provide for amendment to the City Zoning Regulations from time to time. The Board of Planning initiated the amendment to the City Zoning Regulations and the City Zoning Commission and staff have reviewed the proposed zoning regulations hereinafter described. The recommendations of the Zoning Commission and staff have been submitted to the City Council, and the City Council, in due deliberation, has considered the proposed amendments to the City Zoning Regulations.

Section 2. That the Billings, Montana City Code be amended by revising Section 27-201 to add a new definition to read as follows:

LIMITED PHARMACEUTICAL MANUFACTURING: Establishments primarily engaged in manufacturing bulk organic and inorganic medicinal chemicals and their derivatives and processing bulk botanical drugs and herbs. This definition also includes premises engaged in manufacturing, fabricating, or processing drugs in pharmaceutical preparations for human or veterinary use.

Section 3. That the Billings, Montana City Code be amended by revising Section 27-306 District Regulations: Commercial and Industrial Uses to read as follows:

TITLES AND DESCRIPTION OF INDUSTRIES SR - SPECIAL REVIEW A - ALLOWED	Residential Professional	Neighborhood Commercial	Community Commercial	Highway Commercial	Central Business District	Controlled Industrial	Heavy Industrial	Public	South 27th Street Corridor
28 CHEMICALS AND ALLIED PRODUCTS: – Offices only – 2833 –Medicinal & Botanical products – 2834 – Pharmaceutical Preparations	A	A	A	A A	A	A A	A A		A

Section 3. REPEALER. All resolutions, ordinances and sections of the City Code in conflict herewith are hereby repealed.

Section 4. 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.

Section 5. EFFECTIVE DATE. This ordinance shall be effective from and after final passage and as provided by law.

PASSED by the City Council on first reading September 26, 2005.

PASSED, ADOPTED AND APPROVED on second reading October 11, 2005.

CITY OF BILLINGS:

BY: _____
Charles F. Tooley, Mayor

ATTEST:

BY: _____
Marita Herold, CMC/AAE, City Clerk

Zone Change #766
Unified Zoning Regulations Text Amendments
Limited Pharmaceutical Manufacturing

ATTACHMENT B

Excerpts from the SIC Manual, 1987

SIC Manual is adopted as part of the Unified Zoning Regulations Section 27-307, BMCC
SIC 2833 and SIC 2834, specified uses

2833 Medicinal Chemicals and Botanical Products

Establishments primarily engaged in: (1) manufacturing bulk organic and inorganic medicinal chemicals and their derivatives and (2) processing (grading, grinding, and milling) bulk botanical drugs and herbs. Included in this industry are establishments primarily engaged in manufacturing agar-agar and similar products of natural origin, endocrine products, manufacturing or isolating basic vitamins, and isolating active medicinal principals such as alkaloids from botanical drugs and herbs.

Adrenal derivatives: bulk, uncompounded

Agar-agar (ground)

Alkaloids and salts

Anesthetics, in bulk form

Antibiotics: bulk uncompounded

Atropine and derivatives

Barbituric acid and derivatives: bulk, uncompounded

Botanical products, medicinal: ground, graded, and milled

Brucine and derivatives

Caffeine and derivatives

Chemicals, medicinal: organic and inorganic bulk, uncompounded

Cinchona and derivatives

Cocaine and derivatives

Codeine and derivatives

Digitoxin

Drug grading, grinding, and milling

Endocrine products

Ephedrine and derivatives

Ergot alkaloids

Fish liver oils, refined and concentrated for medicinal use

Gland derivatives: bulk uncompounded

Glycosides

Herb grinding, grading, and milling

Hormones and derivatives
Insulin: bulk, uncompounded
Kelp plants
Mercury chlorides, U.S.P.
Mercury compounds, medicinal: organic and inorganic
Morphine and derivatives
Oils, vegetable and animal: medicinal grade refined and concentrated
Opium derivatives
Ox bile salts and derivatives: bulk, uncompounded
Penicillin: bulk, uncompounded
Physostigmine and derivatives
Pituitary gland derivatives: bulk, uncompounded
Procaine and derivatives: bulk, uncompounded
Quinine and derivatives
Reserpines
Salicylic acid derivatives, medicinal grade
Strychnine and derivatives
Sulfa drugs: bulk, uncompounded
Sulfonamides
Theobromine
Vegetable gelatin (agar-agar)
Vitamins, natural and synthetic: bulk, uncompounded

2834 Pharmaceutical Preparations

Establishments primarily engaged in manufacturing, fabricating, or processing drugs in pharmaceutical preparations for human or veterinary use. The greater part of the products of these establishments are finished in the form intended for final consumption, such as ampoules, tablets, capsules, vials, ointments, medicinal powders, solutions, and suspensions. Products of this industry consist of two important lines, namely: (1) pharmaceutical preparations promoted primarily to the dental, medical, or veterinary professions, and (2) pharmaceutical preparations promoted primarily to the public.

Adrenal pharmaceutical preparations
Analgesics
Anesthetics, packaged
Antacids

Anthelmintics
Antibiotics, packaged
Antihistamine preparations
Antipyretics
Antiseptics, medicinal
Astringents, medicinal
Barbituric acid pharmaceutical preparations
Belladonna pharmaceutical preparations
Botanical extracts: powdered, pilular, solid, and fluid, except
Chlorination tablets and kits (water purification)
Cold remedies
Cough medicines
Cyclopropane for anesthetic use (U.S.P. par N.F.), packaged
Dermatological preparations
Dextrose and sodium chloride injection, mixed
Dextrose injection
Digitalis pharmaceutical preparations
Diuretics
Effervescent salts
Emulsifiers, fluorescent inspection
Emulsions, pharmaceutical
Fever remedies
Galenical preparations
Hormone preparations, except diagnostics
Insulin preparations
Intravenous solutions
Iodine, tincture of
Laxatives
Liniments
Lip balms
Lozenges, pharmaceutical
Medicines, capsuled or ampuled
Nitrofuran preparations

Ointments
Parenteral solutions
Penicillin preparations
Pharmaceuticals
Pills, pharmaceutical
Pituitary gland pharmaceutical preparations
Poultry and animal remedies
Powders, pharmaceutical
Procaine pharmaceutical preparations
Proprietary drug products
Remedies, human and animal
Sodium chloride solution for injection, U.S.P.
Sodium salicylate tablets
Solutions, pharmaceutical
Spirits, pharmaceutical
Suppositories
Syrups, pharmaceutical
Tablets, pharmaceutical
Thyroid preparations
Tinctures, pharmaceutical
Tranquilizers and mental drug preparations
Vermifuges
Veterinary pharmaceutical preparations
Vitamin preparations
Water decontamination or purification tablets
Water, sterile: for injections
Zinc ointment

[\(Back to Consent Agenda\)](#)

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Second Reading of an Ordinance expanding Ward II

DEPARTMENT: Planning and Community Services Department through Ramona Mattix, AICP, Planning Director

PRESENTED BY: Aura Lindstrand, Planner II

PROBLEM/ISSUE STATEMENT: On September 12, 2005, the City Council adopted Resolution No. 05-18333 annexing 33.71 acres located directly adjacent to the north of Uinta Park Subdivision, south of Wicks Lane (Annexation #05-08). Pursuant to Section 11-102(c), BMCC, the property is required to be included in one (1) of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward II was conducted on September 26, 2005. A second reading of the ordinance is the final step in the procedure to expand the ward boundaries.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council conduct the public hearing and approve the second reading of this ordinance that adds property to City Ward II.

Approved by: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

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 the following designated Ward the following described real property:

A tract of land situated in the NW ¼ of Section 22, T.1N., R.26E., P.M.M., Yellowstone County, Montana, more particularly described as: Certificate of Survey 3190, Tracts 1 and 2, Recorded May 11, 2004, Under Document No. 3287254, Records of Yellowstone County, Montana; Containing 33.711 gross and net acres, more or less.

(# 05-08) 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 26th day of September, 2005.

PASSED by the City Council on the second reading this 11th day of October, 2005.

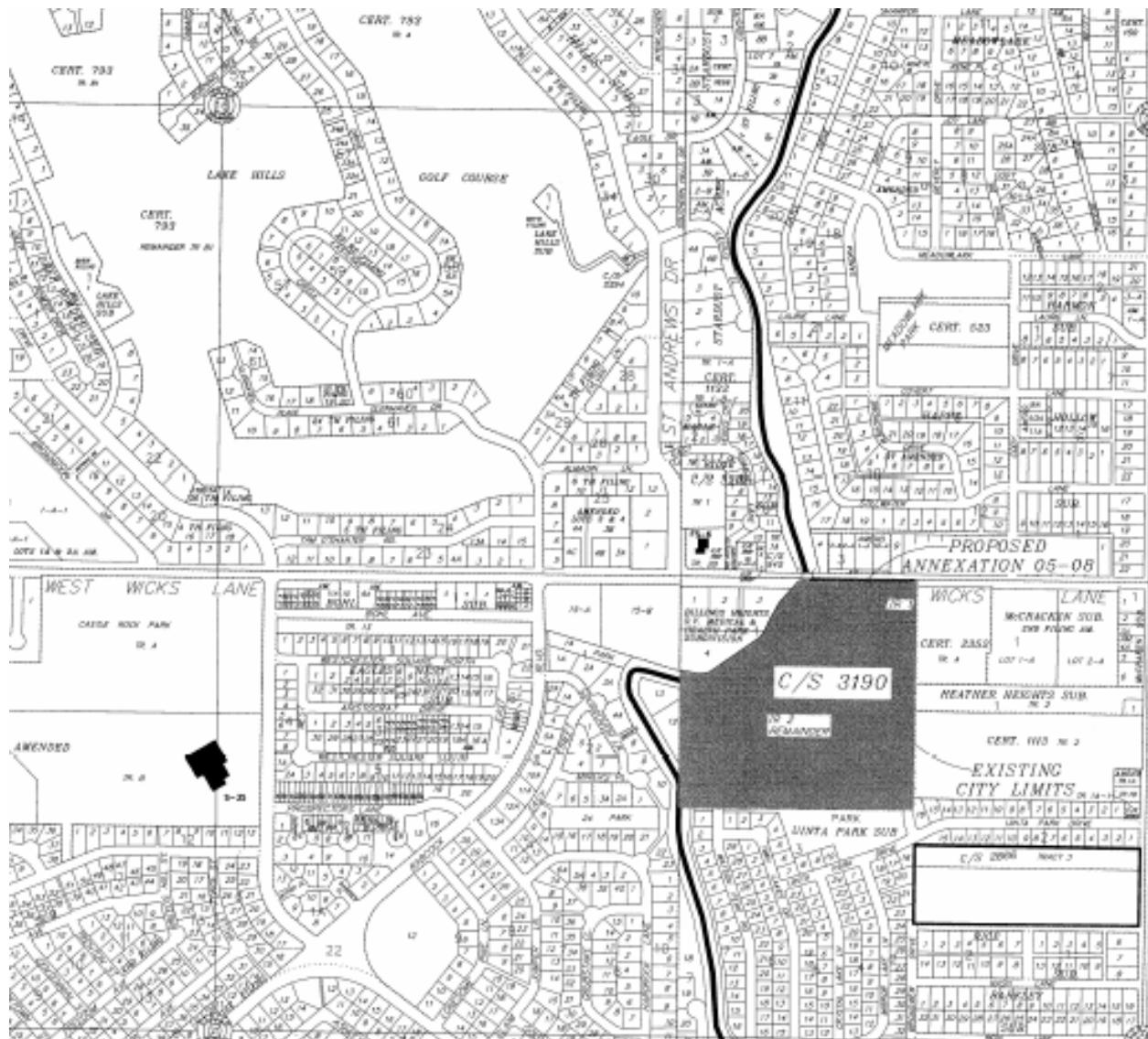
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

Exhibit A



[\(Back to Consent Agenda\)](#)

J

AGENDA ITEM:



CITY COUNCIL SPECIAL SESSION AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Ward Redistricting Ordinance, Second Reading

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Ramona Mattix, AICP, Director

PROBLEM/ISSUE STATEMENT: On August 18th, 2005, the Billings City Council held a special meeting to adopt an emergency ordinance that responded to the American Civil Liberties Union (ACLU) suit over the percentage of overall population deviation among City Wards. The emergency ordinance was effective for 90 days. The City Council voted on the corresponding redistricting based on the revised boundaries on September 26th, 2005. The Council vote was 10-1 on first reading of the ordinance.

ALTERNATIVES ANALYZED:

1. Further revise emergency Ward boundaries and deviation percentages; or
2. Continue the adopted Ward boundaries that reduced the population deviation among Wards

FINANCIAL IMPACT: No financial impact would result.

RECOMMENDATION

Staff recommends that the City Council revise Ward boundaries to reduce population deviation among Wards, and place Precinct 41 in Ward 5, thereby removing it from Ward 3.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

A: Revised Ward Boundary map Exhibit A
B: Ordinance

INTRODUCTION AND HISTORY

On January 24, 2005, City Council adopted new election Ward boundaries based on new information from the 2000 Census. The City had waited to take this action until the State of Montana completed its own redistricting based on the new Census numbers. The population numbers adopted for the Wards is contained in Table 1. The ideal population of city Ward, based solely on population numbers is 17,969. (The 2000 Census total of 89,847 people divided by 5 Wards.) The percentage of deviation is the percent the actual population deviates from the ideal.

Table 1

Ward	Population	Deviation
1	17,389	- 3.38%
2	18,605	+ 3.4 %
3	19,676	+ 9.3 %
4	17,517	- 2.66%
5	16,852	- 6.36%
Total Deviation		15.66 %

The ACLU claimed that any deviation greater than 10% establishes a *prima facie* violation of the one person, one vote entitled to citizens by the constitution. The burden of proof was on the City to justify the deviation by showing a rational and legitimate reason for the percentage difference. In the case of Billings, as was outlined in the staff report Council reviewed January 10, 2005, this 15.66 % difference was due to trying to keep existing precincts intact and trying to allow for the existing growth and annexation that has occurred since the 2000 Census.

Because of the threat of an injunction, knowing that absentee ballots must be available to voters, including military persons stationed overseas by August 24th (and therefore noticed and printed by August 18th) and desiring not to place the primary and general election in jeopardy and at risk to challenge the City Council amended Ward boundaries by emergency ordinance on August 18th, 2005. Staff is recommending retaining the shift of Precinct 41 from Ward 3 to Ward 5. This significantly reduced the deviation of Ward population and does not impact the representation filed by existing candidates in any Ward. The proposed shift and new population numbers as adopted by emergency ordinance is shown in Table 2, along with the new deviation numbers. The ideal population for a Ward was 18,122 based on the new population added by annexation.

Table 2

Ward	Population	Deviation
1	17,392	- 4.03%
2	19,139	+ 5.61%
3	17,851	- 1.50%
4	17,581	- 2.99%
5	18,647	+ 3.90%
Total Deviation		9.84%

In this scenario, Ward 1, 2 and 4 remained as they were, and the most populated Ward 3 shifts one precinct to the least populated Ward 5.

NOTE: If all Ward populations are added up, they amount to 90,610 people. This is more than the City Census total in 2000 by 571 persons. This is because the City has annexed County populated areas since 2000 that have been added to Wards.

RECOMMENDATION

Staff recommends that the City Council revise Ward boundaries to reduce population deviation among Wards, and place Precinct 41 in Ward 5, thereby removing it from Ward 3.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BILLINGS, PROVIDING THAT THE BILLINGS, MONTANA, CITY CODE BE AMENDED BY REVISING SECTION 11-102; CHANGING WARD DISTRICT BOUNDARIES TO REDUCE POPULATION DEVIATIONS

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

3. **AMENDMENT.** Pursuant to Section 11-102(c) of the Billings, Montana, City Code, the City of Billings' ward boundaries are hereby amended to reflect the 2000 census information and to reduce population deviations among the wards. The exact ward boundaries are adopted as specifically set forth in the attached Exhibit "A", which is incorporated herein by reference.
4. **CERTIFICATION.** Pursuant to Section 13-3-103, MCA, 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 wards, the streets, avenues and alleys by name and the wards by number, to the Election Administrator not more than ten (10) days after the effective date of this ordinance.
3. **EMERGENCY ORDINANCE 05-5337 REPEALED.** Emergency Ordinance 05-5337 is hereby repealed on the effective date of this Ordinance.
4. **REPEALER.** All other resolutions, ordinances, and sections of the City Code that are inconsistent herewith are hereby repealed.

PASSED by the City Council on first reading this ____ day of _____, 2005.

PASSED by the City Council on second reading this ____ day of _____, 2005.

THE CITY OF BILLINGS:

Mayor

ATTEST:

City Clerk

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K1

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,690,899.50 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 9, 2005, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

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K2

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Payment of Claims

DEPARTMENT: Administration – Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$1,541,755.74 have been audited and are presented for your approval for payment. A complete listing of the claims dated September 16, 2005, is on file in the Finance Department.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims.

Approved By: City Administrator City Attorney

ATTACHMENT:

A -- List of claims greater than \$2500

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K3

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

SUBJECT: Payment of Claims

DEPARTMENT: Municipal Court

PRESENTED BY: Nikki R. Schaubel, Municipal Court Administrator

PROBLEM/ISSUE STATEMENT: Claims in the amount of \$515,590.80 have been audited and are presented for your approval for payment. A complete listing of the claims dated May 15, 2005 to September 15, 2005 is on file in the Municipal Court.

RECOMMENDATION

Staff recommends that Council approve Payment of Claims

Approved By: City Administrator _____ City Attorney _____

ATTACHMENTS

A – Check register 05/15/05 to 09/15/2005

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Public Hearing and First Reading of an Ordinance expanding Ward V

DEPARTMENT: Planning and Community Services Department

PRESENTED BY: Candi Beaudry, AICP, Planning Division Manager

PROBLEM/ISSUE STATEMENT: On September 26, 2005, the City Council adopted Resolution No. 05-18357 annexing .363 acres, including a .294-acre parcel located north of Broadwater Avenue and west of 52nd Street West and a portion of the Broadwater Avenue right-of-way. (Annexation #05-09). The property must be added to one of the City's election wards. The first reading and public hearing on the ordinance to add the property to Ward V will be held on October 11, 2005. The second reading of the ordinance is scheduled for Council action on October 24, 2005.

FINANCIAL IMPACT: There are no direct financial impacts if this ordinance is approved.

RECOMMENDATION

Staff recommends that the City Council hold the public hearing and approve the first reading of this ordinance that adds property to City Ward V.

Approved by: City Administrator _____ City Attorney _____

ATTACHMENT

A: Ward Ordinance and Exhibit A

ORDINANCE NO. 05-_____

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 V 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 the following designated Ward the following described real property:

A tract of land situated in the NW1/4 of Section 4, T.1S., R.25E., P.M.M., Yellowstone County, Montana, more particularly described as: Grand Acres Subdivision, First Filing, Grand Acres Park, Recorded June 16, 1959, Under Document No. 623226, Records of Yellowstone County, Montana; including all adjacent right-of-way of Broadwater Avenue. Containing 0.363 gross and 0.294 net acres, more or less. (# 05-09) 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 11th day of October, 2005.

PASSED by the City Council on the second reading this 24th day of October, 2005.

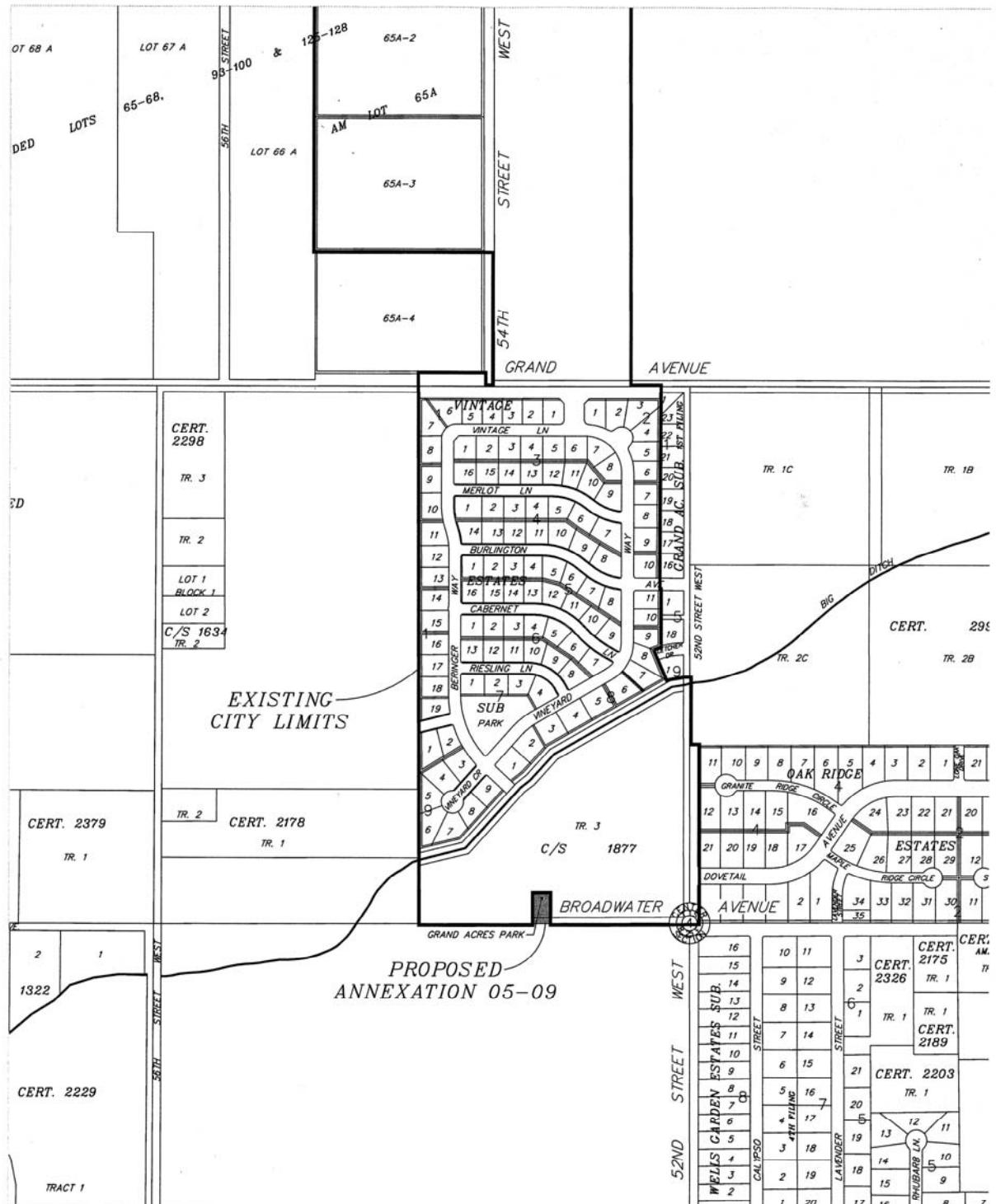
THE CITY OF BILLINGS:

Charles F. Tooley, MAYOR

ATTEST:

BY: _____
Marita Herold, CITY CLERK

EXHIBIT "A"



(Back to Regular Agenda)



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, OCTOBER 11, 2005

SUBJECT: Public Hearing regarding the Re-Spread Resolution for the Refunding of Special Improvement Districts 1332, 1327, 1334, 1335 and 1340

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager

PROBLEM/ISSUE STATEMENT: The following assessment resolution has been completed by the Finance Division and is ready to spread on the tax rolls. These Special Improvement Districts (SIDs) were refunded to obtain a lower interest rate for these districts. These projects and bond sales, and the original spreads on tax rolls, were previously approved by council.

FINANCIAL IMPACT: The costs associated with SIDs 1332, 1327, 1334, 1335 and 1340 are assessed per lot. The net effective interest rate is 3.802%. Under the State statute 7-12-4189, the City is required to add $\frac{1}{2}$ of 1% for a total rate of 4.302%. The $\frac{1}{2}$ of 1% will be used as additional security on bond issues, as stated in the final bond resolution.

RECOMMENDATION

Staff recommends that a public hearing be held and Council pass the proposed resolution on October 11, 2005.

Approved By: **City Administrator** _____ **City Attorney** _____

ATTACHMENT

- A- Resolution for SID 1327
- B- Resolution for SID 1332
- C- Resolution for SID 1334

- D- Resolution for SID 1335
- E- Resolution for SID 1340

C:\Documents\Dean\9981 Re-Spread SID Refunding.doc

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Appoint Business Improvement District Board of Trustees

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council created the downtown Business Improvement District (BID) in August, 2005. The District is administered by a Board of Trustees, whose members are appointed by the Mayor and confirmed by the Council. The Council will consider approving the attached resolution that contains the Mayor's appointments, their terms and their powers and duties. The appointments are recommended by the Downtown Billings Partnership.

ALTERNATIVES ANALYZED: Montana Code requires that a BID be administered by a Board of Trustees whose members are appointed by the Mayor and confirmed by the Council.

FINANCIAL IMPACT: This decision has no direct financial impacts. The Board members are required to serve without compensation. The Board will create a work plan and submit a proposed budget and assessments in time for the FY 07 budget process.

RECOMMENDATION

Staff recommends that Council approve the attached Resolution that creates the BID Board of Trustees, names the initial members, establishes their terms and specifies their powers and duties.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A: Resolution

RESOLUTION _____

**A RESOLUTION CREATING A BOARD OF TRUSTEES
FOR BILLINGS BUSINESS IMPROVEMENT DISTRICT NO.
0001, APPOINTING THE INITIAL TRUSTEES AND
SPECIFYING THE POWERS AND DUTIES OF THE BOARD**

WHEREAS, the Billings City Council created Business Improvement District No. 0001 on August 22, 2005 by approving Resolution No. 05-18328, and

WHEREAS, according to Montana State Code 7-12-1121 MCA, a Board of Trustees must be created to govern the District and five (5) to seven (7) Trustees must be appointed to govern any Business Improvement District, and

WHEREAS, the Downtown Billings Partnership submitted the names of seven (7) proposed Trustees for appointment to the Board of Trustees, all of whom are property owners within the District, and

WHEREAS, Mayor Charles F. Tooley recommends that the Billings City Council create the Board of Trustees and confirm the appointment of seven (7) Trustees named below.

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

Section 1. Business Improvement District No. 0001 Board of Trustees: The Business Improvement District No. 0001 Board of Trustees is hereby created. There shall be seven (7) Trustees.

Section 2. Board Appointments: The initial Board of Trustees for Business Improvement District No. 0001 shall be as follows and their terms shall be as shown. All terms begin January 1, 2006. After the initial term, all subsequent Trustees shall be appointed to four (4) year terms, except that a vacancy occurring during a term will be filled for the unexpired term. The unexpired term shall be filled in the same manner as other vacancies. The initial Board Chair shall be _____, who shall serve a one (1) year term. Subsequent Chair persons shall serve one (1) year terms and shall be selected by the Board.

<u>Trustee Name</u>	<u>Initial Term</u>
Brad Anderson	1 year
Michelle Cormier	2 years
Michael Gray	2 years
Normal Miller	3 years
Billie Ruff	3 years
Mike Schaer	4 years
Steve Wahrlich	4 years

Section 3. Powers and Duties of Trustees. The appointed Trustees shall have the powers and duties set out in Sections 7-12-1121 through 7-12-1133, M.C.A. and any other applicable laws, ordinances or regulations. The Board of Trustees shall submit to the City Council for approval a work plan and budget for the ensuing fiscal year no later than the last day of February preceding the beginning of the fiscal year for which the work plan and budget apply. The City Council may modify the work plan and budget as it considers necessary and appropriate.

APPROVED by the City Council of the City of Billings, Montana this _____ day of October, 2005.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE City Clerk

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AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 11, 2005

TITLE: Americans with Disabilities Act (ADA) Grievance Process and ADA Coordinator

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The City Council will consider adopting a Resolution that establishes a grievance process for the Americans with Disabilities Act (ADA), appointing an ADA Coordinator and repealing a 1998 resolution that covered the same topics. The ADA Settlement Agreement that the Council approved last month requires this action.

ALTERNATIVES ANALYZED: The City must adopt a grievance procedure and appoint a coordinator. The primary alternative available to the Council is who to appoint as the coordinator. Staff recommends that the Facilities Manager be appointed because that position has the broadest knowledge of City facilities, the ADA and the Settlement Agreement.

FINANCIAL IMPACT: Adopting the grievance process and designating an ADA coordinator has no direct financial impacts. There could be costs if grievances are filed and the complaint resolutions require program or facility modifications. The financial impact will be determined as complaints are received and resolved.

RECOMMENDATION

Staff recommends that Council approve the attached Resolution that establishes an ADA grievance process, names the City's ADA Coordinator and repeals the previous grievance process resolution.

Approved By: **City Administrator** **City Attorney**

ATTACHMENTS

A: Resolution

RESOLUTION NO. 05-_____

A RESOLUTION DESIGNATING A CITY OF BILLINGS AMERICANS WITH DISABILITIES ACT (ADA) COORDINATOR, ESTABLISHING A GRIEVANCE PROCEDURE TO BE USED BY ANYONE WHO WISHES TO FILE A COMPLAINT ALLEGING DISCRIMINATION ON THE BASIS OF DISABILITY AND REPEALING RESOLUTION NO.98-17429

WHEREAS, the City of Billings entered into a Settlement Agreement with the US Dept. of Justice for ADA compliance that requires the City to adopt a grievance policy that complies with DOJ standards and to designate an ADA coordinator, and

WHEREAS, the City has previously adopted an ADA grievance procedure and named an ADA coordinator by adopting Resolution No. 17429, which is now outdated.

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

Section 1. ADA coordinator appointment: The City of Billings Mayor and City Council hereby designate the Facilities Manager in the Dept. of Administration as the ADA coordinator for the City of Billings. The coordinator is responsible for overseeing, planning, training and implementing compliance with the ADA and the Settlement Agreement and for managing the ADA grievance procedure.

Section 2. Grievance procedure adoption: The City of Billings hereby adopts the ADA grievance procedure that is attached to this resolution as Exhibit A. The Mayor and City Council call upon the ADA coordinator and all City employees to provide equal access to services, activities, programs and facilities for all disabled persons and to support the grievance procedure as a means to address possible access shortcomings.

Section 3. Additional remedies: Nothing in this grievance process shall deprive an aggrieved person from pursuing additional remedies for alleged violations of the ADA such as filing a complaint with federal or state agencies or courts. Utilizing the grievance process is not a prerequisite for pursuing the other remedies.

Section 4. Repeal: Resolution No. 98-17429, which established an ADA coordinator and an ADA grievance process and that was adopted by the Billings City Council on December 21, 1998 is hereby repealed.

APPROVED by the City Council of the City of Billings, Montana this _____ day of October, 2005.

THE CITY OF BILLINGS:

By: _____
Charles F. Tooley, Mayor

ATTEST:

By: _____
Marita Herold, CMC/AAE City Clerk

EXHIBIT A

The City of Billings, Montana Grievance Procedure under The Americans with Disabilities Act

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act of 1990. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the City of Billings. Billings Personnel Policy governs employment-related complaints of disability discrimination.

In most cases the complaint shall be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Ms. Saree Couture
City of Billings Facilities Manager / ADA Coordinator
PO Box 1178
Billings, Montana 59103

Within 15 calendar days after receipt of the complaint, the ADA Coordinator or his/her designee will meet with the complainant to discuss the complaint and the possible resolutions. Within 15 calendar days of the meeting, the ADA Coordinator will respond in writing, and where appropriate, in format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the City of Billings and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision within 15 calendar days after receipt of the response to the City Administrator or his/her designee. Within 15 calendar days after receipt of the appeal, the City Administrator will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, the City Administrator will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator, appeals to the City Administrator and responses from these two officers will be retained by the City of Billings for at least three years.

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CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, OCTOBER 11, 2005

TITLE: Approval of award for the City-Wide Gasoline, Diesel Fuel and Lubrication Products supply bids.

DEPARTMENT: Administration-Finance Division

PRESENTED BY: Patrick M. Weber, Financial Services Manager
 Larry Deschene, Motor Pool Manager

PROBLEM/ISSUE STATEMENT: The Motor Pool Division administers an annual contract for all gasoline, diesel fuel and lubrication products for City equipment. Two bids were received this year for Schedule A, Gasoline and Diesel Fuel and three bids were received for Schedule B, Lubrication Products. The City Council must vote to approve or reject the bids.

FINANCIAL IMPACT: All departments with city equipment budget for the fuel and lubrication products expense. Three bids were received October 4, 2005 as follows:

SCHEDULE A – GASOLINE AND DIESEL FUEL PRODUCTS

GM Petroleum (Billings MT) \$1,736,863

	Regular <u>Unleaded</u>	Mid-grade <u>Unleaded</u>	Super <u>Unleaded</u>	#2 Diesel	#1 Diesel
Base Price	2.2251	2.2944	2.3637	2.3412	2.5194
Cleanup Fee	.0075	.0075	.0075	.0075	.0075
L.U.S.T.	.001	.001	.001	.001	.001
State Tax	.27	.27	.27	No tax	No tax
Total Price	2.5036	2.5729	2.6422	2.3497	2.5279

Town and Country Supply (Laurel MT) \$1,695,649

	Regular <u>Unleaded</u>	Mid-grade <u>Unleaded</u>	Super <u>Unleaded</u>	#2 Diesel	#1 Diesel
Base Price	2.2100	2.2590	2.3500	2.2750	2.4250
Cleanup Fee	.0075	.0075	.0075	.0075	.0075

L.U.S.T.	.001	.001	.001	.001	.001
State Tax	.27	.27	.27	No tax	No tax
Total Price	2.4885	2.5375	2.6285	2.2835	2.4335

A & I Distributors (Billings MT) NO BID

The gasoline and fuel price per gallon will rise and fall with the market based on the posted tank wagon price at the refinery. The total amount listed is the current price per gallon times the estimated annual usage. When last year's bid was approved, the estimated costs for the three fuel products bid was \$1.6106/gallon for unleaded, \$1.7442/gallon for super unleaded and \$1.4305/gallon for #2 diesel. Mid grade unleaded gallon and #1 Diesel were not part of last years bid. The lubrication product price per unit will increase or decrease based on the vendor price index.

SCHEDULE B - LUBRICATION PRODUCTS

<u>GM Petroleum</u>	<u>Town and Country Supply</u>	<u>A&I Distributors</u>
\$68,690.60	\$61,232.69	\$52,137.04

RECOMMENDATION

Staff recommends that City Council award the gasoline and diesel fuel contract to Town and Country Supply and the Lubrication products contract to A & I Distributors for the next 12 months.

ATTACHEMENT

A-2005 Gasoline, Fuel Lubrication Products Bid Tabulation

Approved By: **City Administrator** ____ **City Attorney** ____

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