

**Note: Supporting Documents Follow Agenda**

# **CITY OF BILLINGS**

## ***CITY OF BILLINGS MISSION STATEMENT:***

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

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## **AGENDA**

**COUNCIL CHAMBERS**

**July 27, 2009**

**6:30 P.M.**

**CALL TO ORDER – Mayor Tussing**

**PLEDGE OF ALLEGIANCE – Mayor Tussing**

**INVOCATION – Councilmember Astle**

**ROLL CALL**

**MINUTES – July 13, 2009**

**COURTESIES**

**PROCLAMATIONS**

**ADMINISTRATOR REPORTS – Tina Volek**

**PUBLIC COMMENT on “NON-PUBLIC HEARING” Agenda Items: 1, 3(a), 3(b), 4, and 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. Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications Received	Human Relations Commission	07/27/09	12/31/10
2.	William Kipp	Community Development	07/27/09	12/31/09

3.	Matt Krivonen	Zoning Commission	07/27/09	12/31/10
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1. Unexpired term of N. Gregory Kohn
2. Unexpired term of Kathleen Gilluly
3. Unexpired term of Thomas Grimm

**B. Bid Awards:**

**(1) Airport Ramp Sweeper.** (Opened 6/23/09) (Delayed from 7/13/09) Recommend Intermountain Sweeper Company, \$187,329.

**(2) Park I Elevator Modernization and Upgrade.** (Opened 7/14/09). Recommend Langlas Associates, Inc., \$249,000.

**(3) W.O. 04-26, Zone 4 Reservoir Phase 2.** (Opened 7/14/09). Recommend Star Service, Inc., \$2,676,578.

**(4) W.O. 08-27, Solid Waste Landfill Phase 4 Expansion.** (Opened 7/14/09). Recommend CMG Construction, Inc., \$699,935.

**C. Approval** of purchase of property at 3113 Stanford Drive, \$107,000.

**D. Change Order #4,** SID 1379 King Avenue West Landscape Improvements Contract, A-1 Landscaping, not to exceed \$10,000.

**E. Professional Services Contract** for W.O. 09-11, Rimrock Road Improvements from 17<sup>th</sup> Street West to Forsythia Blvd., Kadrmas, Lee & Jackson (KLJ); \$301,100.

**F. Professional Services Contract** for W.O. 10-01, 2010 Water and Sewer Replacement Projects, Morrison-Maierle, Inc., not to exceed 1,202,610.

**G. Agreement** for Landfill Use with City of Big Timber, one-year term; \$34,500 estimated annual revenue.

**H. Agreement** with Yellowstone County Council on Aging, Inc. for senior programs at the Billings Community Center, July 1, 2009 – June 30, 2010, \$25,000.

**I. Amendment No. 9** with Morrison-Maierle, Inc. for engineering services for the Airport's West End Entrance Replacement Project, \$83,408.

**J. Amendment No. 10** with Morrison-Maierle, Inc. for engineering services for the Airport Improvement Program (AIP) 35 Taxi Lane Rehabilitation Project, \$43,054.

**K. Right-of-way Easement** with Billings Clinic for installation of wayfinding signs in the 1000 block of N. 27<sup>th</sup> Street for W.O. 06-20, Downtown Wayfinding Signage, at no cost to the City.

**L. Approval** of sale of Fire Department surplus property:

(1) Used pump and motor to Reed Point Volunteer Fire Department, \$500.

(2) Two Emergency One (E-One) fire apparatus - Unit #4090 and Unit #4091.

**M. Street Closure:**

(1) Mexican Fiesta, August 1, 2009, 6 a.m. – 7 p.m., 6<sup>th</sup> Avenue S. between S. 28<sup>th</sup> and S. 29<sup>th</sup>, and S. 29<sup>th</sup> from 6<sup>th</sup> Avenue S. to the alley.

**N. Resolution of Intent** to adopt the Old Town Neighborhood Master Plan and set a public hearing for August 10, 2009.

**O. Resolution** repealing Resolution #07-18594 and establishing and naming a Board of Trustees for the Billings Tourism Business Improvement District No. 0002.

**P. Bills and Payroll**

(1) June 30, 2009

(Action: approval or disapproval of Consent Agenda)

**REGULAR AGENDA:**

**2. CONTINUANCE OF PUBLIC HEARING AND RESOLUTION VACATING A PORTION OF CLARK AVENUE WITHIN THE 2300 BLOCK.** (Continued from 7/13/2009) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

**3. (a) RESOLUTION RELATING TO POOLED SERIES 2009 SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICTS 1372 AND 1386); FIXING THE FORM AND DETAILS AND AUTHORIZING THE EXECUTION AND DELIVERY.** Staff recommends approval. (Action: approval or disapproval of staff recommendation).

**(b) CONSTRUCTION BID AWARD FOR SID 1386, EAST AND WEST MACDONALD DRIVE.** (Opened 6/23/09) Delayed from 7/13/09 until after bond sale. Staff recommends JEM Contracting, \$241,632.50. (Action: approval or disapproval of staff recommendation).

**4. RESOLUTION RELATING TO REVENUE BONDS FOR THE 2008 AND 2009 WASTEWATER REPLACEMENT PROJECTS; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS OF THE BONDS.** Staff recommends approval. (Action: approval or disapproval of staff recommendation).

5. **RESOLUTION RELATING TO REVENUE BONDS FOR THE 2008 AND 2009 WATER REPLACEMENT PROJECTS; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS OF THE BONDS.** Staff recommends approval. (Action: approval or disapproval of staff recommendation).
6. **PUBLIC COMMENT on Non-Agenda Items** -- Speaker sign-in required. (Restricted to ONLY items not on this 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)**

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

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



**A**

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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, JULY 27, 2009**

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**TITLE:** **Boards & Commissions –Appointments**

**DEPARTMENT:** **City Administrator's Office**

**PRESENTED BY:** **wynnette Maddox, Administration**

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**PROBLEM/ISSUE STATEMENT:** Confirmation of appointments for the Board and Commission positions that are vacant due to resignations.

**FINANCIAL IMPACT:** No financial impact involved.

**RECOMMENDATION**

Mayor Tussing recommends that Council confirm the following appointments:

	Name	Board/Commission	Term	
			Begins	Ends
1.	No Applications Received	Human Relations Commission	07/27/09	12/31/10
2.	William Kipp	Community Development	07/27/09	12/31/09
3.	Matt Krivonen	Zoning Commission	07/27/09	12/31/10

1. Unexpired term of N. Gregory Kohn
2. Unexpired term of Kathleen Gilluly
3. Unexpired term of Thomas Grimm

**Approved By:** **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** Award of Ramp Sweeper for Billings Logan International Airport  
**DEPARTMENT:** Aviation and Transit  
**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** This project is for the purchase of a new Airport Ramp Sweeper that is used primarily to clear the commercial aircraft parking ramp, taxiways, taxi lanes, and Terminal streets of construction debris, foreign object debris (FOD), and sand that is used for traction during periods of ice and snow. It is important to clean these areas because serious aircraft damage or engine failure may occur if these materials should be ingested into a jet engine or aircraft propeller. The new unit will replace a 25-year-old sweeper that is no longer able to clean these areas effectively and was identified for replacement through the City's Equipment Replacement Program.

This project was advertised in the *Billings Times* for two weeks, and was posted on the City's Web Site. On June 23, 2009, the following bids for this piece of equipment were received:

<b>COMPANY</b>	<b>PRICE</b>
Titan Machinery Company	\$173,642.62
Intermountain Sweeper Company	\$187,329.00
<b>ESTIMATE</b>	<b>\$200,000.00</b>

In the bid specifications for this piece of equipment, one of the specification items was for the collection hopper to be constructed from 304 grade stainless steel material. Additionally, the dust separator was specified to be constructed in stainless steel. The specification for stainless steel is the result of past experience with the current Airport Ramp Sweeper. The existing Airport Ramp Sweeper's hopper had to be replaced approximately 10 years ago due to rusting, at a cost of over \$19,000. Because the Airport expects to have the Ramp Sweeper for at least 20 years, the stainless steel upgrade is an important aspect in the final consideration of the successful bid.

Of the two bids received, the Intermountain Sweeper Company bid was the only one to meet the stainless steel specification. The Titan Machinery bid offered an alternative to the stainless steel specification by coating their hopper with an adhered rubberized liner and a lifetime warranty on the hopper. While this is an improvement over the existing

hopper style in the current Airport Ramp Sweeper, it still does not meet the specifications.

**FINANCIAL IMPACT:** This equipment replacement was budgeted at \$190,400. The successful bid of \$187,329 would be paid for out of the Airport's Passenger Facility Charge Fund. This project was approved in the FY 2009 CIP and budget. The project was designed and set to be advertised in May, bid on June 9, with approval on June 22. However, a mishap in conveying the advertising materials to the City Clerk occurred, which delayed the bid award. While funding is available for this project and adequate budget authority exists in the FY 2010 Airport budget, a first quarter budget amendment will be necessary to correct the use of this additional budget in this Fiscal Year.

### **RECOMMENDATION**

Staff recommends that City Council award the Airport Ramp Sweeper to Intermountain Sweeper Company for the amount of \$187,329, since Intermountain Sweeper Company was the only bidder to meet the bid specifications for a number of important items.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27<sup>th</sup>, 2009**

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**TITLE:** Contract Award for Park 1 Elevator Modernization and Upgrade  
**DEPARTMENT:** Administrative Services – Parking Division  
**PRESENTED BY:** Chris Mallow, Parking Supervisor

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**PROBLEM/ISSUE STATEMENT:** The Parking Division budgeted funds, as part of the Capital Improvements Plan, in FY10 to upgrade and modernize the elevator car and systems at the Park 1 garage, located at 2912 3<sup>rd</sup> Ave North. This is the original elevator that was installed when the garage was built in 1977. The Parking Division has seen consistently increasing maintenance costs and downtimes, particularly in the winter months, due to the age and deterioration of the hydraulic systems. This project will bring the operation and safety systems of this garage up to current code, as well as provide a new aesthetically pleasing cab for the Park 1 customers. The project was advertised in the *Billings Times* and the City of Billings website on July 2<sup>nd</sup> and 9<sup>th</sup>, 2009. On July 14<sup>th</sup>, 2009, the following bids on this project were received:

<b><u>CONTRACTOR</u></b>	<b><u>BASE BID</u></b>
Langlas and Associates, Inc.	\$249,000.00

**FINANCIAL IMPACT:** The total cost of the project is Two Hundred Forty-nine Thousand dollars (\$249,000.00) and will be funded through Parking Division reserve funds. This project was budgeted in FY10 Capital Improvement Plan for a total of \$300,000.00. This project will be administered by Collaborative Design Architects under a contract previously executed at the March 23<sup>rd</sup>, 2009, City Council meeting.

**RECOMMENDATION:** Staff recommends that City Council approve the award of the Park 1 Elevator Modernization and Upgrade contract to the low responsive bidder Langlas Associates, Inc., for the amount of \$249,000.00.

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



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** W.O. 04-26—Zone 4 Reservoir, Phase 2, Construction Contract Award

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The Public Works Water Utility proposes to construct a pumping facility and water storage tank in Northwest Billings (near Ironwood Subdivision) to provide service to water distribution pressure Zones 4 and 5 West. The new pump station, associated site piping, and Zone 4 reservoir have been designed to allow expansion and provide future service to Zones 6 and 7. Phase 1 of the project involves the construction of a new two million gallon reservoir, which will be a composite elevated tank tower (the base, or stem, of the tower will be concrete and the tank portion will be steel). Phase 2 of the project involves all site work, access road construction, pump station construction (in the stem of the tower), and all associated piping. The project was designed by HDR Engineering, with whom the City has a contract for these professional services.

Phase 1 was bid June 23, 2009, and the corresponding contract was awarded by Council on July 13, 2009. Bids for Phase 2 were opened July 14, 2009, and by law, Council must act on the bid opening at this meeting.

**FINANCIAL IMPACT:** This project is being funded by a State Revolving Fund (SRF) loan. The FY 2010 budget includes ample funds to cover the construction costs of Phase 2.

Approved Funding Amount in 2009 CIP:	\$ 8,097,885.00
Previously encumbered for Professional Services:	\$ (1,092,585.00)
Previously encumbered for Phase 1 construction:	\$ (2,468,000.00)
<u>Amount being requested for Phase 2 construction:</u>	<u>\$ (2,676,578.00)</u>
Remaining Funding:	\$ 1,860,722.00

Bids were opened July 14, 2009, with the following results:

Firm(s)	Star Service, Inc.	COP Construction		Engineer's Estimate
<b>BASE LUMP SUM BID</b>	\$2,676,578.00	\$2,769,124.00		\$3,200,000.00

### **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 04-26—Zone 4 Reservoir, Phase 2 to Star Service, Inc. for \$2,676,578.00.

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



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

**TITLE:** W.O. 08-27—Solid Waste Landfill Phase 4 Expansion,  
Construction Contract Award

**DEPARTMENT:** Public Works

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

**PROBLEM/ISSUE STATEMENT:** The City currently disposes of its solid waste at the City of Billings Regional Landfill. The Phase 2 cell is nearly filled to capacity, and the Phase 3 cell is projected to be full in the next 12-15 months. Therefore, further expansion is required by developing the Phase 4 cell, which is estimated to have a 4-year period before reaching capacity. The Phase 4 cell will be constructed within the licensed landfill area. The project includes excavation and embankment work to prepare the area for installation of the required liner. The project was designed by Great West Engineering, with whom the City has a contract for these professional services.

Bids were opened for the Phase 4 expansion on July 14, 2009, and by law, Council must act on the bid opening at this meeting.

**FINANCIAL IMPACT:** This project is being funded by the Landfill Infrastructure Fund. The FY 2010 budget includes ample funds to cover the construction costs of Phase 4.

Approved Funding Amount in 2009 and 2010 CIP: \$ 826,000.00

Amount being requested for Phase 4 construction: \$(699,935.00)  
Remaining Funding: \$ 126,065.00

Bids were opened July 14, 2009, with the following results:

<b>Firm(s)</b>	<b>TOTAL BID AMOUNT</b>

Riverside Sand & Gravel		\$1,261,480.00	
CMG Construction, Inc		\$ 699,935.00	
21 Construction		\$ 767,670.00	
Oftedal Construction		\$1,116,600.00	
Bozeman Sand & Gravel		\$ 993,420.00	
Trapper Peak Construction		\$ 897,829.00	
Delhur Industries		\$ 837,415.98	
Engineer's Estimate		\$ 933,180.00	

### **RECOMMENDATION**

Staff recommends that Council award a construction contract for W.O. 08-27—Landfill Phase 4 Expansion to CMG Construction, Inc. for \$699,935.00.

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



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

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**TITLE:** Purchase of Property at 3113 Stanford Drive

**DEPARTMENT:** Public Works

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

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**PROBLEM/ISSUE STATEMENT:** The Public Works Department reconstructed and upgraded the Staple Reservoir Complex on Stanford Drive in 2004. During the construction, there was an accidental release of water by the contractor that was presumed to have caused foundation settlement on the property at 3113 Stanford Drive. A settlement with the contractor's insurance company and the residents was completed, which resolved all liability in the case with the current homeowners. During the investigation of the property damage and possible cause, it was determined the existing reservoir and/or piping is leaking allegedly causing continuing foundation settlement. The piping in this area is older and has lead joints that can leak. Replacing all the piping to and around the reservoir would be cost prohibitive at this time. Public Works has offered to purchase the property for \$107,000 in as is condition and will allow the owners to remain on the property rent free while their new home is being built.

**ALTERNATIVES ANALYZED:** Purchasing the property would mitigate potential future liability due to continued foundation settling caused by water leakage from the complex and surrounding infrastructure. The property will be used as a residential buffer area and for potential construction of a drain system to intercept ground water. An appraisal of the property without the structural foundation concerns is \$292,000. Due to the foundation issues it is very difficult to determine current appraised value.

**FINANCIAL IMPACT:** The Public Works Department has allocated \$170,000 in the FY 2010 Capital Improvement Program for the acquisition of property for the expansion of the Water Treatment Plant. We suggest using a portion of this funding for the purchase of the property.

### **RECOMMENDATION**

Staff recommends that the City Council approve the purchase of the property at 3113 Stanford Drive for \$107,000 and authorize the City Administrator to sign the purchase agreement.

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

**ATTACHMENT**

A.      Buy/Sell Agreement

**BUY - SELL AGREEMENT**  
**(Including Earnest Money Receipt)**



The use of this form is for REALTOR® members only (members of the Montana Association of REALTORS®)  
 and cannot be used by any other party for any purpose. Use of these forms by other parties may  
 result in legal action by the Montana Association of REALTORS®.

1 This Agreement stipulates the terms of sale of this property. Read carefully before signing.

2 This is a legally binding contract. If not understood, seek competent advice.

3 BILLINGS Montana, (date) July 9, 2009,

4 CITY OF BILLINGS,

5 as  joint tenants with rights of a survivorship,  tenants in common,  single in his/her own right,

6  Other \_\_\_\_\_ (hereinafter called "Buyer") agrees to purchase, and the

7 Seller agrees to sell the following described real property (hereinafter referred to as "Property") commonly known

8 as 3113 STANFORD DRIVE

9 \_\_\_\_\_

10 in the City of BILLINGS, County of YELLOWSTONE,

11 Montana, legally described as: LOT 9 BLOCK 3 MORELEDGE SUB.

12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 TOGETHER with all interest of Seller in vacated streets and alleys adjacent thereto, all easements and other  
 16 appurtenances thereto, and all improvements thereon. All existing permanently installed fixtures and fittings that are  
 17 attached to the Property are included in the purchase price, such as electrical, plumbing and heating fixtures, wood,  
 18 pellet, or gas stoves, built-in appliances, screens, storm doors, storm windows, curtain rods and hardware, attached floor  
 19 coverings, T.V. antennas, satellite dish, hot tub, air cooler or conditioner, garage door openers and controls, fireplace  
 20 inserts, mailbox, and trees and shrubs and perennials attached to the Property, attached buildings or structures unless  
 21 otherwise noted below except:

22 NONE

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

26 **PERSONAL PROPERTY:** The following items of personal property, free of liens and without warranty of condition,  
 27 are included and shall be transferred by bill of sale: DISHWASHER, DISPOSAL & GARAGE DOOR OPENER

28 \_\_\_\_\_

29 \_\_\_\_\_

30 \_\_\_\_\_

31 \_\_\_\_\_

32 **LEASED/RENTED PERSONAL PROPERTY:** The following personal property is leased/rented:  water softener  
 33  water conditioner  propane tank  satellite dish  satellite control  alarm system  other \_\_\_\_\_

34 \_\_\_\_\_

35 Buyer is responsible for making arrangements concerning Buyer's right to lease/rent said items and Seller makes no  
 36 representations or warranties concerning the transferability of said items or the assignment of any agreements relating  
 37 to the lease/rental of said items.

38 \_\_\_\_\_

39 **PURCHASE PRICE AND TERMS:**

40 Total purchase price is One Hundred Seven Thousand U.S. Dollars

41 (\$ 107,000.00 ) payable as follows:

42 \$ 1,000.00 earnest money to be applied at closing.

43 \$ \_\_\_\_\_ as additional cash payment, payable on or before closing.

44 \$ 106,000.00 balance of the purchase price will be financed as follows:

45  Conventional  MBOH  Seller Financing  
 46  FHA  USDA-RD  Assumption of Existing Loans

47  VA  Other Institutional Financing

48 **PURCHASE TO PAY ALL CASH AT CLOSING OF WHICH THE EARNEST MONEY IS A PART.**

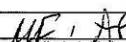
49 \_\_\_\_\_

50 \_\_\_\_\_

  
 Buyer's Initials

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 Seller's Initials

Real Estate By Hamwey 1010 Grand Avenue, Billings MT 59102

Phone: 4062482020 Fax: (406) 248-3949 Charlie Hamwey

3113 STANFORD

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51 **CLOSING DATE:** The date of closing shall be (date) July 31, 2009. The  
 52 parties may, by mutual agreement, close the transaction anticipated by this Agreement at any time prior to the date  
 53 specified. The Buyer and Seller will deposit with the closing agent all instruments and funds necessary to complete  
 54 the purchase in accordance with this Agreement.  
 55

56 **POSSESSION:** Seller shall deliver to Buyer possession of the property and allow occupancy:  
 57  when the closing agent is in receipt of all required, signed documents and all funds necessary for the purchase; OR  
 58  on the date of recording the deed or notice of purchaser's interest, OR  
 59  AS PER RENTAL ADDENDUM AGREEMENT.

60 Property shall be vacant unless otherwise agreed in writing. Seller shall provide keys and/or means to operate locks,  
 61 mailboxes, security systems, alarms, garage door opener(s), and Property Owner's Association facilities, if applicable.  
 62

63 **RECEIPT OF EARNEST MONEY:** Buyer agrees to provide Earnest Money in the amount of One Thousand  
 64 U.S. Dollars (\$ 1,000.00) as evidenced by  Cash,  
 65 the receipt of which is acknowledged by the undersigned Broker/Salesperson; OR  Check, the receipt of which is  
 66 acknowledged by the undersigned Broker/Salesperson;  OR, \_\_\_\_\_  
 67

68 If Buyer fails to pay the Earnest Money as set forth above, Buyer will be in default of this Agreement and Seller shall be  
 69 entitled to immediately terminate this Agreement and declare any Earnest Money already paid by Buyer to be forfeited.  
 70

71 All parties to this transaction agree, unless otherwise provided herein, that the earnest monies will be deposited  
 72 pursuant to Montana Law OR within (3) business days of the date all parties have signed the Agreement or  
 73

74 and such funds will be held in a trust account by AMERICAN TITLE & ESCROW  
 75 Parties agree that interest accruing on earnest money, if any, while deposited shall be payable to: AMERICAN TITLE &  
 76 ESCROW

77 If interest is payable to the Broker it is agreed that sums so paid are consideration for services rendered.  
 78 CHARLES H. HAMWEY (406) 248-2020 Charles H. Hamwey  
 79 (Broker/Salesperson's Printed Name and Phone Number) (Signature of Broker/Salesperson)

80 To be signed only if in actual receipt of Cash or Check.  
 81

82 The parties authorize the holder of the earnest money to forward to the closing agent, upon its request, all or any  
 83 portion of the earnest money required to complete the closing of the transaction.  
 84

85 **FINANCING CONDITIONS AND OBLIGATIONS:**  
 86

87 **BUYER'S REPRESENTATION OF FUNDS:** Buyer represents that they have sufficient funds for the down  
 88 payment and closing costs to close this sale in accordance with this Agreement and are not relying upon any  
 89 contingent source of such funds unless otherwise expressly set forth herein.  
 90

91 **LOAN APPLICATION:** If Buyer fails to make written application for financing and pay to the lender any  
 92 required fees, apply for assumption of an existing loan or contract, or initiate any action required for  
 93 completion of a contract for deed by 5:00 P.M. (Mountain Time) (date) N/A  
 94 Buyer will be in breach of this Agreement and Seller can exercise Seller's remedies under this Agreement.  
 95

96 **DISCOUNT POINTS:** If a Buyer obtains financing from a lender requiring discount points, Seller agrees to pay  
 97 discount points up to a maximum of \_\_\_\_\_ percent (N/A %) of the Buyer's  
 98 loan. Seller's obligation will not exceed \$ N/A. Any funds paid by Seller as set forth above shall not be  
 99 used for the origination fee, closing costs, reserves, or any other costs. Buyer shall pay all other discount points.  
 100

101 **V.A. BUYERS:** It is expressly agreed that, notwithstanding any other provisions of this contract, the Buyer  
 102 shall not incur any penalty by forfeiture of earnest money or otherwise be obligated to complete the purchase  
 103 of the Property if the contract purchase price or cost exceeds the reasonable value of the Property established  
 104 by the Veteran's Administration. The Buyer shall, however, have the privilege and option of proceeding with  
 105 the consummation of this Agreement without regard to the amount of the reasonable value established by  
 106 the Veteran's Administration.

 Buyer's Initials

## P's Initials

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Buy/Sell, September 2008

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W W W W W Seller's Initials

3113 STANFORD

107 **F.H.A. BUYERS:** In the event funds for the transaction anticipated by this Agreement are to be derived from  
108 an F.H.A. insured loan, it is expressly agreed that, notwithstanding any other provisions of this Agreement,  
109 the Buyer shall not be obligated to complete the purchase of the property described herein or to incur any  
110 penalty by forfeiture of earnest money deposits or otherwise, unless the Buyer has received a written  
111 statement issued by the Federal Housing Commissioner, Veteran's Administration, or a Direct Endorsement  
112 lender setting forth the appraised value of the Property for mortgage insurance purposes of not less than the  
113 amount set forth in the APPRAISAL PROVISION section, which amount is incorporated herein by reference.  
114 The Buyer shall have the privilege and option of proceeding with the consummation of this Agreement without  
115 regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised  
116 valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban  
117 Development (HUD) will insure. HUD does not warrant the value nor the condition of the Property. The Buyer  
118 should satisfy himself/herself that the price and condition of the Property are acceptable.  
119

120 **SMOKE DETECTOR(S):** Property has # N/A Smoke Detector(s).  
121

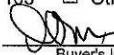
122 **PROPERTIES INSPECTIONS:** The Buyer is aware that any Brokerage Firm(s) and Salespersons involved in the  
123 transaction anticipated by this Agreement have not conducted an expert inspection or analysis of the Property or its  
124 condition and make no representations to the Buyer as to its condition, do not assure that the house and/or buildings  
125 will be satisfactory to the Buyer in all respects, that all equipment will operate properly or that the Property and/or  
126 improvements comply with current building and zoning codes and ARE NOT building inspectors, building contractors,  
127 structural engineers, electricians, plumbers, sanitarians, septic or cesspool experts, well drillers or well experts, land  
128 surveyors, civil engineers, flood plain or water drainage experts, roofing contractors or roofing experts, accountants,  
129 attorneys, or title examiners, or experts in identifying hazardous waste and/or toxic materials.  
130

132 **CONTINGENCIES:** The contingencies set forth in this Agreement or on attached addenda shall be deemed to have  
133 been released, waived, or satisfied, and the Agreement shall continue to closing, unless, by 5:00 p.m. (Mountain  
134 Time) on the date specified for each contingency, the party requesting that contingency has notified the other party  
135 or the other party's Broker/Salesperson in writing that the contingency is not released, waived, or satisfied. If a party  
136 has notified the other party on or before the release date that a contingency is not released, waived, or satisfied, this  
137 Agreement is terminated, and the earnest money will be returned to the Buyer, unless the parties negotiate other  
138 terms or provisions.  
139

140 **INSPECTION CONTINGENCY:**

141  This Agreement is contingent upon Buyer's acceptance of the Property conditions identified through any  
142 inspections or advice requested below. Buyer agrees to acquire, at Buyer's own expense, independent  
143 inspections or advice from qualified inspectors or advisors of the Buyer's choice. Buyer agrees that any  
144 investigations or inspections undertaken by Buyer or on his/her behalf shall not damage or destroy the property,  
145 without the prior written consent of Seller. Further, Buyer agrees to return the property to its original condition and to  
146 indemnify Seller from any damage or destruction to the property caused by the Buyer's investigations or  
147 inspections, if Buyer does not purchase the property.  
148

<input type="checkbox"/> Home Inspection	<input type="checkbox"/> Review and Approval of Protective Covenants
<input type="checkbox"/> Seller's Property Disclosure	<input type="checkbox"/> Easements
<input type="checkbox"/> Roof Inspection	<input type="checkbox"/> Flood Plain Determination
<input type="checkbox"/> Structural/Foundation Inspection	<input type="checkbox"/> Water Sample Test
<input type="checkbox"/> Electrical Inspection	<input type="checkbox"/> Septic or Cesspool Inspection
<input type="checkbox"/> Plumbing Inspection	<input type="checkbox"/> Mineral Rights Search
<input type="checkbox"/> Heating, ventilation, cooling system - Inspection	<input type="checkbox"/> Radon
<input type="checkbox"/> Wood Stove/Fireplace Inspection	<input type="checkbox"/> Asbestos
<input type="checkbox"/> Pest/Rodent Inspection	<input type="checkbox"/> Wild Fire Risk
<input type="checkbox"/> Well Inspection for condition of Well and Quantity of Water	<input type="checkbox"/> Legal Advice
<input type="checkbox"/> Accounting Advice	<input type="checkbox"/> Toxic Waste/Hazardous Material
<input type="checkbox"/> Survey or Corner Pins located	<input type="checkbox"/> Underground Storage Tanks
<input type="checkbox"/> Access to Property	<input type="checkbox"/> Sanitary Approval/Septic permit
<input type="checkbox"/> Verification of # of code compliant bedrooms	<input type="checkbox"/> Mold
<input type="checkbox"/> Verification of square footage of improvements _____	<input type="checkbox"/> Verification of lot size _____
<input type="checkbox"/> Water Rights	<input type="checkbox"/> Airport Affected Area
<input type="checkbox"/> Zoning Determination	
<input type="checkbox"/> Other _____	

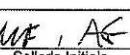
  
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166 Unless Buyer delivers written notice of Buyer's disapproval of the Property conditions on or before (date) N/A,  
167 this contingency shall be of no further force or effect. If Buyer disapproves of the property condition, Buyer shall  
168 deliver written notice to the Seller or the Seller's Broker/Salesperson on or before the date specified above,  
169 together with a copy of that portion of the inspection or report upon which the disapproval is based. Buyer shall also  
170 state whether Buyer elects to immediately terminate the Agreement or negotiate a resolution of the conditions noted.  
171 If Buyer elects to negotiate a resolution of the conditions noted, the notice must contain all of Buyer's objections  
172 and requested remedies. If the parties enter into a written agreement in satisfaction of the conditions noted, this  
173 contingency shall be of no further force or effect. If the parties cannot come to written agreement in satisfaction of  
174 the conditions noted or if the Buyer does not withdraw, in writing, his/her disapproval of the condition noted, on or  
175 before (date) N/A, the earnest money shall be returned to the Buyer, and the agreement then  
176 terminated.

177

178 **FINANCING CONTINGENCY:**

179  This Agreement is contingent upon Buyer obtaining the financing specified in the section of this  
180 Agreement entitled "PURCHASE PRICE AND TERMS". If financing cannot be obtained by the Time for  
181 Completion (defined below), this Agreement is terminated and the earnest money will be refunded to the  
182 Buyer. If third-party financing of a type specified herein is required by the terms of this Agreement  
183 (including assumptions, contracts for deed, and lender financing) the closing shall occur on the date  
184 specified or as soon thereafter as financing is completed, but no later N/A days after the stated  
185 closing date (the "Time for Completion"); OR  
186  This Agreement is contingent upon the Buyer obtaining financing for the Property on terms acceptable to  
187 Buyer. Release Date: N/A.

188

189 **APPRAISAL CONTINGENCY:**

190  Property must appraise for at least (\$ 107,000.00 ). If the Property does not appraise for at least  
191 the specified amount, this Agreement is terminated and earnest money refunded to the Buyer unless the  
192 Buyer elects to proceed with closing this Agreement without regard to appraised value. Written notice of  
193 Buyer's election to proceed shall be given to Seller or Seller's Broker/Salesperson within 3 days of  
194 Buyer or Buyer's Broker/Salesperson receiving notice of appraised value; OR  
195  Property must appraise for at least (\$ 107,000.00 ). Release Date: July 10, 2009.

196

197 **TITLE CONTINGENCY:** This Agreement is contingent upon Buyer's receipt and approval (to Buyer's  
198 satisfaction) of the preliminary title commitment. Release Date: FIVE business days from  
199 Buyer's or Buyer's representative's receipt of preliminary title commitment.

200

201 **INSURANCE CONTINGENCY:** This Agreement is contingent upon Buyer's ability to acquire, at a rate  
202 acceptable to the Buyer, hazard insurance on the property. Release Date: N/A.  
203 This Agreement is contingent upon CITY COUNCIL APPROVAL ON July 27, 2009

204

205 \_\_\_\_\_ Release Date: July 27, 2009

206 This Agreement is contingent upon \_\_\_\_\_

207

208 \_\_\_\_\_ Release Date: \_\_\_\_\_

209

210 **ADDITIONAL PROVISIONS: PROPERTY IS BEING SOLD IN ITS "AS IS" CONDITION.**

211

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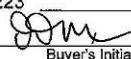
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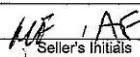
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224 **CONVEYANCE:** The Seller shall convey the Property by WARRANTY deed, free of  
225 all liens and encumbrances except those described in the preliminary title commitment, as approved by the Buyer.  
226

227 **MANUFACTURED HOME(S):** If a MANUFACTURED HOME is included in the sale of this Property, title will be  
228 conveyed at time of closing. Year N/A Make/Model N/A  
229 Serial Number N/A Title Number N/A

230

231 **WATER:** All water, including surface water or ground water, any legal entitlement to water, including statements of  
232 claim, certificates of water rights, permits to appropriate water, exempt existing rights, decreed basins or any ditches,  
233 ditch rights, or ditch easements appurtenant to and/or used in connection with the Property are included with the  
234 Property, except N/A

235

236 Filing or transfer fees will be paid by  Seller,  Buyer,  split equally between Buyer and Seller.  
237 Documents for transfer will be prepared by N/A

238

239 **WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:** By Montana law, failure of the parties at closing or transfer  
240 of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for  
241 updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in  
242 the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424,  
243 MCA, could result in a penalty against the transferee and rejection of the deed for recording.

244

245 **CLOSING AGENTS FEES:** Closing agents fee will be paid by  Seller  Buyer  Equally Shared.

246

247 **TITLE INSURANCE:** Seller, at Seller's expense, shall furnish Buyer with an ALTA Standard Coverage Owners Title  
248 Insurance Policy (as evidenced by a standard form American Land Title Association title insurance commitment) in an  
249 amount equal to the purchase price. Buyer may purchase additional owner's title insurance coverage in the form of  
250 "Extended Coverage" or "Enhanced Coverage" for an additional cost to the buyer. It is recommended that buyer obtain  
251 details from a title company.

252

253 **CONDITION OF TITLE:** All mortgages, judgements and liens shall be paid or satisfied by the Seller at or prior to  
254 closing unless otherwise provided herein. Seller agrees that no additional encumbrances, restrictions, easements  
255 or other adverse title conditions will be placed against the title to the Property subsequent to the effective date of  
256 the preliminary title commitment approved by the Buyer.

257

258 **SPECIAL IMPROVEMENT DISTRICTS:** All Special Improvement Districts (including rural SIDs), including those  
259 that have been noticed to Seller by City/County but not yet spread or currently assessed, will be:  
260  paid off by Seller at closing;  
261  assumed by Buyer at closing; OR  
262  \_\_\_\_\_  
263 All perpetual SIDs shall be assumed by Buyer.

264

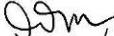
265 **ASSOCIATION SPECIAL ASSESSMENTS:** Any special or non-recurring assessments of any non-governmental  
266 association, including those that have been approved but not yet billed or assessed, will be:  
267  paid off by Seller at closing;  
268  assumed by Buyer at closing; OR  
269  \_\_\_\_\_

270

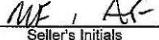
271 **PRORATION OF TAXES AND ASSESSMENTS:** Seller and Buyer agree to prorate taxes, Special Improvement  
272 District assessments for the current tax year, as well as prepaid rents, water and sewer system charges, heating  
273 fuel and tank rental, irrigation assessments, Homeowner's Association dues and/or common maintenance fees,  
274 as of the date of closing unless otherwise agreed as set forth in the additional provisions.

275

276 **CONDITION OF PROPERTY:** Seller agrees that the Property shall be in the same condition, normal wear and  
277 tear excepted, from the date of the execution of this Agreement up to the time Buyer takes possession of the  
278 Property. Seller agrees to leave the Property in broom clean or better condition and allow Buyer a walk-through  
279 inspection of said Property prior to closing to insure that all appurtenances and appliances included in the sale  
280 remain on the Property.

  
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281 **NOXIOUS WEEDS DISCLOSURE:** Buyers of property in the State of Montana should be aware that some  
282 properties contain noxious weeds. The laws of the State of Montana require owners of property within this state to  
283 control, and to the extent possible, eradicate noxious weeds. For information concerning noxious weeds and your  
284 obligations as an owner of property, contact either your local County extension agent or Weed Control Board.  
285

286 **MEGAN'S LAW DISCLOSURE:** Pursuant to the provisions of Title 46, Chapter 23, Part 5 of the Montana Code  
287 Annotated, certain individuals are required to register their address with the local law enforcement agencies as  
288 part of Montana's Sexual and Violent Offender Registration Act. In some communities, law enforcement offices  
289 will make the information concerning registered offenders available to the public. If you desire further information  
290 please contact the local County Sheriff's office, the Montana Department of Justice, in Helena, Montana, and/or  
291 the probation officers assigned to the area.  
292

293 **RADON DISCLOSURE STATEMENT:** The following disclosure is given pursuant to the Montana Radon Control  
294 Act, Montana Code Annotated Section 75-3-606. RADON GAS: RADON IS A NATURALLY OCCURRING  
295 RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES,  
296 MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON  
297 THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL  
298 INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR  
299 STATE PUBLIC HEALTH UNIT. If the Property has been tested for radon, the Seller will provide a copy of the test  
300 results concurrent with an executed copy of this Agreement. If the property has received radon mitigation treatment, the  
301 Seller will provide the evidence of the mitigation treatment concurrent with an executed copy of this Agreement.  
302

303 **BUYER'S REMEDIES:**

304 (A) If the Seller fails to accept the offer contained in this Agreement within the time period provided in the  
305 BUYER'S COMMITMENT section, all earnest monies shall be returned to the Buyer.  
306 (B) If the Seller accepts the offer contained in this Agreement, but refuses or neglects to consummate the  
307 transaction anticipated by this Agreement within the time period provided in this Agreement, the Buyer may:  
308 (1) Demand immediate repayment of all monies that Buyer has paid as earnest money, and upon the  
309 return of such money, the rights and duties of Buyer and Seller under this Agreement shall be terminated;  
310 OR (2) Demand that Seller specifically perform Seller's obligation under this Agreement;  
311 OR (3) Demand monetary damages from Seller for Seller's failure to perform the terms of this Agreement.  
312

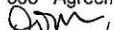
313 **SELLER'S REMEDIES:**

314 If the Seller accepts the offer contained in this Agreement and Buyer refuses or neglects to consummate the  
315 transaction anticipated by this Agreement within the time period provided in this Agreement, the Seller may:  
316 (1) Declare the earnest money paid by Buyer be forfeited;  
317 OR (2) Demand that Buyer specifically perform Buyer's duties and obligations under this Agreement;  
318 OR (3) Demand that Buyer pay monetary damages for Buyer's failure to perform the terms of this Agreement.  
319

320 **BUYER'S AND SELLER'S CERTIFICATION:** By entering into this Agreement, each person or persons executing  
321 this Agreement, as Buyer or Seller, represents that he/she is eighteen (18) years of age or older, of sound mind,  
322 and legally competent to own or transfer real property in the State of Montana; and, if acting on behalf of a  
323 corporation, partnership, or other non-human entity, that he/she is duly authorized to enter into this Agreement on  
324 behalf of such entity.  
325

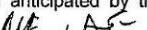
326 **FOREIGN PERSON OR ENTITY:** Section 1445 of the Internal Revenue Code provides that a Buyer of a U.S. real  
327 property interest may be required to withhold tax if the Seller is a foreign person. Sellers acknowledge and agree that  
328 unless the purchase price of the Property does not exceed \$300,000 and Buyer is purchasing the Property for use by  
329 Buyer as a personal residence, Sellers shall deliver to Buyer a certificate of non-foreign status and any other  
330 certificate, affidavit, or statement as may be necessary to meet the requirements of Section 1445 of the Internal  
331 Revenue Code, in a form reasonably acceptable to Buyer and/or Buyer's attorney. In the event Sellers do not deliver  
332 said documents to Buyer at or before closing, Sellers acknowledge and agree that Buyer or the closing agent may  
333 withhold ten percent (10%) of the Purchase Price and submit this amount to the Internal Revenue Service, pursuant to  
334 Section 1445 of the Internal Revenue Code.  
335

336 **CONSENT TO DISCLOSE INFORMATION:** Buyer and Seller hereby consent to the procurement and disclosure  
337 by Buyer, Seller, and Salespersons and their attorneys, agent, and other parties having interests essential to this  
338 Agreement, of any and all information reasonably necessary to consummate the transaction anticipated by this  
339

  
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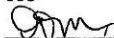
339 Agreement, specifically including access to escrows for review of contracts, deeds, trust indentures, or similar  
340 documents concerning this property or underlying obligations pertaining thereto.  
341  
342 **RISK OF LOSS:** All loss or damage to any of the above-described Property or personal property to any cause is  
343 assumed by Seller through the time of closing unless otherwise specified.  
344  
345 **TIME IS OF THE ESSENCE:** Time is of the essence as to the terms and provisions of this Agreement.  
346  
347 **BINDING EFFECT AND NON-ASSIGNABILITY:** The Agreement is binding upon the heirs, successors and  
348 assigns of each of the parties hereto; however, Buyer's rights under this Agreement are not assignable without the  
349 Seller's express written consent.  
350  
351 **ATTORNEY FEE:** In any action brought by the Buyer or the Seller to enforce any of the terms of this Agreement,  
352 the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall  
353 determine just.  
354  
355 **COMMISSION:** The Seller's and/or Buyer's commitment to pay a commission in connection with the transaction  
356 anticipated by this Agreement is an integral part of this Agreement.  
357  
358 **FACSIMILE:** The parties agree that a facsimile copy of this Agreement to Sell and Purchase which contains the  
359 parties' signatures may be used as the original.  
360  
361 **ENTIRE AGREEMENT:** This Agreement, together with any attached exhibits and any addenda or amendments  
362 signed by the parties, shall constitute the entire agreement between Seller and Buyer, and supersedes any other  
363 written or oral agreements between Seller and Buyer. This Agreement can be modified only in writing, signed by  
364 the Seller and Buyer.  
365  
366 **COUNTERPARTS:** A copy of this Agreement may be executed by each individual/entity separately, and when  
367 each has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete  
368 Agreement between the parties.  
369  
370 **EARNEST MONEY DISPUTES:** Buyer and Seller agree that, in the event of any controversy regarding the  
371 earnest money and things of value held by the Broker, closing agent, or any person or entity holding such money or  
372 property, unless mutual written instructions are received by the holder of the earnest money and things of value,  
373 Broker or closing agent shall not be required to take any action, but may await any proceedings, or, at Broker's or  
374 closing agent's option and sole discretion, may interplead all parties and deposit any monies or things of value in a  
375 Court of competent jurisdiction and may utilize as much of the earnest money deposit as may be necessary to  
376 advance the cost and fees required for filing such action.  
377

378 **ADDENDA AND/OR DISCLOSURES ATTACHED:** (check all that apply):  
379  Lead Based Paint Disclosure  Sale of Buyer's Property  
380  Addendum for Additional Provisions  1031 Tax Deferred Exchange  
381  Back-up Offer  Multi-Family Disclosure  
382  Mold Disclosure  Water Rights Acknowledgement  
383  RENTAL AGREEMENT  Condominium Disclosure/Addendum  
384

385 **RELATIONSHIP CONFIRMATION:** The parties to this Agreement confirm that the real estate licensees' identified  
386 hereafter have been involved in the capacities indicated below and the parties have previously received the  
387 required statutory disclosures setting forth the licensees' duties and the limits of their obligations to each party:  
388 CHARLES H. HAMWEY of REAL ESTATE BY HAMWEY PC

389 (name of licensee) (name of Brokerage company)  
390 is acting as  Seller's Agent/Salesperson  Dual Agent/Salesperson  Statutory Broker.  
391

392 CHARLES H. HAMWEY of REAL ESTATE BY HAMWEY PC  
393 (name of licensee) (name of Brokerage company)  
394 is acting as  Buyer's Agent/Salesperson  Dual Agent/Salesperson  Statutory Broker  
395  Seller's Agent/Salesperson (includes Seller's Sub-Agent or Salesperson).

  
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## Lead-Based Paint Disclosure



1 **Property Address:**

2 3113 STANFORD DRIVE, BILLINGS, MT 59102

3

4 **Lead Warning Statement:** Every Buyer of any interest in residential real property on which a residential dwelling was built prior  
5 to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk  
6 of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning  
7 disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular  
8 risk to pregnant women. The Seller of any interest in residential real property is required to provide the Buyer with any information  
9 on lead-based paint hazards from risk assessments or inspections in the Seller's possession and notify the Buyer of any known  
10 lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to  
11 purchase.

12 **Seller's Disclosures:** The Seller hereby discloses the presence of lead-based paint and/or lead-based paint hazards by checking  
13 the appropriate boxes as follows:

14 (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

15  Seller knows that lead-based paint and/or lead-based paint hazards are present in  
16 the property (explain):

17

18  Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the  
19 property.

20 (b) Records and Reports available to the Seller (check one below):

21  Seller has provided the Buyer with all available records and reports pertaining to lead-  
22 based paint and/or lead-based paint hazards in the property. Those reports and records  
23 are itemized as follows:

24

25  Seller has no records or reports pertaining to lead-based paint and/or lead-based paint  
26 hazards in the property.

27 **Buyer's Acknowledgment:** Buyer acknowledges as follows:

28 (c) Buyer has received copies of all information listed in item (b), if any.

29 (d) Buyer has received the pamphlet "Protect Your Family From Lead in Your Home."

30 (e) Buyer has (check one below):

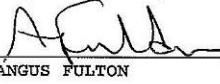
31  Received a 10 business day opportunity (or other mutually agreed upon period) to  
32 conduct a risk assessment or inspection of the presence of lead-based paint hazards  
33 (in which event the parties have entered a Lead-Based Paint Contingency Addendum);  
34 or

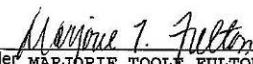
35  Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based  
36 paint and/or lead-based paint hazards.

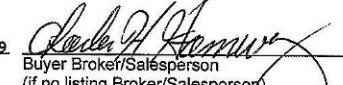
37 **Broker/Salesperson's Acknowledgment:** The Seller Broker/Salesperson (or if no listing Broker/Salesperson, any  
38 Broker/Salesperson in the transaction) acknowledges as follows:

39 (f) Broker/Salesperson has informed the Seller of the Seller's obligations under 42 U.S.C. §4852(d)  
40 and is aware of his/her responsibility to ensure compliance.

41 **Certifications:** The undersigned have reviewed the information above and certify, to the best of their knowledge, that the  
42 information, which they have provided is true and accurate.

43  7-9-2009  7-9-2009  
44 Seller ANGUS FULTON Date Buyer CITY OF BILLINGS Date

45  7-9-2009  7-9-2009  
46 Seller MARJORIE TOOLE FULTON Date Buyer \_\_\_\_\_ Date

47  07/09/2009  07/09/2009  
48 Seller Broker/Salesperson CHARLES H. HAMWEY Date Buyer Broker/Salesperson  
49 (if no listing Broker/Salesperson)  
50 CHARLES H. HAMWEY

51 **NOTE:** Unless otherwise expressly stated the term "Days" means calendar days and not business days. Business days are defined as all days as except Sundays and  
52 holidays. Any performance which is required to be completed on a Saturday, Sunday or a holiday can be performed on the next business day.

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54 Real Estate By Hamwey 1010 Grand Avenue, Billings MT 59102

55 Phone: 4062482020 Fax: (406) 248-3949

56 Charlie Hamwey

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58 3113 STANFORD

## MOLD DISCLOSURE



3113 STANFORD DRIVE

1 Property Address: BILLINGS, MT 59102

2

3 MOLD DISCLOSURE: There are many types of mold. Inhabitable properties are not, and cannot be, 4 constructed to exclude mold. Moisture is one of the most significant factors contributing to mold growth. 5 Information about controlling mold growth may be available from your county extension agent or health 6 department. Certain strains of mold may cause damage to property and may adversely affect the health of 7 susceptible persons, including allergic reactions that may include skin, eye, nose, and throat irritation. Certain 8 strains of mold may cause infections, particularly in individuals with suppressed immune systems. Some 9 experts contend that certain strains of mold may cause serious and even life-threatening diseases. However, 10 experts do not agree about the nature and extent of the health problems caused by mold or about the level of 11 mold exposure that may cause health problems. The Centers for Disease Control and Prevention is studying 12 the link between mold and serious health conditions. The seller, landlord, seller's agent, buyer's agent, or 13 property manager cannot and does not represent or warrant the absence of mold. It is the buyer's or tenant's 14 obligation to determine whether a mold problem is present. To do so, the buyer or tenant should hire a 15 qualified inspector and make any contract to purchase, rent, or lease contingent upon the results of that 16 inspection. A seller, landlord, seller's agent, buyer's agent, or property manager who provides this mold 17 disclosure statement, provides for the disclosure of any prior testing and any subsequent mitigation or 18 treatment for mold, and discloses any knowledge of mold is not liable in any action based on the presence of 19 or propensity for mold in a building that is subject to any contract to purchase, rent, or lease.

20 The undersigned, Seller, Landlord, Seller's Agent and/or Property Manager disclose that they have knowledge 21 that the building or buildings on the property have mold present in them. This disclosure is made in recognition 22 that all inhabitable properties contain mold, as defined by the Montana Mold Disclosure Act (any mold, fungus, 23 mildew or spores). The undersigned are not representing that a significant mold problem exists or does not 24 exist on the property, as such a determination may only be made by a qualified inspector.

25 If Seller/Landlord knows a building located on the property has been tested for mold, Seller/Landlord has 26 previously provided or with this Disclosure provides the Buyer/Tenant a copy of the results of that test (if 27 available) and evidence of any subsequent mitigation or treatment.

28 Angus 29 Seller/Landlord 30 ANGUS FULTON

29 Date 30 7-9-2009

Charles H. Hamwey 31 Seller's Agent/Property Manager 32 Seller/Landlord 33 MARJORIE TOOLE FULTON

31 Date 32 07/09/2009 33

Seller's Agent/Property Manager Date

31 Marjorie J. Fulton 32 Seller/Landlord 33 MARJORIE TOOLE FULTON

31 Date 32 7-7-2009 33

Seller's Agent/Property Manager Date

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## POST-CLOSING RENTAL AGREEMENT

Landlord: The City of Billings, Montana  
Address:  
Phone:

Tenants: Angus and Marjorie Fulton  
Address: 3113 Stanford Drive, Billings, Montana 59102  
Phone: (406) 248-9046

Commencement Date: This Rental Agreement is entered into for the period beginning on the closing date of the sale of the subject property by Tenants to Landlord

Termination Date: This lease shall terminate on the earlier of the date twelve months following the closing date or 30 days following written notice by Tenants of their intent to terminate.

Premises: 3113 Stanford Drive, Billings, Montana 59102, more particularly described in the attached Exhibit A.

Rent: The rent for the entire term shall \$10.00 and other valuable consideration, receipt of which is acknowledged by the Landlord.

In consideration of the mutual covenants contained herein, the parties agree as follows:

1. Landlord leases the subject premises to Tenant and Tenant leases the subject premises from Landlord for the term and for the rent reserved set forth above, and subject to the terms of this Rental Agreement.
2. This Rental Agreement shall be governed by the Residential Landlord And Tenant Act Of 1977, Montana Code Annotated, Title 70, Chapter 24 as set forth and as amended.
3. Any Rules and Regulations adopted by the Landlord which are delivered or posted in conformance with Section 70-24-31 1, MCA are enforceable as terms of this Rental Agreement after the term provided by law. Any such Rules and Regulations shall be deemed incorporated herein by reference.
4. The only people who will reside in the rental premises shall be: Angus Fulton, Marjorie Fulton and their children

Tenant is authorized to have pets.

5. Tenant shall pay for all utilities except: None.

6. The parties shall execute a written statement of the condition of the premises attached prior to the commencement date. Tenant agrees to return the premises to the Landlord in the same or better condition at the termination of the tenancy exclusive of normal wear and tear or due to further deterioration of the premises due to soil instability.
7. The Landlord may adopt rules concerning the Tenants use and occupancy of the premises, which, if adopted are attached hereto and incorporated by reference herein; provided that no rules may be adopted without the consent of Tenant after the date of this Rental Agreement if such rules would constitute a substantial modification of the Rental Agreement.

### Tenants:

Tenants: John Mar  
Margie Fuller

Landlord:

## The City of Billings, Montana

By David D. Mumford  
Its City of Billings



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** SID 1379 King Avenue West – Landscape Improvements Contract  
**DEPARTMENT:** Public Works/Engineering  
**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Landscaping was installed with SID 1379 along King Avenue West from S. 32 Street West to Shiloh Road. At the June 23, 2008, City Council meeting, Council awarded the landscaping contract to A-1 Landscaping, Inc. in the amount of \$350,000. The landscaping contract was for improvements to King Avenue West, but it neglected the small connection areas on north/south streets that were disturbed with the King Avenue West expansion project. The areas to be improved with this Change Order are the southeast frontage of the Town Pump, the south side of King Avenue West along Meadowbrook Drive, the north side of King Avenue West along Decathlon Parkway, the north side of King Avenue West along Olympic Boulevard, and the north side of King along S. 32<sup>nd</sup> Street West. This change order will clean up the areas that got missed in the original contract and restore them to existing conditions.

**ALTERNATIVES ANALYZED:**

- Approve Change Order #4 for a not to exceed amount of \$10,000;
- Do not approve Change Order #4.

**FINANCIAL IMPACT:** Funding for this Change Order will be paid through Arterial Funds. A summary of the original contract amount and subsequent change orders are detailed below. As the bid amount was more than the \$350,000 Public Works intended to award, Change Order #1 removed quantities from the contract to meet constraints.

<u>Contract Detail</u>	<u>Amount</u>
Original Contract Bid Amount	\$403,928.50
Change Order #1	(\$53,928.50)
Change Order #2	\$34,998.50
Change Order #3	(\$137.55)
Change Order #4 (This Memo)	\$10,000.00

**RECOMMENDATION**

Staff recommends that Council approve Change Order #4 with A-1 Landscaping for a not to exceed amount of \$10,000.

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

**ATTACHMENTS**

A. Change Order #4

## CHANGE ORDER

No.  
4

DATE OF ISSUANCE 7-15-09  
09

EFFECTIVE DATE 7-15-

OWNER City of Billings, Montana

CONTRACTOR A-1 Landscaping and Nursery

Contract: N/A

Project: S.I.D. 1379: King Avenue West Landscape Improvements

OWNER's Contract No. N/A ENGINEER's Contract No.

**ENGINEER** City of Billings

You are directed to make the following changes in the Contract Documents:

*Description:*

- 1) Make necessary improvements to clean up the existing areas on the north/south street.

*Reason for Change Order:*

1) The reason for this change order is to restore the landscaping along King Avenue West from S. 32<sup>nd</sup> Street West to Shiloh Road to existing conditions.

*Attachments: (List documents supporting change)*

## CHANGE IN CONTRACT PRICE:

## CHANGE IN CONTRACT TIMES:

**RECOMMENDED:**

**APPROVED:**

## ACCEPTED:

By \_\_\_\_\_ (ENGINEER - Signature)  
(Authorized Signature) OWNER (Authorized Signature) CONTRACTOR

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

EJCDC 1910-8-B

**Prepared by the Engineers Joint Contract Documents Committee and endorsed by The  
Associated General Contractors of America and the Construction Specifications Institute.**

AGENDA ITEM: **E**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** W.O. 09-11 Rimrock Road Improvements from 17<sup>th</sup> Street West to Forsythia Blvd. – Contract for Professional Services

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** W.O. 09-11 will widen Rimrock Road from 17<sup>th</sup> Street West to Forsythia Boulevard from its current two-lane road section to a three-lane road section with curb/gutter, sidewalk and bike lanes. Also included in the project will be the replacement of a 12-inch water main. The attached professional services contract with Kadomas, Lee & Jackson (KLJ) is for design of these improvements. KLJ was selected for this work based on City staff review of project proposals submitted by prequalified firms. Other firms considered were HDR Engineering, DOWL HKM, and Sanderson Stewart.

**ALTERNATIVES ANALYZED:**

- Approve the professional services contract with KLJ in the amount of \$301,100.
- Do not approve the professional services contract with KLJ.

**FINANCIAL IMPACT:** Funding for the design of this project has been approved in the CIP for Fiscal Year 2010, and will be paid through Arterial Funds.

**RECOMMENDATION**

Staff recommends that Council approve the professional services contract for W.O. 09-11 with KLJ in the amount of \$301,100.

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

**ATTACHMENTS**

KLJ Professional Services  
Contract (available for  
viewing in City Clerk's  
Office)



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

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**TITLE:** Work Order 10-01 – Contract for Professional Engineering Services, 2010 Water and Sewer Replacement Projects

**DEPARTMENT:** Public Works - Engineering Division

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

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**PROBLEM/ISSUE STATEMENT:** Mayor and Council are asked to consider authorizing a Contract for Professional Services with Morrison-Maierle, Inc. in the amount of \$1,202,610.00 for engineering design and construction administration services on the 2010 Water and Sewer Replacement Projects. Water and sewer mains would be replaced in various city locations as identified by City staff. Morrison-Maierle, Inc., in partnership with DOWL HKM, was selected based on City staff review of project proposals submitted by prequalified firms. Other firms considered for the work were Sanderson Stewart, Interstate Engineering, and HDR.

**ALTERNATIVES ANALYZED:**

1. Authorize the Mayor to sign a contract with Morrison-Maierle, Inc.
2. Do not authorize the Mayor to sign a contract with Morrison-Maierle, Inc.

**FINANCIAL IMPACT:** Funding for this project has been approved in the CIP projects – Water Main Replacement and Sanitary Sewer Replacement. Funding is sufficient for the engineering design and construction administration portion of the project which is now under consideration, as well as for project construction, which is planned for bidding in March of 2010. Sanitary Sewer Replacement will be funded entirely through a State Revolving Fund loan.

**RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the design and construction administration portion of the 2010 Water and Sewer Replacement Projects with Morrison-Maierle, Inc. in the amount not to exceed \$1,202,610.00.

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

**ATTACHMENT**

- A. Professional Services Contract and Basic Services of Engineer (23 pages)  
(Available for viewing in the City Clerk's Office)

## **INTRODUCTION**

This project would replace water and sanitary sewer lines in various areas of Billings. The water and sewer main replacement program is a long-standing annual program that was developed to maintain the integrity of the utility lines serving the residents of Billings.

## **PROCEDURAL HISTORY**

Completed Items:

- The Morrison-Maierle, Inc./DOWL HKM project team was selected based on Engineering Division staff review of project proposals submitted by prequalified firms which also included Interstate Engineering, HDR, and Sanderson Stewart.

Items to be Completed:

- Council authorizes the Mayor to sign the Contract with Morrison-Maierle, Inc.
- Morrison-Maierle, Inc. completes the design and performs construction administration of the project once it is bid and awarded.

## **BACKGROUND**

Each year, the City identifies areas in need of replacement based on data collected related to the frequency of main failures in various areas throughout Billings.

Approximately 11,095 linear feet of sewer main and 11,150 feet of water main will be designed and replaced by the 2010 City of Billings projects.

## **ALTERNATIVES ANALYSIS**

If the annual rehabilitation project is not constructed, the City runs the risk of failed utility lines and interruption of services to the residents of Billings.

## **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to sign a contract for professional services for the 2010 Water & Sewer Replacement Project with Morrison-Maierle, Inc. in the amount not to exceed \$1,202,610.00.

## **ATTACHMENT**

- A. Professional Services Contract and Basic Services of Engineer (23 pages)  
(Available for viewing in City Clerk's Office)



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

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**TITLE:** **LANDFILL USE AGREEMENT – CITY OF BIG TIMBER**

**DEPARTMENT:** Public Works Department

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

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**PROBLEM/ISSUE STATEMENT:** The City of Big Timber requested that the City of Billings enter into an agreement that would allow them to haul their waste to the Billings Regional Landfill. It is estimated that the City of Big Timber will deposit 2,300 tons of waste at the Billings Regional Landfill in FY2010. We have the employees, equipment, and landfill capacity to accept this waste without negatively impacting the life of the landfill or the level of service we provide our existing customers.

Recent changes to the state “Mega Landfill Law” now allow the City of Billings to accept waste from cities it could not handle previously. The City currently accepts waste from several adjacent counties and the cities and towns within those counties through agreements with those entities. The City Council approved the other FY2010 agreements June 22, 2009. Staff negotiated the agreement with the City of Big Timber after the other agreements were approved.

**ALTERNATIVES ANALYZED:**

- 1) Do not approve the 1-year agreement with the City of Big Timber
- 2) Approve the 1-year agreement with the City of Big Timber

**FINANCIAL IMPACT:** This agreement specifies a rate \$15.00 per ton of waste, according to the FY2010 rates approved by the City Council at the June 8, 2009, Council meeting, which includes the 20% surcharge for all entities (except Yellowstone County that pays a 10% surcharge). The agreement with the City of Big Timber will generate approximately \$34,500 in revenue in fiscal year 2010.

**RECOMMENDATION**

Staff recommends that the City Council approve, and the Mayor sign, the 1-year Landfill Use Agreement with the City of Big Timber.

**Approved By:** **City Administrator** \_\_\_\_\_ **City Attorney** \_\_\_\_\_

**ATTACHMENT**

A – Landfill Use Agreement with the City of Big Timber

## A G R E E M E N T

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_, by and between CITY OF BIG TIMBER and the CITY OF BILLINGS, MONTANA, a municipal corporation, herein called the CITY,

WITNESSETH:

WHEREAS, the City of Big Timber is desirous of using the landfill facilities of the CITY for the disposal of solid waste generated within the City of Big Timber.

WHEREAS, the CITY is willing to allow the City of Big Timber use of its landfill facilities during normal published operating times which currently are seven (7) days a week between the hours of 8:00 A.M. and 5:30 P.M. during the period of March through November and six (6) days a week between the hours of 8:00 A.M. and 5:30 P.M. Monday through Saturday during the period of December through February.

NOW, THEREFORE, in consideration of the mutual covenants and agreements between the parties hereto, it is mutually agreed as follows:

1. That the CITY will permit the disposal of solid waste, except industrial wastes, collected by the City of Big Timber at the landfill facility operated by the CITY at such times as said landfill shall be open for disposal of solid waste pursuant to all rules, regulations, and limitation of Billings Municipal Code, Chapter 21.
2. That the City of Big Timber agrees to pay the CITY for the use of said landfill facilities at the rate of \$15.00 per ton as weighed on the landfill scale. Should the scale be inoperable, the rate will be \$1.92 per cubic yard of non-compacted solid waste and \$5.10 per cubic yard of compacted solid waste as determined by the load capacity of the vehicle used to haul said solid waste regardless of the actual size of the load.
3. The Billings City Council has adopted a policy for separate Landfill charges for the disposal of special waste, dead animals, non-processed tires, and asbestos. Said charges will apply in addition to, or in lieu of, the amount specified in paragraph two above, but it is further understood that the CITY will not hold the City of Big Timber liable for these additional charges but will bill said charges direct to the individual company or entity physically depositing said special waste, dead animals, non processed tires and asbestos at the landfill.
4. Only solid waste generated within the political jurisdiction of the City of Big Timber can be disposed of in the City of Billings landfill. This includes waste currently accepted by the City of Big Timber from within Sweet Grass County.
5. No liquid waste or hazardous waste as defined by the E.P.A. and the State of Montana Solid Waste Bureau will be accepted. By law, any hazardous waste is the responsibility of all parties involved from the time it is generated until its final disposal.
6. It is further understood and agreed that this agreement shall be effective for Twelve (12) Months from and after the 1st day of July 2009, unless terminated by the CITY. The CITY may terminate this agreement at any time, with or without cause, upon thirty (30) days written notice to the City of Big Timber.
7. The City of Big Timber waives any and all claims and recourse against the CITY OF BILLINGS, including the right to contribution for loss or damage to persons or property, arising from, growing out of, or in any way connected with or incidental to performance of this agreement.

Further, the City of Big Timber shall indemnify, hold harmless and defend the CITY OF BILLINGS against any and all claims, demands, causes of action, damages, costs, expenses, liability, or judgments against the CITY OF BILLINGS which may arise as a result of the CITY OF BILLINGS entering into this agreement.

Indemnity under this agreement shall commence on the date of execution hereof and shall continue for the entire term this agreement is in effect and for any applicable period of limitations thereafter. The CITY OF BILLINGS agrees to notify the City of Big Timber in writing, within ten (10) days of any claim made against the CITY OF BILLINGS on the obligations indemnified against.

8. It is further understood and agreed that the City of Big Timber may terminate this agreement at any time upon payment in full of any monies owing under this agreement and upon written notice Ninety (90) days in advance to the CITY.

DATED THIS \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CITY OF BIG TIMBER

CITY OF BILLINGS

ADMINISTRATOR

RON TUSSING, MAYOR

TINA VOLEK, CITY

CARI MARTIN, CITY CLERK

APPROVED AS TO FORM:

Billings City Attorney

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## CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

Monday, July 27<sup>th</sup>, 2009

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**TITLE:** Yellowstone County Council on Aging Agreement Renewal

**DEPARTMENT:** Parks, Recreation & Public Lands Department

**PRESENTED BY:** Robin Grinsteiner, Billings Community Center Director

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### **PROBLEM/ISSUE STATEMENT:**

The City of Billings receives county mill levy funding annually through the Yellowstone County

Council on Aging (YCCOA) for the senior programs at the Billings Community Center.

The attached document sets forth the terms of the agreement that is renewed each year. This year's funding amount will be \$25,000.00.

### **ALTERNATIVES ANALYZED:**

1. Approve the Agreement (Recommended)
2. Disapprove the agreement

### **FINANCIAL IMPACT:**

This funding source comprises about 12.3% of the Community Center's total budget.

### **RECOMMENDATION**

Staff recommends that Council authorize the Mayor to execute the agreement with the Yellowstone County Council on Aging.

**Approved By:** City Administrator        **City Attorney** X  
(Previously reviewed)

### **ATTACHMENTS:**

**A:** Memorandum of Agreement with the Yellowstone County Council on Aging, Inc. (2 pages)

## **AGREEMENT**

This **AGREEMENT** between the Yellowstone County Council on Aging, Inc (YCCOA) and the City of Billings, is for the provision of the services for persons 60 years of age or older and their spouses according to the following terms.

### **SECTION 1                   GENERAL TERMS**

- 1.1** This agreement will be effective from July 1, 2009 through June 30, 2010. Prior to the completion date, the contract will be reviewed for renewal by YCCOA upon submission of a budget and funding request to YCCOA for the upcoming year by the City of Billings.
- 1.2** This agreement is for Yellowstone County Senior Mill Levy funding which comes to the Yellowstone County Council on Aging and is distributed to senior service providers by the YCCOA with approval by the County Commissioners. As such, these funds are available to match Federal funds or other grants.
- 1.3** The allocation for this time period will be \$25,000. Payments will be made in four equal allocations. This amount includes \$1,800 that is considered rent for the kitchen and dining room space for the Senior Dinner Program meal site. The remainder of the funds will be used to support the Senior Center program expenses. It is understood that YCCOA will pay for  $\frac{1}{2}$  of the repairs to the kitchen equipment that it uses provided there is notification of necessary repairs before they are made. YCCOA will also pay for the iced used by the Senior Dinner Program semi annually.
- 1.4** This agreement may be modified by a written amendment signed by an authorized representative of both parties, and attached to the original of this contract.
- 1.5** Either party, without cause, may terminate this agreement by written notice sixty (60) days in advance.

### **SECTION 2                   REPORTS AND RECORDS**

- 2.1** All financial and supporting documents regarding the use of these funds shall be available at anytime to the YCCOA upon request from the YCCOA auditor.
- 2.2** A monthly report of individual senior participants at the senior center will be submitted to the YCCOA office no later than 10 working days into the next month. This will include name and birthdate of each participant.

## SECTION 3 REPRESENTATIVE

**3.1** The YCCOA representative shall be Bea Ann Melichar, YCCOA Executive Director or her representative. The City of Billings representative shall be the Parks Recreation and Public Lands Director or his representative.

## SECTION 4 SENIOR NEWS

**4.1** The monthly YCCOA publication, “Senior News”, shall be available to all participants of the center and is not subject to their membership in any organization. News specific to the Billings Community Center shall be included in the publication each month and will follow guidelines established by YCCOA for setup, font, size and content with upcoming events, activities and speakers featured. News is subject to review and editing by the YCCOA Executive Director and or her designee. This news is to be submitted by the 15<sup>th</sup> of each month unless otherwise notified. There will be a charge for additional space in the Senior News.

## **SECTION 5 TRAINING/PLANNING MEETINGS**

5.1 A representative of the Billings Community Center will attend planning or training meetings as necessary in relationship to these funds, provided there is adequate notification of such meetings.

## **SECTION 6 IDENTIFICATION ON PUBLICATIONS**

6.1 Any written materials the Billings Community Center produces that lists the sources of funding for their program shall also include the Yellowstone County Council on Aging.

**This Agreement is hereby signed and entered into by both parties:**

## **Bea Ann Melichar, Executive Director**

Date

## **City of Billings Representative**

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Date

AGENDA ITEM:



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** Approval of Amendment Nine with Morrison-Maierle, Inc., for Engineering Services for the Airport's West End Entrance Replacement Project

**DEPARTMENT:** Aviation and Transit

**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment Nine for \$83,408, includes all of the services indicated above for this Summer's West End Approach Replacement project. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff. This project was approved in the City's Capital Improvement Program and will provide a new highway access point west of the Airport designed to accommodate the many large tractor-trailer units using that access without interfering with traffic in adjacent vehicle lanes, thereby enhancing the safety of the entrance. Amendment Nine will produce approximately \$205,000 in Airport improvements.

**FINANCIAL IMPACT:** The total cost of Amendment Nine to the five-year engineering contract with Morrison-Maierle, Inc. is \$83,408 and will be funded with local capital dollars. This project was included in the FY 2009 budget and because of an advertising mishap, the corresponding construction contract was awarded at the July 13 Council meeting. While adequate funding and budget authority exists in the Airport FY 2010 local capital budget to initially cover the construction project and engineering and design work provided under this requested Engineering Services Amendment, a first quarter budget adjustment will be necessary to correct the use of this additional budget

from this Fiscal Year, and reestablish the full FY 2010 capital budget for this year's approved projects.

**RECOMMENDATION**

Staff recommends that the City Council approve Amendment Nine with Morrison-Maierle, Inc. in the amount of \$83,408 for the engineering services required for the Airport's West End Entrance Replacement Project.

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



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

---

**TITLE:** Approval of Amendment Nine with Morrison-Maierle, Inc., for Engineering Services for the Airport's West End Entrance Replacement Project

**DEPARTMENT:** Aviation and Transit

**PRESENTED BY:** Thomas H. Binford, A.A.E., Director of Aviation and Transit

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**PROBLEM/ISSUE STATEMENT:** Due to the specialized nature of engineering services required for airfield infrastructure design, including knowledge of the Federal Aviation Administration (FAA) design and grant funding process, the City has historically entered into a five-year term contract to provide engineering services at the Airport. On November 13, 2006, the City approved a five-year contract with Morrison-Maierle, Inc. to provide the design surveys for the project, development of projects plans, specifications and bidding documents, contract administration, to include coordination meetings, pay requests, etc. The contract also includes full time on-site inspection, construction surveys, and development and submittal of the final project closeout documents, as required for all Federal AIP projects. The base five-year contract is amended each time a new project is undertaken, and Amendment Nine for \$83,408, includes all of the services indicated above for this Summer's West End Approach Replacement project. The scope of work and associated engineering fees have been reviewed and negotiated by Airport staff. This project was approved in the City's Capital Improvement Program and will provide a new highway access point west of the Airport designed to accommodate the many large tractor-trailer units using that access without interfering with traffic in adjacent vehicle lanes, thereby enhancing the safety of the entrance. Amendment Nine will produce approximately \$205,000 in Airport improvements.

**FINANCIAL IMPACT:** The total cost of Amendment Nine to the five-year engineering contract with Morrison-Maierle, Inc. is \$83,408 and will be funded with local capital dollars. This project was included in the FY 2009 budget and because of an advertising mishap, the corresponding construction contract was awarded at the July 13 Council meeting. While adequate funding and budget authority exists in the Airport FY 2010 local capital budget to initially cover the construction project and engineering and design work provided under this requested Engineering Services Amendment, a first quarter budget adjustment will be necessary to correct the use of this additional budget

from this Fiscal Year, and reestablish the full FY 2010 capital budget for this year's approved projects.

## **RECOMMENDATION**

Staff recommends that the City Council approve Amendment Nine with Morrison-Maierle, Inc. in the amount of \$83,408 for the engineering services required for the Airport's West End Entrance Replacement Project.

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



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

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**TITLE:** W.O. 06-20, Wayfinding Sign Easement

**DEPARTMENT:** Public Works - Engineering

**PRESENTED BY:** David D. Mumford, Public Works Director

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#### **PROBLEM/ISSUE STATEMENT:**

When the City received permission from the Montana Department of Transportation to install wayfinding signs along 27<sup>th</sup> Street (State Highway 3) one of the requirements the State imposed was the installation of large guide signs on 27<sup>th</sup> advising motorists coming into the downtown area from the interstate or the airport area of the wayfinding signage. The only place the City owns sufficient street right-of-way to place the southbound guide sign is between 9<sup>th</sup> and 10<sup>th</sup> Avenues North, directly adjacent to the Billings Clinic main hospital. Billings Clinic does not want the sign in that location and has offered the City a no cost easement to place the sign farther north. The easement is in the 1000 block of North 27<sup>th</sup> between the 27<sup>th</sup> Medical Building (1020 N. 27<sup>th</sup>) and the Cenex convenience store. The easement provides a location for the sign that is less visually intrusive to the overall Billings Clinic campus. The easement provides that if Billings Clinic desires to relocate the sign because of future development on the Clinic's lot, the cost of relocation would be borne by Billings Clinic.

#### **ALTERNATIVES ANALYZED:**

- Install the sign in City owned street right-of-way in the 900 block
- Accept the easement and install the sign in the 1000 Block

#### **FINANCIAL IMPACT:**

The easement is being provided at no cost to the City. Costs of installing the sign are the same in either location

#### **RECOMMENDATION**

Staff recommends that Council accept the easement for installation of the wayfinding guide sign on Billings Clinic property in the 1000 block of N. 27<sup>th</sup>.

**Approved By:**      **City Administrator** \_\_\_\_\_      **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

- A. Easement document
- B. Guide Sign drawing

**EASEMENT AGREEMENT**

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between **BILLINGS CLINIC**, a Montana nonprofit corporation, P.O. Box 37000, Billings, Montana 59107-7000 ("Grantor"); **UNITED INDUSTRY, INC.**, a Montana corporation, successor in interest to 27<sup>th</sup> Street Professional Center, a Montana partnership, 404 North 31<sup>st</sup> Street, Suite 100, Billings, Montana 59101 ("Grantor's Tenant") and **CITY OF BILLINGS, MONTANA**, ("Grantee").

**RECITALS:**

A. Grantor is the owner of the following described real property located in Yellowstone County, Montana ("Property"):

Lot 20, in Block 4, North Side Addition, 3<sup>rd</sup> Filing, according to the plat thereof on file and of record in the office of the Clerk and Recorder of Yellowstone County, Montana.

B. Grantor leases the Property (together with other property) to Grantor's Tenant pursuant to a long term ground lease dated April 22, 1983 (the "Ground Lease").

C. Grantee desires to place the wayfinding guide sign depicted on Exhibit "A" attached hereto ("Sign") on the corner of the Grantor's Property as depicted on Exhibit "B" (the "Easement Area").

D. Grantor is willing to grant an easement to Grantee to place the Sign on the Easement Area upon the terms and conditions contained in this Agreement.

E. Grantor's Tenant is willing to consent to and abide by the terms of this Agreement.

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Effect of Recitals. The foregoing recitals are true and correct and by this reference are incorporated into the terms and conditions of this Agreement.

2. Grant of Easement. Grantor hereby grants to Grantee a non-transferable nonexclusive easement to use the Easement Area for the placement and maintenance of the Sign (the "Easement").

3. Term. The Easement granted herein shall commence on the date hereof and shall continue until the Sign is removed or the Easement is terminated as herein provided.

4. Maintenance and Restoration. Grantee shall use its best efforts to avoid damaging the Grantor's Property during the placement of the Sign and any maintenance thereof. Grantee shall maintain the Sign in good and safe condition.

5. Easement Non-Exclusive. The rights granted to Grantee under this Agreement are non-exclusive, and Grantee understand and agrees that the Easement is not to be construed as an Easement given to the exclusion of Grantor, Grantor's Tenant or their successors and assigns. Notwithstanding the foregoing, however, Grantor and Grantor's Tenant agree that they will not obstruct the Sign in any respect.

6. Sign Relocation. If, in Grantor's sole discretion, Grantor's desired use of Grantor's Property and any adjacent property that Grantor may acquire requires the removal and relocation of the Sign, Grantor shall be responsible for the cost associated with relocating the Sign. Grantee shall cooperate with Grantor in relocating the Sign.

7. Indemnification. Grantee shall indemnify and hold Grantor and Grantor's Tenant harmless from and against all claims, demands, losses, damages, liability and costs, including but not limited to reasonable attorney and paralegal fees, arising from, relating to or resulting from Grantee's or Grantee's employees', authorized agents' or invitees' use and occupancy of the Easement Area.

8. Termination. This Agreement and the Easement herein granted shall automatically terminate, and all rights and privileges shall immediately and unconditionally revert to and vest in Grantor upon any violation by Grantee of any of the terms, conditions or restrictions contained in this Agreement. In addition, Grantor shall have the right to terminate this Easement at any time that the Grantor's Property or any adjacent property that Grantor may acquire is utilized or improved in such a way that the removal of the Sign is required in Grantor's sole discretion.

9. Time. Time shall be of the essence of this Agreement.

10. Entire Agreement. This Agreement contains the entire agreement between the parties and shall supersede all prior negotiations and agreements. This Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties.

11. Attorney's Fees. Should either party incur any costs or expenses, including reasonable attorney fees, in enforcing any of the provisions of this Agreement, then the other or unsuccessful party shall reimburse the prevailing party upon demand.

12. Assignment. Grantee may not assign its rights under this Agreement.

13. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and permitted assigns of the parties.

14. Governing Law. This Agreement shall be governed by the laws of the State of Montana.

15. Facsimiles and Counterparts. A facsimile or electronic copy of this Agreement containing the signature of either party shall be accepted as the original. This Agreement may be executed in one or more counterparts, which taken together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**BILLINGS CLINIC**, a Montana nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“Grantor”

**UNITED INDUSTRY, INC.**, a Montana corporation,  
successor in interest to 27<sup>th</sup> Street Professional Center

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“Grantor’s Tenant”

**CITY OF BILLINGS, MONTANA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

“Grantee”

STATE OF MONTANA )  
: ss.  
County of Yellowstone )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_ of **BILLINGS CLINIC**, a Montana nonprofit corporation.

(Seal)

[Type, Stamp or Print Name]  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_\_\_

STATE OF MONTANA )  
County of Yellowstone ) : ss.

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_ of **UNITED INDUSTRY, INC.**, a Montana corporation.

(Seal)

[Type, Stamp or Print Name]  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_\_\_.

STATE OF MONTANA )  
County of Yellowstone ) : ss.

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by \_\_\_\_\_, as \_\_\_\_\_ of **CITY OF BILLINGS, MONTANA.**

(Seal)

[Type, Stamp or Print Name]  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, 20\_\_\_\_.



Entire surface will be 3M Diamond Grade  
Reflective Sheetings mounted to an aluminum panel  
as specified below.

**Sign Face:**

The sign face requires aluminum sheeting in cement using AASHTO-L-98 or AA-6051-T6  
sheet aluminum fastened to an extruded T-section (AA6051-T6) bracketice with  
S175 blind rivets and Type IV retroreflective sheeting. Use the backbracketice with  
net spacing shown in the MCD Detail and Drawing. Use extruded T-sections  
weighing a minimum of 3.88 lbs/incher foot with a minimum moment of inertia about  
the neutral axis of 0.40 inches.

**Sign Supports:**

Using the ADT 50 mph wind chart, this sign will require 2 SWx7 structural steel posts  
with multi-directional breakaway devices (frangible sign post breakaways) and a post  
spacing of 4'-10".

The source for the breakaway devices is:

Tango Industries

20 Jones Street

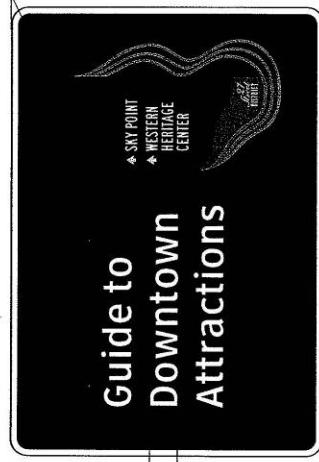
New Rochelle, NY 10801

**Sign Mounting:**

Signs with extruded T-section backbracketice are attached to the sign supports at the  
backbracketice points with aluminum post clips and T-bolts on each side of both posts.

**Sign Clearance:**

The sign installation will require a minimum lateral clearance of 5' (from R/W?)



8'-0" ——————

Color: 3M inks on Diamond Grade Reflective material  
As indicated on Color Specification Page

Color 2R ——————

Color 4R ——————

Color 5R ——————

Color 6R ——————

Color 7R ——————

Color 8R ——————

Color 9R ——————

Color 10R ——————

Color 11R ——————

Color 12R ——————

Color 13R ——————

Color 14R ——————

Color 15R ——————

Color 16R ——————

Color 17R ——————

Color 18R ——————

Color 19R ——————

Color 20R ——————

Color 21R ——————

Color 22R ——————

Color 23R ——————

Color 24R ——————

Color 25R ——————

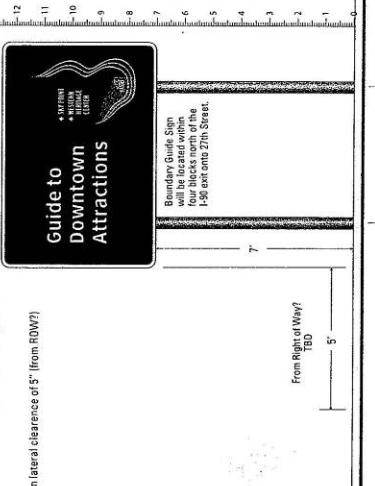
Color 26R ——————

Color 27R ——————

Color 28R ——————

Color 29R ——————

Color 30R ——————



13 ——————  
12 ——————  
11 ——————  
10 ——————  
9 ——————  
8 ——————  
7 ——————  
6 ——————  
5 ——————  
4 ——————  
3 ——————  
2 ——————  
1 ——————  
0 ——————

From Right of Way?  
TBD

4'-10" ——————

beauchamp)

**Downtown Billings, Montana**  
**Boundary Guide Sign for Downtown Wayfinding Signage**

**Sign and pole must be engineered to withstand 80 mph windload**

DATE: 06/15/06  
PROJECT: Downtown Billings Wayfinding Signage  
DRAWINGS: Boundary Guide Sign  
SCALE: Large 2' x 3' / Small 1' x 3'

AGENDA ITEM:

**L1**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** Sale of surplus fire equipment

**DEPARTMENT:** Fire

**PRESENTED BY:** Paul A. Dextrus, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** The fire department recently completed a standardization project on the three brush trucks in use by the Fire Department. Part of this standardization was to replace the water pump and motor on the 2002 Brush Truck (unit #4057) with the same type/style/gpm as on the two other and newer brush trucks.

The Fire Chief of the Reed Point Volunteer Fire Department submitted a letter of interest with an offer to purchase the used pump and motor for his department in the amount of \$500.00.

**ALTERNATIVES ANALYZED:** To approve or not approve the sale of surplus fire equipment.

**FINANCIAL IMPACT:**

**RECOMMENDATION**

Staff recommends approval of the sale of used pump and motor to the Reed Point Volunteer Fire Department for the sum of five hundred dollars (\$500.00).

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

---

**TITLE:** Sale of Surplus Property – 1991 E-One Fire Trucks  
**DEPARTMENT:** Fire  
**PRESENTED BY:** Paul A. Dextrus, Fire Chief

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**PROBLEM/ISSUE STATEMENT:** The Billings Fire Department requests City Council approval to begin the process of advertising for sale the two Emergency One (E-One) fire apparatus listed below.

It is our intent to remove these two reserve units completely from service as soon as the two new trucks approved by City Council at the September 2008 meetings are officially placed into service. The two reserve units are identified as follows:

Unit #4090 1991 Emergency One with 124,532 miles  
Unit #4091 1991 Emergency One with 104,217 miles

**FINANCIAL IMPACT:** Revenue from the sale of the two reserve units will be used to offset the cost of miscellaneous equipment; auxiliary lighting, identification markers, and communication devices needed before the new trucks can be placed into service.

**RECOMMENDATION**

Staff requests Council approval to advertise for sale and dispose of Unit(s) #4090 and #4091.

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

AGENDA ITEM:

**M**



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

---

**TITLE:** Mexican Fiesta Street Closure

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** Dave Mumford, P.E., Public Works Director

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**PROBLEM/ISSUE STATEMENT:** The organizers of the Mexican Fiesta request the closure of 6<sup>th</sup> Ave S. between 28<sup>th</sup> and 29<sup>th</sup> Street and 29<sup>th</sup> Street from 6<sup>th</sup> Ave. S. to the alley from 6:00 a.m. to 7:00 p.m. on Saturday, August 1, 2009, for a Mexican Fiesta Celebration.

Recommended conditions of approval include the members of the Mexican Fiesta to:

1. Notify residences and businesses within a 1 block area
2. Notify all emergency facilities, bus lines and media at least two weeks in advance of the event
3. Provide and install adequate traffic barricades and signs directing motorists around closure
4. Provide certificate of insurance naming City of Billings as additional insured
5. Clean the area to be used after the event
6. Obtain a Park Use permit from the Recreation Division for the use of South Park
7. Maintain a 10' clear lane on 6<sup>th</sup> Ave. South for emergency purposes

**ALTERNATIVES ANALYZED:**

1. Approve request for street closures
2. Deny the street closures

**FINANCIAL IMPACT:** There are no costs to the City of Billings other than administrative time to process permit. Traffic control and litter removal are to be paid for by the Mexican Fiesta organizers.

**RECOMMENDATION**

Staff recommends that Council approve the closure named above

**Approved By:**      **City Administrator** \_\_\_\_      **City Attorney** \_\_\_\_

## ATTACHMENTS

- A. Right of Way Special Activity Permit
- B. Course Map
- C. Certificate of insurance



### City of Billings RIGHT-OF-WAY ACTIVITY PERMIT

Please check the type of activity you are applying for:

Parade  Run/Walk/Procession  Street/Alley Closure  Block Party

Submit this application with attachments to either the: Public Works office, 2224 Montana Ave., Billings, MT 59101 or Downtown Billings office, 2815 2nd Ave North, Billings, MT 59101. Application packet should be turned in at least 60 days prior to the date of the proposed event for approval.

PERSON MAKING APPLICATION Jake Romero

ORGANIZATION MAKING APPLICATION Mexican Fiesta

PHONE 406 - 208-0103

ADDRESS 421 So 33 Str CITY Billings STATE MT ZIP 59101

EMAIL ADDRESS \_\_\_\_\_

APPROXIMATE TIME EVENT WILL:

Assemble 6 Am Start 10 Am Disband 7 Pm

DATE OF EVENT August 1<sup>st</sup> 2009

PURPOSE/DESCRIPTION OF EVENT: (Description and detail of the event.)

Fund Raiser Mexican Fiesta

EVENT ROUTE DESIRED (IF APPLICABLE): (Please attach map.)

Close 6 Ave So. From 28<sup>th</sup> Str to 29<sup>th</sup> Str  
and 29<sup>th</sup> Str to alley

BLOCK PARTY STREET LOCATION (IF APPLICABLE):

CLEAN UP IMPLEMENTATION: (Company contracted or services you will provide)

**CERTIFICATION OF INSURANCE WHICH MUST SHOW:** (1) The limits of liability coverage for the period of this agreement as a minimum of \$750,000 per claim/ \$1.5 million per occurrence general liability, and (2) the City of Billings named on the Certificate of Insurance as the additional insured. (Refer to the sample insurance copy. Please note a certificate of insurance *is not required* for Block Parties)

**NOTICE:** ANY MARKINGS (NO PAINT ALLOWED) TO BE PLACED ON PUBLIC RIGHT-OF-WAY MUST BE APPROVED BY THE CITY TRAFFIC/ENGINEERING DEPARTMENT PRIOR TO PLACEMENT, BE ENVIRONMENTALLY SAFE, AND NOT CONFLICT WITH EXISTING MARKINGS.

**FOR DOWNTOWN EVENTS:** YOU OR THE ORGANIZATION YOU REPRESENT MUST "ASSIGN" THE FIRST TWO BLOCKS OF THE DOWNTOWN EVENT ROUTE FOR NO PARKING TWO HOURS PRIOR TO YOUR EVENT USING THE ROUTE SIGNS PROVIDED BY THE CITY. IT IS YOUR RESPONSIBILITY TO PROVIDE THE APPROPRIATE BARRICADES FOR THE STREET CLOSURE.

IF USING THE ESTABLISHED EVENT ROUTE, THE CITY WILL PROVIDE TWO POLICE OFFICERS WITH VEHICLES TO START THE EVENT, AND A STREET SWEEPER, IF NECESSARY, TO FOLLOW THE EVENT.

**COORDINATOR OF EVENTS AT WHICH ALCOHOL WILL BE CONSUMED IN PUBLIC RIGHT-OF-WAY ARE REQUIRED TO OBTAIN AN OPEN CONTAINER PERMIT FROM THE POLICE DEPARTMENT**

**UPON SIGNING OF THIS APPLICATION, THE APPLICANT AGREES NOT TO VIOLATE ANY STATE OR CITY CODES IN THE PRESENTATION OF THE REQUESTED SPECIAL ACTIVITY.**

In consideration for permission to conduct its activity as requested, applicant agrees to indemnify, defend and hold harmless the City of Billings, its officers, agents, employees and volunteers from damage to property and for injury to or death of any person and from all liability claims, actions or judgments which may arise from the activity.

Applicants also agree to obtain valid "save or hold harmless agreements" from all participants in its activity, protecting the City of Billings from all losses arising out of its activity, including damages of any kind or nature.

APPLICANT SIGNATURE Jake Romero DATE 6-24-09

APPLICATION APPROVED \_\_\_\_\_ DATE \_\_\_\_\_

APPLICATION DENIED \_\_\_\_\_ DATE \_\_\_\_\_

**ADDITIONAL RESTRICTIONS OR SPECIAL CONDITIONS: YES [ ] NO [ ]**  
(IF YES, ATTACH COPY)

**FOR CITY USE ONLY**

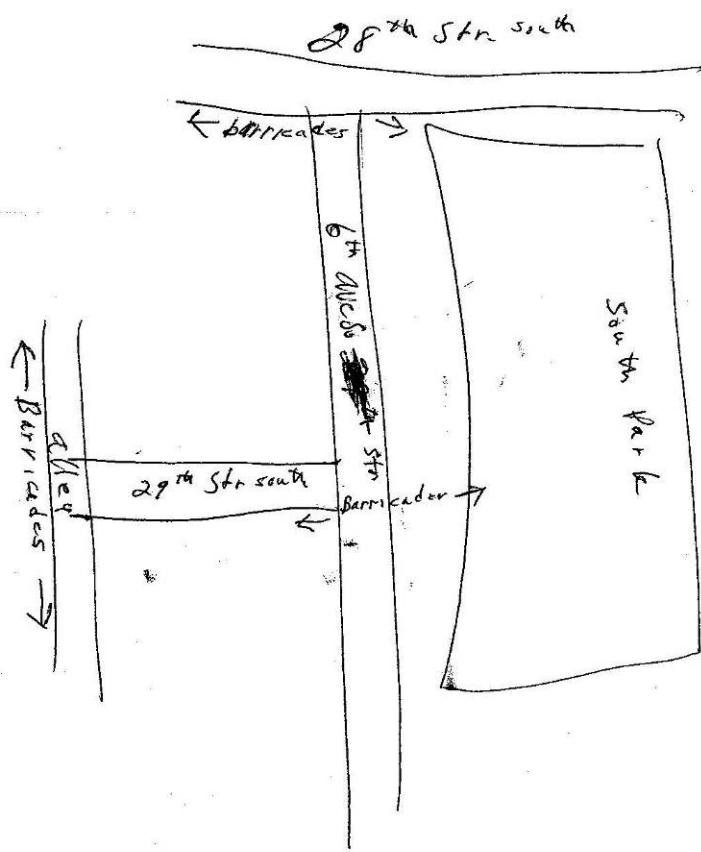
FEE: \_\_\_\_\_

APPLICANT NOTIFIED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**COPIES TO:**  
CITY ADMINISTRATOR  
DEPUTY CITY ADMINISTRATOR  
POLICE CHIEF  
FIRE CHIEF  
FIRE MARSHALL  
MET TRANSIT MANAGER  
STREET/TRAFFIC SUPERINTENDANT  
TRAFFIC ENGINEER  
PRPL DIRECTOR  
PARKING SUPERVISOR  
CITY ATTORNEY

Mexican Fiesta August 1st 2009



## Certificate of Coverage

Date: 4/6/2009

<b>Certificate Holder</b> The Roman Catholic Bishop of Great Falls A Corporation Sole, Chancery Office P O Box 1399 Great Falls, MT 59403	<b>This Certificate is issued as a matter of information only and confers no rights upon the holder of this certificate. This certificate does not amend, extend or alter the coverage afforded below.</b>
<b>Covered Location</b> Our Lady of Guadalupe Church 209 South 35th Street Billings, MT 59102	<b>Company Affording Coverage</b> THE CATHOLIC MUTUAL RELIEF SOCIETY OF AMERICA 10843 OLD MILL RD OMAHA, NE 68154

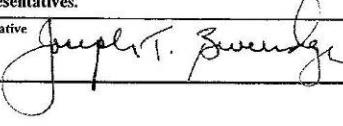
<b>Coverages</b>
------------------

This is to certify that the coverages listed below have been issued to the certificate holder named above for the certificate indicated, notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage afforded described herein is subject to all the terms, exclusions and conditions of such coverage. Limits shown may have been reduced by paid claims.

	Type of Coverage	Certificate Number	Coverage Effective Date	Coverage Expiration Date	Limits	
					Real & Personal Property	General Aggregate
	<b>Property</b>					
	<b>General Liability</b>				Products-Comp/OP Agg	
	<input checked="" type="checkbox"/> Occurrence	8560	7/1/2009	7/1/2010	Personal & Adv Injury	
	<input type="checkbox"/> Claims Made				Each Occurrence	500,000
	<b>Excess Liability</b>	8560	7/1/2009	7/1/2010	Fire Damage (Any one fire)	
					Med Exp (Any one person)	
	<b>Excess Liability</b>	8560	7/1/2009	7/1/2010	Each Occurrence	1,000,000
	<b>Other</b>				Each Occurrence	

**Description of Operations/Locations/Vehicles/Special Items**

Coverage only extends for claims arising out of Our Lady of Guadalupe's Mexican Fiesta held at South Park, Billings, MT on July 31, 2009 through August 2, 2009. Includes Host Liquor Liability of \$1,000,000.

<b>Holder of Certificate</b> Additional Protected Person(s) City of Billings  <div style="border: 1px solid black; padding: 2px; display: inline-block;">0069000226</div>	<b>Cancellation</b>  Should any of the above described coverages be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the holder of certificate named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.  Authorized Representative 
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**ENDORSEMENT**  
(TO BE ATTACHED TO CERTIFICATE)

Effective Date of Endorsement 7/31/2009 Charge \_\_\_\_\_ Credit \_\_\_\_\_  
Cancellation Date of Endorsement 8/3/2009

Certificate Holder The Roman Catholic Bishop of Great Falls  
A Corporation Sole, Chancery Office  
P O Box 1399  
Great Falls, MT 59403

Certificate No. 8560 of The Catholic Mutual Relief Society is amended as follows:

**SECTION II - ADDITIONAL PROTECTED PERSON(S)**

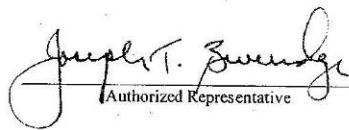
It is understood and agreed that Section II - Liability (only with respect to Coverage D - General Liability, Coverage F - Medical Payments to Others and Coverage H - Counseling Errors and Omissions) is amended to include as an Additional Protected Person(s) members of the organizations shown in the schedule, but only with respect to their liability for the Protected Person(s) activities or activities they perform on behalf of the Protected Person(s).

It is further understood and agreed that coverage extended under this endorsement is limited to and applies only with respect to liability assumed by contract or agreement; and this extension of coverage shall not enlarge the scope of coverage provided under this certificate or increase the limit of liability thereunder. Unless otherwise agreed by contract or agreement, coverage extended under this endorsement to the Additional Protected Person(s) will not precede the effective date of this certificate of coverage endorsement or extend beyond the cancellation date.

**Schedule - ADDITIONAL PROTECTED PERSON(S)**  
City of Billings

Remarks: Coverage only extends for claims arising out of Our Lady of Guadalupe's Mexican Fiesta held at South Park, Billings, MT on July 31, 2009 through August 2, 2009. Includes Host Liquor Liability of \$1,000,000.

PKS-122 (1-99)

  
\_\_\_\_\_  
Joseph T. Zwenger  
Authorized Representative

<b>ACORD</b> TM. <b>CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YYYY) 06/24/2009
PRODUCER Phone: (406) 258-5938 Fax: (406) 254-8906 <b>BURNS INSURANCE AGENCY INC</b> 711 NORTH 27TH BILLINGS MT 59101		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>DAVE Bungard 259-4384</b> <b>INSURED</b> AL BEDOO SHRINE TEMPLE A.A.O.N.M.S. C/O IT'S CLUBS AND UNITS 1125 BROADWATER AVENUE BILLINGS MT 59102		INSURERS AFFORDING COVERAGE NAIC #
<b>INSURER A:</b> Praetorian Insurance Company <b>INSURER B:</b> <b>INSURER C:</b> <b>INSURER D:</b> <b>INSURER E:</b>		

**COVERS**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	END/LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
			GENERAL LIABILITY	H981000342-01	05/01/09	05/01/10	EACH OCCURRENCE	\$ 1,000,000
			X COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ex incurrence)	\$ 100,000
			<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED. EXP (Any one person)	\$ 5,000
							PERSONAL & ADV. INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 5,000,000
							PRODUCTS-COMP/OP AGG.	\$ 2,000,000
			GENL. AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC					
			AUTOMOBILE LIABILITY	H982000288-01	05/01/09	05/01/10	COMBINED SINGLE LIMIT (Ex accident)	\$ 1,000,000
			X ANY AUTO				BODILY INJURY (Per person)	\$
			<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
			<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
			<input type="checkbox"/> HIRED AUTOS					
			<input type="checkbox"/> NON-OWNED AUTOS					
			GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
			<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC	\$
							AGGREGATE	\$
			EXCESS / UMBRELLA LIABILITY	H983000122-01	05/01/09	05/01/10	EACH OCCURRENCE	\$ 1,000,000
			X OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 1,000,000
								\$
			<input type="checkbox"/> DEDUCTIBLE					\$
			X RETENTION \$ 10,000					\$
			WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUS	OTHER
			ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$
			If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE-EA EMPLOYEE	\$
							E.L. DISEASE-POLICY LIMIT	\$
			OTHER:					

**DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/ SPECIAL PROVISIONS**

Fiesta South Park the first week end in August  
Above coverage subject to conditions and exclusions  
\*\*City of Billings listed as additional insured\*\*

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
CITY OF BILLINGS 210 N 27th BILLINGS, MT 59101	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDSAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
Attention: Susan 237-6291	AUTHORIZED REPRESENTATIVE



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2008

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**TITLE:** Old Town Neighborhood Master Plan – Resolution of Intent to Adopt and Set Date of Public Hearing

**DEPARTMENT:** Planning & Community Services

**PRESENTED BY:** Lora Mattox, AICP, Transportation Planner

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**PROBLEM/ISSUE STATEMENT:** The Old Town Neighborhood Master Plan is a guide for the redevelopment of the area around Minnesota Avenue. The boundaries of the area are approximately South 30<sup>th</sup> Street on the west to South 25<sup>th</sup> Street on the east and from the railroad tracks on the north to 1<sup>st</sup> Avenue South on the south.

The Planning Board conducted a public hearing on July 14, 2009, to receive comments on the neighborhood master plan. After discussion, the Planning Board on a 9-0 vote recommended approval of the Old Town Neighborhood Master Plan to the Billings City Council.

The Council at its August 3, 2009, work session will hear a presentation on the Old Town Neighborhood Master Plan. At the regular meeting scheduled on July 27, 2009, the council will consider a Resolution of Intent to Adopt the Old Town Neighborhood Master Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for the Council meeting on August 10, 2009.

**FINANCIAL IMPACT:** In 2008, three sources of funding were identified to complete the Minnesota Avenue Streetscape Enhancement Project and include a Special Improvement District (SID), individual property owner contributions, and the City of Billings. In addition, grant funds will also be pursued to offset some of the future SID portions of the costs.

#### **RECOMMENDATION**

The Yellowstone County Board of Planning recommends that the City Council approve the Resolution to Adopt the Old Town Neighborhood Master Plan as part of the Yellowstone County and City of Billings 2008 Growth Policy. A copy of the plan is on file in the Planning Division Office.

**Approved By:**      **City Administrator** \_\_\_\_\_      **City Attorney** \_\_\_\_\_

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 09-01
- B. Resolution of Intent to Adopt the Old Town Neighborhood Master Plan as part of the Yellowstone County and City of Billings 2008 Growth Policy
- C. Old Town Neighborhood Master Plan Drawings
- D. Minnesota Avenue Streetscape Enhancement Project Cost Estimates
- E. Old Town Neighborhood Master Plan Summary

## **INTRODUCTION**

In 2006, Old Town Neighborhood property owners, Ward I City Council Members, and other interested parties met to review projects identified in the Minnesota Avenue Master Plan that was completed by High Plains Architects and Fischer & Associates. This study was renamed the Old Town Neighborhood Master Plan and expanded the boundaries to the description above. In 2007, the Old Town Neighbors, Inc. was formed as a non-profit corporation with a five member board that would review and adopt the Old Town Neighborhood Master Plan with neighborhood input. The projects include the nomination of the Old Town Neighborhood as a National Register Historic District (in process) and Minnesota Avenue Streetscape enhancements.

## **PROCEDURAL HISTORY**

- 2001 Fischer and Associates and High Plains Architects completed Phase One of the Minnesota Avenue Master Plan. This project outlined the issues, developed three levels of recommended alternatives, and identified implementation strategies and costs for each.
- 2003 Same consultant team along with Peaks to Plains Design continued the study to develop more site specific ideas relating to items in Phase I. The study was renamed the Old Town Neighborhood Master Plan.
- 2006 The Old Town Neighborhood property owners, Ward I City Council Members, and other interested parties were invited to a neighborhood meeting to review projects.
- 2007 Old Town Neighbors, Inc. was formed as a non-profit corporation and the Old Town Neighborhood Master Plan was adopted by the board with neighborhood input.
- 2008 Three funding sources were identified to complete the Minnesota Avenue Streetscape Enhancement Project of the Old Town Neighborhood Plan.
- May, 2009 Old Town Neighbors, Inc. requested that the Old Town Neighborhood Master Plan be formally adopted by the Yellowstone County Planning Board, Billings City Council, and the Board of County Commissioners.
- 7/14/2009 Yellowstone County Planning Board adopted resolution 09-01 recommending adoption of the Old Town Neighborhood Master Plan as part of the 2008 Growth Policy to the City Council and the Board of County Commissioners.
- 7/21/2009 The Board of County Commissioners will consider a Resolution of Intent to Adopt the Old Town Neighborhood Master Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for August 25, 2009.
- 7/27/2009 The Billings City Council will consider a Resolution of Intent to Adopt the Old Town Neighborhood Master Plan and set a date for a public hearing to receive comment on the neighborhood plan. The public hearing is scheduled for August 10, 2009.

## **BACKGROUND**

In 2008, the Yellowstone County and City of Billings Growth Policy was adopted by the Billings City Council. As part of the Growth Policy, the governing body may include one or more neighborhood plans (76-1-601(2)(4)(a), MCA). A neighborhood plan must be consistent with the growth policy. The Old Town Neighborhood Master Plan contains the following elements:

1. A strategy for development, maintenance, and replacement of public infrastructure, including public streetscapes, roads, and bridges.
2. An implementation strategy that includes potential funding sources.

The neighborhood planning process involved local residents to identify issues impacting the area and works towards goals, objectives and actions to address these issues. The goals and objectives, which describe desired future conditions, are implemented through policies and future capital improvement planning. Policies are commitments to the residents that the elected officials shall acknowledge and attempt to achieve those goals and objectives.

The Planning Board held a formal public hearing on the Neighborhood Plan on July 14, 2009. Taking into consideration the comments received at the public hearing, the Planning Board is forwarding a recommendation of approval to the Yellowstone County Commissioners and the Billings City Council (See Planning Board Resolution No. 09-01).

## **STAKEHOLDERS**

All residents, landowners and business owners within the boundary have a stake in the adoption and implementation of the Old Town Neighborhood Master Plan. All comments received from individuals have been taken into consideration and the document was modified as appropriate.

On July 14, 2009 the Planning Board conducted a public hearing to receive comments on the proposed Neighborhood Master Plan. During discussion, board member Al Littler asked for a clarification on the potential funding sources as he understood that the property owners would ask for an SID to be created for much of the work, but wanted clarification on what exactly was the property owners responsibility. Randy Hafer from High Plains Architects and a member of the Old Town Neighbors, Inc. clarified that the property owners would be involved in an SID and be responsible for the portion of sidewalk, curb and gutter located along their property frontage. In addition, grant funds from a variety of sources may also be applied for to offset some of the SID funding needed. After further discussion, the Planning Board on a 9-0 vote recommended approval of the Old Town Neighborhood Master Plan to the Billings City Council.

## **RECOMMENDATION**

The Yellowstone County Board of Planning recommends that City Council approve the Resolution to Adopt the Old Town Neighborhood Master Plan as part of the Yellowstone County and City of Billings 2008 Growth Policy.

**ATTACHMENTS**

- A. Yellowstone County Board of Planning Resolution 09-01
- B. Resolution of Intent to Adopt the Old Town Neighborhood Master Plan as part of the Yellowstone County and City of Billings 2008 Growth Policy.
- C. Old Town Neighborhood Master Plan Drawings
- D. Minnesota Avenue Streetscape Enhancement Project Cost Estimates
- E. Old Town Neighborhood Master Plan Summary

**ATTACHMENT A**  
**Yellowstone County Board of Planning**  
**Resolution to Recommend Adoption of the Old Town Neighborhood Master Plan**

**RESOLUTION NO. 09- 01**

**RESOLUTION TO RECOMMEND ADOPTION OF THE  
OLD TOWN NEIGHBORHOOD MASTER PLAN**

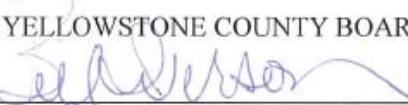
WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Yellowstone County Board of Planning, desires to adopt a Neighborhood Master Plan consistent with the 2008 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 14<sup>th</sup> day of July, 2009, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Old Town Neighborhood Master Plan:

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Yellowstone County Board of Planning recommends adoption of the Old Town Neighborhood Master Plan.

APPROVED AND PASSED by the Yellowstone County Board of Planning this 14<sup>th</sup> day of July, 2009.

THE YELLOWSTONE COUNTY BOARD OF PLANNING:

BY:   
Bill Iverson, President

ATTEST:

BY:   
Candi Beaudry, Executive Secretary

**ATTACHMENT B**

**RESOLUTION NO. 09-\_\_\_\_\_**

**RESOLUTION OF INTENT TO ADOPT THE OLD TOWN NEIGHBORHOOD  
MASTER PLAN AS PART OF THE YELLOWSTONE COUNTY - CITY OF  
BILLINGS 2008 GROWTH POLICY.**

WHEREAS, pursuant to Title 76, Chapter 1, PART 601, Montana Codes Annotated, the Billings City Council, desires to adopt a Neighborhood Plan consistent with the 2008 Growth Policy covering the entire Yellowstone County Board of Planning jurisdiction:

WHEREAS, on the 14th day of July, 2009, a public hearing was held by the Yellowstone County Board of Planning for the purpose of receiving public comments on the proposed Neighborhood Plan and on the 10<sup>th</sup> day of August, 2009, the Billings City Council will hold a public hearing for the same purpose:

WHEREAS, The Yellowstone County Board of Planning by Resolution 09-01, recommends the Billings City Council adopt the proposed Neighborhood Plan and any ordinances and resolution for its implementation:

NOW, THEREFORE, BE IT HEREBY RESOLVED that it is the intent of the Billings City Council to adopt the Old Town Neighborhood Master Plan as part of the Yellowstone County – City of Billings 2008 Growth Policy.

APPROVED AND PASSED by the City Council of the City of Billings this 27<sup>th</sup> day of July, 2009.

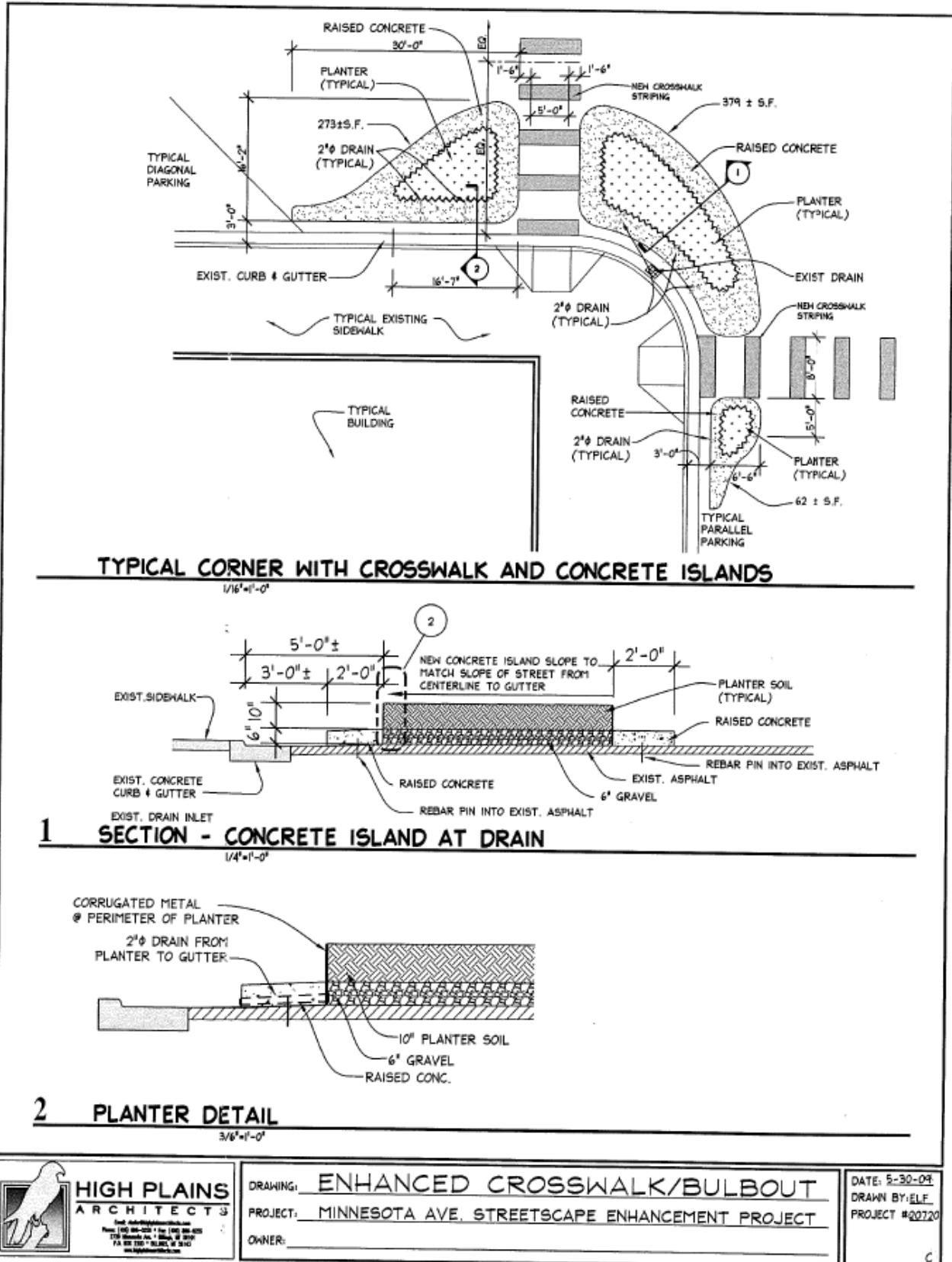
THE CITY OF BILLINGS:

BY:\_\_\_\_\_  
Ron Tussing,      MAYOR

ATTEST:

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

**ATTACHMENT C**  
**Old Town Neighborhood Master Plan Drawings**





EXISTING TREE

LEGEND

A PUBLIC ART COMPONENT SHALL BE PART OF THE PLAN FOR LONG TERM VISUAL TREATMENT OF EXTERIOR SURFACES WITHIN THE MINNEAPOLIS AVENUE STREETSCAPE SPECIAL IMPROVEMENT DISTRICT (SID).

H-O CROSSWALK LIGHTING

SCALE: NONE



## HIGH PLAINS

Best Auto Body  
Phone: (608) 888-0250 • Fax: (608) 888-0251  
1750 Minnesota Ave. • Monroe WI  
920.262.2713 • 800.667.4729  
[www.bestautobody.com](http://www.bestautobody.com)

JULY 25, 2008



MINNESOTA AVENUE STREETSCAPE ENHANCEMENT PROJECT COST ESTIMATE  
as of March 2009

SID ITEMS - ITEM & DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL ITEM COST	% OF BUDGET	COST/SF OF PROPE
Crosswalks (paint)	5000	Square feet	\$5.00	\$25,000.00	5.17%	\$0.05
Concrete bulbouts & planters	9000	Square feet	\$5.75	\$51,750.00	10.69%	\$0.10
Trees (per plan) + 27th Street	90	Each	\$225.00	\$20,250.00	4.18%	\$0.04
Irrigation Service (2 services)	1	Lump sum	\$100,000.00	\$100,000.00	20.66%	\$0.19
Border at curb (colored band)	4800	Linear feet	\$12.00	\$57,600.00	11.90%	\$0.11
Conduit provisions (included in historic lighting costs)	4800	Linear feet	\$7.86	\$37,728.00	7.80%	\$0.07
Decorative/historic lighting	0	Each	\$0.00	\$0.00	0.00%	\$0.00
Burial of overhead lines	4800	Linear feet	\$11.00	\$52,800.00	10.91%	\$0.10
<b>Sub-Total</b>				<b>\$345,128.00</b>		<b>\$0.64</b>
<b>PAID BY PROPERTY OWNERS - ITEM &amp; DESCRIPTION</b>						
Remove & replace curbs & gutters	250	Linear feet	\$31.33	\$7,832.50	1.62%	
New curbs & gutters	50	Linear feet	\$23.10	\$1,155.00	0.24%	
Remove & replace sidewalks	3500	Square feet	\$7.24	\$25,340.00	5.24%	
New sidewalks	3500	Square feet	\$5.78	\$20,230.00	4.18%	
Barrel flower pots	40	Each	\$50.00	\$2,000.00	0.41%	
<b>Sub-Total</b>				<b>\$56,557.50</b>		
<b>TO BE COMPLETED BY CITY - ITEM &amp; DESCRIPTION</b>						
Intersection sidewalk ramps (city standard)*	14	Each	\$850.00	\$11,900.00	2.46%	
Parking modifications - paint	225	Each	\$70.00	\$15,750.00	3.25%	
Parking modifications - signs	84	Each	\$650.00	\$54,600.00	11.28%	
<b>Sub-Total</b>				<b>\$82,250.00</b>	100.00%	
<b>STREETSCAPE TOTAL</b>				<b>\$483,935.50</b>		
<b>25th STREET PEDESTRIAN/BIKE BRIDGE</b>						
(with associated parking lot development)						
Bridge/moving/repair/deck				\$150,000.00		
Towers/foundations/stairs				\$185,000.00		
(2) elevators or (2) ramps				\$205,000.00		
Parking lot/curbs/gutters, sidewalk				\$130,000.00		
Landscaping/lighting/fence				\$120,000.00		
<b>BRIDGE TOTAL*</b>				<b>\$790,000.00</b>	*includes 15% contingency & professional fees	
<b>AREA OF STREETSCAPE PROJECT</b>						
1/2 blocks - MN Avenue to tracks = 24,600 X 5.5 =				135,300		
Full blocks - MN Avenue to 1st Avenue South = 81,000 X 5				405,000		
<b>TOTAL SQUARE FEET IN PROPOSED SID AREA</b>				<b>540,300</b>		

**ATTACHMENT E**  
**Old Town Neighborhood Master Plan Summary**

**OLD TOWN NEIGHBORHOOD MASTER PLAN**  
**May 20, 2009**

**I. HISTORY OF PLANNING**

In 2001, Fischer and Associates and High Plains Architects completed Phase One of the Minnesota Avenue Master Plan. This project outlined the issues, developed three levels of recommended alternatives, and identified implementation strategies and costs for each.

In 2003, the same consultant team along with Peaks to Plains Design was commissioned to continue the study to develop more site specific ideas relating to the items addressed in Phase One. The study was renamed the Old Town Neighborhood Master Plan and expanded the boundaries from South 30<sup>th</sup> Street on the west to South 25<sup>th</sup> Street on the east and from the railroad tracks on the north to 1<sup>st</sup> Avenue South on the south. The study identified the importance of getting the Old Town Neighborhood Master Plan adopted as a formal plan and establishing what entity would be responsible for ushering the plan forward.

In 2006, Old Town Neighborhood property owners, Ward I City Council Members, and other interested parties were invited to a neighborhood gathering meeting to review projects (past, present, and future) of the Old Town Neighborhood Master Plan that had or could impact the neighborhood. Three of those were identified as major projects worth supporting:

1. Quiet Zone
  - Now under contract and scheduled for completion summer 2009
2. Old Town Historic District
  - Includes the Old Town Neighborhood as well as Montana Avenue from North 30<sup>th</sup> Street on the west to North 27<sup>th</sup> Street on the east
  - The final work is under contract with Joan Brownell and scheduled to be completed the end of 2009
3. Minnesota Avenue Streetscape Enhancement Project
  - Revised parking adding diagonal to Minnesota Avenue and side streets between tracks and 1<sup>st</sup> Avenue South
  - Enhanced Crosswalks/Bulbouts developed in consultation with City Engineering Department (see drawing prepared by High Plains Architects dated 5/30/09 attached)
  - 25<sup>th</sup> Street Bridge & parking (see rendering prepared by Jim Collins attached)
  - Street trees
  - Utilities underground (electricity/phone/data & sprinkler water)
  - Sidewalk & curb & gutter improvements

**II. CURRENT PLAN**

In 2007, the Old Town Neighbors, Inc. was formed as a non-profit corporation with a five member board that would hold monthly meetings. The current Old Town Neighborhood Master Plan was adopted by the board with neighborhood input. The main components are illustrated on the Old Town Neighborhood Master Plan map prepared by High Plains Architects dated July 25, 2008 attached hereto. (and include the items listed in #3 above)

### III. COSTS

In 2008, three sources of funding were identified to complete the Minnesota Avenue Streetscape Enhancement Project of the Old Town Neighborhood Master Plan. The three sources are Special Improvement District (SID), individual property owners, and the City of Billings. (see Minnesota Avenue Streetscape Cost Estimate – March 2009 attached hereto). With the adoption of the Old Town Neighborhood Master Plan, the Old Town Neighbors hope to pursue grant funding (CTEP, CBDG, etc.) to offset some of the future SID portions of the costs.

### IV. REQUEST

Old Town Neighbors, Inc. is requesting that the "Old Town Neighborhood Master Plan" be formally adopted by the Yellowstone County Planning Board, the City Council, and the County Commissioners as an official neighborhood plan.



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## CITY COUNCIL AGENDA ITEM

### CITY OF BILLINGS, MONTANA

### Monday, July 27, 2009

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**TITLE:** Resolution Repealing Resolution No. 07-18594 and Establishing a Board of Trustees for the Billings Tourism Business Improvement District No. 0002 and Naming the Trustees

**DEPARTMENT:** Administration

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

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**PROBLEM/ISSUE STATEMENT:** The Billings City Council created the Tourism Business Improvement District (TBID) No. 0002 on August 27, 2007 by Resolution No. 07-18593. The Council approved the first Board of Trustees on the same date by Resolution No. 07-18594. The initial terms of office began on September 1, 2007 and were for staggered, one, two, three and four year terms. The TBID Board of Trustees submitted a request that the City Council amend the terms of office so that they begin July 1 and are coterminous with the budget fiscal year. The proposed resolution will satisfy the request and it complies with state law.

**FINANCIAL IMPACT:** There is no direct financial impact on the City. All features of the TBID except the Trustees' terms of office will remain unchanged. The City provides limited service to the TBID by setting the assessments on eligible hotels, creating the assessment roll for transmittal to the County Treasurer for collection and remitting the assessments to the TBID.

#### **RECOMMENDATION**

Staff recommends that Council approve the attached resolution that repeals Resolution No. 07-18594 and names a new Board of Trustees for the Tourism Business Improvement District No. 0002.

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

#### **ATTACHMENTS**

A:      Resolution

## **INTRODUCTION**

The Billings City Council created the Tourism Business Improvement District (TBID) No. 0002 on August 27, 2007 by Resolution No. 07-18593. The Council created the first Board of Trustees on the same date by Resolution No. 07-18594. The initial terms of office began on September 1, 2007 and were for staggered, one, two, three and four year terms. The TBID Board of Trustees submitted a request that the City Council amend the terms of office so that they begin July 1 and are coterminous with the budget fiscal year. The proposed resolution will satisfy the request and it complies with state law.

## **BACKGROUND**

Since 1985, Montana Code Annotated Article 7-12-1100 et. seq. has allowed cities to create business improvement districts. The act was amended in 2007 to allow tourism districts and those amendments were proposed by and lobbied by the Billings Chamber of Commerce. The City of Billings endorsed the legislation and Billings was the first community in the state to create a TBID. The TBID's purpose is to attract conventions, trade shows, the travel industry and major sporting events in order to promote local tourism and to benefit the lodging businesses within the TBID. The Act requires the City Council to create a board of trustees with five to seven members and for a tourism board, to appoint hotel owners or their designated representatives. The City Council approved Resolution No. 07-18594 in August, 2007, and made all seven trustees' terms of office effective on September 1. Only one term expired since the initial creation and the Mayor, with Council consent, approved a new term for that member. Two board members' terms expire August 31, 2009 and the Mayor must reappoint them or their replacements.

The statutes do not specifically address or authorize the City Council to change the trustees' terms of office. However, MCA 7-12-1123 allows the Mayor to remove trustees from office, with Council consent. With the Mayor's recommendation, the City Council could adopt a resolution that 1) repeals Resolution No. 07-18594, thereby removing all members from office, and 2) establishes a new board with terms that begin July 1, 2009. That would require that there be one member with a one year term, two members with two years, two with three years and two with four years terms. The Mayor could appoint the trustees who currently hold office or he could appoint replacements. In the original appointments, when filling the expired term of one member and for appointments to fill unexpired terms, the lodging association presented nominations and the Mayor appointed them.

## **RECOMMENDATION**

Staff recommends that Council approve the attached resolution that repeals Resolution No. 07-18594 and names a new Board of Trustees for the Tourism Business Improvement District No. 0002.

## **ATTACHMENTS**

A: Resolution

**ATTACHMENT A**

**Resolution No. 09-\_\_\_\_\_**

A RESOLUTION REPEALING CITY OF BILLINGS RESOLUTION NO. 07-18594, CREATING A BOARD OF TRUSTEES FOR BILLINGS TOURISM BUSINESS IMPROVEMENT DISTRICT NO.0002, APPOINTING TRUSTEES AND SPECIFYING THE POWERS AND DUTIES OF THE BOARD.

**WHEREAS**, the Billings City Council created the Tourism Business Improvement District No. 0002 on August 27, 2007 by approving Resolution No. 07-18593, 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 Billings City Council approved Resolution No. 07-18594 on August 27, 2007, creating and naming an initial Board of Trustees whose terms began on September 1, 2007, and

**WHEREAS**, the Billings Tourism Improvement District No. 0002 Board of Trustees requested on June 16, 2009 that their terms of office be adjusted to coincide with the budget fiscal year (July 1), and

**WHEREAS**, Montana Code Annotated does not provide clear authority to change terms of office but 7-12-1123 allows the appointing authority, with Council consent, to remove trustees from office, and

**WHEREAS**, Mayor Ron Tussing recommends that the Billings City Council 1) repeal Resolution No. 07-18594, 2) create a new Board of Trustees for the Tourism Business Improvement District No. 0002 and 3) 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. Repeal Resolution No. 07-18594:** City of Billings Resolution No. 07-18594 is hereby repealed on this date and shall have no further authority or effect on the governance of the Tourism Business Improvement District No. 0002, however, all prior lawful acts by the Board of Trustees are hereby affirmed.

**Section 2. Tourism Business improvement District No. 0002 Board of Trustees:**  
The Tourism Business Improvement District No. 0002 Board of Trustees is hereby created. There shall be seven (7) Trustees.

**Section 3. Board Appointments:** The Board of Trustees for the Tourism Business Improvement District No. 0002 shall be as follows and their terms shall be as shown. All terms begin July 1, 2009. 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 Shelli Mann, who shall serve a one (1) year term in that office. Subsequent Chair persons shall serve one (1) year terms and shall be selected by the Board.

<u>Trustee Name</u>	<u>Initial Term</u>
Chris Johnson	1 Year
Cheri Milne	2 Years
Stephen Wahrlich	2 years
Shelli Mann	3 Years
Joyce Bratland	3 Years
Ginny Hart	4 Years
	4 Years

**Section 4. 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 first (1<sup>st</sup>) day of May 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 27<sup>th</sup> day of July, 2009.

THE CITY OF BILLINGS:

By: \_\_\_\_\_  
Ron Tussing, Mayor

ATTEST:

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** Payment of Claims

**DEPARTMENT:** Administration – Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

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**PROBLEM/ISSUE STATEMENT:** Claims in the amount of \$4,576,816.88 have been audited and are presented for your approval for payment. A complete listing of the claims dated June 30, 2009, in the Finance Department.

**RECOMMENDATION**

Staff recommends that Council approve Payment of Claims.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**TITLE:** Continuation of Public Hearing and Resolution for Vacation of a Portion of Clark Avenue within the 2300 Block

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

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**PROBLEM/ISSUE STATEMENT:** Paul and Renae Parkins, owners of the property at 2334 Clark Avenue, have requested to vacate Clark Avenue in front of their property which is approximately 80 feet by 60 feet. Currently, Clark Avenue runs from 23<sup>rd</sup> St. W. to a dead end at their property and will not be extended to 24<sup>th</sup> St. W. due to a building that is constructed on 24<sup>th</sup> St. W.. Both property owners on the other side of the street and the west side of the street have signed off on the Parkins vacating this street for themselves. There is a water line in Clark Avenue that dead ends at the Parkins property which will remain in an easement pursuant to state law. If the Parkins ever decide to build a structure over the vacated property, they will be responsible to move the water line as approved by the City Engineer's Office. At the July 13, 2009, Council Meeting, Council delayed action of the resolution and continued the public to the July 27, 2009, Council Meeting. This delay was to allow legal to evaluate the language in the resolution for correctness. The attached resolution has been approved by legal.

**ALTERNATIVES ANALYZED:**

1. After continuation of public hearing, approve the ROW vacation of Clark Avenue.
2. Do not approve the vacation of the right of way.

**FINANCIAL IMPACT:** A comparison land sales report was done by Kendal Mayer, a realtor with Century 21, which valued the right-of-way between \$2,200 and \$2,600. Paul and Renae Parkins are offering \$2,200 for the proposed vacated right of way.

**RECOMMENDATION**

Staff recommends that Council approve the vacation of a portion of Clark Avenue within the 2300 Block.

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

**ATTACHMENT**

- A. Map Depicting Area to be Vacated
- B. Resolution vacating a portion of Clark Avenue
- C. Comparison Sales letter from Realtor



RESOLUTION NO. 09-\_\_\_\_\_

A RESOLUTION OF THE CITY OF BILLINGS,  
MONTANA, DISCONTINUING AND VACATING  
portion of Clark Avenue.

WHEREAS, a proper petition was filed with the City Council of the City of Billings, Montana, as per Section 22-601 BMCC, requesting discontinuance and vacation of portion of Clark Avenue as described hereinafter; and

WHEREAS, a public hearing was properly noticed and held as required by law.

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

1. DISCONTINUANCE AND VACATION. Pursuant to Sections 7-14-4114 and 7-14-4115, M.C.A., portion of Clark Avenue more particularly described as follows:

**A tract of land situated in Amended Plat of Arnold Subdivision 2<sup>nd</sup> Filing in Billings, Yellowstone County, Montana, more particularly described as:**

A portion of Clark Avenue adjacent to Lot 7, Block 5, Arnold Subdivision 2<sup>nd</sup> Filing, beginning at the northeast corner of Lot 7, Block 5 of Arnold Subdivision 2<sup>nd</sup> Filing said point being the southeast corner of the area of road to be vacated; thence S 89°57' W for a distance of 80 feet to the northwest corner of Lot 7, Block 5 said point being the southwest corner of the area of road to be vacated and a point on the west line of said subdivision; thence along the west line of said subdivision N 00°16' W a distance of 60 feet to the north right of way of Clark Avenue; thence along the right of way of Clark Avenue said line being the south line of Block 8 of Arnold Subdivision 2<sup>nd</sup> Filing N 89°57' E a distance of 80 feet; thence S 00°16' E a distance of 60 feet to the Point of Beginning.  
Containing 4,800 square feet.

Is hereby discontinued, abandoned and vacated and shall revert to adjacent property owners of Lots 2 and 7, Amended Plat of Arnold Subdivision 2<sup>nd</sup> Filing. The water main located underground within the vacated portion of Clark Avenue will remain in an easement pursuant to Section 7-14-4115, M.C.A.

2. **PUBLIC INTEREST.** The discontinuance, vacation and abandonment of the above described **portion of Clark Avenue** is in the best interest of the public and can be done without any public detriment.

## THE CITY OF BILLINGS:

BY: \_\_\_\_\_  
Ron Tussing MAYOR

## ATTEST:

BY: \_\_\_\_\_  
Cari Martin



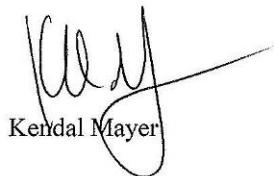
2-18-2009

To whom it may concern,

I was contacted by Mr. Paul Parkins and was asked to give a value opinion of a vacant lot at the end of the 2300 block of Clark Ave. It is my understanding that the vacant lot in question borders Mr. Parkins' property at 2334 Clark Ave. and is approximately 2,058 square feet in size. I was later contacted by Chris Hertz from the city of Billings and he explained to me that Mr. Parkins was wanting the city to vacate the vacant lot in question, as well as the street in front of his home for a total area equal to 4,800 square feet.

It is my opinion that the vacant lot and requested street area in front of Mr. Parkins' property at 2334 Clark Ave. has little or no value, except to Mr. Parkins and his property. It is also my opinion that the added market value or benefit Mr. Parkins could reasonably see by adding these pieces of land to his property is \$2,200-\$2,600. \$2,200-\$2,600 is my value opinion of the vacant lot and the street in front of 2334 Clark Ave.

Sincerely,

A handwritten signature in black ink, appearing to read "Kendal Mayer".

Kendal Mayer

Kendal Mayer • Cell: (406) 321-1353 • Office: (406) 294-2145 • Fax: (406) 294-2192 • Website:  
[kendalmayer.com](http://kendalmayer.com) • Email: [kendal.mayer@century21.com](mailto:kendal.mayer@century21.com)

# AGENDA ITEM: 3A



## CITY COUNCIL AGENDA ITEM CITY OF BILLINGS, MONTANA Monday, July 27, 2009

**SUBJECT:** Resolution Relating to Pooled Series 2009, Special Improvement District Bonds; Fixing the form and details and authorizing the execution and delivery.

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

**PROBLEM/ISSUE STATEMENT:** On July 13, 2009, City Council approved a resolution authorizing a negotiated bond sale for Pooled Special Improvement District Bonds Series 2009 (SID 1372 and 1386). Wells Fargo Bank purchased the bonds at a true interest rate of 5.28%. The following resolution outlines the form and detail of the bonds. Missoula did a competitive sale on Monday, July 13<sup>th</sup> in the amount of \$750,000 and received two bids with a low bid of 5.1248%. The additional costs to get the bond rated and conduct the public sale were in the range of \$10,000 to \$15,000 higher than the City's negotiated sale. The difference in the interest rates of .1552% will cost all the property owners in the two districts approximately an additional \$6,000 over the 15 years versus the \$10,000 to \$15,000.

SID 1372 has been completed in Summerhill and had a cash contribution from Jeff Essman. SID 1386 is for MacDonald and will be completed in the 2009 construction season.

### **RECOMMENDATION**

It is recommended that the City Council approve the attached resolution.

Approved By: City Administrator \_\_\_\_\_ City Attorney \_\_\_\_\_

### **ATTACHMENT**

A - Resolution prepared by Kennedy and Graven

## **CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE**

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO POOLED SPECIAL IMPROVEMENT DISTRICT BONDS (SPECIAL IMPROVEMENT DISTRICT NOS. 1372 and 1386), SERIES 2009; FIXING THE FORM AND DETAILS AND PROVIDING FOR THE EXECUTION AND DELIVERY THEREOF AND SECURITY THEREFOR" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a meeting on July 27, 2009, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following City Council members voted in favor thereof:

voted against the same:

abstained from voting thereon:

or were absent:

WITNESS my hand officially this 27<sup>th</sup> day of July, 2009.

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City Clerk

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

**RESOLUTION RELATING TO POOLED SPECIAL  
IMPROVEMENT DISTRICT BONDS (SPECIAL  
IMPROVEMENT DISTRICT NOS. 1372 and 1386), SERIES 2009;  
FIXING THE FORM AND DETAILS AND PROVIDING FOR  
THE EXECUTION AND DELIVERY THEREOF AND SECURITY  
THEREFOR**

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

Section 1. Recitals. It is hereby found, determined and declared as follows:

1.01. Establishment of Special Improvement District Nos. 1372 and 1386.

(a) Intent Resolutions. This Council has duly and validly created and established in the City various special improvement districts (individually a “District” and, collectively, the “Districts”), designated as the following: (i) Special Improvement District No. 1372 (“District No. 1372”); and (ii) Special Improvement District No. 1386 (“District No. 1386”). The City expressed its intention to create each District pursuant to the following resolutions of this City Council: (i) pursuant to Resolution No. 08-18688, adopted on March 10, 2008, with respect to District No. 1372; and (ii) pursuant to Resolution No. 09-18804, adopted on April 13, 2009, with respect to District No. 1386. Resolution No. 08-18688 and Resolution No. 09-18804 are each referred to herein as an Intent Resolution and collectively as the “Intent Resolutions”.

The Districts were formed for the purpose of financing certain public improvements, and incidental costs thereto, for the special benefit of the properties located in each of the Districts. Each Intent Resolution designated the number of each District, described the boundaries thereof, stated the general character of the public improvements (the “Improvements”) to be made in each District and specially benefiting property located therein, and an estimate of the costs thereof, in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the “Act”). Pursuant to each Intent Resolution, this City Council also declared its intention to cause the cost and expense of making the Improvements to be assessed against the owners of the properties (the “Property Owners”) included within the boundaries of each District in accordance with one or more methods of assessment authorized in Sections 7-12-4161 to 7-12-4165 of the Act. Capitalized terms used in this resolution and not defined herein shall have the meanings given them in each Intent Resolution.

In the Intent Resolutions, this City Council further found that it is in the public interest, and in the best interest of the City and the Districts, to secure payment of principal of and interest on the Bonds by the Revolving Fund of the City (the “Revolving Fund”), on the basis of the factors required to be considered under Section 7-12-4225 of the Act. The prior findings with respect to the pledge of the Revolving Fund as security for the Bonds are hereby ratified and confirmed. This City Council, in each Intent Resolution, also declared its intention to reimburse the City for costs paid before issuance of the Bonds, as required by Section 1.150-2 of the Income Tax Regulations promulgated under the Internal Revenue Code of 1986, as amended (the “Code”).

(b) Notices. Notices of the passage of each of the Intent Resolutions were given by two publications in *The Billings Times*, the official newspaper of the City and a qualified

newspaper of general circulation in the City, as required by the Act. Notice of the passage of each Intent Resolution was also mailed to all persons, firms or corporations or the agents thereof owning real property within the Districts listed in their names upon the last completed assessment roll for State of Montana (the "State"), Yellowstone County (the "County"), and school district taxes, at their last known addresses. The notice of passage of each Intent Resolution, in accordance with the provisions thereof, stated the following: (i) the general character of the Improvements; (ii) the estimated cost of the Improvements; (iii) the method or methods of assessment of such costs against properties in the Districts; (iv) the time when and the place where the City Council would hear and pass upon all protests made against the making of the Improvements or the creation of the Districts; (v) referred to the Intent Resolutions as being on file in the office of the City Clerk for a description of the boundaries of the Districts; and (vi) included a statement that, subject to the limitations of Section 7-12-4222 of the Act, the general fund of the City may be used to provide loans to the Revolving Fund or a general tax levy may be imposed on all taxable property in the City to meet the financial requirements of the Revolving Fund.

(c) Formation of the Districts. At regularly scheduled meetings, this City Council met to hear, consider and pass upon all protests made against the making of the Improvements and the creation of each of the Districts. After the public hearings and deliberations with respect to the formation of each District, this City Council, pursuant a resolution duly adopted of this City Council with respect to each District determined and declared that insufficient protests against the creation of each of the Districts or the proposed work had been filed in the time and manner provided by law by the owners of the property to be assessed for the Improvements in the Districts. This City Council, in the resolutions with respect to the formation of District No. 1372 and District No. 1386, also confirmed the findings it previously made in the Intent Resolutions with respect to the pledge of the Revolving Fund to the portion of the Bonds allocable to each District. The boundaries of the Districts have not been amended or altered since the passage of the resolutions authorizing their formation.

1.02. Construction Contracts and Related Costs. Plans, specifications, maps, profiles and surveys for construction of the Improvements in each District were prepared by the engineers acting for the City with respect to the Improvements in each District, and were thereupon examined and approved by this City Council. An advertisement for bids for construction of the Improvements in each District was published in *The Billings Times*, the official newspaper of the City, in accordance with the provisions of Section 7-12-4141 of the Act, after which the bids theretofore received were opened and examined. The City subsequently reviewed the bids for the Improvements to each District, and the City subsequently award the contract for construction of the Improvements in each District to the contractor that was determined to be the lowest bidder for the furnishing of all work and material required for constructing the improvements in each District.

Contracts for the construction of the Improvements were therefore awarded to said bidders, subject to the right of owners of property liable to be assessed for the costs thereof to elect to take the work and enter into written contracts therefor in the manner provided by Section 7-12-4147 of the Act, which election the property owners failed to make. Thereafter, the City and the successful bidders for the construction contracts related to the Improvements entered into written contracts for construction of the Improvements upon the bidders having executed and filed bonds satisfactory to this City Council and in the form and manner provided by Montana Code Annotated, Title 18, Chapter 2, Part 2, as amended.

1.03. Costs. It is currently estimated that the total costs and expenses of the Improvements, including the incidental costs, are as set forth in Resolution No. 09-18845, adopted on July 13, 2009. The City currently estimates that the costs and expenses to be assessed against properties benefited by the

Improvements in each District for which the City has not already received payment, including costs of preparation of plans, specifications, maps, profiles, engineering superintendence and inspection, preparation of assessment rolls, expenses of making the special assessments, the cost of work and materials under the construction contract and all other costs and expenses, including the deposits of Bond proceeds to the Revolving Fund, are not less than \$509,000. Such amount will be levied and assessed upon the assessable real property within the Districts on the basis described in each Intent Resolution, and the City will not contribute funds to the construction of the Improvements, other than from proceeds of the Bonds.

This City Council has jurisdiction and is required by law to levy and assess \$509,000, together with interest thereon, to collect such special assessments and credit the same to the special improvement District Account (as defined herein) created for each of the Districts, which District Accounts are to be maintained on the official books and records of the City separate from all other City funds, for the payment of principal of and interest due on the Bonds.

1.04. Sale and Issuance of Bonds. For the purpose of financing a portion of the costs and expenses of making the Improvements, which are to be assessed against the Property Owners, this City Council determined that the issuance and sale of the Bonds in a pooled single offering was in the best interests of the City and the Property Owners and would facilitate the sale of the Bonds at lower interest rates. Pursuant to the Authorizing Resolution, this City Council called for the sale of Bonds in the total aggregate amount not to exceed \$509,000, which amount represents Bonds allocable for each District as follows:

<u>District Number</u>	<u>Principal Amount</u>
1372	\$292,000
1386	217,000

Pursuant to the Authorizing Resolution, and as authorized by Montana Code Annotated, Section 7-12-4204, as amended, the City has negotiated the sale of the Bonds to Wells Fargo Brokerage Services, LLC (the "Purchaser"), a division of Wells Fargo Bank, National Association. The Purchaser is authorized to do business in the State of Montana. The Purchaser has agreed to purchase the Bonds from the City at a purchase price of \$499,329 (the original principal amount of \$509,000, less the Purchaser's fee of \$9,671) without accrued interest, at the rate of interest and price set forth in Section 2.01 hereof.

1.05. Recitals. All acts, conditions and things required by the Constitution and laws of the State, including the Act, as amended, in order to make the Bonds valid and binding special obligations in accordance with their terms and in accordance with the terms of this resolution have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required.

## Section 2. Description of the Bonds.

2.01. Principal Amount, Maturities, Denominations, Date, Interest Rates. For the purpose of paying the costs and expenses incurred in construction of the Improvements, and in anticipation of the collection of special assessments to be levied therefor, and in accordance with the proposal described in Section 1.05, the City shall forthwith issue and sell the Bonds to the Purchaser. The Bonds are payable solely from amounts deposited in the Special Improvement District Nos. 1372 and 1386 Debt Service Fund (the "Debt Service Fund") and the District Accounts and subaccounts established therein. The Bonds shall be denominated "Pooled Special Improvement District Bonds (Special Improvement District Nos. 1372 and 1386) Series 2009". The Bonds shall be dated, as originally issued, and be registered as of August 10, 2009, and shall each be in minimum denominations of \$5,000 or any integral multiple thereof. The Bonds shall be issued as a single term bond and shall mature not later than July 1, 2024. The Bonds

shall bear interest from the date of original registration until paid or duly called for redemption at the rate of 5.28% per annum.

2.02. Interest Payment Dates. Interest on the Bonds shall be payable on each January 1 and July 1, commencing January 1, 2010 (each a “Payment Date”), to the owners of record thereof as such appear on the bond registrar at the close of business on the fifteenth (15<sup>th</sup>) day of the immediately preceding month, whether or not such day is a business day. Principal of the Bonds shall be paid on each Payment Date, commencing January 1, 2010. Upon the original delivery of the Bonds to the Purchaser and upon each subsequent transfer or exchange of a Bond pursuant to Section 2.04, the Registrar shall date each Bond as of the date of its authentication.

2.03. Method of Payment. The Bonds shall be issued in fully registered form in book-entry only form. The interest on and, upon surrender thereof at the operations center of the Registrar (as hereinafter defined), the principal of each Bond, shall be payable by check or draft drawn on the Registrar.

2.04. Registration. The City hereby appoints Wells Fargo Brokerage Services, LLC, to act as the initial bond registrar, transfer agent and paying agent (the “Registrar”). The City reserves the right to appoint a successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of Montana (the “Bond Registration Act”). The City agrees to pay the reasonable and customary charges, if any, of the Registrar for services performed with respect to the Bonds. This Section 2.04 shall establish a system of registration for the Bonds as defined by the Bond Registration Act. The effect of registration and the rights and duties of the City and the Registrar with respect thereto shall be as follows:

(a) Bond Register. The Registrar shall keep at its operations center a Bond register in which the Registrar shall provide for the registration of ownership of Bonds and the registration of transfers and exchanges of Bonds entitled to be registered, transferred or exchanged.

(b) Transfer. Upon surrender for transfer of any Bond duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Bonds of a like aggregate principal amount and maturity, as requested by the transferor. The Registrar may, however, close the books for registration of the transfer of any Bond to be selected or called for redemption. No transfer or exchange of a Bond shall affect its order of registration for purposes of redemption pursuant to Section 2.05 hereof.

(c) Exchange of Bonds. Whenever any Bond is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Bonds of a like aggregate principal amount and maturity, as requested by the registered owner or the owner’s attorney duly authorized in writing.

(d) Cancellation. All Bonds surrendered upon any transfer or exchange shall be promptly canceled by the Registrar. After cancellation the Registrar shall provide a certificate to the City specifying the maturities canceled.

(e) Improper or Unauthorized Transfer. When any Bond is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Bond or separate instrument of transfer is valid and genuine and that the

requested transfer is legally authorized. The Registrar shall incur no liability for the refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(f) Persons Deemed Owners. The City and the Registrar may treat the person in whose name any Bond is at any time registered in the bond register as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of and interest on such Bond and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer of Bonds or exchange of Bonds (except for an exchange upon the partial redemption of any Bond pursuant to Section 2.05 hereof), the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

(h) Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Registrar shall deliver a new Bond of like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond or in lieu of and in substitution for any such Bond destroyed, stolen or lost, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith and, in the case of a Bond destroyed, stolen or lost, upon filing with the Registrar of evidence satisfactory to it that such Bond was destroyed, stolen or lost, and of the ownership thereof, and upon furnishing to the Registrar an appropriate bond or indemnity in form, substance and amount satisfactory to it, in which both the City and the Registrar shall be named as obligees. All Bonds so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, destroyed, stolen or lost Bond has already matured or such Bond has been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

## 2.05. Redemption of the Bonds.

(a) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption on the dates and at a price of par plus accrued interest to the date of redemption in accordance with Schedule A to the Form of Bonds in Exhibit A attached hereto.

(b) Mandatory Redemption. If on any Payment Date there will be a balance in the Debt Service Fund after payment of the principal and interest due on all Bonds drawn against it, either from (i) the prepayment of special assessments levied in the Districts or (ii) the transfer of surplus money from a Construction Subaccount to a District Account and, subsequently, to the Debt Service Fund, as provided in Section 3.02, then the Financial Services Manager shall call for redemption on the Payment Date outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the Payment Date, will equal the amount of such funds on deposit in the Debt Service Fund on that date are subject to mandatory redemption on that Payment Date. The redemption price of the Bonds on such Payment Date shall equal the amount of the principal amount of the Bonds to be redeemed, plus interest accrued to the date of redemption on the applicable Payment Date.

(c) Optional Redemption. The Bonds are subject to redemption, in whole or in part, on July 1, 2014, and any date thereafter, at the option of the City, in whole or in part, from sources of funds available therefor other than those described in Subsection (b) of this

Section 2.05, at a redemption price equal to the principal amount thereof to be redeemed plus interest accrued to the redemption date, without premium.

(d) Selection of Bonds for Redemption; Partial Redemption. If less than all of the Bonds are to be redeemed, Bonds shall be redeemed in order of the stated maturities thereof. If less than all Bonds of a stated maturity are to be redeemed, the Bonds of such maturity shall be selected for redemption in \$5,000 principal amounts selected by the Registrar by lot or other manner it deems fair. Upon partial redemption of a Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount thereof outstanding.

(e) Notice and Effect of Redemption. The date of redemption and the principal amount of the Bonds shall be fixed by the Financial Services Manager, who shall give notice thereof to the Registrar forty-five (45) days in advance in order for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses appearing in the bond register, of the numbers of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall be not less than thirty (30) days after the date of mailing notice. On the date so fixed interest on the Bonds or portions thereof so redeemed shall cease.

2.06. Form. The Bonds shall be drawn in substantially the form set forth in Exhibit A hereto, and by this reference made a part hereof, with such modifications as are permitted by the Act.

2.07. Execution, Registration and Delivery. The Bonds shall be prepared under the direction of the Financial Services Manager, or his or her designee, and shall be executed on behalf of the City by the signatures of the Mayor, Financial Services Manager, and the City Clerk, or their respective designees, provided that the signatures and the corporate seal may be printed, engraved or lithographed facsimiles of the originals. The seal of the City need not be impressed or imprinted on any Bond. In case any officer whose signature or a facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of any Bond, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. Notwithstanding such execution, no Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this resolution unless a certificate of authentication and registration on such Bond has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication and registration on different Bonds need not be signed by the same representative. The executed certificate of authentication and registration on each Bond shall be conclusive evidence that it has been authenticated and delivered under this resolution. The Bonds shall be registered in order of their serial numbers by the Registrar, as attested by the Certificate of Authentication, as of August 10, 2009. When the Bonds have been so executed, authenticated and registered, they shall be delivered by the Registrar to the Purchaser upon payment of the purchase price in accordance with the contract of sale heretofore made and executed.

2.08. Application of Bond Proceeds. The Purchaser shall not be obligated to see to the application of the purchase price of the Bonds. The City's Financial Services Manager (or his/her designee) shall credit the proceeds of the Bonds (taking into account the Purchaser's discount of \$9,671) as follows:

(a) \$25,450 to the Revolving Fund, as required by Section 7-12-4169(2) of the Act;

(b) \$17,815 the General Fund of the City for the City's administration fee with respect to the Districts; and

(c) \$456,064 to the Construction Subaccounts in each District Account (on a pro-rata basis in accordance with the allocation set forth in Section 1.04 of this resolution) of the Debt Service Fund for the cost of the Improvements and the payment of costs of issuance for the Bonds.

Section 3. Debt Service Fund; Accounts Created Therein; and Special Assessments.

3.01. Debt Service Fund. There is hereby created and established a fund designated as the “Special Improvement District Nos. 1372 and 1386 Fund” (the “Debt Service Fund”), which shall be maintained by the Financial Services Manager on the books and records of the City separate and apart from all other funds of the City. Within the Debt Service Fund there shall be created and maintained separate accounts for each of the Districts and designated as the District No. 1372 Account and the District No. 1386 Account (each a “District Account” and collectively, the “District Accounts”). Within each District Account there shall be maintained three separate subaccounts, designated as the “Construction Subaccount,” the “Principal Subaccount” and “Interest Subaccount,” respectively.

3.02. Construction Subaccounts. There shall be credited to the Construction Subaccount in each of the District Accounts the pro-rata portion of the proceeds of the sale of the Bonds as provided in Section 2.08. Any earnings on investment of money in the Construction Subaccount shall be retained therein. All costs and expenses of constructing the Improvements to be paid from proceeds of the Bonds shall be paid from time to time as incurred and allowed from the Construction Subaccount in accordance with the provisions of applicable law, and money in the Construction Subaccount shall be used for no other purpose; provided that upon completion of the Improvements and after all claims and expenses with respect to the Improvements have been fully paid and satisfied, any amount of money remaining in the Construction Subaccount shall be transferred to the applicable Principal Subaccount and then to the Debt Service Fund and used to redeem Bonds as provided in Sections 2.05 and 3.03(b).

3.03. Principal Subaccounts and Interest Subaccounts.

(a) Principal Subaccounts and Interest Subaccounts Generally. Money in the Principal Subaccounts and Interest Subaccounts shall be used only for (i) payment of the principal of the Bonds from the Principal Subaccount and interest on the Bonds from the Interest Subaccounts as such payments become due or (ii) to redeem Bonds.

(b) Deposits to Principal Subaccounts and Interest Subaccounts. The Financial Services Manager shall credit on November 30 and May 31 of each year to the applicable Interest Subaccount so much of a special assessment as interest payment and the balance thereof to the applicable Principal Subaccount with respect to the installment of principal of the Bonds due on the special assessments to be levied by the City with respect to the Improvements in each of the Districts. Interest income on money in the Principal Subaccounts and Interest Subaccounts shall be retained therein and used as any other funds therein. Any installment of a special assessment paid prior to its due date with interest accrued thereon to the next succeeding Payment Date shall be credited with respect to principal and interest payments in the same manner as other special assessments are credited to the Principal Subaccounts and Interest Subaccounts. All money in the Principal Subaccounts and Interest Subaccounts shall be used first to pay interest due, and any remaining money shall be used to pay Bonds then due and, if money is available, to redeem Bonds in accordance with Section 2.05(a); provided that any money transferred to the Principal Subaccounts from the Construction Subaccount pursuant to Section 3.02 shall be transferred to the Debt Service Fund and applied to redeem Bonds to the extent possible on the next Payment Date for which notice of redemption may properly be given pursuant to Section 2.05(a). Prior to the applicable Payment Date, the Financial Services Manager shall transfer the applicable amount from each Principal

Subaccount and Interest Subaccount to the Debt Service Fund to make the payment due on the Bonds on such Payment Date. Redemption of Bonds shall be as provided in Section 2.05, and interest shall be paid as accrued thereon to the date of redemption, in accordance with the provisions of Section 7-12-4206 of the Act.

3.04. Loans from Revolving Fund. The City Council shall annually or more often if necessary issue an order authorizing a loan or advance from the Revolving Fund to the Debt Service Fund (Sinking Fund) in an amount sufficient to replenish any deficiency then existing in the Debt Service Fund and shall issue an order authorizing a loan or advance from the Revolving Fund to the Debt Service Fund in an amount sufficient to make good any deficiency then existing in the Debt Service Fund in such order to the extent that money is available in the Revolving Fund. Provided, however, that at the time any such loan or advance is to be made, Reserve Account shall have been or shall remain depleted on the next Payment Date. A deficiency shall be deemed to exist in the Debt Service Fund if the money on deposit therein, on any June 15 or December 15 (excluding amounts in the Debt Service Fund representing prepaid special assessments) is less than the amount necessary to pay Bonds due (other than upon redemption), and interest on all Bonds payable, on the next succeeding Payment Date.

Pursuant to Ordinance No. 1096, as amended, the City has undertaken and agreed to provide funds for the Revolving Fund by levying such tax or making such loan from the General Fund as authorized by Section 7-12-4222 of the Act. In the event that the balance on hand in the Revolving Fund fifteen (15) days prior to any date when interest is due on special improvement district bonds or warrants of the City is not sufficient to make good all deficiencies then existing in the special improvement Debt Service Funds for which the City has covenanted to make loans from the Revolving Fund, the balance on hand in the Revolving Fund shall be allocated to the funds of the special improvement districts in which such deficiencies then exist in proportion to the amounts of the deficiencies on the respective dates of receipt of such money, until all interest accrued on such special improvement district bonds or warrants of the City has been paid. On any date when all accrued interest on special improvement district bonds and warrants of the City payable from funds for which the City has covenanted to make loans from the Revolving Fund has been paid, any balance remaining in the Revolving Fund shall be lent or advanced to the special improvement Debt Service Funds for payment and redemption of bonds to the extent the special improvement Debt Service Funds are deficient for such purpose, and, if money in the Revolving Fund is insufficient therefor, pro rata, in an amount proportionate to the amount of such deficiency.

The City hereby determines, covenants and agrees to levy the property tax described in the immediately preceding paragraph to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law (including SB 184, adopted by the Montana Legislature in 1999) or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly. In addition, the City hereby covenants to comply with the requirements of the Code and the Regulations in order that the Revolving Fund comply and continue to qualify as "reasonably required" debt service reserve fund for the Bonds.

Section 4. Covenants. The City covenants and agrees with the owners from time to time of each of the Bonds that until all the Bonds and interest thereon are fully paid.

4.01. Compliance with Resolution. The City will hold the Debt Service Fund and the Revolving Fund as trust funds, separate and apart from all of its other funds, and the City, its officers-and agents, will comply with all covenants and agreements contained in this resolution. The provisions hereinabove made with respect to the Debt Service Fund and the Revolving Fund are in accordance with the undertaking and agreement of the City made in connection with the public offering of the Bonds and the sale of the Bonds as set forth in Section 1.04.

4.02. Construction of Improvements. The City will do all acts and things necessary to enforce the provisions of the construction contracts and bonds referred to in Section 1.03 and to ensure the completion of the Improvements for the benefit of the Districts in accordance with the plans and specifications and within the time therein provided, and will pay all costs thereof promptly as incurred and allowed, out of the Debt Service Fund and within the amount of the proceeds of the Bonds appropriated thereto.

4.03. Levy of Assessments. The City will do all acts and things necessary for the final and valid levy of special assessments upon all assessable real property within the boundaries of the Districts in accordance with the Constitution and laws of the State and the Constitution of the United States, in an aggregate principal amount not less than \$509,000. In addition the levy of special assessments with respect to each of the Districts shall not be less than the amounts set forth in the following table:

<u>District Number</u>	<u>Principal Amount</u>
1372	\$292,000
1386	217,000

The special assessments shall be levied on the basis set forth in each Intent Resolution; and shall be payable in equal, semiannual installments over a period of fifteen (15) years, with interest on the whole amount remaining unpaid at an annual rate equal to the sum of: (i) the average annual interest rate borne by the Bonds, plus (ii) one-half of one percent (0.50%) per annum, interest being payable with principal installments. The special assessments to be levied will be payable on the 30th day of November in each of the years 2009 through 2023, and on the 31st day of May in the years 2010 through 2023, inclusive, if not theretofore paid, and shall become delinquent on such date unless paid in full. The first partial payment of each assessment shall include interest on the entire assessment from the date of original registration of the Bonds to January 1, 2010 and each subsequent partial payment shall include interest for six (6) months on that payment and the then remaining balance of the special assessment. The special assessments shall constitute a lien upon and against the property against which they are made and levied, which lien may be extinguished only by payment of the assessment with all penalties, cost and interest as provided in Section 7-12-4191 of the Act. No tax deed issued with respect to any lot or parcel of land shall operate as payment of any installment of the assessment thereon which is payable after the execution of such deed, and any tax deed so issued shall convey title subject only to the lien of said future installments, as provided in Montana Code Annotated, Section 15-18-214.

4.04. Reassessment. If at any time and for whatever reason any special assessment or tax herein agreed to be levied is held invalid, the City and this City Council, its officers and employees, will take all steps necessary to correct the same and to reassess and re-levy the same, including the ordering of work, with the same force and effect as if made at the time provided by law, ordinance or resolution relating thereto, and will reassess and re-levy the same with the same force and effect as an original levy thereof, as authorized in Section 7-12-4186 of the Act. Any special assessment, or reassessment or re-levy shall, so far as is practicable, be levied and collected as it would have been if the first levy had been enforced including the levy and collection of any interest accrued on the first levy.

If proceeds of the Bonds, including investment income thereon, are applied to the redemption of such Bonds, as provided in Sections 7-12-4205 and 7-12-4206 of the Act, or if refunding bonds are issued and the principal amount of the outstanding Bonds of the Districts is decreased or increased, the City will reduce or increase, respectively, the special assessments levied in the Districts and then outstanding pro rata by the principal amount of such prepayment or the amount above or below the outstanding principal amount of bonds represented by the refunding bonds. The City and this City Council, its officers and employees will reassess and re-levy such special assessments, with the same effect as an original levy, in

such reduced or increased amounts in accordance with the provisions of Sections 7-12-4176 through 7-12-4178 of the Act.

4.06. Absence of Litigation. There is now no litigation pending or, to the best knowledge of the City, threatening or questioning: the validity or regularity of the creation of the Districts, the contracts for construction of the Improvements or the undertaking and agreement of the City to levy special assessments therefor and to make good any deficiency in the collection thereof through the levy of taxes for and the making of advances from the Revolving Fund as security for the Bonds; the right and power of the City to issue the Bonds; or in any manner questioning the existence of any condition precedent to the exercise of the City's powers in these matters. If any such litigation should be initiated or threatened, the City will forthwith notify in writing the Purchaser, and will furnish the Purchaser a copy of all documents, including pleadings, in connection with such litigation.

4.07. Waiver of Penalty and Interest. The City covenants not to waive the payment of penalty or interest on delinquent special assessments levied on property in the Districts for costs of the Improvements, unless the City determines, by resolution of the City Council, that such waiver is in the best interest of the owners of the outstanding Bonds.

#### Section 5. Tax Matters.

5.01. Use of Improvements. The Improvements will be owned and operated by the City and available for use by members of the general public on a substantially equal basis. The City shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the Improvements or security for the payment of the Bonds which might cause the Bonds to be considered "private activity bonds" or "private loan bonds" within the meaning of Section 141 of the Code and the applicable Regulations.

5.02. General Covenant. The City covenants and agrees with the owners from time to time of the Bonds that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Bonds to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations applicable to the Bonds. By this resolution, the City covenants to take any and all actions within its powers to ensure that the interest on the Bonds will not become includable in gross income for federal income tax purposes under the Code and the applicable Regulations.

5.03. Arbitrage Certification. The Mayor, the City Clerk and the Financial Services Manager, being the officers of the City charged with the responsibility for issuing the Bonds pursuant to this resolution, are authorized and directed to execute and deliver to the Purchaser a certificate in accordance with the provisions of Section 148 of the Code and the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Bonds, it is reasonably expected that the proceeds of the Bonds will be used in a manner that would not cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations.

5.04. Qualified Tax-Exempt Obligations. In order to qualify the Bonds as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, the City makes the following factual statements and representations:

(a) the Bonds are not "private activity bonds" as defined in Section 141 of the Code;

(b) the City designates the Bonds as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;

(c) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds) which will be issued by the City (and all subordinate entities of the City) during calendar year 2009 will not exceed \$30,000,000; and

(d) not more than \$30,000,000 of obligations issued by the City during calendar year 2009 have been designated for purposes of Section 265(b)(3) of the Code.

Section 6. Authentication of Transcript. The officers of the City are hereby authorized and directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings relating to the issuance of the Bonds and such other certificates and affidavits as maybe required to show the right, power and authority of the City to issue the Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the City as to the truth of the statements purported to be shown thereby.

Section 7. Discharge.

7.01. General. When the liability of the City on all Bonds issued under and secured by this resolution has been discharged as provided in this Section 7, all pledges, covenants and other rights granted by this resolution to the owners of such obligations shall cease.

7.02. Payment. The City may discharge its liability with reference to any Bond or installment of interest thereon which is due on any date by on or before that date depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, mailing to the registered owner of such Bond a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in-full, or if any Bond or installment of interest thereon shall not be paid when due, the City may nevertheless discharge its liability with reference thereto by depositing with the Registrar funds sufficient, or, if a City officer is the Registrar, by mailing to the registered owner thereof a check or draft in a sum sufficient and providing proceeds available, for the payment thereof in full with interest accrued to the date of such deposit or mailing.

7.03. Prepayment. The City may also discharge its liability with reference to any prepayable Bonds which are called for redemption on any date in accordance with their terms by depositing with the Registrar on or before that date an amount equal to the principal and interest which are then due thereon; provided that notice of such redemption has been duly given as provided in this Resolution.

7.04. Escrow. The City may also at any time discharge its liability in its entirety with reference to the Bonds, subject to the provisions of law now or hereafter authorizing and regulating such action, by depositing irrevocably in escrow, with a bank qualified by law as an escrow agent for this purpose, cash or securities which are authorized by law to be so deposited, bearing interest payable at such times and at such rates and maturing on such dates as shall be required, without reinvestment, to provide funds sufficient to pay all principal and interest to become due on all Bonds on or before maturity or, if any Bond has been duly called for redemption or notice of such redemption has been irrevocably provided for, on or before the designated redemption date.

7.05. Irrevocable Deposits. If an officer of the City is the Registrar, any deposit made under this Section 7 with the Registrar shall be irrevocable and held for the benefit of the owners of the Bonds in respect of which such deposits have been made.

Section 8. Continuing Disclosure. The Purchaser need not comply with the continuing disclosure requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Rule”), because the Bonds are in a principal amount less than \$1,000,000. Consequently, the City will not enter into any undertaking to provide continuing disclosure of any kind with respect to the Bonds, however, the City shall provide financial information to the Purchaser as the Purchaser reasonably requests.

Section 9. Repeals and Effective Date.

9.01. Repeal. All provisions of other resolutions and other actions and proceedings of the City and this City Council that are in any way inconsistent with the terms and provisions of this resolution are repealed, amended and rescinded to the full extent necessary to give full force and effect to the provisions of this resolution.

9.02. Effective Date. This resolution shall take effect immediately upon its passage and adoption by this City Council.

PASSED by the City Council of the City of Billings, Montana, this 27th day of July, 2009.

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Mayor

Attest:

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City Clerk

## **EXHIBIT A**

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

CITY OF BILLINGS  
POOLED SPECIAL IMPROVEMENT DISTRICT BONDS  
(SPECIAL IMPROVEMENT DISTRICT NOS. 1372 and 1386)  
SERIES 2009

No. 1		\$509,000
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Rate	Maturity	Date of Original Issue
5.28%	July 1, 2024	August 10, 2009

REGISTERED OWNER: WELLS FARGO BROKERAGE SERVICES, LLC

PRINCIPAL AMOUNT: FIVE HUNDRED NINE THOUSAND DOLLARS

FOR VALUE RECEIVED, the City of Billings, Yellowstone County, Montana (the "City"), will pay to the registered owner identified above, or registered assigns, on the maturity date specified above the principal amount specified above, solely from the revenues hereinafter specified, as authorized by Resolution No. 09-18845, adopted on July 13, 2009 (the "Authorizing Resolution"), and Resolution No. 09-\_\_\_\_\_, adopted on July 27, 2009 (the "Bond Resolution"), all subject to the provisions hereinafter described relating to the redemption of this Bond before maturity. This Bond bears interest at the rate per annum specified above from the date of registration of this Bond, as expressed herein, or from such later date to which interest hereon has been paid or duly provided for, until the maturity date specified above or an earlier date on which this Bond shall have been duly called for redemption by the Financial Services Manager. Interest on this Bond is payable semiannually, commencing January 1, 2010, on the first day of January and the first day of July in each year, to the owner of record of this Bond appearing as such in the bond register as of the close of business on the 15th day (whether or not such is a business day) of the immediately preceding month. Interest on and, upon presentation and surrender hereof to Wells Fargo Brokerage Services, LLC, as bond registrar and paying agent (the "Registrar"), the principal of this Bond are payable by check or draft of the Registrar, or its successor. The principal of and interest on this Bond are payable in lawful money of the United States of America.

The Bonds are issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"), to finance the costs of certain local public improvements (collectively, the "Improvements") for the special benefit of property located in Special Improvement District No. 1372 and 1386 of the City (collectively, the "Districts"). The Bonds are issuable only as fully registered bonds of single maturities in denominations of \$5,000 or any integral multiple thereof.

This Bond is payable from the collection of a special tax or special assessments levied upon all assessable real property within the boundaries of each District, in an aggregate principal amount of not less than \$509,000, except as such amount may be reduced or increased in accordance with provisions of Montana law. Such special assessments constitute a lien against the assessable real estate within the Districts and are to be deposited into the Special Improvement District Nos. 1372 and 1386 Fund of the City (the "Debt Service Fund") and the applicable Principal Subaccount and Interest Subaccount of the District Accounts established therein.

The City has also validly established a Special Improvement District Revolving Fund (the "Revolving Fund") to secure the payment of certain of its special improvement district bonds, including the Bonds. The City has also agreed, to the extent permitted by the Act, to issue orders annually authorizing loans or advances from the Revolving Fund to Debt Service Fund (Sinking Fund), in amounts sufficient to make good any deficiency in the Debt Service Fund to pay principal of or interest on the Bonds to the extent that funds are available in the Revolving Fund, and to provide funds for the Revolving Fund by annually making a tax levy or loan from its general fund in an amount sufficient for that purpose, subject to the limitation that no such tax levy or loan may in any year cause the balance in the Revolving Fund to exceed five percent of the principal amount of the City's then outstanding special improvement district bonds secured thereby and the durational limitations specified in the Act. The City has also agreed levy the property tax described in the immediately preceding sentence to provide funds for the Revolving Fund so long as any Bonds are outstanding to the extent required under the provisions of this Resolution and the Act, even though such property tax levy may, under applicable law (including SB 184, adopted by the Montana Legislature in 1999) or provisions of the home rule charter of the City, require that property tax levies of the City for other purposes be reduced correspondingly. In addition, the City has covenanted to comply with the requirements of the Code and the Regulations in order that the Revolving Fund comply and continue to qualify as "reasonably required" debt service reserve fund for the Bonds.

The Bonds are subject to mandatory redemption in order of stated maturities and within a stated maturity in \$5,000 principal amounts selected by lot or other manner deemed fair by the Registrar on any Payment Date if, after paying all principal and interest then due on the Bonds, there are funds to the credit of the Debt Service Fund, from the prepayment of special assessments levied in the Districts or from surplus proceeds of the Bonds not required to pay costs of the Improvements, for the redemption thereof, and in the manner provided for the redemption of the same. The Bonds are subject to redemption, at the option of the City, from other sources of funds available therefor on July 1, 2014 or any date thereafter. The redemption price is equal to the principal amount of the Bonds or portions thereof to be redeemed plus interest accrued thereon to the date of redemption. The date of redemption of Bonds and principal amount of Bonds to be redeemed shall be fixed by the Financial Services Manager, who shall give notice thereof to the Registrar forty-five (45) days in advance in order for the Registrar to give notice, by first class mail, postage prepaid, or by other means required by the securities depository, to the owner or owners of such Bonds at their addresses shown on the Bond register, of the Bonds or portions thereof to be redeemed and the date on which payment will be made, which date shall not be less than thirty (30) days after the date of mailing of notice, on which date so fixed interest shall cease. On the date so fixed, interest on the Bonds or portions thereof so redeemed shall cease to accrue. Upon partial redemption of any Bond, a new Bond or Bonds will be delivered to the registered owner without charge, representing the remaining principal amount outstanding.

As provided in the Bond Resolution and subject to certain limitations set forth therein, this Bond is transferable upon the books of the City at the operations center of the Registrar, by the registered owner hereof in person or by his attorney duly authorized in writing upon surrender hereof together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or his attorney, and may also be surrendered in exchange for Bonds of other authorized denominations. Upon

such transfer or exchange, the City will cause a new Bond or Bonds to be issued in the name of the transferee or registered owner, of the same aggregate principal amount, bearing interest at the same rate and maturing on the same date, subject to reimbursement for any tax, fee or governmental charge required to be paid with respect to such transfer or exchange.

The City and the Registrar may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and neither the City nor the Registrar shall be affected by any notice to the contrary.

The City has designated this Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that all things required to be done precedent to the issuance of this Bond have been properly done, happened and been performed in the manner prescribed by the laws of the State of Montana and the resolutions and ordinances of the City of Billings, Montana, relating to the issuance thereof; and that the opinion attached hereto is a true copy of the legal opinion given by Bond Counsel with reference to the Bonds, dated the date of original issuance and delivery of the Bonds.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication and Registration herein shall have been executed by the Registrar by the manual signature of one of its authorized representatives.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the City of Billings, Yellowstone County, Montana, by its City Council, has caused this Bond to be executed by the facsimile signatures of the Mayor and the City Clerk, and by a facsimile of the official seal of the City.

**CITY OF BILLINGS, MONTANA**

Dated: August 10, 2009

(SEAL)

By \_\_\_\_\_ (facsimile signature)  
Mayor

By \_\_\_\_\_ (facsimile signature)  
Financial Services Manager

By \_\_\_\_\_ (facsimile signature)  
City Clerk

### PROVISIONS AS TO REGISTRATION

The ownership of the unpaid principal balance of this Bond and the interest accruing thereon is registered on the books of Wells Fargo Brokerage Services, LLC, in the name of the registered holder last noted below.

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of Purchaser as Bond Registrar</u>
August 10, 2009	<b>Wells Fargo Brokerage Services, LLC</b> <b>608 Second Avenue South, 10<sup>th</sup> Floor</b> MAC 9303-095 Minneapolis MN 55479 Attention: Public Finance	_____

## SCHEDULE A

### Mandatory Sinking Fund Redemption Schedule

**S.I.D. Bond**      **City of Billings**      **Exhibit A**

<b>Costs Funded</b> <b>\$509,000.00</b>	<b>Payment Rate</b> <b>5.28%</b>	<b>30 Payments</b>	<b>Level Payment</b>	<b>Closing Fees</b> <b>\$0.00</b>	<b>Average Life</b> <b>8.56 years</b> <b>103 months</b>		
		<b>2 per year</b> <b>5.280%</b>	<b>\$24,636.97</b>				
		<b>Rate</b> <b>Fctr=.048403</b>					
		<b>Commencement: Aug 10, 2009</b>					
		<b>Closing Date: Aug 10, 2009</b>					

<b>Pmt</b>	<b>Total Payment Due</b>	<b>Interest Payment Due</b>	<b>Principal Payment Due</b>	<b>After Payment Principal Balance</b>	<b>After Payment Termination Value</b>	<b>Payment Due Date</b>
1	\$0.00		\$0.00	\$509,000.00		Aug 10, 2009
2	\$24,636.97	\$10,526.12	\$14,110.85	\$494,889.15	\$494,889.14	Jan 1, 2010
3	\$24,636.97	\$13,065.07	\$11,571.90	\$483,317.24	\$483,317.24	Jul 1, 2010
4	\$24,636.97	\$12,759.58	\$11,877.40	\$471,439.84	\$471,439.84	Jan 1, 2011
5	\$24,636.97	\$12,124.17	\$12,512.80	\$446,736.08	\$446,736.08	Jan 1, 2012
6	\$24,636.97	\$11,793.83	\$12,843.14	\$433,892.94	\$433,892.93	Jul 1, 2012
7	\$24,636.97	\$11,454.77	\$13,182.20	\$420,710.73	\$420,710.73	Jan 1, 2013
8	\$24,636.97	\$11,106.76	\$13,530.21	\$407,180.52	\$407,180.52	Jul 1, 2013
9	\$24,636.97	\$10,749.57	\$13,887.41	\$393,293.11	\$393,293.11	Jan 1, 2014
10	\$24,636.97	\$10,382.94	\$14,254.04	\$379,039.08	\$379,039.08	Jul 1, 2014
11	\$24,636.97	\$10,006.63	\$14,630.34	\$364,408.73	\$364,408.73	Jan 1, 2015
12	\$24,636.97	\$9,620.39	\$15,016.58	\$349,392.15	\$349,392.15	Jul 1, 2015
13	\$24,636.97	\$9,223.95	\$15,413.02	\$333,979.13	\$333,979.13	Jan 1, 2016
14	\$24,636.97	\$8,817.05	\$15,819.93	\$318,159.20	\$318,159.20	Jul 1, 2016
15	\$24,636.97	\$8,399.40	\$16,237.57	\$301,921.63	\$301,921.63	Jan 1, 2017
16	\$24,636.97	\$7,970.73	\$16,666.24	\$285,255.39	\$285,255.39	Jul 1, 2017
17	\$24,636.97	\$7,530.74	\$17,106.23	\$268,149.16	\$268,149.15	Jan 1, 2018
18	\$24,636.97	\$7,079.14	\$17,557.84	\$250,591.32	\$250,591.32	Jul 1, 2018
19	\$24,636.97	\$6,615.61	\$18,021.36	\$232,569.95	\$232,569.95	Jan 1, 2019
20	\$24,636.97	\$6,139.85	\$18,497.13	\$214,072.83	\$214,072.82	Jul 1, 2019
21	\$24,636.97	\$5,651.52	\$18,985.45	\$195,087.37	\$195,087.37	Jan 1, 2020
22	\$24,636.97	\$5,150.31	\$19,486.67	\$175,600.71	\$175,600.70	Jul 1, 2020
23	\$24,636.97	\$4,635.86	\$20,001.12	\$155,599.59	\$155,599.59	Jan 1, 2021
24	\$24,636.97	\$4,107.83	\$20,529.15	\$135,070.45	\$135,070.44	Jul 1, 2021
25	\$24,636.97	\$3,565.86	\$21,071.11	\$113,999.33	\$113,999.33	Jan 1, 2022

26	\$24,636.97	\$3,009.58	\$21,627.39	\$92,371.94	\$92,371.94	Jul 1, 2022
27	\$24,636.97	\$2,438.62	\$22,198.36	\$70,173.58	\$70,173.58	Jan 1, 2023
28	\$24,636.97	\$1,852.58	\$22,784.39	\$47,389.19	\$47,389.19	Jul 1, 2023
29	\$24,636.97	\$1,251.07	\$23,385.90	\$24,003.29	\$24,003.29	Jan 1, 2024
30	\$24,636.97	\$633.69	\$24,003.29	\$0.00	\$1.00	Jul 1, 2024

BL240-6 (BWJ)  
352720v.3



**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

**TITLE:** SID 1386 East & West MacDonald Drive – Construction Bid Award

**DEPARTMENT:** Public Works/Engineering

**PRESENTED BY:** David D. Mumford, PE, Public Works Director

**PROBLEM/ISSUE STATEMENT:** Bids were received and evaluated for SID 1386 on June 23, 2009. The project was delayed on the July 13 Council Meeting until bonds were sold. This project consists of street improvements to East and West MacDonald Drive.

**ALTERNATIVES ANALYZED:**

1. Award SID 1386 to JEM Contracting in the amount of \$241,632.50; or
2. Reject all bids and do not award SID 1386

**FINANCIAL IMPACT:** Six bids were received for this project; the four lowest are shown below:

<u>Project Costs</u>	<u>Bids</u>
Engineer's Estimate	\$ 310,150.00
JEM Contracting	\$ 241,632.50
CMG Construction	\$ 279,925.00
Winkler Excavating	\$ 295,763.00
HL Ostermiller	\$ 303,577.50

**SID 1386 Funding Available**

SID Construction Assessments with Contingency	\$ 226,137.00
Storm Drain Funds	\$ 34,000.00
Gas Tax Funds	\$ 166,500.00
<u>Contract Amount (This Memo)</u>	<u>\$(241,632.50)</u>
<b>Remaining Funds</b>	<b>\$ 185,004.50</b>

Remaining funds for this project shall be used for construction administration, staking, and change orders.

**RECOMMENDATION**

Staff recommends that Council award JEM Contracting's bid for SID 1386 in the amount of \$241,632.50.

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



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

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**SUBJECT:** Resolution Relating to Revenue Bonds for the 2008 and 2009 Wastewater Replacement Projects; Authorizing the Issuance and Fixing the Terms and Conditions of the Bonds

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

---

**PROBLEM/ISSUE STATEMENT:** On March 9, 2009, the council authorized the issuance of Department of Natural Resources and Conservation (DNRC) loans which will be represented and secured by revenue bonds to pay for the cost of construction for the 2008 and 2009 wastewater replacement projects. The City of Billings projects were selected to receive the American Recovery and Reinvestment Act (ARRA) funding for a portion of the loans.

This resolutions authorizes the issuance and fixes the terms and conditions of the bonds.

**FINANCIAL IMPACT:** The wastewater loan of \$6,137,000 consists of three parts. Upon completion of the ARRA program requirements, \$390,700 of the loan will be forgiven. A reduced interest of 1.75% will be applied to \$359,300 of the loan. The remaining amount of the loan, \$5,387,000 will be issued at a rate of 3.75% per annum payable over 20 years.

**RECOMMENDATION**

It is recommended that the City Council approve the attached resolution.

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

**ATTACHMENT**

A – Wastewater resolution prepared by Dorsey & Whitney

## CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_ entitled: “RESOLUTION RELATING TO \$6,137,000 SEWER SYSTEM REVENUE BONDS (DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$390,700 SUBORDINATE LIEN TAXABLE SERIES 2009A BOND, \$359,300 SERIES 2009B BOND, AND \$5,387,000 SERIES 2009C BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on July 27, 2009, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Council Members voted in favor thereof: \_\_\_\_\_

\_\_\_\_\_ ; voted against the same: \_\_\_\_\_

\_\_\_\_\_ ; abstained from voting thereon: \_\_\_\_\_

\_\_\_\_\_ ; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_\_ day of July, 2009.

---

City Clerk

***SUPPLEMENTAL RESOLUTION***  
***Relating to***  
***\$6,137,000***  
***SEWER SYSTEM REVENUE BONDS***  
***(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM)***  
***CONSISTING OF***  
***\$390,700 SUBORDINATE LIEN TAXABLE SERIES 2009A BOND,***  
***\$359,300 SERIES 2009B BOND,***  
***AND***  
***\$5,387,000 SERIES 2009C BOND***  
***CITY OF BILLINGS, MONTANA***

*Adopted: July 27, 2009*

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

RESOLUTION RELATING TO \$6,137,000 SEWER SYSTEM  
REVENUE BONDS (DNRC WATER POLLUTION CONTROL  
STATE REVOLVING LOAN PROGRAM), CONSISTING OF  
\$390,700 SUBORDINATE LIEN TAXABLE SERIES 2009A  
BOND, \$359,300 SERIES 2009B BOND, AND \$5,387,000  
SERIES 2009C BOND; AUTHORIZING THE ISSUANCE AND  
FIXING THE TERMS AND CONDITIONS THEREOF

WHEREAS, pursuant to the Water Pollution Control State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended (the "State Act"), the State of Montana (the "State") has established a revolving loan program (the "Program") to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the "DNRC"), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the "DEQ"), and has provided that a water pollution control state revolving fund (the "Revolving Fund") be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state water pollution control revolving fund under the Federal Water Pollution Control Act (also known as the Clean Water Act) (the "Clean Water Act"), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the State Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Clean Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, one-time funding has been made available to the Program under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) ("ARRA"), a portion of which funding may be disbursed to eligible borrowers for eligible projects, upon satisfaction of certain terms and conditions specified in ARRA, Program documents, and herein; and

WHEREAS, the City of Billings, Yellowstone County, Montana (the "Borrower") has applied to the DNRC for the 2009 Loans (as hereinafter defined) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the 2009 Project (as hereinafter defined) which will carry out the purposes of the Clean Water Act and be implemented in accordance with ARRA; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2009 Bonds (as hereinafter defined) to evidence the 2009 Loans (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund the 2009A Loan (as hereinafter defined) and the 2009B Loan (as hereinafter defined) with funds provided by the United States Environmental Protection Agency under ARRA, [and will fund the 2009C Loan in part, directly or indirectly, with

proceeds of State Bonds (as hereinafter defined) and in part, directly or indirectly, with funds provided by the EPA under the Clean Water Act.]

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

**K.**

**DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES**

**Definitions.** Unless a different meaning clearly appears from the context, terms used with initial capital letters but undefined in this Supplemental Resolution shall have the meanings given them in the Original Resolution (as amended by Article XII below), the Indenture, in Article XII below, or as follows:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the Series 2009 Acquisition and Construction Account created in the Sewer System Fund pursuant to Section 8.7 of this Supplemental Resolution.

“Act” means Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as amended, which authorizes the Borrower to own and operate the System, to undertake the 2009 Project and to issue the Series 2009 Bonds to finance costs of the 2009 Project.

“Additional Bonds” means any Bonds issued pursuant to Section 10.3 of the Original Resolution.

“Administrative Expense Surcharge” means, when applicable as provided by this Resolution, a surcharge equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the 2009 Loans, payable by the Borrower on a Payment Date.

“ARRA” means the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), and all regulations, rules, and interpretations issued by the EPA thereunder.

“ARRA Bonds” means, collectively, the Series 2009A Bond and the Series 2009B Bond.

“ARRA Certificate and Request” means the certificate and request attached hereto in the form of the attached Appendix D to be completed, executed and delivered by the Borrower to the DNRC pursuant to Section 5.12.

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any Counsel nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bonds” means the Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, and any Additional Bonds; “Bonds” does not include the Series 2009A Bond.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“City” means the City of Billings, Montana and its permitted successors or assigns hereunder.

“Closing” means the date of delivery of the Series 2009 Bonds to the DNRC.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Supplemental Resolution and the Series 2009 Bonds. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Supplemental Resolution shall be without effect.

“Committed Amount” means the amount of the 2009 Loans committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 3.2 and 3.4 of this Supplemental Resolution.

“Construction Contract” means the binding contract for construction of the 2009 Project entered into between the Borrower and the construction contractor in compliance with all laws of the State, including those regarding the construction of public projects.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the 2009 Project, selected by the Borrower and satisfactory to the DNRC.

“Council” means the City Council of the City of Billings, Montana.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the State Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the State Act.

“DNRC Forgiveness Statement” means a written statement delivered to the Borrower by the DNRC that the Borrower’s obligation to repay the principal of the Series 2009A Bond is forgiven.

“DNRC Noncompliance Statement” means a written statement delivered to the Borrower by the DNRC that the Borrower’s obligation to repay the principal of the Series 2009A Bond is not forgiven.

“DNRC Statement” means a DNRC Forgiveness Statement or a DNRC Noncompliance Statement.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Clean Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Title VI of the Clean Water Act and any grant made available by the EPA for deposit in the Revolving Fund pursuant to Section 205(m) of the Clean Water Act.

“Estimated Completion Date” means June 30, 2010, the date by which it is estimated by the Borrower that the 2009 Project will be substantially completed.

“Fund” means the Sewer System Fund established pursuant to Section 11.1 of the Original Resolution.

“Green Infrastructure” means the portion of the 2009 Project that addresses green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, as described more particularly in ARRA and EPA policies or guidelines.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of May 1, 1998, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan Loss Reserve Surcharge” means, when applicable as provided by this Resolution, a surcharge equal to seventy-five hundredths of one percent (1.00%) per annum on the outstanding principal amount of the 2009 Loans, payable by the Borrower on a Payment Date.

“Loan Repayments” means periodic installments of principal and interest (including any applicable Administrative Expense Surcharge and Loan Loss Reserve Surcharge as provided in this Resolution) by Borrower in repayment of the Series 2009B Bond and Series 2009C Bond, and if the DNRC delivers a DNRC Noncompliance Statement, of the Series 2009A Bond, at the rates and times specified in Article V.

“Operating Account” means the account created in the Sewer System Fund pursuant to Section 11.3 of the Original Resolution.

“Original Resolution” means Resolution No. 05-18326 of the City adopted on August 22, 2005, as amended and supplemented by Resolution No. 08-18738, adopted on July 28, 2008.

“Payment Date” means the date on which a payment of interest or principal and interest on the Bonds or the Series 2009A Bond is due.

“Program” means the Water Pollution Control State Revolving Fund Program established by the State Act.

“Project” means an improvement, betterment, reconstruction or extension of the System, including the 2005 Project and the 2009 Project.

“Public Entity” means a State agency, city, town, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body established by State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Regulations” means the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto, promulgated under the Code or otherwise applicable to the Series 2009 Bonds.

“Replacement and Depreciation Account” means the Account created in the Sewer System Fund pursuant to Section 11.6 of the Original Resolution.

“Reserve Account” means the account created in the Sewer System Fund pursuant to Section 11.5 of the Original Resolution.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum principal of and interest payable on outstanding Bonds in the current or any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Resolution” means the Original Resolution, as amended and supplemented by this Supplemental Resolution and other supplemental resolutions.

“Revenue Bond Account” means the account created in the Sewer System Fund pursuant to Section 11.4 of the Original Resolution.

“Series 2005 Bond” means the \$4,515,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005, issued by the Borrower, in the original principal amount of \$4,515,000 pursuant to the Resolution as then in effect.

“Series 2008 Bond” means the Sewer System Revenue Bond (DNRC Revolving Loan Program), Series 2008, issued by the Borrower, in the original principal amount of \$7,400,000 pursuant to the Resolution as then in effect.

“Series 2009 Bonds” means, collectively, the Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond.

“Series 2009A Bond” means the \$390,700 Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2009A, issued to the DNRC to evidence the 2009A Loan.

“Series 2009B Bond” means the \$359,300 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009B, issued to the DNRC to evidence the 2009B Loan.

“Series 2009C Bond” means the \$5,387,000 Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009C, issued to the DNRC to evidence the 2009C Loan.

“Sewer Debt” means all Bonds and any other Debt incurred to acquire, construct, extend, improve, add to or otherwise pay expenses of or related to the System, without regard to the source of payment and security for such Debt (i.e., without regard to whether it is general obligation or revenue Debt).

“Sewer Revenues” means revenues (gross or net) received by the Borrower from or in connection with the operation of the System.

“Sewer System Fund” means the fund created by Section 11.1 of the Original Resolution.

“State” means the State of Montana.

“State Bonds” means the State’s General Obligation Bonds (Water Pollution Control State Revolving Fund Program), issued or to be issued pursuant to the Indenture.

“State Act” means Montana Code Annotated, Title 75, Chapter 5, Part 11, as amended from time to time.

“Supplemental Resolution” means this Resolution No. \_\_\_\_\_ of the Borrower adopted on July 27, 2009.

“Surplus Account” means the account created in the Sewer System Fund pursuant to Section 11.7 of the Original Resolution.

“Surplus Net Revenues” shall mean that portion of the Net Revenues in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the existing sewer system of the Borrower and all extensions, improvements and betterments thereof hereafter constructed and acquired, including, without limitation, the 2009 Project.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

“2009A Committed Amount” means the amount of the 2009A Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009B Committed Amount” means the amount of the 2009B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009C Committed Amount” means the amount of the 2009C Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009B First Advance” means the first advance of funds of the Loan from the proceeds of the 2009B Loan by the DNRC to the Borrower in the amount of \$\_\_\_\_\_.

“2009C First Advance” means the first advance of funds of the 2009C Loan by the DNRC to the Borrower.

“2009 Loans” or “Loan” means, collectively, the 2009A Loan, 2009B Loan, and the 2009C Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the costs of the 2009 Project and to pay costs of issuance of the Series 2009 Bonds.

“2009A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009A Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009B Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009C Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009C Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009 Project” means the designing and engineering of the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the 2009 Loans, described in Appendix A hereto.

“2009 Project Readiness Date” means a date that is no later than November 1, 2009.

“Undisbursed Committed Amount” means any undisbursed Committed Amount which is not required to pay costs of the 2009 Project upon completion thereof as provided in Section 3 of this Supplemental Resolution.

Other Rules of Construction. For all purposes of this Supplemental Resolution, except where the context clearly indicates otherwise:

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

Terms in the singular include the plural and vice versa.

All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

All references to mail shall refer to first-class mail postage prepaid.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

“Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Appendices. Attached to this Supplemental Resolution and hereby made a part hereof are the following Appendices:

Appendix A: a description of the 2009 Project;

Appendix B-1: the form of the Series 2009A Bond;

Appendix B-2: the form of the Series 2009B Bond;

Appendix B-3: the form of the Series 2009C Bond;

Appendix C: additional agreements and representations of the Borrower; and

Appendix D: ARRA Certificate and Request.

## L.

### AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS

#### Authorization and Findings.

Authorization. Under the provisions of the Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

The System. The Borrower, pursuant to the Act and other laws of the State has established and presently owns and operates the System.

The 2009 Project. After investigation of the facts and as authorized by the Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to acquire and construct the 2009 Project.

Outstanding Bonds. Pursuant to the Act and the Original Resolution, the Borrower has issued, and has outstanding, its Series 2005 Bond and Series 2008 Bond. The Series 2005 Bond and the Series 2008 Bond are payable from Net Revenues of the System, and no other bonds or indebtedness are outstanding that are payable from or secured by revenues of the System.

Additional Bonds. The Borrower reserved the right under Section 10.3 of the Original Resolution to issue Additional Bonds to finance the cost or estimated cost of providing any improvement, extension or rehabilitation of the System; provided that if the Additional Bonds are issued to complete a project, a certificate is to be signed by the Mayor and City Clerk or either of them stating that on the date of issuance of such Additional Bonds Net Revenues of the System meet the requirements set forth in Section 10.3 of the Original Resolution. Based on a certificate executed or to be executed by the Mayor and City Clerk or either of them, it is hereby determined that the Borrower is authorized to issue the Series 2009A Bond in the maximum principal amount of \$390,700, the Series 2009B Bond in the maximum principal amount of \$359,300 and the Series 2009C Bond in the maximum principal amount of \$5,387,000 pursuant to Section 10.3 of the Original Resolution, as amended hereby, with the Series 2009B Bond and the Series 2009C Bond payable from and secured by the Net Revenues on a parity with the outstanding Series 2005 Bond. For purposes of the foregoing certificate, principal of and interest on the 2009A Loan are disregarded and interest on the Series 2009B Bonds is assumed to be 1.75%. The Borrower acknowledges and agrees that if it fails to deliver timely an acceptable ARRA Certificate and Request as provided in Section 5.1 of this Supplemental Resolution as determined in the sole and complete discretion of the DNRC, then principal and interest and surcharges will become due and owing on the Series 2009A Bond and the Series 2009B Bond as provided in Section 5.1 of this Supplemental Resolution, and the Borrower shall thereupon, to the extent required by Section 6.7 of the Original Resolution, as amended hereby, adjust its schedule of fees, rates, and charges applicable to the System to cause Net Revenues and Surplus Net Revenues to be produced in an amount at least equal to that required by this Resolution.

The total cost of the 2009 Project and costs of issuance and funding the reserve is estimated to be \$6,137,000, which will be paid from proceeds of the Series 2009 Bonds. The Borrower

covenants with the DNRC that from and after the 2009B First Advance it will spend the Committed Amount on costs of the 2009 Project before applying its own funds to costs of the 2009 Project.

Representations. The Borrower represents as follows:

Organization and Authority. The Borrower:

is duly organized and validly existing as a municipal corporation of the State;

has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Supplemental Resolution and to enter into the Collateral Documents and to issue the Series 2009 Bonds and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents;

is a Governmental Unit and a Public Entity; and

has taken all proper action to authorize the execution, delivery and performance of its obligations under this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2009 Bonds in the maximum amount of the Committed Amount.

Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by the Resolution, the Series 2009 Bonds and the Collateral Documents or the validity and enforceability of the Resolution, the Series 2009 Bonds and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the 2009 Project, the Series 2009 Bonds or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Series 2009 Bonds.

Borrowing Legal and Authorized. The adoption of this Supplemental Resolution, the execution and delivery of the Series 2009 Bonds and the Collateral Documents and the consummation of the transactions provided for in this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents and compliance by the Borrower with the provisions of the Resolution, the Series 2009 Bonds and the Collateral Documents:

are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any

lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any ordinance, resolution, indenture, loan agreement or other agreement or instrument (other than the Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Series 2009 Bonds and the Collateral Documents, would constitute a default under the Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2009 Bonds and the Collateral Documents.

Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Supplemental Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents (including any necessary water rate increase) or for the 2009 Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Supplemental Resolution, issuing the Series 2009 Bonds or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder. If a utility board or commission manages or controls the System, such board or commission has agreed with the DNRC to abide by the terms of the Resolution and the Collateral Documents, including approving any necessary sewer rate increases.

Binding Obligation. The Resolution, the Series 2009 Bonds and any Collateral Document to which the Borrower is a party are the valid and binding special, limited obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

The 2009 Project. The 2009 Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provision of Article III of this Supplemental Resolution.

Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its

obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2009 Bonds.

Compliance With Law. The Borrower:

is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents.

Covenants.

Insurance. In addition to the requirements of Section 2.2 of the Original Resolution, the Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the DNRC as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this 0 and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this 0.

Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under the Resolution, the Series 2009 Bonds and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such

place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under the Resolution, the Series 2009 Bonds and the Collateral Documents.

Maintenance of Security, if Any; Recordation of Interest.

The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of the Resolution and the Collateral Documents so long as any amount is owing under the Resolution or the Series 2009 Bonds;

The Borrower shall forthwith, after the execution and delivery of the Series 2009 Bonds and thereafter from time to time, cause the Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph 0, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2009 Bonds and the Collateral Documents and the documents described in subparagraph 0.

Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Appendix C hereto.

Financial Information. This 0 supplements, and is not intended to limit, the requirements in Section 2.2(e) of the Original Resolution. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

the preliminary budget for the System, with items for the 2009 Project shown separately; and

when adopted, the final budget for the System, with items for the 2009 Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with

the Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 180 days after the close of each fiscal year, cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;

A balance sheet as of the end of the fiscal year;

The number of premises connected to the System at the end of the fiscal year;

The amount on hand in each account of the Fund at the end of the fiscal year;

A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and

A determination that the report shows full compliance by the Borrower with the provisions of the Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Reserve Account, and receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum amount of principal and interest payable on outstanding Parity Bonds (calculated assuming the DNRC has delivered a DNRC Forgiveness Statement) in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with the Resolution, or that the methods used in accounting for such revenues were contrary to any provision of the Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted

governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of the Resolution.

2009 Project Accounts. The Borrower shall maintain 2009 Project accounts in accordance with generally accepted government accounting standards, and as separate accounts, as required by Section 602(b)(9) of the Clean Water Act.

Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Clean Water Act, as provided in Section 75-6-224(1)(h) of the State Act.

Compliance with Clean Water Act and ARRA. The Borrower has complied and shall comply with all conditions and requirements of the Clean Water Act pertaining to the 2009 Loans and the 2009 Project. The Borrower understands and agrees that the 2009A Loan and the 2009B Loan are being made with funds made available to the DNRC under ARRA. The Borrower has complied and shall comply with all requirements of ARRA applicable to the 2009 Loans.

Program Covenant. The Borrower agrees that neither it nor any "related person" to the Borrower (within the meaning of Section 147(a)(2) of the Code) shall, whether pursuant to a formal or informal arrangement, acquire bonds issued by the State under the Indenture in an amount related to the amount of the Series 2009 Bonds.

Covenants Relating to the Tax-Exempt Status of the State Bonds.

The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2009 Bonds or any other funds of the Borrower in respect of the 2009 Project or the Series 2009 Bonds, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower agrees that it will not enter into, or allow any "related person" (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code.

The Borrower shall not use or permit the use of the 2009 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public (within the meaning of the Regulations) shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

Any portion of the 2009 Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the 2009 Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the 2009 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is otherwise permitted under the Resolution and if such organization agrees with the DNRC to comply with Section 2.3(h), Section 2.3(i) and Section 2.4 of this Supplemental Resolution and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation. In addition, except as otherwise provided in the Resolution or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2009 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Clean Water Act.

At the Closing of the 2009 Loans, the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

The Borrower agrees that during the term of the 2009 Loans it will not contract with or permit any Private Person to manage the 2009 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the State Act or the Clean Water Act or adversely affect the exclusion of interest on State Bonds from gross income or purposes of federal income taxation.

The Borrower may not lease the 2009 Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any default to occur under the Resolution; provided the Borrower may lease all or any portion of the 2009 Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower shall not change the use or nature of the 2009 Project if (i) such change will violate the Clean Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Maintenance of System; Liens. The Borrower shall maintain the System, including the 2009 Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the 2009 Project or any other property making up part of the System, other than liens securing Debt where a parity or senior lien secures the Series 2009 Bonds; provided that this 0 shall not be deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under the Resolution, the Series 2009 Bonds and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under the Resolution, the Series 2009 Bonds and the Collateral Documents, (b) such action does not violate the State Act or the Clean Water Act and does not adversely affect the exclusion of interest on the Series 2009 Bonds or the State Bonds from gross income for federal income tax purposes and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this 0.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

## M.

### USE OF PROCEEDS; THE 2009 PROJECT

Use of Proceeds. The Borrower shall apply the proceeds of the 2009 Loans from the DNRC solely as follows:

The Borrower shall apply the proceeds of the 2009 Loans solely to the financing, refinancing or reimbursement of the costs of the 2009 Project as set forth in Appendix A hereto and this 0. The 2009 Loans will be disbursed in accordance with N hereof and Article VII of the Indenture. If the 2009 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2009 Project and expend proceeds of the 2009 Loans to pay the costs of completing the 2009 Project.

No portion of the proceeds of the 2009 Loans shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Supplemental Resolution of a Project the construction

or acquisition of which occurred or began earlier than June 1, 1993. In addition, if any proceeds of the Loan are to be used to reimburse the Borrower for 2009 Project costs paid prior to the date of adoption of this Supplemental Resolution, the Borrower shall have complied with Section 1.150-2 of the Regulations in respect of such costs.

Any Debt to be refinanced with proceeds of the Loan was incurred after June 1, 1993 for a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

The 2009 Project. Set forth in Appendix A to this Supplemental Resolution is a description of the 2009 Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the Loan (the 2009 Project may consist of more than one facility or activity), and an estimated budget relating to the 2009 Project, including the amount of proceeds of the 2009A Loan and the 2009B Loan estimated to be applied to Green Infrastructure. The 2009 Project may be changed and the description thereof in Appendix A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2009 Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the 2009 Project and providing that the change will not delay the full execution and delivery of the Construction Contract to a date that is after the 2009 Project Readiness Date;

A certificate of Independent Consultant that the change to the 2009 Project in no way adversely affects or diminishes the eligibility of the 2009 Project for ARRA funding or the various attributes of the 2009 Project as that relates to ARRA (such as, for example, the amount of green construction);

A written consent to such change in the 2009 Project by an Authorized DNRC Officer;

An Opinion or Opinions of Bond Counsel stating that the 2009 Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the State Act and is, and was at the time the Series 2009 Bonds was issued, eligible for financing under the Act, such amendment will not violate the State Act or the Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2009 Bonds from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed; and

In the event the change to the 2009 Project has the effect of reducing the amount of the Committed Amount, the written consent of the Borrower to reallocation of the Committed Amount

between the 2009A Loan and the 2009B Loan, if required by the DNRC, as described in Section 5.6 below.

The Borrower acknowledges and agrees that an increase in the principal amount of the 2009 Loans may be made only upon an application to the DEQ, the DNRC and the Trustee, in such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to the Resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in the resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan and compliance with applicable tests for the incurrence of such Debt. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the 2009 Loans to pay costs of the 2009 Project or as to the availability of additional funds under the Program to increase the principal amount of the Loan.

2009 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

construction of the 2009 Project did not commence prior to February 17, 2009, and [the Construction Contract relating to the 2009 Project has been fully executed and delivered];

all construction of the 2009 Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards and the requirements of ARRA;

all future construction of the 2009 Project will be done only pursuant to fixed price construction contracts. The Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

all future construction of the 2009 Project will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

the iron, steel, and manufactured goods used in the 2009 Project comply with the "buy American" requirements of Section 1605 of ARRA, as those requirements are further interpreted by applicable EPA guidance; and

the 2009 Project is a project of the type permitted to be financed under the Act, the State Act and the Program and Title VI of the Clean Water Act;

the Borrower will undertake the 2009 Project promptly after the Closing Date and will cause the 2009 Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the 2009 Project will be substantially completed by the Estimated Completion Date; and

the Borrower agrees to provide information regarding jobs created and retained as a result of the 2009 Project and such other information regarding the 2009 Project, including information for the website [www.montanarecovery.gov](http://www.montanarecovery.gov), to the DNRC and the DEQ upon the request for such information by the DNRC or the DEQ or both, and to post signage at the site of the 2009 Project that designates the 2009 Project as an ARRA funded project.

Completion or Cancellation or Reduction of Costs of the 2009 Project.

Upon completion of the 2009 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2009 Project is complete and stating the amount, if any, of the Undisbursed Committed Amount. If Appendix A describes two or more separate projects as making up the 2009 Project, a separate completion certificate shall be delivered for each.

If all or any portion of the 2009 Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and the amount of the Undisbursed Committed Amount.

If there is any Undisbursed Committed Amount, the DNRC reserves the right under Section 5.6 below to reallocate the amount equal to the Committed Amount as reduced by the Undisbursed Committed Amount between the 2009A Loan and the 2009B Loan, as more particularly provided in Section 5.6.

N.

THE LOAN

The Loan; Disbursement of Loan.

The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this 0 are met, an amount up to (i) \$390,700 (the “2009A Committed Amount”), (ii) \$359,300 (the “2009B Committed Amount”), and (iii) \$5,387,000 (the “2009C Committed Amount”) for the purposes of financing, refinancing or reimbursing the Borrower for a portion of the costs of the 2009 Project; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after the Estimated Completion Date. The Committed Amount may be reduced as provided in Section 3.2 and 0 of this Supplemental Resolution.

The DNRC intends to disburse the 2009 Loans through the Trustee. In consideration of the issuance of the Series 2009 Bonds by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2009 Loans upon receipt of the following documents:

an Opinion of Bond Counsel as to the validity and enforceability of the Series 2009 Bonds and the security therefor and stating in effect that interest on the Series 2009B Bond and the Series 2009C Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

the Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond, fully executed and authenticated;

a certified copy of the Original Resolution and this Supplemental Resolution;

any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2009 Loans;

if all or part of the 2009 Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the 2009 Project was begun no earlier than March 7, 1985 or the debt was incurred no earlier than March 7, 1985, (B) of the Borrower's title to the 2009 Project, (C) of the costs of the 2009 Project and that such costs have been paid by the Borrower and (D) on or before the date of payment of each Reimbursement Expenditure, that the Borrower (or person designated to do so on behalf of the Borrower) made or will have made a written declaration of the Borrower's official intent (a "Declaration") which complies with the provisions of Section 1.150-2(d) and (e) of the Reimbursement Regulations; however, the Declaration need not cover Reimbursement Expenditures: (i) to be paid or reimbursed from sources other than the Series 2009 Bonds, (ii) constituting "preliminary expenditures" (within the meaning of Section 1.150-2(f)(2) of the Regulations) for the 2009 Project, including engineering or architectural expenses and similar preparatory expenses, which in the aggregate do not exceed 20% of the "issue price" of the Series 2009 Bonds, (iii) in a "de minimis" amount (as defined in Section 1.150-2(f)(1) of the Regulations), i.e., \$100,000; or (iv) Reimbursement Expenditures paid not more than 60 days before the date of the Declaration. For purposes of this subparagraph, "Reimbursement Regulations" shall mean Treasury Regulations, Section 1.150-2 and "Reimbursement Expenditures" shall mean any expenditure with respect to the 2009 Project that the Borrower paid or will have paid prior to the issuance of the Series 2009 Bonds;

the items required by the Indenture for the portion of the 2009 Loans to be disbursed at Closing; and

such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

In order to obtain a disbursement of a portion of the 2009 Loans to pay costs of the 2009 Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower

may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

The 2009 Loans shall be disbursed, subject to the other terms and conditions of this Resolution, in the following order:

- (1) First, at the Closing, the 2009B First Advance will be advanced from the 2009B Loan.
- (2) Second, after the 2009B First Advance has been disbursed to the Borrower, the entire amount of the 2009A Loan may then be disbursed to the Borrower as and when needed. For the avoidance of doubt, any amounts of the 2009 Loans to be disbursed at Closing in excess of the 2009B First Advance will be disbursed as proceeds of the 2009A Loan to the extent of the 2009A Committed Amount.
- (3) Third, after the entire principal amount of the 2009A Loan has been disbursed to the Borrower, the remaining amount of the 2009B Loan, if any, will be disbursed to the Borrower as and when needed.
- (4) Fourth, only after the full amount of the 2009A Loan and 2009B Loan has been disbursed to the Borrower, the Borrower may apply to the costs of the 2009 Project any other funds available to it, including grants or other funds, and including amounts under the 2009C Loan, which will be disbursed to the Borrower, starting with the 2009C First Advance, as and when needed.

The Borrower shall submit the request for the 2009B First Advance and the 2009C First Advance in the form required by the DNRC so that it is received by the DNRC by the date that is no later than ten Business Days prior to the date desired by the Borrower for the making of the 2009B First Advance and the 2009C First Advance, respectively. The Borrower shall not be entitled to, and the DNRC shall have no obligation to make, the 2009B First Advance or the 2009C First Advance or any subsequent advance of amounts under the 2009B Loan or the 2009C Loan until such time as the Borrower shall have set aside and funded the Reserve Account in an amount then required to satisfy the Reserve Requirement.

For refinancings, a disbursement schedule complying with the requirements of the Clean Water Act shall be established by the DNRC and the Borrower at Closing. The Trustee shall disburse 2009 Loan amounts directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need any portion of the 2009 Loan which was to have been used to refinance such debt, it shall inform the DNRC and the Trustee of such fact pursuant to Section 3.4(b) and a new disbursement schedule shall be drawn up by the DNRC. The DNRC shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

If all or a portion of a Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating

to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Clean Water Act established by the DNRC and the Borrower at the Closing.

Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its best efforts to obtain an acceleration of such schedule if necessary.

Upon making each 2009A Loan disbursement, 2009B Loan disbursement, and 2009C Loan Disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2009A Bond, Series 2009B Bond, and the Series 2009C Bond, respectively. A Schedule A reflecting the amount of the 2009B First Advance and the 2009C First Advance will first be attached to the Series 2009B Bond and the Series 2009C Bond, respectively, at Closing.

The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the date of the 2009B First Advance and any subsequent disbursement dates, any proceeds of the 2009B Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The Borrower further acknowledges and agrees that any portions of the 2009 Loans representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Revenue Bond Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2009 Bonds and interest thereon shall accrue only from the date of transfer.

Compliance by the Borrower with its representations, covenants and agreements contained in the Original Resolution, this Supplemental Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the Loan in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the Loan.

Commencement of Loan Term. The Borrower's obligations under this Supplemental Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Supplemental Resolution. However, the obligation to make payments under O hereof shall commence only upon the first disbursement by the Trustee of the 2009B Loan proceeds.

Termination of Loan Term. The Borrower's obligations under the Resolution and the Collateral Documents in respect of the Series 2009 Bonds shall terminate upon payment in full of all amounts due under the Series 2009 Bonds and the Resolution in respect thereof; provided, however, that the covenants and obligations provided in P and O of this Supplemental Resolution shall survive the termination of the Resolution.

Loan Closing Submissions. On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

**O.**

**REPAYMENT OF 2009 LOANS**

Repayment of 2009 Loans. The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1.

5.1.1. Manner of Repayment. The Borrower shall pay all Loan Repayments in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

5.1.2. Repayment of 2009A Loan; Principal Forgiveness.

The Borrower is obligated to repay the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2009A Loan as provided in Section 5.1.2(b), unless the DNRC forgives the Borrower's obligation to repay the principal of the 2009A Loan as provided in this paragraph. So long as the Borrower is proceeding diligently to completion of the 2009 Project through the final advance of principal of the 2009B Loan and the Borrower has executed and delivered the ARRA Certificate and Request to the DNRC in form and substance satisfactory to the DNRC within thirty (30) days after the date that the ARRA Certificate and Request is provided to the Borrower by the DNRC, the DNRC will, following review and approval of the ARRA Certificate and Request, deliver to the Borrower a DNRC Forgiveness Statement and the Borrower will thereafter have no obligation to repay amounts advanced under the Series 2009A Bond or interest thereon. In the event the Borrower fails to deliver timely the ARRA Certificate and Request or the Borrower cannot submit the ARRA Certificate and Request because it cannot make the certifications required therein, including without limitation, those related to ARRA, or the ARRA Certificate and Request is delivered in a form that deviates materially from that attached hereto as Appendix D as determined in the sole and complete discretion of the DNRC, then the DNRC will deliver to the Borrower a DNRC Noncompliance Statement.

In the event the DNRC delivers a DNRC Noncompliance Statement, then the Loan Repayments on the 2009A Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest (including the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge) on the outstanding principal balance of the 2009A Loan shall be payable from and after the date of each advance of principal of the 2009A Loan on each Payment Date at the rate of 3.75% per annum, beginning on the first Payment Date following the date of delivery by the DNRC of a DNRC Noncompliance Statement and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan; and

(2) the principal of the 2009A Loan shall be repayable on each Payment Date, beginning on the Payment Date that is the first to occur following delivery by the DNRC of a DNRC Noncompliance Statement, and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 3.75% per annum; provided that principal of the 2009A Loan is payable only in amounts that are multiples of \$1,000

In addition, in the event the DNRC delivers a DNRC Noncompliance Statement (i) the Series 2009A Bond will continue in effect as a Subordinate Lien Obligation, and (ii) the Borrower will forthwith comply with the rate covenant set forth in Section 6.7 of the Original Resolution, as amended hereby, and, if necessary, increase the rates and charges of the System to satisfy such rate covenant as it regards the Series 2009A Bond and the Series 2009B Bond as soon as practicable and in any event no later than three (3) months after the date of delivery to the Borrower by the DNRC of a DNRC Noncompliance Statement.

#### 5.1.3. Repayment of 2009B Loan.

(a) Subject to the provisions of Section 5.1.3(b), the Loan Repayments on the 2009B Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

(1) interest (including the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge) on the outstanding principal balance of the 2009B Loan shall be payable from and after the date of the 2009B First Advance and each advance of principal of the 2009B Loan thereafter on each Payment Date at the rate of 3.75% per annum, beginning on January 1, 2009 (or if no DNRC Statement has been delivered to the Borrower prior to January 1, 2009, then on the first Payment Date after such DNRC Statement has been delivered) and concluding on July 1, 2029; and

(2) the principal of the 2009B Loan shall be repayable on each Payment Date, beginning on the first Payment Date following the 2009B First Advance and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 3.75% per annum, taking into account each Loan Repayment, if any, made pursuant to Section 5.1.3(c), and provided that principal of the 2009B Loan is payable only in amounts that are multiples of \$1,000.

(b) Notwithstanding Section 5.1.3(a), in the event the DNRC delivers a DNRC Forgiveness Statement, then the Loan Repayments on the 2009B Loan from and after the 2009B First Advance and all subsequent advances of the 2009B Loan which shall be due on each Payment Date are as follows:

- (1) interest on the outstanding principal balance of the 2009B Loan shall be payable on each Payment Date, beginning on January 1, 2010 and concluding on July 1, 2029 at the rate of 1.75% per annum;
- (2) the Borrower shall have no obligation to pay any Administrative Expense Surcharge or any Loan Loss Reserve Surcharge; and
- (3) the principal of the 2009B Loan shall be repayable on each Payment Date, beginning on January 1, 2010 and concluding on July 1, 2029, and the amount of each principal payment shall be calculated on the basis of substantially level debt service at an interest rate of 1.75% per annum; provided that principal of the 2009B Loan is payable only in amounts that are multiples of \$1,000.

(c) Notwithstanding Section 5.1.3(a), in the event any Payment Date occurs prior to the delivery by the DNRC to the Borrower of a statement described in Section 5.1.2 (whether or not the obligation of the Borrower to repay the principal advanced under the 2009A Loan has been forgiven), the Loan Repayments on the 2009B Loan will be calculated in accordance with Section 5.1.3(b) for such Payment Date. For the avoidance of doubt, if the DNRC delivers a statement to the Borrower that the obligation of the Borrower to repay the principal advanced under the 2009A Loan has not been forgiven, the Loan Repayments on the 2009B Loan will thereafter be calculated in accordance with Section 5.1.3(a).

**5.1.4. Repayment of 2009C Loan.** The Loan Repayments on the 2009C Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2009C Loan shall be payable on each January 1 and July 1, beginning on the first to occur of either of such dates following the date of the 2009C First Advance, which is the first Payment Date after the 2009C First Advance, but in any event no earlier than January 1, 2010 and concluding on that January 1 or July 1 that constitutes the 40<sup>th</sup> Payment Date after the 2009B First Advance; and
- (2) the principal of the 2009C Loan shall be repayable on each Payment Date, beginning on the January 1 or July 1 that is the first to occur following the date of the 2009C First Advance, but in any event no earlier than January 1, 2010, and concluding on that January 1 or July 1 that constitutes the 40th Payment Date after the 2009B First Advance, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 3.75% per annum; provided that principal of the 2009C Loan is payable only in amounts that are multiples of \$1,000.

**5.1.5. Details Regarding 2009 Loan Repayments.** The payments of principal of and interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2009C Loan and, if applicable, on the 2009A Loan and the 2009B Loan, shall be due on the dates specified above and on the dates and in the amounts shown in Schedule B to each of the

Series 2009B Bond and the Series 2009C Bond and, if applicable, the Series 2009A Bond, as such Schedule B shall be modified from time to time as provided below. Schedule B will first be attached to the Series 2009A Bond and the Series 2009B Bond at Closing. Schedule B will first be attached to the Series 2009C Bond following receipt by the DNRC of the information required in connection with the 2009C First Advance. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest shall be set forth on Schedule B to the Series 2009B Bond and the portion of each Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2009A Bond (and the Series 2009B Bond, if appropriate) and the Series 2009C Bond. Upon each disbursement of 2009 Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the applicable Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was made to pay costs of the 2009 Project pursuant to Section 4.1(b), interest in respect of the Series 2009B Bond and interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge in respect of the Series 2009C Bond, and, if required under Sections 5.1.2 and 5.1.3 hereof, in respect of the Series 2009A Bond and the Series 2009B Bond, on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. If, after the full principal amount of the 2009 Loans has been advanced, the DNRC shall have delivered a DNRC Noncompliance Statement, then the Trustee shall revise the Schedule B to each of the Series 2009A Bond and the Series 2009B Bond in accordance with this Section 5.1, and the Trustee shall send a copy of such schedules to the Borrower within one month after delivery by the DNRC of the DNRC Noncompliance Statement. If the DNRC delivers a DNRC Forgiveness Statement, the Trustee shall revise Schedule B to the Series 2009B Bond in accordance with this Section 5.1 reflecting a debt service schedule with payments at 1.75% per annum, and the Trustee shall send a copy of such revised Schedule B to the Borrower within one month after the delivery of such DNRC Noncompliance Statement. Once the completion certificate for the 2009 Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2009C Bond, and the Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest (including, as applicable, the Administrative Expense Surcharge and Loan Loss Reserve Surcharge) shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

Additional Payments. The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the Loan, the Collateral Documents and the Series 2009 Bonds, including, but not limited to:

the cost of reproducing this Supplemental Resolution, the Collateral Documents and the Series 2009 Bonds;

the fees and disbursements of bond counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, the Resolution, the Collateral Documents and the Series 2009 Bonds and the enforcement thereof; and

all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2009 Bonds, whether or not the Series 2009 Bonds are then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2009 Bonds, the Collateral Documents and the Resolution under the Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

Prepayments. The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2009B Bond or the Series 2009C Bond and, if applicable, the Series 2009A Bond, unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and, if applicable, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2009 Bonds are prepaid in part pursuant to this 0, such prepayments shall be applied to principal payments in inverse order of maturity.

Obligations of Borrower Unconditional. The obligations of the Borrower to make the payments required by the Resolution and the Series 2009 Bonds and to perform its other agreements contained in the Resolution, the Series 2009 Bonds and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in the Resolution and the Series 2009 Bonds, (b) shall perform all its other agreements in the Resolution, the Series 2009 Bonds and the Collateral Documents and (c) shall not terminate the Resolution, the Series 2009 Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2009 Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with the Resolution.

Limited Liability. All payments of principal of and interest on the Loan and other payment obligations of the Borrower hereunder and under the Series 2009 Bonds shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not, except at the option of the Borrower and as permitted by law, be payable out of any other revenues of the Borrower. The obligations of the Borrower under the Resolution and the Series 2009 Bonds shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory or charter limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2009 Bonds, and no funds or property of the Borrower other than the Net Revenues may be required to be used to pay principal of or interest on the Series 2009 Bonds.

Reallocation of 2009 Loans. The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$6,137,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts. The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Original Resolution, as amended hereby, within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

**P.**

#### INDEMNIFICATION OF DNRC AND DEQ

The Borrower shall indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2009 Project. The Borrower shall also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys' fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

**Q.**

**ASSIGNMENT**

Assignment by Borrower. The Borrower may not assign its rights and obligations under the Resolution or the Series 2009 Bonds.

Assignment by DNRC. The DNRC will pledge its rights under and interest in the Resolution, the Series 2009 Bonds and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

State Refunding Bonds. In the event the State Bonds and Additional State Bonds are refunded by bonds which are not Additional State Bonds, all references in the Resolution to State Bonds and Additional State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and Additional State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of Additional State Bonds, all references in the Resolution to the State Bonds shall be deemed to refer to such Additional State Bonds or, in the case of a crossover refunding, both the State Bonds and such Additional State Bonds.

**R.**

**THE SERIES 2009 BONDS**

Net Revenues Available. The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2005 Bond and the Series 2009 Bonds the Net Revenues to be derived from the operation of the System, including improvements, betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals during the term of the Series 2009 Bonds are expected to be more than sufficient to pay the principal and interest when due on the Series 2005 Bond and the Series 2009 Bonds, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein. For purposes of the foregoing statement, principal of and interest on the 2009A Loan are disregarded, and interest on the Series 2009B Bond is assumed to be 1.75%. The Borrower acknowledges and agrees that if the DNRC delivers a statement to the Borrower that the obligation of the Borrower to repay the principal of the 2009A Loan is not forgiven as provided in Section 5.1.2 as determined in the sole and complete discretion of the DNRC, then principal and interest and surcharges will become due and owing on the 2009A Loan evidenced by the Series 2009A Bond and the 2009B Loan evidenced by the Series 2009B Bond as provided in Section 5.1 and the Borrower shall thereupon, to the extent required by Section 6.7 of the Original Resolution, as amended hereby, adjust its schedule of fees, rates, and charges applicable to the System to cause Net Revenues and Surplus Net Revenues to be produced in an amount at least equal to that required by the Resolution.

Issuance and Sale of the Series 2009 Bonds. The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2009 Bonds to evidence the 2009 Loans. The Series 2009 Bonds are issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(2)(a).

Terms. The Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond shall be in the maximum principal amount equal to the original 2009A Committed Amount, 2009B Committed Amount, and 2009C Committed Amount, respectively, shall each be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2009A Loan, 2009B Loan, and 2009C Loan, respectively. The principal of and interest on the Series 2009B Bond and the Series 2009C Bond, and, if applicable, the principal if and interest on the Series 2009A Bond and any Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable on the same dates and in the same amounts on which principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2009A Bond or Series 2009B Bond or Series 2009C Bond shall be deemed made when advances of the 2009A Loan or 2009B Loan or 2009C Loan, respectively, are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2009B Bond, the Series 2009C Bond, and, if applicable, the Series 2009A Bond, as the case may be, as it may be revised by the DNRC from time to time in accordance with Section 5.1. The Series 2009A Bond is a Subordinate Lien Obligation. The Series 2009B Bond and the Series 2009C Bond are Additional Bonds.

The Borrower may prepay the Series 2009 Bonds, in whole or in part, only upon the terms and conditions under which it can prepay the 2009 Loans under 0.

Negotiability, Transfer and Registration. The Series 2009 Bonds shall be fully registered as to both principal and interest, and shall be initially registered in the name of and payable to the DNRC. While so registered, principal of and interest on the Series 2009 Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2009 Bonds shall be negotiable, subject to the provisions for registration and transfer contained in this Section. No transfer of the Series 2009 Bonds shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2009 Bonds, and (2) the Clerk-Treasurer of the Borrower (or successors, the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2009 Bonds and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the Person in whose name the Series 2009 Bonds is registered as the absolute owner of the Series 2009 Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

Execution and Delivery. The Series 2009 Bonds shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such

signatures may be affixed at or prior to the date of delivery of the Series 2009 Bonds. The Series 2009 Bonds shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2009 Bonds shall cease to be officers of the Borrower before the Series 2009 Bonds are issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2009 Bonds may be signed by an authorized official who did not hold such office on the date of adoption of this Supplemental Resolution. The Series 2009 Bonds shall be delivered to the DNRC, or its attorney or legal representative.

Form. The Series 2009A Bond shall be prepared in substantially the form attached as Appendix B-1, the Series 2009B Bond shall be prepared in substantially the form attached as Appendix B-2, and the Series 2009C Bond shall be prepared in substantially the form attached as Appendix B-3..

2009 Acquisition and Construction Account. The 2009 Acquisition and Construction Account (the “Acquisition and Construction Account”) is hereby created as a separate account within the Sewer System Fund and shall be used only to pay as incurred and allowed, costs which under accepted accounting practice are capital costs of the 2009 Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking and the issuance of the Series 2009 Bonds. To the Acquisition and Construction Account shall be credited as received the portion of the proceeds of Series 2009 Bonds for costs of the 2009 Project and for costs of issuance of the Series 2009 Bonds and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account.

S.

### **SECURITY FOR THE SERIES 2009 BONDS**

The Series 2009B Bond and the Series 2009C Bond are issued as Additional Bonds under Article 10 of the Original Resolution, as amended by this Supplemental Resolution, and shall, with the Series 2005 Bond and any other Additional Bonds issued under the provisions of Article 10 of the Original Resolution, as amended hereby, be equally and ratably secured by the provisions of the Resolution and payable out of the Net Revenues appropriated to the Revenue Bond Account of the Sewer System Fund, without preference or priority, all as provided in the Resolution, and secured by the Reserve Account, as further provided in Section 11.5 of the Original Resolution. Upon advancement of principal of the Series 2009B Bond and the Series 2009C Bond, the City Clerk shall transfer from proceeds of the Series 2009B Bond and the Series 2009C Bond such amount or amounts to the Reserve Account to cause the balance therein to equal the Reserve Requirement, treating such principal amount as outstanding. Upon the each advance of the Series 2009B Bond and the Series 2009C Bond, the deposit to the Reserve Account shall be sufficient to cause the balance in the Reserve Account to equal the Reserve Requirement in respect of the Series 2005 Bond and the principal of the Series 2009B Bond and

the Series 2009C Bond so advanced. The Series 2009A Bond is a Subordinate Lien Obligation issued under Section 10.4 of the Original Resolution, as amended hereby. in the event the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge becomes payable under the Series 2009A Bond, the Borrower shall cause rates and charges to be increased to produce Net Revenues at least equal to the amount required under Section 6.7 of the Original Resolution, as amended hereby. The Borrower shall keep, perform and observe each and every one of its covenants and undertakings set forth in the Resolution for the benefit of the registered owners from time to time of the Series 2005 Bond, the Series 2008 Bond, and the Series 2009 Bonds.

## T.

### TAX MATTERS

Use of 2009 Project. The 2009 Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2009 Project or the System or security for the payment of the Series 2009B Bond and the Series 2009C Bond which might cause the Series 2009B Bond or the Series 2009C Bond, or any one of them, to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.

General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2009B Bond and the Series 2009C Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the interest on the Series 2009B Bond and the Series 2009C Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2009B Bond and the Series 2009C Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

Arbitrage Certification. The Mayor and the City Clerk, being the officers of the Borrower charged with the responsibility for issuing the Series 2009B Bond and the Series 2009C Bond pursuant to the Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2009B Bond and the Series 2009C Bond, it is reasonably expected that the proceeds of the Series 2009B Bond and the Series 2009C Bond will be used in a manner that would not cause the Series 2009B Bond and the Series 2009C Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

Arbitrage Rebate. The City acknowledges that the Series 2009B Bond and the Series 2009C Bond are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2009B Bond and the Series 2009C Bond from gross income for federal income tax purposes, unless the Series

2009B Bond and the Series 2009C Bond qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2009B Bond and the Series 2009C Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the Financial Services Manager, and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof..

Information Reporting. The Borrower shall file with the Secretary of the Treasury, not later than November 15, 2009, a statement concerning the Series 2009B Bond and the Series 2009C Bond containing the information required by Section 149(e) of the Code.

“Qualified Tax-Exempt Obligations.” Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2009B Bond and the Series 2009C Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2009 other than its \$495,000 Special Improvement District No. 1384 Bonds, the Series 2009B Bond and the Series 2009C Bond under Section 265(b)(3). The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2009 in an amount greater than \$30,000,000.

## U.

### CONTINUING DISCLOSURE

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2009 Bonds under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Council under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk of the

Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

**V.**

**AMENDMENTS**

**W. Authorization.** Pursuant to Article XV of the Original Resolution, the Borrower reserved the right to amend the Resolution upon notice to and with the consent of the holders of all outstanding Bonds affected thereby.

**X. Consent of DNRC.** The DNRC, which holds all of the outstanding Bonds, has consented in writing to the amendments of the provisions of the Original Resolution set forth herein.

**Y. Amendment of Section 1.1 of Original Resolution by Amending Existing Terms.** Section 1.1 of the Original Resolution is hereby amended by amending the following term in the Original Resolution to read as follows in its entirety and such definition shall amend and supersede the definition of such terms given in the Original Resolution (underlining indicates additions; strike-through deletions):

“Clean Water Act” means the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387, as amended, and all regulations, rules and interpretations issued by the EPA thereunder, as amended or informed by ARRA.

**Z. Amendment of Section 1.1 of Original Resolution by Adding New Defined Terms.** Section 1.1 of the Original Resolution is hereby amended by adding thereto the following defined term to read as follows in its entirety:

“Subordinate Lien Obligations” mean the Series 2009A Bond and any other subordinate lien obligations issued under Section 10.4 of the Original Resolution, as amended hereby.

**AA. Amendment of Section 6.7 of Original Resolution.** Section 6.7 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

“Section 6.7. Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating ~~it~~ them, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of sewer services shall be maintained and shall be revised, whenever and as often as may be

necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain the Operating Reserve herein established, and to produce net revenues Net Revenues during each fiscal year commencing with the fiscal year ending June 30, 2005 2010, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year (assuming, if no DNRC Statement has been delivered by the date of such determination, that a DNRC Forgiveness Statement has been delivered) and to produce Surplus Net Revenues during each fiscal year commencing with the fiscal year in which the DNRC delivers a DNRC Noncompliance Statement in an amount at least sufficient to pay the principal of and interest on the Series 2009A Bond and the Series 2009B Bond as and when due. As of the date of this Resolution, for purposes of the calculation described in the immediately preceding sentence, principal of and interest on the Series 2009A Bond shall be disregarded and interest on the Series 2009B Bond is assumed to be 1.75%. However, in the event the DNRC delivers a DNRC Noncompliance Statement, the Borrower shall forthwith (and in any event no later than three months after the delivery of such DNRC Noncompliance Statement) cause the rates, charges and rentals charged to all recipients of water services to be revised whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the Operating Expenses, to maintain the Operating Reserve herein established, to produce Net Revenues during each fiscal year commencing with the fiscal year ending June 30 of that fiscal year in which the DNRC shall have delivered such DNRC Noncompliance Statement, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year, including, without limitation, the maximum annual principal and interest payable on the Series 2009B Bond calculated at 3.75% per annum, and to produce Surplus Net Revenues adequate to pay the principal of and interest on the Series 2009A Bond as and when due.

If at the close of any fiscal year the net revenues Net Revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

The establishment of the above ratio of Net Revenues available for the Revenue Bond Account and the provision for adequate Surplus Net Revenues in the event the Borrower's obligation to repay the principal of the Series 2009A Bond is not forgiven is deemed necessary for the DNRC to make the Loan 2009 Loans to the Borrower upon terms most advantageous. The excess of the Net Revenues over the annual principal and interest and reserve requirements of the Series 2005 Bond Reserve Requirement and the Series 2008 Bond Reserve Requirement may be used as authorized in Article XI of this Resolution. The Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond and the Series 2009C Bond may be prepaid according to its their terms on any date, and in the estimation of the governing body of the Borrower any excess, prior to that date, of Net Revenues over principal and interest payments actually due and the balance required to be maintained in the Reserve Account, will be needed to pay or to provide reserves for payment of replacements, renewals and improvement costs, in order to provide adequate service for the present population and the increase thereof reasonably to be expected; and after that date, any excess not required for such purposes in the judgment of

the governing body of the Borrower may be used to prepay the Series 2005 Bond, the Series 2008 Bond, or the Series 2009B Bond or the Series 2009C Bond and thereby reduce the interest cost thereon to the Borrower and to the persons served by the System.”

**BB.** Amendment of Section 10.3 of Original Resolution. Section 10.3 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

“Section 10.3. Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond and the Series 2009C Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds (assuming, if no DNRC Statement has been delivered by the date of such determination, that a DNRC Forgiveness Statement has been delivered), on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be deducted to determine the ~~net revenues~~ Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal of or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause amounts in the Reserve Account in the Revenue Bond Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 12.2 11.5 hereof.”

**CC.** Amendment of Section 10.4 of Original Resolution. Section 10.4 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

“Section 10.4 Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional ~~Bonds~~ bonds or notes which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the

Revenue Bond Account (such additional bonds, the “Subordinate Obligations”), or designating Water Debt that is subordinate to the Bonds as Subordinate Obligations; provided, however, no obligations may be issued pursuant to this Section 10.4 if a deficiency exists in the Revenue Bond Account or the Reserve Account which is not to be restored by the issuance of the Subordinate Obligations. Any Surplus Net Revenues segregated to pay such Subordinate Obligations in the Fund are subject to the prior appropriation thereof to the Revenue Bond Account or the Reserve Account if necessary to meet the requirements thereof.”

**DD. Effect of Amendments.** Except as amended by this Article XII, the provisions of the Original Resolution as now in effect remain unamended and the Original Resolution, as amended hereby, continues in full force and effect.

## EE.

### MISCELLANEOUS

**Notices.** All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
P. O. Box 201601  
Helena, Montana 59620-1601  
Attn: Conservation and Resource  
Development Division

Trustee: U.S. Bank National Association  
c/o Corporate Trust Services  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98101

Borrower: City of Billings  
PO Box 1178  
Billings, Montana 59103  
Attn: City Clerk

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.

**Binding Effect.** This Supplemental Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.

**Severability.** If any provision of this Supplemental Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of the Resolution or the enforceability of that provision at any other time.

Amendments. This Supplemental Resolution may not be effectively amended without the written consent of the DNRC.

Applicable Law. This Supplemental Resolution shall be governed by and construed in accordance with the internal laws of the State.

Captions; References to Sections. The captions in this Supplemental Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Supplemental Resolution.

No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Supplemental Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Supplemental Resolution and the making of the Loan.

Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Supplemental Resolution or the Series 2009 Bonds, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Supplemental Resolution or the Series 2009 Bonds.

Right of Others To Perform Borrower's Covenants. In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10.00%) per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2009 Project or the facility or facilities of which the 2009 Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

Authentication of Transcript. The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2009 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2009 Bonds, and all statements contained in and shown by such instruments, including any heretofore

furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

Date. This Supplemental Resolution shall take effect immediately.

Adopted by the City Council of the City of Billings, Montana, on this 27th day of July, 2009.

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Mayor

Attest: \_\_\_\_\_  
City Clerk

(SEAL)

## APPENDIX A

### Description of the 2009 Project

[The 2009 Project generally consists of replacing existing sewer mains with new PVC water mains as well as replacing approximately 41 manholes.]

### Estimated 2009 Project Budget

<u>2009 Project Costs</u>	<u>Series 2009A Bond</u>	<u>Series 2009B Bond</u>	<u>Series 2009C Bond</u>	<u>Total</u>
Preliminary Engineering	\$16,750.00			\$16,750.00
Engineering/Arch. Design		\$100,000.00	\$585,977.00	\$685,977.00
Construction Engineering Services			\$612,547.00	\$612,547.00
Construction	\$373,950.00	\$232,427.00	\$3,033,693.00	\$3,640,070.00
Contingency			\$759,477.00	\$759,477.00
Audit Fees			\$5,000.00	\$5,000.00
Loan Reserves		\$21,873.00	\$385,306.00	\$407,179.00
Bond Counsel		\$5,000.00	\$5,000.00	\$10,000.00
<b>TOTALS</b>	<b>\$390,700.00</b>	<b>\$359,300.00</b>	<b>\$5,387,000.00</b>	<b>\$6,137,000.00</b>

### Green Infrastructure

Of the amount shown above for construction of and improvements to be included in the 2009 Project, the Borrower estimates that \$750,000 of the proceeds of the Series 2009A Bond and of the Series 2009B Bond will be applied to the costs of Green Infrastructure.

## APPENDIX B-1

[Form of the Series 2009A Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

SUBORDINATE LIEN SEWER SYSTEM REVENUE BOND  
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM)  
TAXABLE SERIES 2009A

R-1	\$390,700
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FOR VALUE RECEIVED, THE CITY OF BILLINGS, MONTANA (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond from the date of each advance of principal at the rate of seventy-five hundredths of one percent (0.75%) and one percent (1.00%) per annum, respectively. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing with the Loan Repayment Date that is the first to occur following delivery by the DNRC to the Borrower of a statement that the Borrower's obligation to repay the principal amount of the 2009A Loan is not forgiven, all as described in the Resolution (as hereinafter defined). Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest and the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B attached hereto. Upon each disbursement of 2009A Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the supplemental resolution authorizing this Bond. Schedule B shall be calculated and recalculated on a level debt service

basis assuming an interest rate of three and seventy-five hundredths percent (3.75%) per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS BOND, IN THE EVENT THAT THE BORROWER TIMELY DELIVERS AN ARRA CERTIFICATE AND REQUEST (AS DEFINED IN THE RESOLUTION) IN FORM AND SUBSTANCE SATISFACTORY TO THE DNRC AND THE DNRC IN RESPONSE THERETO SUPPLIES TO THE BORROWER A STATEMENT THAT THE BORROWER'S OBLIGATION TO REPAY PRINCIPAL ADVANCED UNDER THIS BOND IS FORGIVEN, THEN THEREUPON INTEREST SHALL BE DEEMED TO ACCRUE ON THE PRINCIPAL OF THIS SERIES 2009A BOND FROM THE DATE OF EACH ADVANCE AT THE RATE OF ZERO PERCENT (0.00%) PER ANNUM AND THE BORROWER'S OBLIGATION TO REPAY PRINCIPAL ADVANCED HEREUNDER SHALL BE FORGIVEN, AND THE BORROWER SHALL HAVE NO OBLIGATION TO REPAY THE DNRC OR ITS REGISTERED ASSIGNS ANY AMOUNTS ADVANCED HEREUNDER OR INTEREST OR ANY SURCHARGE THEREON. THIS BOND SHALL THEREUPON BE MARKED "CANCELLED" AND RETURNED BY THE HOLDER TO THE BORROWER, AND THIS BOND SHALL NO LONGER CONSTITUTE AN OBLIGATION OF THE BORROWER OR OF THE SYSTEM (AS HEREINAFTER DEFINED).

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time and constitutes a series in the maximum authorized principal amount of \$390,700 (the "Series 2009A Bond"). The Series 2009A Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of the Borrower (the "System") and to pay costs of issuance of the Series 2009A Bond. The Series 2009A Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. 05-18326 of the City adopted on August 22, 2005, as amended and supplemented by Resolution No. 08-18738, adopted on July 28, 2008, as further amended and supplemented by Resolution No. \_\_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the "Resolution"). The Series 2009A Bond is issuable only as a single, fully registered bond. The Series 2009A Bond is issued as a Subordinate Lien Obligation payable out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account in the Fund of the Borrower. The Borrower has issued its outstanding Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005 (the "Series 2005 Bond"), Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008 (the "Series 2008 Bond"), and is issuing simultaneously herewith its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009B (the "Series 2009B Bond") and its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan

Program), Series 2009C (the “Series 2009C Bond”). The Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond are parity lien bonds payable from the Revenue Bond Account in the Fund of the Borrower. Following the 2009B First Advance, principal amounts of this Series 2009A Bond are advanced until all of the principal of this Series 2009A Bond is advanced and then the remaining amounts of principal of the Series 2009B Bond or the principal amounts of the Series 2009C Bond are advanced. Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009A Bond has been issued, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009A Bond.

The Borrower may prepay the principal of the Series 2009A Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2009A Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

This Series 2009A Bond, including interest and any premium for the redemption thereof, are payable solely from the Surplus Net Revenues available for the payment hereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009A Bond is registered as the absolute owner hereof, whether this Series 2009A Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009A Bond may be transferred as hereinafter provided.

The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$6,137,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts.

The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Resolution within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Replacement and Depreciation Account and Surplus Account in that Fund, into which will be paid, subject to the prior lien thereon of the Revenue Bond Account and the Reserve Account, Surplus Net Revenues; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System, to produce in each fiscal year Net Revenues in excess of such current expenses, equal to at least 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year and to produce in each fiscal year adequate Surplus Net Revenues to pay the principal of and interest on the Series 2009A Bond as and when due; that additional bonds issued on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond (such bonds, collectively with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond, the "Bonds") and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond, and other parity Bonds, upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, the Series 2009C Bond, and additional parity Bonds on such Net Revenues (such as is the case with this Series 2009A Bond); that all provisions for the security of the holder of this Series 2009A Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2009A Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; and that this Series 2009A Bond and the interest hereon are payable solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of the Fund and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2009A Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Mayor

(SEAL)

---

City Clerk

## ***REGISTRATION AND TRANSFER***

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

### **REGISTER**

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
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\_\_\_\_\_, 2009      Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
Helena, MT 59620

### ***THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER***

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby

irrevocably constitute and appoint \_\_\_\_\_

attorney to transfer the Bond on the books kept for the registration thereof, with full power of

substitution in the premises.

Dated: \_\_\_\_\_

**Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.**

***SCHEDULE A***  
***SCHEDULE OF AMOUNTS ADVANCED***

***Total Amount***

***SCHEDULE B***

			Loan Loss	
			Administrative	Reserve
	Total Loan			
<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Expense Surcharge</u>	<u>Surcharge</u>
<u>Payment</u>				

## APPENDIX B-2

[Form of the Series 2009B Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

SEWER SYSTEM REVENUE BOND  
(DNRC WATER POLLUTION CONTROL STATE REVOLVING LOAN PROGRAM)  
SERIES 2009B

R-1 \$359,300

FOR VALUE RECEIVED, THE CITY OF BILLINGS, MONTANA (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond from the date of each advance of principal at the rate of seventy-five hundredths of one percent (0.75%) and one percent (1.00%) per annum, respectively. Interest and Administrative Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing with the Loan Repayment Date that is the first to occur following delivery by the DNRC of a DNRC Noncompliance Statement (as defined in the Resolution described below) and taking into account payments, if any, made on each Loan Repayment Date prior to the deliver of such statement, all as described in the Resolution. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of 2009B Loan amounts to the Borrower pursuant to the Resolution, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of three and seventy-five hundredths percent (3.75%) per

annum. Past-due payments of principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, IN THE EVENT THE BORROWER TIMELY DELIVERS AN ARRA CERTIFICATE AND REQUEST (AS DEFINED IN THE RESOLUTION) IN FORM AND SUBSTANCE SATISFACTORY TO THE DNRC AND THE DNRC IN RESPONSE THERETO SUPPLIES TO THE BORROWER A DNRC FORGIVENESS STATEMENT AS SET FORTH IN THE RESOLUTION, THEN AMOUNTS ADVANCED HEREUNDER FROM AND AFTER THE 2009B FIRST ADVANCE (AS DEFINED IN THE RESOLUTION) SHALL BEAR INTEREST AT A RATE OF ONE AND SEVENTY-FIVE HUNDREDTHS PERCENT (1.75%), AND THE BORROWER SHALL HAVE NO OBLIGATION TO PAY ANY ADMINISTRATIVE EXPENSE SURCHARGE OR ANY LOAN LOSS RESERVE SURCHARGE. If the DNRC delivers a DNRC Forgiveness Statement, the Trustee shall revise Schedule B to the Series 2009B Bond reflecting a debt service schedule with payments at 1.75% per annum in accordance with the Resolution, and the Trustee shall send a copy of such revised Schedule B to the Borrower within one month after the delivery of such statement.

In the event any Loan Repayment Date occurs prior to the delivery by the DNRC of a DNRC Statement (as defined in the Resolution), the amount of interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge payable on each such Loan Repayment Date will be calculated as if the DNRC has previously delivered to the Borrower DNRC Forgiveness Statement.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$359,300 (the "Series 2009B Bond"), issued to finance a portion of the costs of construction of certain improvements to the sewer system of the Borrower (the "System") and to pay costs of issuance of the Series 2009B Bond. The Series 2009B Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. 05-18326 of the City adopted on August 22, 2005, as amended and supplemented by Resolution No. 08-18738, adopted on July 28, 2008, as further amended and supplemented by Resolution No. \_\_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the "Resolution"). The Series 2009B Bond is issuable only as a single, fully registered bond. The Series 2009B Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the Borrower's outstanding Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005 (the "Series 2005 Bond"), its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008 (the "Series 2008 Bond"), and its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009C (the "Series

2009C Bond”), which is being issued simultaneously herewith. The Borrower is also issuing simultaneously herewith its Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2009A (the “Series 2009A Bond”). The 2009B First Advance has been advanced at Closing. Following the 2009B First Advance, the remaining principal amounts of this Series 2009B Bond are advanced immediately after the full advance of the principal amount of the Series 2009A Bond. Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009B Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond (collectively, the “Bonds”) or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009B Bond.

The Borrower may prepay the principal of the Series 2009B Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, to the date of prepayment on the amount of principal prepaid. If the Series 2009B Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional, statutory or charter limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009B Bond is registered as the absolute owner hereof, whether this Series 2009B Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009B Bond may be transferred as hereinafter provided.

This Series 2009B Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$6,137,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the

total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts. The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Resolution within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Sewer System Fund into which the revenues of the System as defined in the Original Resolution (the "Revenues"), including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, Net Revenues of the System then on hand (the Revenues remaining after the payment of Operating Expenses (as defined in the Original Resolution) of the System), an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable from that account, and a Reserve Account in that fund into which shall be paid additional Net Revenues sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, the Reserve Requirement (as defined in the Resolution); that the Revenue Bond Account and the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide Net Revenues for each fiscal year at least equal to 125% of the maximum principal and interest payable from the Revenue Bond Account in any subsequent fiscal year (calculated assuming the DNRC has delivered a DNRC Forgiveness Statement), to maintain the balance in the Reserve Account at the Reserve Requirement, to pay promptly the reasonable and current expenses of operating and maintaining the System, and to provide reserves for the repair and replacement of the System; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and the Series 2009C Bond, and other parity Bonds on such Net Revenues and such obligations are payable only from Surplus Net Revenues (as is the case with the Series 2009A Bond); that all provisions for the security of this Series 2009B Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts,

conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2009B Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2009B Bond and the premium, if any, and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional, statutory or charter limitation or provision and the issuance of the Series 2009B Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional, statutory or charter limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

Mayor

(SEAL)

---

City Clerk

## ***REGISTRATION AND TRANSFER***

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
_____, 2009	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> Helena, MT 59620	_____

### ***THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER***

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

## FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby

irrevocably constitute and appoint \_\_\_\_\_

attorney to transfer the Bond on the books kept for the registration thereof, with full power of

substitution in the premises.

Dated: \_\_\_\_\_

**Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or any change whatsoever.**

***SCHEDULE A***  
***SCHEDULE OF AMOUNTS ADVANCED***

### ***Total Amount***

***SCHEDULE B***

Total Loan		Administrative	Loan Loss	Reserve
<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Expense Surcharge</u>	<u>Surcharge</u>
<u>Payment</u>				

## APPENDIX B-3

[Form of the Series 2009C Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

WATER SYSTEM REVENUE BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
SERIES 2009C

R-1	\$5,387,000
-----	-------------

FOR VALUE RECEIVED, the City of Billings, Montana (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Sewer System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. As described more particularly in the Resolution (defined below), the 2009C First Advance will be made, if at all, following the advance of the full principal amount of the Series 2009A Bond and the Series 2009B Bond (as such terms are defined below or in the Resolution), and upon the making of the 2009C First Advance, the DNRC shall enter the applicable amount on Schedule A hereto and attach the applicable Schedule B hereto. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) and one percent (1.00%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing on the date first set forth in the column headed "Date" or "Payment Date" on Schedule B attached hereto. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be

prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.75% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$5,387,000 (the “Series 2009C Bond”). The Series 2009C Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of the Borrower (the “System”), to fund deposits to the Reserve Account, and to pay costs of issuance of the Series 2009C Bond. The Series 2009C Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution No. 05-18326 of the City adopted on August 22, 2005, as amended and supplemented by Resolution No. 08-18738, adopted on July 28, 2008, as further amended and supplemented by Resolution No. \_\_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the “Resolution”). The Series 2009C Bond is issuable only as a single, fully registered bond. The Series 2009C Bond is issued on a parity with the Borrower’s outstanding Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2005 (the “Series 2005 Bond”), its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2008 (the “Series 2008 Bond”), and its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009B (the “Series 2009B Bond”), which is being issued simultaneously herewith. The Borrower is also issuing simultaneously herewith its Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2009A (the “Series 2009A Bond”). Principal amounts of this Series 2009C Bond are advanced only after the full principal amount of the Series 2009A Bond and the Series 2009B Bond have been advanced. Terms used with initial capital letters but not defined herein have the meanings given them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009C Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, and Series 2009C Bond (collectively, the “Bonds”) or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009C Bond.

The Borrower may prepay the principal of the Series 2009C Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or

Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest, and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2009C Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Series 2009C Bond, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009C Bond is registered as the absolute owner hereof, whether this Series 2009C Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009C Bond may be transferred as hereinafter provided.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that Fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to all Bonds payable from that Account; that the Borrower has created a Reserve Account in such fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account sufficient to maintain a reserve therein equal to the maximum amount of principal and interest payable in any subsequent fiscal year on all such Bonds; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Bonds and any other additional Bonds issued pursuant to the Resolution on a parity therewith; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year Net Revenues in excess of such current expenses, equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, Series 2009C Bond, and other parity Bonds, upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2008 Bond, the Series 2009B Bond, Series 2009C Bond, and additional parity Bonds on such Net Revenues; that all provisions for the security of the holder of this Series 2009C Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the

State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2009C Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; and that this Series 2009C Bond and the interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2009C Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of the Mayor and the City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

---

Mayor

(SEAL)

---

City Clerk



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**CITY COUNCIL AGENDA ITEM**  
**CITY OF BILLINGS, MONTANA**  
**Monday, July 27, 2009**

---

**SUBJECT:** Resolution Relating to Revenue Bonds for the 2008 and 2009 Water Replacement Projects; Authorizing the Issuance and Fixing the Terms and Conditions of the Bonds

**DEPARTMENT:** Administration-Finance Division

**PRESENTED BY:** Patrick M. Weber, Financial Services Manager

---

**PROBLEM/ISSUE STATEMENT:** On March 9, 2009, the council authorized the issuance of Department of Natural Resources and Conservation (DNRC) loans which will be represented and secured by revenue bonds to pay for the cost of construction for the 2008 and 2009 water replacement projects. The City of Billings projects were selected to receive the American Recovery and Reinvestment Act (ARRA) funding for a portion of the loans. This resolutions authorizes the issuance and fixes the terms and conditions of the bonds.

**FINANCIAL IMPACT:** The water loan of \$3,500,000 consists of three parts. \$416,300 of the loan will be forgiven upon completion of the ARRA program requirements. A reduced interest of 1.75% will be applied to \$333,700 of the loan. The remaining amount of the loan, \$2,750,000 will be issued at a rate of 3.75% per annum payable over 20 years.

**RECOMMENDATION**

It is recommended that the City Council approve the attached resolution.

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

**ATTACHMENT**

A –Water resolution prepared by Dorsey & Whitney

## CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the “City”), hereby certify that the attached resolution is a true copy of Resolution No. \_\_\_\_\_ entitled: “RESOLUTION RELATING TO \$3,500,000 WATER SYSTEM REVENUE BONDS (DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM), CONSISTING OF \$416,300 SUBORDINATE LIEN TAXABLE SERIES 2009A BOND, \$333,700 SERIES 2009B BOND, AND \$2,750,000 SERIES 2009C BOND; AUTHORIZING THE ISSUANCE AND FIXING THE TERMS AND CONDITIONS THEREOF” (the “Resolution”), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Council of the City at a regular meeting on July 27, 2009, and that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

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

WITNESS my hand officially this \_\_\_\_\_ day of May, 2009.

---

City Clerk

***SUPPLEMENTAL RESOLUTION***

***Relating to***

***\$3,500,000***

***WATER SYSTEM REVENUE BONDS***

***(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)***

***CONSISTING OF***

***\$416,300 SUBORDINATE LIEN TAXABLE SERIES 2009A BOND,***

***\$333,700 SERIES 2009B BOND,***

***AND***

***\$2,750,000 SERIES 2009C BOND***

***CITY OF BILLINGS, MONTANA***

*Adopted: July 27, 2009*

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

RESOLUTION RELATING TO \$3,500,000 WATER SYSTEM  
REVENUE BONDS (DNRC DRINKING WATER STATE  
REVOLVING LOAN PROGRAM), CONSISTING OF \$416,300  
SUBORDINATE LIEN TAXABLE SERIES 2009A BOND,  
\$333,700 SERIES 2009B BOND, AND \$2,750,000 SERIES  
2009C BOND; AUTHORIZING THE ISSUANCE AND FIXING  
THE TERMS AND CONDITIONS THEREOF

WHEREAS, pursuant to the Drinking Water State Revolving Fund Act, Montana Code Annotated, Title 75, Chapter 6, Part 2, as amended (the “State Act”), the State of Montana (the “State”) has established a revolving loan program (the “Program”) to be administered by the Department of Natural Resources and Conservation of the State of Montana, an agency of the State (the “DNRC”), and by the Department of Environmental Quality of the State of Montana, an agency of the State (the “DEQ”), and has provided that a drinking water state revolving fund (the “Revolving Fund”) be created within the state treasury and all federal, state and other funds for use in the Program be deposited into the Revolving Fund, including, but not limited to, all federal grants for capitalization of a state drinking water revolving fund under the federal Safe Drinking Water Act (the “Safe Drinking Water Act”), all repayments of assistance awarded from the Revolving Fund, interest on investments made on money in the Revolving Fund and payments of principal of and interest on loans made from the Revolving Fund; and

WHEREAS, the State Act provides that funds from the Program shall be disbursed and administered for the purposes set forth in the Safe Drinking Water Act and according to rules adopted by the DEQ and the DNRC; and

WHEREAS, one-time funding has been made available to the Program under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) (“ARRA”), a portion of which funding may be disbursed to eligible borrowers for eligible projects, upon satisfaction of certain terms and conditions specified in ARRA, Program documents, and herein; and

WHEREAS, the City of Billings, Yellowstone County, Montana (the “Borrower”) has applied to the DNRC for the 2009 Loans (as hereinafter defined) from the Revolving Fund to enable the Borrower to finance, refinance or reimburse itself for the costs of the 2009 Project (as hereinafter defined) which will carry out the purposes of the Safe Drinking Water Act and be implemented in accordance with ARRA; and

WHEREAS, the Borrower is authorized under applicable laws, ordinances and regulations to adopt this Resolution and to issue the Series 2009 Bonds (as hereinafter defined) to evidence the 2009 Loans (as hereinafter defined) for the purposes set forth herein; and

WHEREAS, the DNRC will fund the 2009A Loan (as hereinafter defined) and the 2009B Loan (as hereinafter defined) with funds provided by the United States Environmental Protection Agency under ARRA, [and will fund the 2009C Loan in part, directly or indirectly, with

proceeds of State Bonds (as hereinafter defined) and in part, directly or indirectly, with funds provided by the EPA under the Clean Water Act.]

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

**FF.**

**DEFINITIONS, RULES OF CONSTRUCTION AND APPENDICES**

**Definitions.** Unless a different meaning clearly appears from the context, terms used with initial capital letters but undefined in this Supplemental Resolution shall have the meanings given them in the Original Resolution (as amended by Article XII below), the Indenture, in Article XII below, or as follows:

“Accountant” or “Accountants” means an independent certified public accountant or a firm of independent certified public accountants satisfactory to the DNRC.

“Acquisition and Construction Account” means the Series 2009 Acquisition and Construction Account created in the Water System Fund pursuant to Section 8.7 of this Supplemental Resolution.

“Act” means Montana Code Annotated, Title 7, Chapter 7, Parts 44 and 45, as heretofore and hereafter amended or supplemented.

“Additional Bonds” means any Bonds issued pursuant to Section 10.3 of the Original Resolution.

“Administrative Expense Surcharge” means, when applicable as provided by this Resolution, a surcharge equal to seventy-five hundredths of one percent (0.75%) per annum on the outstanding principal amount of the 2009 Loans, payable by the Borrower on a Payment Date.

“ARRA” means the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009), and all regulations, rules, and interpretations issued by the EPA thereunder.

“ARRA Bonds” means, collectively, the Series 2009A Bond and the Series 2009B Bond.

“ARRA Certificate and Request” means the certificate and request attached hereto in the form of the attached Appendix D to be completed, executed and delivered by the Borrower to the DNRC pursuant to Section 5.12.

“Authorized DNRC Officer” means the Director of the DNRC or his or her designee.

“Bond Counsel” means any Counsel nationally recognized as experienced in matters relating to the issuance by states or political subdivisions of tax-exempt obligations selected by the Borrower and acceptable to the DNRC.

“Bonds” means the Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, and any Additional Bonds; “Bonds” does not include the Series 2009A Bond.

“Business Day” means any day which is not a Saturday or Sunday, a legal holiday in the State or a day on which banks in Montana are authorized or required by law to close.

“City” means the City of Billings, Montana and its permitted successors or assigns hereunder.

“Closing” means the date of delivery of the Series 2009 Bonds to the DNRC.

“Collateral Documents” means any security agreement, guaranty or other document or agreement delivered to the DNRC securing the obligations of the Borrower under this Supplemental Resolution and the Series 2009 Bonds. If no Collateral Documents secure such obligations, any reference to Collateral Documents in this Supplemental Resolution shall be without effect.

“Committed Amount” means the amount of the 2009 Loans committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Sections 3.2 and 3.4 of this Supplemental Resolution.

“Construction Contract” means the binding contract for construction of the 2009 Project entered into between the Borrower and the construction contractor in compliance with all laws of the State, including those regarding the construction of public projects.

“Consultant” means a nationally recognized consultant or firm of consultants, or an independent engineer or firm of independent engineers, or an Accountant, which in any case is qualified and has skill and experience in the preparation of financial feasibility studies or projections for facilities similar to the System or the 2009 Project, selected by the Borrower and satisfactory to the DNRC.

“Council” means the City Council of the City of Billings, Montana.

“Counsel” means an attorney duly admitted to practice law before the highest court of any state and satisfactory to the DNRC.

“Debt” means, without duplication, (1) indebtedness of the Borrower for borrowed money or for the deferred purchase price of property or services; (2) the obligation of the Borrower as lessee under leases which should be recorded as capital leases under generally accepted accounting principles; and (3) obligations of the Borrower under direct or indirect guarantees in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (1) or (2) above.

“DEQ” means the Department of Environmental Quality of the State of Montana, an agency of the State, or any successor to its powers, duties and obligations under the State Act or the EPA Agreements.

“DNRC” means the Department of Natural Resources and Conservation of the State of Montana, an agency of the State, and any successor to its powers, duties and obligations under the State Act.

“DNRC Forgiveness Statement” means a written statement delivered to the Borrower by the DNRC that the Borrower’s obligation to repay the principal of the Series 2009A Bond is forgiven.

“DNRC Noncompliance Statement” means a written statement delivered to the Borrower by the DNRC that the Borrower’s obligation to repay the principal of the Series 2009A Bond is not forgiven.

“DNRC Statement” means a DNRC Forgiveness Statement or a DNRC Noncompliance Statement.

“EPA” means the Environmental Protection Agency, an agency of the United States of America, and any successor to its functions under the Safe Drinking Water Act.

“EPA Agreements” means all capitalization grant agreements and other written agreements between the DEQ, DNRC and the EPA concerning the Program.

“EPA Capitalization Grant” means a grant of funds to the State by the EPA under Section 1452 of the Safe Drinking Water Act.

“Estimated Completion Date” means June 30, 2010, the date by which it is estimated by the Borrower that the 2009 Project will be substantially completed.

“Fund” means the Water System Fund established pursuant to Section 11.1 of the Original Resolution.

“Green Infrastructure” means the portion of the 2009 Project that addresses green infrastructure, water or energy efficiency improvements, or other environmentally innovative activities, as described more particularly in ARRA and EPA policies or guidelines.

“Governmental Unit” means governmental unit as such term is used in Section 145(a) of the Code.

“Indenture” means the Indenture of Trust, dated as of May 1, 1998, between the Board of Examiners of the State and the Trustee, as such may be supplemented or amended from time to time in accordance with the provisions thereof, pursuant to which, among other things, the State Bonds are to be or have been issued.

“Loan Loss Reserve Surcharge” means, when applicable as provided by this Resolution, a surcharge equal to seventy-five hundredths of one percent (1.00%) per annum on the outstanding principal amount of the 2009 Loans, payable by the Borrower on a Payment Date.

“Loan Repayments” means periodic installments of principal and interest (including any applicable Administrative Expense Surcharge and Loan Loss Reserve Surcharge as provided in this Resolution) by Borrower in repayment of the Series 2009B Bond and Series 2009C Bond, and if the DNRC delivers a DNRC Noncompliance Statement, of the Series 2009A Bond, at the rates and times specified in Article V.

“Operating Account” means the account created in the Water System Fund pursuant to Section 11.3 of the Original Resolution.

“Original Resolution” means Resolution No. 05-18329 of the Borrower adopted on September 12, 2005.

“Payment Date” means the date on which a payment of interest or principal and interest on the Bonds or the Series 2009A Bond is due.

“Program” means the Drinking Water State Revolving Fund Program established by the State Act.

“Project” means an improvement, betterment, reconstruction or extension of the System, including the 2005 Project and the 2009 Project.

“Public Entity” means a State agency, city, town, municipality, irrigation district, county water and sewer district, a soil conservation district or other public body established by State law or an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

“Regulations” means the Treasury Department, Income Tax Regulations, as amended or any successor regulation thereto, promulgated under the Code or otherwise applicable to the Series 2009 Bonds.

“Replacement and Depreciation Account” means the Account created in the Water System Fund pursuant to Section 11.6 of the Original Resolution.

“Reserve Account” means the account created in the Water System Fund pursuant to Section 11.5 of the Original Resolution.

“Reserve Requirement” means, as of the date of calculation, an amount equal to the maximum principal of and interest payable on outstanding Bonds in the current or any future fiscal year (giving effect to mandatory sinking fund redemption, if any).

“Resolution” means the Original Resolution, as amended and supplemented by this Supplemental Resolution and other supplemental resolutions.

“Revenue Bond Account” means the account created in the Water System Fund pursuant to Section 11.4 of the Original Resolution.

“Series 2005 Bond” means the Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2005, issued by the Borrower, in the original principal amount of \$17,300,000 pursuant to the Resolution as then in effect.

“Series 2009 Bonds” means, collectively, the Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond.

“Series 2009A Bond” means the \$416,300 Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2009A, issued to the DNRC to evidence the 2009A Loan.

“Series 2009B Bond” means the \$333,700 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, issued to the DNRC to evidence the 2009B Loan.

“Series 2009C Bond” means the \$2,750,000 Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009C, issued to the DNRC to evidence the 2009C Loan.

“State” means the State of Montana.

“State Bonds” means the State’s General Obligation Bonds (Drinking Water State Revolving Fund Program), issued or to be issued pursuant to the Indenture.

“State Act” means Montana Code Annotated, Title 75, Part 6, Chapter 2, as amended from time to time.

“Supplemental Resolution” means this Resolution No. \_\_\_\_\_ of the Borrower adopted on July 27, 2009.

“Surplus Account” means the account created in the Water System Fund pursuant to Section 11.7 of the Original Resolution.

“Surplus Net Revenues” shall mean that portion of the Net Revenues in excess of the current requirements of the Operating Account, the Revenue Bond Account and the Reserve Account.

“System” means the water system of the Borrower and all extensions, improvements and betterments thereof heretofore or hereafter constructed and acquired.

“Trustee” means U.S. Bank National Association, in Seattle, Washington, or any successor trustee under the Indenture.

“2005 Project” means the costs of the facilities, improvements and activities financed in part with proceeds of the Series 2005 Bond.

“2009A Committed Amount” means the amount of the 2009A Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009B Committed Amount” means the amount of the 2009B Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009C Committed Amount” means the amount of the 2009C Loan committed to be lent by the DNRC to the Borrower pursuant to Section 4.1 of this Supplemental Resolution, as such amount may be reduced pursuant to Section 3.2 and Section 3.4 of this Supplemental Resolution.

“2009B First Advance” means the first advance of funds of the Loan from the proceeds of the 2009B Loan by the DNRC to the Borrower in the amount of \$\_\_\_\_\_.

“2009C First Advance” means the first advance of funds of the 2009C Loan by the DNRC to the Borrower.

“2009 Loans” or “Loan” means, collectively, the 2009A Loan, 2009B Loan, and the 2009C Loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the Committed Amount to provide funds to pay all or a portion of the costs of the 2009 Project and to pay costs of issuance of the Series 2009 Bonds.

“2009A Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009A Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009B Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009B Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009C Loan” means the loan made to the Borrower by the DNRC pursuant to the Program in the maximum amount of the 2009C Committed Amount to provide funds to pay a portion of the costs of the 2009 Project payable under the Program and to pay costs of issuance.

“2009 Project” means the designing and engineering of the facilities, improvements and activities financed, refinanced or the cost of which is being reimbursed to the Borrower with proceeds of the 2009 Loans, described in Appendix A hereto.

“2009 Project Readiness Date” means a date that is no later than November 1, 2009.

“Undisbursed Committed Amount” means any undisbursed Committed Amount which is not required to pay costs of the 2009 Project upon completion thereof as provided in Section 3 of this Supplemental Resolution.

“Water System Fund” means the fund created by Section 11.1 of the Original Resolution.

Other Rules of Construction. For all purposes of this Supplemental Resolution, except where the context clearly indicates otherwise:

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted government accounting standards.

Terms in the singular include the plural and vice versa.

All references to time shall refer to Helena, Montana time, unless otherwise provided herein.

All references to mail shall refer to first-class mail postage prepaid.

Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

“Or” is not exclusive, but is intended to permit or encompass one, more or all of the alternatives conjoined.

Appendices. Attached to this Supplemental Resolution and hereby made a part hereof are the following Appendices:

Appendix A: a description of the 2009 Project;

Appendix B-1: the form of the Series 2009A Bond;

Appendix B-2: the form of the Series 2009B Bond;

Appendix B-3: the form of the Series 2009C Bond;

Appendix C: additional agreements and representations of the Borrower; and

Appendix D: ARRA Certificate and Request.

**GG.**

#### **AUTHORIZATION, FINDINGS, REPRESENTATIONS AND COVENANTS**

##### Authorization and Findings.

Authorization. Under the provisions of the Act, the Borrower is authorized to issue and sell its revenue bonds payable during a term not exceeding forty years from their date of issue, to provide funds for the reconstruction, improvement, betterment and extension of the System or to refund its revenue bonds issued for such purpose; provided that the bonds and the interest thereon are to be payable solely out of the net income and revenues to be derived from rates, fees and charges for the services, facilities and commodities furnished by the undertaking, and are not to create any obligation for the payment of which taxes may be levied except to pay for services provided by the undertaking to the Borrower.

The System. The Borrower, pursuant to the Act and other laws of the State has established and presently owns and operates the System.

The 2009 Project. After investigation of the facts and as authorized by the Act, this Council has determined it to be necessary and desirable and in the best interests of the Borrower to acquire and construct the 2009 Project.

Outstanding Bonds. Pursuant to the Act and the Original Resolution, the Borrower has issued, and has outstanding, its Series 2005 Bond. The Series 2005 Bond is payable from Net Revenues of the System, and no other bonds or indebtedness are outstanding that are payable from or secured by revenues of the System.

Additional Bonds. The Borrower reserved the right under Section 10.3 of the Original Resolution to issue Additional Bonds to finance the cost or estimated cost of providing any improvement, extension or rehabilitation of the System; provided that if the Additional Bonds are issued to complete a project, a certificate is to be signed by the Mayor and City Clerk or either of them stating that on the date of issuance of such Additional Bonds Net Revenues of the System meet the requirements set forth in Section 10.3 of the Original Resolution. Based on a certificate executed or to be executed by the Mayor and City Clerk or either of them, it is hereby determined that the Borrower is authorized to issue the Series 2009A Bond in the maximum principal amount of \$416,300, the Series 2009B Bond in the maximum principal amount of \$333,700 and the Series 2009C Bond in the maximum principal amount of \$2,750,000 pursuant to Section 10.3 of the Original Resolution, as amended hereby, with the Series 2009B Bond and the Series 2009C Bond payable from and secured by the Net Revenues on a parity with the outstanding Series 2005 Bond. For purposes of the foregoing certificate, principal of and interest on the 2009A Loan are disregarded and interest on the Series 2009B Bonds is assumed to be 1.75%. The Borrower acknowledges and agrees that if it fails to deliver timely an acceptable ARRA Certificate and Request as provided in Section 5.1 of this Supplemental Resolution as determined in the sole and complete discretion of the DNRC, then principal and interest and surcharges will become due and owing on the Series 2009A Bond and the Series 2009B Bond as provided in Section 5.1 of this Supplemental Resolution, and the Borrower shall thereupon, to the extent required by Section 6.7 of the Original Resolution, as amended hereby, adjust its schedule of fees, rates, and charges applicable to the System to cause Net Revenues and Surplus Net Revenues to be produced in an amount at least equal to that required by this Resolution.

The total cost of the 2009 Project and costs of issuance and funding the reserve is estimated to be \$5,634,934, which will be paid from proceeds of the Series 2009 Bonds and funds in the amount of \$2,134,934 the Borrower has on hand and available therefor. The Borrower covenants with the DNRC that from and after the 2009B First Advance it will spend the Committed Amount on costs of the 2009 Project before applying its own funds to costs of the 2009 Project.

Representations. The Borrower represents as follows:

Organization and Authority. The Borrower:

is duly organized and validly existing as a municipal corporation of the State;

has all requisite power and authority and all necessary licenses and permits required as of the date hereof to own and operate the System and to carry on its current activities with respect to the System, to adopt this Supplemental Resolution and to enter into the Collateral Documents and to issue the Series 2009 Bonds and to carry out and consummate all transactions contemplated by the Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents;

is a Governmental Unit and a Public Entity; and

has taken all proper action to authorize the execution, delivery and performance of its obligations under this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents and the incurrence of the Debt evidenced by the Series 2009 Bonds in the maximum amount of the Committed Amount.

Litigation. There is no litigation or proceeding pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower in any court or before or by any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the existence, corporate or otherwise, of the Borrower, or the ability of the Borrower to make all payments and otherwise perform its obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents, or the financial condition of the Borrower, or the transactions contemplated by the Resolution, the Series 2009 Bonds and the Collateral Documents or the validity and enforceability of the Resolution, the Series 2009 Bonds and the Collateral Documents. No referendum petition has been filed with respect to any resolution or other action of the Borrower relating to the 2009 Project, the Series 2009 Bonds or any Collateral Documents and the period for filing any such petition will have expired before issuance of the Series 2009 Bonds.

Borrowing Legal and Authorized. The adoption of this Supplemental Resolution, the execution and delivery of the Series 2009 Bonds and the Collateral Documents and the consummation of the transactions provided for in this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents and compliance by the Borrower with the provisions of the Resolution, the Series 2009 Bonds and the Collateral Documents:

are within the powers of the Borrower and have been duly authorized by all necessary action on the part of the Borrower; and

do not and will not result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Borrower pursuant to any ordinance, resolution, indenture, loan agreement or other agreement or instrument (other than the Resolution and any Collateral Documents) to which the Borrower is a party or by which the Borrower or its property may be bound, nor will such action result in any violation of the provisions of any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower, its properties or operations are subject.

No Defaults. No event has occurred and no condition exists that, upon execution and delivery of the Series 2009 Bonds and the Collateral Documents, would constitute a default under the Resolution or the Collateral Documents. The Borrower is not in violation of any term of any agreement, bond resolution, trust indenture, charter or other instrument to which it is a party or by which it or its property may be bound which violation would materially and adversely affect the transactions contemplated hereby or the compliance by the Borrower with the terms hereof or of the Series 2009 Bonds and the Collateral Documents.

Governmental Consent. The Borrower has obtained or made all permits, findings and approvals required to the date of adoption of this Supplemental Resolution by any governmental body or officer for the making and performance by the Borrower of its obligations under this Supplemental Resolution, the Series 2009 Bonds and the Collateral Documents (including any necessary water rate increase) or for the 2009 Project, the financing or refinancing thereof or the reimbursement of the Borrower for the costs thereof. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority (other than those, if any, already obtained) is required on the part of the Borrower as a condition to adopting this Supplemental Resolution, issuing the Series 2009 Bonds or entering into the Collateral Documents and the performance of the Borrower's obligations hereunder and thereunder.

Binding Obligation. The Resolution, the Series 2009 Bonds and any Collateral Document to which the Borrower is a party are the valid and binding special, limited obligations and agreements of the Borrower, enforceable against the Borrower in accordance with their terms, except to the extent that the enforceability thereof may be limited by laws relating to bankruptcy, moratorium, reorganization, insolvency or similar laws affecting creditors' rights and general principles of equity.

The 2009 Project. The 2009 Project consists and will consist of the facilities, improvements and activities described in Appendix A, as such Appendix A may be amended from time to time in accordance with the provision of Article III of this Supplemental Resolution. The 2009 Project comprises facilities of a type that, as determined by the EPA, will facilitate compliance with the national primary drinking water regulations applicable to the System or will otherwise significantly further the health protection objectives of the Safe Drinking Water Act.

The System. The System is a "community water system" within the meaning of the State Act and the Safe Drinking Water Act in that it is a public water system, comprising collection, treatment, storage and distribution facilities for the provision to the public of water for human consumption, that serves not less than 15 service connections used by year-round residents of the area served by the System or regularly serves not less than 25 year-round residents.

Full Disclosure. There is no fact that the Borrower has not specifically disclosed in writing to the DNRC that materially and adversely affects or (so far as the Borrower can now foresee), except for pending or proposed legislation or regulations that are a matter of general public information, that will materially and adversely affect the properties, operations and finances of the System, the Borrower's status as a Public Entity and Governmental Unit, its ability to own and operate the System in the manner it is currently operated or the Borrower's ability to perform its obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents and to pledge any revenues or other property pledged to the payment of the Series 2009 Bonds.

Compliance With Law. The Borrower:

is in compliance with all laws, ordinances, governmental rules and regulations and court or other governmental orders, judgments and decrees to which it is subject and which are material to the properties, operations and finances of the System or its status as a Public Entity and Governmental Unit; and

has obtained all licenses, permits, franchises or other governmental authorizations necessary to the ownership of the System and the operation thereof and agrees to obtain all such licenses, permits, franchises or other governmental authorizations as may be required in the future for the System and the operation thereof, which failure to obtain might materially and adversely affect the ability of the Borrower to conduct the operation of the System as presently conducted or the condition (financial or otherwise) of the System or the Borrower's ability to perform its obligations under the Resolution, the Series 2009 Bonds and the Collateral Documents.

Covenants.

Insurance. In addition to the requirements of Section 2.2 of the Original Resolution, the Borrower at all times shall keep and maintain with respect to the System property and casualty insurance and liability insurance with financially sound and reputable insurers, or self-insurance as authorized by State law, against such risks and in such amounts, and with such deductible provisions, as are customary in the State in the case of entities of the same size and type as the Borrower and similarly situated and shall carry and maintain, or cause to be carried and maintained, and pay or cause to be paid timely the premiums for all such insurance. All such insurance policies shall name the DNRC as an additional insured. Each policy must provide that it cannot be cancelled by the insurer without giving the Borrower and the DNRC 30 days' prior written notice. The Borrower shall give the DNRC prompt notice of each insurance policy it obtains or maintains to comply with this 0 and of each renewal, replacement, change in coverage or deductible under or amount of or cancellation of each such insurance policy and the amount and coverage and deductibles and carrier of each new or replacement policy. Such notice shall specifically note any adverse change as being an adverse change. The Borrower shall deliver to the DNRC at Closing a certificate providing the information required by this 0.

Right of Inspection and Notice of Change of Location. The DNRC, the DEQ and the EPA and their designated agents shall have the right at all reasonable times during normal business hours and upon reasonable notice to enter into and upon the property of the Borrower for the purpose of inspecting the System or any or all books and records of the Borrower relating to the System.

Further Assurance. The Borrower shall execute and deliver to the DNRC all such documents and instruments and do all such other acts and things as may be necessary or required by the DNRC to enable the DNRC to exercise and enforce its rights under the Resolution, the Series 2009 Bonds and the Collateral Documents and to realize thereon, and record and file and re-record and refile all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be necessary or required by the DNRC to validate, preserve and protect the position of the DNRC under the Resolution, the Series 2009 Bonds and the Collateral Documents.

Maintenance of Security, if Any; Recordation of Interest.

The Borrower shall, at its expense, take all necessary action to maintain and preserve the lien and security interest of the Resolution and the Collateral Documents so long as any amount is owing under the Resolution or the Series 2009 Bonds;

The Borrower shall forthwith, after the execution and delivery of the Series 2009 Bonds and thereafter from time to time, cause the Resolution and any Collateral Documents granting a security interest in revenues or real or personal property and any financing statements or other notices or documents relating thereto to be filed, registered and recorded in such manner and in such places as may be required by law in order to perfect and protect fully the lien and security interest hereof and thereof and the security interest in them granted by the Resolution and, from time to time, shall perform or cause to be performed any other act required by law, including executing or causing to be executed any and all required continuation statements and shall execute or cause to be executed any further instruments that may be requested by the DNRC for such perfection and protection; and

Except to the extent it is exempt therefrom, the Borrower shall pay or cause to be paid all filing, registration and recording fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment of the documents described in subparagraph 0, and all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Series 2009 Bonds and the Collateral Documents and the documents described in subparagraph 0.

Additional Agreements. The Borrower covenants to comply with all representations, covenants, conditions and agreements, if any, set forth in Appendix C hereto.

Financial Information. This 0 supplements, and is not intended to limit, the requirements in Section 2.2(e) of the Original Resolution. The Borrower agrees that for each fiscal year it shall furnish to the DNRC and the DEQ, promptly when available:

the preliminary budget for the System, with items for the 2009 Project shown separately; and

when adopted, the final budget for the System, with items for the 2009 Project shown separately.

The Borrower will cause proper and adequate books of record and account to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly gross revenues derived from its operation, and the segregation and application of the gross revenues in accordance with the Resolution, in such reasonable detail as may be determined by the Borrower in accordance with generally accepted governmental accounting practice and principles. It will cause such books to be maintained on the basis of the same fiscal year as that utilized by the Borrower. The Borrower shall, within 180 days after the close of each fiscal year,

cause to be prepared and supply to the DNRC a financial report with respect to the System for such fiscal year. The report shall be prepared at the direction of the financial officer of the Borrower in accordance with applicable generally accepted governmental accounting principles and, in addition to whatever matters may be thought proper by the financial officer to be included therein, shall include the following:

- A statement in detail of the income and expenditures of the System for the fiscal year, identifying capital expenditures and separating them from operating expenditures;
- A balance sheet as of the end of the fiscal year;
- The number of premises connected to the System at the end of the fiscal year;
- The amount on hand in each account of the Fund at the end of the fiscal year;
- A list of the insurance policies and fidelity bonds in force at the end of the fiscal year, setting out as to each the amount thereof, the risks covered thereby, the name of the insurer or surety and the expiration date of the policy or bond; and
- A determination that the report shows full compliance by the Borrower with the provisions of the Resolution during the fiscal year covered thereby, including proper segregation of the capital expenditures from operating expenses, maintenance of the required balance in the Reserve Account, and receipt of Net Revenues during each fiscal year at least equal to 125% of the maximum amount of principal and interest payable on outstanding Parity Bonds (calculated assuming the DNRC has delivered a DNRC Forgiveness Statement) in any subsequent fiscal year, or, if the report should reveal that the revenues have been insufficient for compliance with the Resolution, or that the methods used in accounting for such revenues were contrary to any provision of the Resolution, the report shall include a full explanation thereof, together with recommendations for such change in rates or accounting practices or in the operation of the System as may be required.

The Borrower shall also have prepared and supplied to the DNRC and the DEQ, within 180 days of the close of every other fiscal year, an audit report prepared by an independent certified public accountant or an agency of the state in accordance with generally accepted governmental accounting principles and practice with respect to the financial statements and records of the System. The audit report shall include an analysis of the Borrower's compliance with the provisions of the Resolution.

2009 Project Accounts. The Borrower shall maintain 2009 Project accounts in accordance with generally accepted government accounting standards.

Records. After reasonable notice from the EPA or the DNRC, the Borrower shall make available to the EPA or the DNRC such records as the EPA or the DNRC reasonably requires to review and determine compliance with the Safe Drinking Water Act, as provided in Section 75-6-224(1)(h) of the State Act.

Compliance with Safe Drinking Water Act and ARRA. The Borrower has complied and shall comply with all conditions and requirements of the Safe Drinking Water Act pertaining to the 2009 Loans and the 2009 Project. The Borrower understands and agrees that the 2009A Loan and the 2009B Loan are being made with funds made available to the DNRC under ARRA. The Borrower has complied and shall comply with all requirements of ARRA applicable to the 2009 Loans.

Compliance with DEQ Requirements. The Borrower shall comply with plan, specification and other requirements for public water systems established by the DEQ, as required by Section 75-6-224(1)(h) of the State Act.

Covenants Relating to the Tax-Exempt Status of the State Bonds.

The Borrower covenants and agrees that it will not use or permit to be used any of the proceeds of the Series 2009 Bonds or any other funds of the Borrower in respect of the 2009 Project or the Series 2009 Bonds, directly or indirectly, in a manner that would cause, or take any other action that would cause, any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code or would otherwise cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower agrees that it will not enter into, or allow any “related person” (as defined in Section 147(a)(2) of the Code) to enter into, any arrangement, formal or informal, for the purchase of the State Bonds or any other obligations of the DNRC in an amount related to the amount of the Loan or the portion of the Loan derived directly or indirectly from proceeds of the State Bonds or that would otherwise cause any State Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code.

The Borrower shall not use or permit the use of the 2009 Project directly or indirectly in any trade or business carried on by any Person who is not a Governmental Unit. For the purpose of this subparagraph, use as a member of the general public (within the meaning of the Regulations) shall not be taken into account and any activity carried on by a Person other than a natural person shall be treated as a trade or business.

Any portion of the 2009 Project being refinanced or the cost of which is being reimbursed was acquired by and is now and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Any portion of the 2009 Project being financed shall be acquired by and shall, during the term of the Loan, be owned by the Borrower and not by any other Person. Notwithstanding the previous two sentences, the Borrower may transfer the 2009 Project or a portion thereof to another Governmental Unit which is also a Public Entity if such transfer is

otherwise permitted under the Resolution and if such organization agrees with the DNRC to comply with Section 2.3(h), Section 2.3(i) and Section 2.4 of this Supplemental Resolution and if the DNRC receives an Opinion of Bond Counsel that such transfer will not violate the State Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on the State Bonds from gross income or purposes of federal income taxation. In addition, except as otherwise provided in the Resolution or in any Collateral Documents, the Borrower may sell or otherwise dispose of any portion of the 2009 Project which has become obsolete or outmoded or is being replaced or for other reasons is not needed by the Borrower or beneficial to the general public or necessary to carry out the purposes of the Safe Drinking Water Act.

At the Closing of the 2009 Loans, the DNRC will, if necessary to obtain the Opinion of Bond Counsel described in Section 7.05(a) of the Indenture, deliver to the Borrower instructions concerning compliance by the Borrower with the arbitrage rebate requirements of Section 148 of the Code (the "Arbitrage Rebate Instructions"). The Borrower shall comply with the Arbitrage Rebate Instructions, if any, delivered to it by the DNRC at Closing, as such Instructions may be amended or replaced by the DNRC from time to time. The Arbitrage Rebate Instructions may be amended or replaced by new Arbitrage Rebate Instructions delivered by the DNRC and accompanied by an Opinion of Bond Counsel to the effect that the use of said amended or new Arbitrage Rebate Instructions will not adversely affect the excludability of interest on the State Bonds or any Additional State Bonds (except State Bonds the interest on which the State did not intend to be excluded from gross income for federal income tax purposes) from gross income of the recipients thereof for federal income tax purposes.

The Borrower agrees that during the term of the 2009 Loans it will not contract with or permit any Private Person to manage the 2009 Project or any portion thereof except according to a written management contract and upon delivery to the DNRC of an opinion of Bond Counsel to the effect that the execution and delivery of such management contract will not violate the State Act or the Safe Drinking Water Act or adversely affect the exclusion of interest on State Bonds from gross income or purposes of federal income taxation.

The Borrower may not lease the 2009 Project or any portion thereof to any Person other than a Nonexempt Person which agrees in writing with the Borrower and the State not to cause any default to occur under the Resolution; provided the Borrower may lease all or any portion of the 2009 Project to a Nonexempt Person pursuant to a lease which in the Opinion of Bond Counsel delivered to the DNRC will not cause the interest on the State Bonds to be included in gross income for purposes of federal income taxation.

The Borrower shall not change the use or nature of the 2009 Project if (i) such change will violate the Safe Drinking Water Act, or (ii) so long as the State Bonds are outstanding unless, in the Opinion of Bond Counsel delivered to the DNRC, such change will not result in the inclusion in gross income of interest on the State Bonds for federal income tax purposes.

Maintenance of System; Liens. The Borrower shall maintain the System, including the 2009 Project, in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto. The Borrower shall not grant or permit to exist any lien on the 2009 Project or any other property making up part of the System, other than liens securing Debt where a parity or senior lien secures the Series 2009 Bonds; provided that this 0 shall not be

deemed to be violated if a mechanic's or contractor's lien is filed against any such property so long as the Borrower uses its best efforts to obtain the discharge of such lien and promptly reports to the DNRC the filing of such lien and the steps it plans to take and does take to discharge of such lien.

Maintenance of Existence; Merger, Consolidation, Etc.; Disposition of Assets. The Borrower shall maintain its corporate existence, except that it may consolidate with or merge into another Governmental Unit or permit one or more Governmental Units to consolidate with or merge into it or may transfer all or substantially all of its assets to another Governmental Unit and then dissolve if the surviving, resulting or transferee entity (if other than the Borrower) (i) is a Public Entity and (ii) assumes in writing all of the obligations of the Borrower under the Resolution, the Series 2009 Bonds and the Collateral Documents, and (a) such action does not result in any default in the performance or observance of any of the terms, covenants or agreements of the Borrower under the Resolution, the Series 2009 Bonds and the Collateral Documents, (b) such action does not violate the State Act or the Safe Drinking Water Act and does not adversely affect the exclusion of interest on the Series 2009 Bonds or the State Bonds from gross income for federal income tax purposes and (c) the Borrower delivers to the DNRC on the date of such action an Opinion of Bond Counsel that such action complies with this 0.

Other than pursuant to the preceding paragraph, the Borrower shall not transfer the System or any portion thereof to any other Person, except for property which is obsolete, outmoded, worn out, is being replaced or otherwise is not needed for the operation of the System, unless the provisions of (a) and (b) of the preceding paragraph are satisfied and the Borrower delivers to the DNRC an Opinion of Bond Counsel to that effect and, in addition, the DNRC consents to such transfer.

## HH.

### USE OF PROCEEDS; THE 2009 PROJECT

Use of Proceeds. The Borrower shall apply the proceeds of the 2009 Loans from the DNRC solely as follows:

The Borrower shall apply the proceeds of the 2009 Loans solely to the financing, refinancing or reimbursement of the costs of the 2009 Project as set forth in Appendix A hereto and this 0. The 2009 Loans will be disbursed in accordance with N hereof and Article VII of the Indenture. If the 2009 Project has not been completed prior to Closing, the Borrower shall, as quickly as reasonably possible, complete the 2009 Project and expend proceeds of the 2009 Loans to pay the costs of completing the 2009 Project.

No portion of the proceeds of the 2009 Loans shall be used to reimburse the Borrower for costs paid prior to the date of adoption of this Supplemental Resolution of a Project the construction or acquisition of which occurred or began earlier than June 1, 1993. In addition, if any proceeds of the Loan are to be used to reimburse the Borrower for 2009 Project costs paid prior to the date of adoption of this Supplemental Resolution, the Borrower shall have complied with Section 1.150-2 of the Regulations in respect of such costs.

Any Debt to be refinanced with proceeds of the Loan was incurred after June 1, 1993 for a Project the construction or acquisition of which began after June 1, 1993. No proceeds of the Loan shall be used for the purpose of refinancing an obligation the interest on which is exempt from federal income tax or excludable from gross income for purposes of federal income taxation unless the DNRC has received an Opinion of Bond Counsel, satisfactory to it, to the effect that such refinancing will not adversely affect the exclusion of interest on the State Bonds from gross income for purposes of federal income taxation.

The 2009 Project. Set forth in Appendix A to this Supplemental Resolution is a description of the 2009 Project, which describes the property which has been or is to be acquired, installed, constructed or improved and the other activities, if any to be funded from the Loan (the 2009 Project may consist of more than one facility or activity), and an estimated budget relating to the 2009 Project, including the amount of proceeds of the 2009A Loan and the 2009B Loan estimated to be applied to Green Infrastructure. The 2009 Project may be changed and the description thereof in Appendix A may be amended from time to time by the Borrower but only after delivery to the DNRC of the following:

A certificate of the Borrower setting forth the amendment to Appendix A and stating the reason therefor, including statements whether the amendment would cause an increase or decrease in the cost of the 2009 Project, an increase or decrease in the amount of Loan proceeds which will be required to complete the 2009 Project and providing that the change will not delay the full execution and delivery of the Construction Contract to a date that is after the 2009 Project Readiness Date;

A certificate of Independent Consultant that the change to the 2009 Project in no way adversely affects or diminishes the eligibility of the 2009 Project for ARRA funding or the various attributes of the 2009 Project as that relates to ARRA (such as, for example, the amount of green construction);

A written consent to such change in the 2009 Project by an Authorized DNRC Officer;

An Opinion or Opinions of Bond Counsel stating that the 2009 Project, as constituted after such amendment, is, and was at the time the State Bonds were issued, eligible for financing under the State Act and is, and was at the time the Series 2009 Bonds was issued, eligible for financing under the Act, such amendment will not violate the State Act or the Act and such amendment will not adversely affect the exclusion of interest on the State Bonds or the Series 2009 Bonds from gross income for purposes of federal income taxation. Such an Opinion of Bond Counsel shall not be required for amendments which do not affect the type of facility to be constructed or activity to be financed; and

In the event the change to the 2009 Project has the effect of reducing the amount of the Committed Amount, the written consent of the Borrower to reallocation of the Committed Amount between the 2009A Loan and the 2009B Loan, if required by the DNRC, as described in Section 5.6 below.

The Borrower acknowledges and agrees that an increase in the principal amount of the 2009 Loans may be made only upon an application to the DEQ, the DNRC and the Trustee, in

such form as the DEQ shall specify, which is approved by the DEQ and the DNRC, in their sole and absolute discretion, and adoption by the governing body of the Borrower of a resolution amendatory of or supplementary to the Resolution authorizing the additional loan and delivery of written certifications by officers of the Borrower to the DEQ, the DNRC and the Trustee to the effect that all representations and covenants contained in the resolution as it may be so amended or supplemented are true as of the date of closing of the additional loan and compliance with applicable tests for the incurrence of such Debt. No assurance can be given that any additional loan funds will be available under the Program at the time of any such application or thereafter. The Borrower acknowledges and agrees that neither the DEQ, the DNRC, the Trustee nor any of their agents, employees or representatives shall have any liability to the Borrower and have made no representations to the Borrower as to the sufficiency of the 2009 Loans to pay costs of the 2009 Project or as to the availability of additional funds under the Program to increase the principal amount of the Loan.

2009 Project Representations and Covenants. The Borrower hereby represents to and covenants with the DNRC that:

construction of the 2009 Project did not commence prior to February 17, 2009, and [the Construction Contract relating to the 2009 Project has been fully executed and delivered];

all construction of the 2009 Project has complied and will comply with all federal and state standards, including, without limitation, EPA regulations and standards and the requirements of ARRA;

all future construction of the 2009 Project will be done only pursuant to fixed price construction contracts. The Borrower shall obtain a performance and payment bond from the contractor for each construction contract in the amount of 100% of the construction price and ensure that such bond is maintained until construction is completed to the Borrower's, the DNRC's and the DEQ's satisfaction;

all future construction of the 2009 Project will be done in accordance with plans and specifications on file with the DNRC and the DEQ, provided that changes may be made in such plans and specifications with the written consent of an Authorized DNRC Officer and the DEQ;

the iron, steel, and manufactured goods used in the 2009 Project comply with the "buy American" requirements of Section 1605 of ARRA, as those requirements are further interpreted by applicable EPA guidance; and

the 2009 Project is a project of the type permitted to be financed under the Act, the State Act and the Program and Section 1452 of the Safe Drinking Water Act;

the Borrower will undertake the 2009 Project promptly after the Closing Date and will cause the 2009 Project to be completed as promptly as practicable with all reasonable dispatch, except only as completion may be delayed by a cause or event not reasonably within the control of the Borrower; it is estimated by the Borrower that the 2009 Project will be substantially completed by the Estimated Completion Date; and

the Borrower agrees to provide information regarding jobs created and retained as a result of the 2009 Project and such other information regarding the 2009 Project, including information for the website [www.montanarecovery.gov](http://www.montanarecovery.gov), to the DNRC and the DEQ upon the request for such information by the DNRC or the DEQ or both, and to post signage at the site of the 2009 Project that designates the 2009 Project as an ARRA funded project.

Completion or Cancellation or Reduction of Costs of the 2009 Project.

Upon completion of the 2009 Project, the Borrower shall deliver to the DNRC a certificate stating that the 2009 Project is complete and stating the amount, if any, of the Undisbursed Committed Amount. If Appendix A describes two or more separate projects as making up the 2009 Project, a separate completion certificate shall be delivered for each.

If all or any portion of the 2009 Project is cancelled or cut back or its costs are reduced or for any other reason the Borrower will not require the full Committed Amount, the Borrower shall promptly notify the DNRC in writing of such fact and the amount of the Undisbursed Committed Amount.

If there is any Undisbursed Committed Amount, the DNRC reserves the right under Section 5.6 below to reallocate the amount equal to the Committed Amount as reduced by the Undisbursed Committed Amount between the 2009A Loan and the 2009B Loan, as more particularly provided in Section 5.6.

**II.**

**THE LOAN**

The Loan; Disbursement of Loan.

The DNRC has agreed to lend to the Borrower, from time to time as the requirements of this 0 are met, an amount up to (i) \$416,300 (the “2009A Committed Amount”), (ii) \$333,700 (the “2009B Committed Amount”), and (iii) \$2,750,000 (the “2009C Committed Amount”) for the purposes of financing, refinancing or reimbursing the Borrower for a portion of the costs of the 2009 Project; provided the DNRC shall not be required to loan any proceeds of the State Bonds to the Borrower after the Estimated Completion Date. The Committed Amount may be reduced as provided in Section 3.2 and 0 of this Supplemental Resolution.

The DNRC intends to disburse the 2009 Loans through the Trustee. In consideration of the issuance of the Series 2009 Bonds by the Borrower, the DNRC shall make, or cause the Trustee to make, a disbursement of all or a portion of the 2009 Loans upon receipt of the following documents:

an Opinion of Bond Counsel as to the validity and enforceability of the Series 2009 Bonds and the security therefor and stating in effect that interest on the Series 2009B Bond and the Series 2009C Bond is not includable in gross income of the owner thereof for purposes of federal income taxation, in form and substance satisfactory to the DNRC;

the Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond, fully executed and authenticated;

a certified copy of the Original Resolution and this Supplemental Resolution;

any other security instruments or documents required by the DNRC or DEQ as a condition to their approval of the 2009 Loans;

if all or part of a Loan is being made to refinance a Project or reimburse the Borrower for the costs of a Project paid prior to the Closing, evidence, satisfactory to the DNRC and the Bond Counsel referred to in (1) above, (A) that the acquisition or construction of the Project was begun no earlier than June 1, 1993 or the debt was incurred no earlier than June 1, 1993, (B) of the Borrower's title to the Project, (C) of the costs of such Project and that such costs have been paid by the Borrower and (D) if such costs were paid before adoption of this Supplemental Resolution that the Borrower has complied with Section 1.150-2 of the Regulations;

the items required by the Indenture for the portion of the 2009 Loans to be disbursed at Closing; and

such other certificates, documents and other information as the DNRC, the DEQ or the Bond Counsel giving the opinion referred to in subparagraph (1) may require (including any necessary arbitrage rebate instructions).

In order to obtain a disbursement of a portion of the 2009 Loans to pay costs of the 2009 Project, the Borrower shall submit to the DNRC and the Trustee a signed request for disbursement on the form prescribed by the DNRC, with all attachments required by such form. The Borrower may obtain disbursements only for costs which have been legally incurred and are due and payable. All Loan disbursements will be made to the Borrower only upon proof that cost was incurred.

The 2009 Loans shall be disbursed, subject to the other terms and conditions of this Resolution, in the following order:

(1) First, at the Closing, the 2009B First Advance will be advanced from the 2009B Loan.

(2) Second, after the 2009B First Advance has been disbursed to the Borrower, the entire amount of the 2009A Loan may then be disbursed to the Borrower as and when needed. For the avoidance of doubt, any amounts of the 2009 Loans to be disbursed at Closing in excess of the 2009B First Advance will be disbursed as proceeds of the 2009A Loan to the extent of the 2009A Committed Amount.

(3) Third, after the entire principal amount of the 2009A Loan has been disbursed to the Borrower, the remaining amount, if any, of the 2009B Loan will be disbursed to the Borrower as and when needed.

(4) Fourth, only after the full amount of the 2009A Loan and 2009B Loan has been disbursed to the Borrower, the Borrower may apply to the costs of the 2009 Project any other funds available to it, including grants or other funds, and including amounts under the 2009C Loan, which will be disbursed to the Borrower, starting with the 2009C First Advance, as and when needed.

**The Borrower shall submit the request for the 2009B First Advance and the 2009C First Advance in the form required by the DNRC so that it is received by the DNRC by the date that is no later than ten Business Days prior to the date desired by the Borrower for the making of the 2009B First Advance and the 2009C First Advance, respectively. The Borrower shall not be entitled to, and the DNRC shall have no obligation to make, the 2009B First Advance or the 2009C First Advance or any subsequent advance of amounts under the 2009B Loan or the 2009C Loan until such time as the Borrower shall have set aside and funded the Reserve Account in an amount then required to satisfy the Reserve Requirement.**

For refinancings, a disbursement schedule complying with the requirements of the Safe Drinking Water Act shall be established by the DNRC and the Borrower at Closing. The Trustee shall disburse 2009 Loan amounts directly to the holder of the debt being refinanced according to such schedule. If the Borrower should repay all or a portion of the debt to be refinanced from other sources or should otherwise not need any portion of the 2009 Loan which was to have been used to refinance such debt, it shall inform the DNRC and the Trustee of such fact pursuant to Section 3.4(b) and a new disbursement schedule shall be drawn up by the DNRC. The DNRC shall obtain a receipt from the holder of the debt being refinanced for each disbursement made to pay or prepay a portion of such debt.

If all or a portion of a Loan is made to reimburse a Borrower for Project costs paid by it prior to Closing, the Borrower shall present at Closing the items required by Section 4.1(b) relating to such costs. The Trustee shall disburse such amounts to the Borrower pursuant to a disbursement schedule complying with the requirements of the Safe Drinking Water Act established by the DNRC and the Borrower at the Closing.

Notwithstanding anything else provided herein, the Trustee shall not be obligated to disburse the Loan any faster or to any greater extent than it has available EPA Capitalization Grants, Bond proceeds and other amounts available therefor in the Revolving Fund. The DNRC shall not be required to do "overmatching" pursuant to Section 5.04(b) of the Indenture, but may do so in its discretion. The Borrower acknowledges that if Project costs are incurred faster than the Borrower projected at Closing, there may be delays in making Loan disbursements for such costs because of the schedule under which EPA makes EPA Capitalization Grant money available to the DNRC. The DNRC will use its best efforts to obtain an acceleration of such schedule if necessary.

Upon making each 2009A Loan disbursement, 2009B Loan disbursement, and 2009C Loan Disbursement, the Trustee shall note such disbursement on Schedule A to the Series 2009A Bond, Series 2009B Bond, and the Series 2009C Bond, respectively. A Schedule A reflecting the amount of the 2009B First Advance and the 2009C First Advance will first be attached to the Series 2009B Bond and the Series 2009C Bond, respectively, at Closing.

The Borrower agrees that it will deposit in the Reserve Account upon receipt thereof, on the date of the 2009B First Advance and any subsequent disbursement dates, any proceeds of the 2009B Loan borrowed for the purpose of increasing the balance in the Reserve Account to the Reserve Requirement. The Borrower further acknowledges and agrees that any portions of the 2009 Loans representing capitalized interest shall be advanced only on Payment Dates and shall be transferred by the Trustee on the Payment Date directly to the Revenue Bond Account. The amount of any such transfer shall be a credit against the interest payments due on the Series 2009 Bonds and interest thereon shall accrue only from the date of transfer.

Compliance by the Borrower with its representations, covenants and agreements contained in the Original Resolution, this Supplemental Resolution and the Collateral Documents shall be a further condition precedent to the disbursement of the Loan in whole or in part. The DNRC and the Trustee, in their sole and absolute discretion, may make one or more disbursements, in whole or in part, notwithstanding such noncompliance, and without liability to make any subsequent disbursement of the Loan.

**Commencement of Loan Term.** The Borrower's obligations under this Supplemental Resolution and the Collateral Documents shall commence on the date hereof unless otherwise provided in this Supplemental Resolution. However, the obligation to make payments under O hereof shall commence only upon the first disbursement by the Trustee of the 2009B Loan proceeds.

**Termination of Loan Term.** The Borrower's obligations under the Resolution and the Collateral Documents in respect of the Series 2009 Bonds shall terminate upon payment in full of all amounts due under the Series 2009 Bonds and the Resolution in respect thereof; provided, however, that the covenants and obligations provided in P and O of this Supplemental Resolution shall survive the termination of the Resolution.

**Loan Closing Submissions.** On or prior to the Closing, the Borrower will have delivered to the DNRC and the Trustee the closing submissions required by Section 7.05 of the Indenture.

JJ.

#### REPAYMENT OF 2009 LOANS

**Repayment of 2009 Loans.** The Borrower shall repay the amounts lent to it pursuant to Section 4.1 hereof in accordance with this Section 5.1.

5.1.1. **Manner of Repayment.** The Borrower shall pay all Loan Repayments in lawful money of the United States of America to the DNRC. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a year of 360 days comprising 12 months of 30 days each.

5.1.2. **Repayment of 2009A Loan; Principal Forgiveness.**

The Borrower is obligated to repay the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the 2009A Loan as provided in Section 5.1.2(b), unless the DNRC forgives the Borrower's obligation to repay the principal of the 2009A Loan as provided in this paragraph. So long as the Borrower is proceeding diligently to completion of the 2009 Project through the final advance of principal of the 2009B Loan and the Borrower has executed and delivered the ARRA Certificate and Request to the DNRC in form and substance satisfactory to the DNRC within thirty (30) days after the date that the ARRA Certificate and Request is provided to the Borrower by the DNRC, the DNRC will, following review and approval of the ARRA Certificate and Request, deliver to the Borrower a DNRC Forgiveness Statement and the Borrower will thereafter have no obligation to repay amounts advanced under the Series 2009A Bond or interest thereon. In the event the Borrower fails to deliver timely the ARRA Certificate and Request or the Borrower cannot submit the ARRA Certificate and Request because it cannot make the certifications required therein, including without limitation, those related to ARRA, or the ARRA Certificate and Request is delivered in a form that deviates materially from that attached hereto as Appendix D as determined in

**the sole and complete discretion of the DNRC, then the DNRC will deliver to the Borrower a DNRC Noncompliance Statement.**

**In the event the DNRC delivers a DNRC Noncompliance Statement, then the Loan Repayments on the 2009A Loan required by this Section 5.1 shall be due on each Payment Date, as follows:**

- (1) interest (including the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge) on the outstanding principal balance of the 2009A Loan shall be payable from and after the date of each advance of principal of the 2009A Loan on each Payment Date at the rate of 3.75% per annum, beginning on the first Payment Date following the date of delivery by the DNRC of a DNRC Noncompliance Statement and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan; and
- (2) the principal of the 2009A Loan shall be repayable on each Payment Date, beginning on the Payment Date that is the first to occur following delivery by the DNRC of a DNRC Noncompliance Statement, and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at the rate of 3.75% per annum; provided that principal of the 2009A Loan is payable only in amounts that are multiples of \$1,000

**In addition, in the event the DNRC delivers a DNRC Noncompliance Statement (i) the Series 2009A Bond will continue in effect as a Subordinate Lien Obligation, and (ii) the Borrower will forthwith comply with the rate covenant set forth in Section 6.7 of the Original Resolution, as amended hereby, and, if necessary, increase the rates and charges of the System to satisfy such rate covenant as it regards the Series 2009A Bond and the Series 2009B Bond as soon as practicable and in any event no later than three (3) months after the date of delivery to the Borrower by the DNRC of a DNRC Noncompliance Statement.**

#### **5.1.3. Repayment of 2009B Loan.**

(a) Subject to the provisions of Section 5.1.3(b), the Loan Repayments on the 2009B Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest (including the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge) on the outstanding principal balance of the 2009B Loan shall be payable from and after the date of the 2009B First Advance and each advance of principal of the 2009B Loan thereafter on each Payment Date at the rate of 3.75% per annum, beginning on January 1, 2009 (or if no DNRC Statement has been delivered to the Borrower prior to January 1, 2009, then on the first Payment Date after such DNRC Statement has been delivered) and concluding on July 1, 2029; and
- (2) the principal of the 2009B Loan shall be repayable on each Payment Date, beginning on the first Payment Date following the 2009B First Advance and concluding on the 40<sup>th</sup> Payment Date under the 2009B Loan, and the amount of each principal payment shall be calculated on the basis of a

substantially level debt service at the rate of 3.75% per annum, taking into account each Loan Repayment, if any, made pursuant to Section 5.1.3(c), and provided that principal of the 2009B Loan is payable only in amounts that are multiples of \$1,000.

(b) Notwithstanding Section 5.1.3(a), in the event the DNRC delivers a DNRC Forgiveness Statement, then the Loan Repayments on the 2009B Loan from and after the 2009B First Advance and all subsequent advances of the 2009B Loan which shall be due on each Payment Date are as follows:

- (1) interest on the outstanding principal balance of the 2009B Loan shall be payable on each Payment Date, beginning on January 1, 2010 and concluding on July 1, 2029 at the rate of 1.75% per annum;
- (2) the Borrower shall have no obligation to pay any Administrative Expense Surcharge or any Loan Loss Reserve Surcharge; and
- (3) the principal of the 2009B Loan shall be repayable on each Payment Date, beginning on January 1, 2010 and concluding on July 1, 2029, and the amount of each principal payment shall be calculated on the basis of substantially level debt service at an interest rate of 1.75% per annum; provided that principal of the 2009B Loan is payable only in amounts that are multiples of \$1,000.

(c) Notwithstanding Section 5.1.3(a), in the event any Payment Date occurs prior to the delivery by the DNRC to the Borrower of a statement described in Section 5.1.2 (whether or not the obligation of the Borrower to repay the principal advanced under the 2009A Loan has been forgiven), the Loan Repayments on the 2009B Loan will be calculated in accordance with Section 5.1.3(b) for such Payment Date. For the avoidance of doubt, if the DNRC delivers a statement to the Borrower that the obligation of the Borrower to repay the principal advanced under the 2009A Loan has not been forgiven, the Loan Repayments on the 2009B Loan will thereafter be calculated in accordance with Section 5.1.3(a).

**5.1.4. Repayment of 2009C Loan.** The Loan Repayments on the 2009C Loan required by this Section 5.1 shall be due on each Payment Date, as follows:

- (1) interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal balance of the 2009C Loan shall be payable on each January 1 and July 1, beginning on the first to occur of either of such dates following the date of the 2009C First Advance, which is the first Payment Date after the 2009C First Advance, but in any event no earlier than January 1, 2010 and concluding on that January 1 or July 1 that constitutes the 40<sup>th</sup> Payment Date after the 2009B First Advance; and

(2) the principal of the 2009C Loan shall be repayable on each Payment Date, beginning on the January 1 or July 1 that is the first to occur following the date of the 2009C First Advance, but in any event no earlier than January 1, 2010, and concluding on that January 1 or July 1 that constitutes the 40th Payment Date after the 2009B First Advance, and the amount of each principal payment shall be calculated on the basis of a substantially level debt service at a rate of 3.75% per annum; provided that principal of the 2009C Loan is payable only in amounts that are multiples of \$1,000.

**5.1.5. Details Regarding 2009 Loan Repayments.** The payments of principal of and interest and the Administrative Expense Surcharge and the Loan Loss Reserve Surcharge on the 2009C Loan and, if applicable, on the 2009A Loan and the 2009B Loan, shall be due on the dates specified above and on the dates and in the amounts shown in Schedule B to each of the Series 2009B Bond and the Series 2009C Bond and, if applicable, the Series 2009A Bond, as such Schedule B shall be modified from time to time as provided below. Schedule B will first be attached to the Series 2009A Bond and the Series 2009B Bond at Closing. Schedule B will first be attached to the Series 2009C Bond following receipt by the DNRC of the information required in connection with the 2009C First Advance. The portion of each such Loan Repayment consisting of principal and the portion consisting of interest shall be set forth on Schedule B to the Series 2009B Bond and the portion of each Loan Repayment consisting of principal and the portion consisting of interest and the amount of each Administrative Expense Surcharge and the amount of each Loan Loss Reserve Surcharge shall be set forth in Schedule B to the Series 2009A Bond (and the Series 2009B Bond, if appropriate) and the Series 2009C Bond. Upon each disbursement of 2009 Loan amounts to the Borrower pursuant to Section 4.1 hereof, the Trustee shall enter or cause to be entered the amount advanced on Schedule A to the applicable Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond under "Advances" and the total amount advanced under Section 4.1, including such disbursement, under "Total Amount Advanced."

If the advance was made to pay costs of the 2009 Project pursuant to Section 4.1(b), interest in respect of the Series 2009B Bond and interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge in respect of the Series 2009C Bond, and, if required under Sections 5.1.2 and 5.1.3 hereof, in respect of the Series 2009A Bond and the Series 2009B Bond, on such advance shall accrue from the date the advance is made and shall be payable on each Payment Date thereafter. If, after the full principal amount of the 2009 Loans has been advanced, the DNRC shall have delivered a DNRC Noncompliance Statement, then the Trustee shall revise the Schedule B to each of the Series 2009A Bond and the Series 2009B Bond in accordance with this Section 5.1, and the Trustee shall send a copy of such schedules to the Borrower within one month after delivery by the DNRC of the DNRC Noncompliance Statement. If the DNRC delivers a DNRC Forgiveness Statement, the Trustee shall revise Schedule B to the Series 2009B Bond in accordance with this Section 5.1 reflecting a debt service schedule with payments at 1.75% per annum, and the Trustee shall send a copy of such revised Schedule B to the Borrower within one month after the delivery of such DNRC Noncompliance Statement. Once the completion certificate for the 2009 Project has been delivered to the DNRC, the Trustee shall revise Schedule B to the Series 2009C Bond, and the

Trustee shall send a copy of such Schedule B to the Borrower within one month after delivery of the completion certificate.

Past-due payments of principal and interest (including, as applicable, the Administrative Expense Surcharge and Loan Loss Reserve Surcharge) shall bear interest at the rate of ten percent (10.00%) per annum, until paid.

**Additional Payments.** The Borrower shall also pay, within 30 days after receipt of a bill therefor, from any legally available funds therefor, including proceeds of the Loan, if the Borrower so chooses, all reasonable expenses of the DNRC and the Trustee in connection with the Loan, the Collateral Documents and the Series 2009 Bonds, including, but not limited to:

the cost of reproducing this Supplemental Resolution, the Collateral Documents and the Series 2009 Bonds;

the fees and disbursements of bond counsel and other Counsel utilized by the DNRC and the Trustee in connection with the Loan, the Resolution, the Collateral Documents and the Series 2009 Bonds and the enforcement thereof; and

all taxes and other governmental charges in connection with the execution and delivery of the Collateral Documents or the Series 2009 Bonds, whether or not the Series 2009 Bonds are then outstanding, including all recording and filing fees relating to the Collateral Documents and the pledge of the State's right, title and interest in and to the Series 2009 Bonds, the Collateral Documents and the Resolution under the Resolution (and with the exceptions noted therein) and all expenses, including attorneys' fees, relating to any amendments, waivers, consents or collection or enforcement proceedings pursuant to the provisions hereof or thereof.

**Prepayments.** The Borrower may not prepay all or any part of the outstanding principal amount of the Series 2009B Bond or the Series 2009C Bond and, if applicable, the Series 2009A Bond, unless (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and, if applicable, Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2009 Bonds are prepaid in part pursuant to this 0, such prepayments shall be applied to principal payments in inverse order of maturity.

**Obligations of Borrower Unconditional.** The obligations of the Borrower to make the payments required by the Resolution and the Series 2009 Bonds and to perform its other agreements contained in the Resolution, the Series 2009 Bonds and Collateral Documents shall be absolute and unconditional, except as otherwise provided herein or in such documents. The Borrower (a) shall not suspend or discontinue any payments provided for in the Resolution and the Series 2009 Bonds, (b) shall perform all its other agreements in the Resolution, the Series 2009 Bonds and the Collateral Documents and (c) shall not terminate the Resolution, the Series 2009 Bonds or the Collateral Documents for any cause, including any acts or circumstances that may constitute failure of consideration, destruction of or damage to the 2009 Project or the System, commercial frustration of purpose, any dispute with the DNRC or the EPA, any change in the laws of the United

States or of the State or any political subdivision of either or any failure of the DNRC to perform any of its agreements, whether express or implied, or any duty, liability or obligation arising from or connected with the Resolution.

**Limited Liability.** All payments of principal of and interest on the Loan and other payment obligations of the Borrower hereunder and under the Series 2009 Bonds shall be special, limited obligations of the Borrower payable solely out of the Net Revenues and shall not, except at the option of the Borrower and as permitted by law, be payable out of any other revenues of the Borrower. The obligations of the Borrower under the Resolution and the Series 2009 Bonds shall never constitute an indebtedness of the Borrower within the meaning of any state constitutional provision or statutory or charter limitation and shall never constitute or give rise to a pecuniary liability of the Borrower or a charge against its general credit or taxing power. The taxing powers of the Borrower may not be used to pay principal of or interest on the Series 2009 Bonds, and no funds or property of the Borrower other than the Net Revenues may be required to be used to pay principal of or interest on the Series 2009 Bonds.

**Reallocation of 2009 Loans.** The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$3,500,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts. The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Original Resolution, as amended hereby, within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

KK.

#### **INDEMNIFICATION OF DNRC AND DEQ**

The Borrower shall indemnify and save harmless the DNRC and the DEQ and their officers, employees and agents (each an "Indemnified Party" or, collectively, the "Indemnified Parties") against and from any and all claims, damages, demands, expenses, liabilities and losses of every kind asserted by or on behalf of any Person arising out of the acts or omissions of the Borrower or its employees, officers, agents, contractors, subcontractors, or consultants in connection with or with regard or in any way relating to the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation or financing of the 2009 Project. The Borrower shall also indemnify and save harmless the Indemnified Parties against and from all costs, reasonable attorneys' fees, expenses and liabilities incurred in any action or proceeding brought by reason of any such claim or demand. If any proceeding is brought against an Indemnified Party by reason of such claim or demand, the Borrower shall, upon notice from an Indemnified Party, defend such proceeding on behalf of the Indemnified Party.

LL.

#### **ASSIGNMENT**

**Assignment by Borrower.** The Borrower may not assign its rights and obligations under the Resolution or the Series 2009 Bonds.

**Assignment by DNRC.** The DNRC will pledge its rights under and interest in the Resolution, the Series 2009 Bonds and the Collateral Documents (except to the extent otherwise provided in the Indenture) as security for the payment of the State Bonds and may further assign such interests to the extent permitted by the Indenture, without the consent of the Borrower.

**State Refunding Bonds.** In the event the State Bonds and Additional State Bonds are refunded by bonds which are not Additional State Bonds, all references in the Resolution to State Bonds and Additional State Bonds shall be deemed to refer to the refunding bonds and any bonds of the State on a parity with such refunding bonds (together, the "Refunding Bonds") or, in the case of a crossover refunding, to the State Bonds and Additional State Bonds and the Refunding Bonds. In the event the State Bonds are refunded by an issue of Additional State Bonds, all references in the Resolution to the State Bonds shall be deemed to refer to such Additional State Bonds or, in the case of a crossover refunding, both the State Bonds and such Additional State Bonds.

MM.

#### **THE SERIES 2009 BONDS**

**Net Revenues Available.** The Borrower is authorized to charge just and equitable rates, charges and rentals for all services directly or indirectly furnished by the System, and to pledge and appropriate to the Series 2005 Bond and the Series 2009 Bonds the Net Revenues to be derived from the operation of the System, including improvements,

betterments or extensions thereof hereafter constructed or acquired. The Net Revenues to be produced by such rates, charges and rentals during the term of the Series 2009 Bonds are expected to be more than sufficient to pay the principal and interest when due on the Series 2005 Bond and the Series 2009 Bonds, and to create and maintain reasonable reserves therefor and to provide an adequate allowance for replacement and depreciation, as prescribed herein. For purposes of the foregoing statement, principal of and interest on the 2009A Loan are disregarded, and interest on the Series 2009B Bond is assumed to be 1.75%. The Borrower acknowledges and agrees that if the DNRC delivers a statement to the Borrower that the obligation of the Borrower to repay the principal of the 2009A Loan is not forgiven as provided in Section 5.1.2 as determined in the sole and complete discretion of the DNRC, then principal and interest and surcharges will become due and owing on the 2009A Loan evidenced by the Series 2009A Bond and the 2009B Loan evidenced by the Series 2009B Bond as provided in Section 5.1 and the Borrower shall thereupon, to the extent required by Section 6.7 of the Original Resolution, as amended hereby, adjust its schedule of fees, rates, and charges applicable to the System to cause Net Revenues and Surplus Net Revenues to be produced in an amount at least equal to that required by the Resolution.

**Issuance and Sale of the Series 2009 Bonds.** The Council has investigated the facts necessary and hereby finds, determines and declares it to be necessary and desirable for the Borrower to issue the Series 2009 Bonds to evidence the 2009 Loans. The Series 2009 Bonds are issued to the DNRC without public sale pursuant to Montana Code Annotated, Section 7-7-4433(2)(a).

**Terms.** The Series 2009A Bond, the Series 2009B Bond, and the Series 2009C Bond shall be in the maximum principal amount equal to the original 2009A Committed Amount, 2009B Committed Amount, and 2009C Committed Amount, respectively, shall each be issued as a single, fully registered bond numbered R-1, shall be dated as of the date of delivery to the DNRC, and shall bear interest at the rate charged by the DNRC on the 2009A Loan, 2009B Loan, and 2009C Loan, respectively. The principal of and interest on the Series 2009B Bond and the Series 2009C Bond, and, if applicable, the principal if and interest on the Series 2009A Bond and any Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable on the same dates and in the same amounts on which principal and interest of the Loan Repayments are payable. Advances of principal of the Series 2009A Bond or Series 2009B Bond or Series 2009C Bond shall be deemed made when advances of the 2009A Loan or 2009B Loan or 2009C Loan, respectively, are made under Section 4.1, and such advances shall be payable in accordance with Schedule B to the Series 2009B Bond, the Series 2009C Bond, and, if applicable, the Series 2009A Bond, as the case may be, as it may be revised by the DNRC from time to time in accordance with Section 5.1. The Series 2009A Bond is a Subordinate Lien Obligation. The Series 2009B Bond and the Series 2009C Bond are Additional Bonds.

The Borrower may prepay the Series 2009 Bonds, in whole or in part, only upon the terms and conditions under which it can prepay the 2009 Loans under 0.

**Negotiability, Transfer and Registration.** The Series 2009 Bonds shall be fully registered as to both principal and interest, and shall be initially registered in the name of

and payable to the DNRC. While so registered, principal of and interest on the Series 2009 Bonds shall be payable to the DNRC at the Office of the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601 or such other place as may be designated by the DNRC in writing and delivered to the Borrower. The Series 2009 Bonds shall be negotiable, subject to the provisions for registration and transfer contained in this Section. No transfer of the Series 2009 Bonds shall be valid unless and until (1) the holder, or his duly authorized attorney or legal representative, has executed the form of assignment appearing on the Series 2009 Bonds, and (2) the Clerk-Treasurer of the Borrower (or successors, the "Registrar"), as Bond Registrar, has duly noted the transfer on the Series 2009 Bonds and recorded the transfer on the registration books of the Registrar. The Registrar may, prior to noting and recording the transfer, require appropriate proof of the transferor's authority and the genuineness of the transferor's signature. The Borrower shall be entitled to deem and treat the Person in whose name the Series 2009 Bonds is registered as the absolute owner of the Series 2009 Bonds for all purposes, notwithstanding any notice to the contrary, and all payments to the registered holder shall be valid and effectual to satisfy and discharge the Borrower's liability upon such Bond to the extent of the sum or sums so paid.

**Execution and Delivery.** The Series 2009 Bonds shall be executed on behalf of the Borrower by the manual signatures of the Mayor and the City Clerk. Any or all of such signatures may be affixed at or prior to the date of delivery of the Series 2009 Bonds. The Series 2009 Bonds shall be sealed with the corporate seal of the Borrower. In the event that any of the officers who shall have signed the Series 2009 Bonds shall cease to be officers of the Borrower before the Series 2009 Bonds are issued or delivered, their signatures shall remain binding upon the Borrower. Conversely, the Series 2009 Bonds may be signed by an authorized official who did not hold such office on the date of adoption of this Supplemental Resolution. The Series 2009 Bonds shall be delivered to the DNRC, or its attorney or legal representative.

**Form.** The Series 2009A Bond shall be prepared in substantially the form attached as Appendix B-1, the Series 2009B Bond shall be prepared in substantially the form attached as Appendix B-2, and the Series 2009C Bond shall be prepared in substantially the form attached as Appendix B-3..

**2009 Acquisition and Construction Account.** The 2009 Acquisition and Construction Account (the "Acquisition and Construction Account") is hereby created as a separate account within the Water System Fund and shall be used only to pay as incurred and allowed, costs which under accepted accounting practice are capital costs of the 2009 Project and of such future reconstructions, improvements, betterments or extensions of the System as may be authorized in accordance with law, including but not limited to payments due for work and materials performed and delivered under construction contracts, architectural, engineering, inspection, supervision, fiscal and legal expenses, the cost of lands and easements, reimbursement of any advances made from other Borrower funds, and all other expenses incurred in connection with the acquisition, construction and financing of any such undertaking and the issuance of the Series 2009 Bonds. To the Acquisition and Construction Account shall be credited as received the portion of the

**proceeds of Series 2009 Bonds for costs of the 2009 Project and for costs of issuance of the Series 2009 Bonds and any other funds appropriated by the Borrower to the Acquisition and Construction Account for improvements to the System, and all income received from the investment of the Acquisition and Construction Account.**

**NN.**

**SECURITY FOR THE SERIES 2009 BONDS**

The Series 2009B Bond and the Series 2009C Bond are issued as Additional Bonds under Article 10 of the Original Resolution, as amended by this Supplemental Resolution, and shall, with the Series 2005 Bond and any other Additional Bonds issued under the provisions of Article 10 of the Original Resolution, as amended hereby, be equally and ratably secured by the provisions of the Resolution and payable out of the Net Revenues appropriated to the Revenue Bond Account of the Water System Fund, without preference or priority, all as provided in the Resolution, and secured by the Reserve Account, as further provided in Section 11.5 of the Original Resolution. Upon advancement of principal of the Series 2009B Bond and the Series 2009C Bond, the City Clerk shall transfer from proceeds of the Series 2009B Bond and the Series 2009C Bond such amount or amounts to the Reserve Account to cause the balance therein to equal the Reserve Requirement, treating such principal amount as outstanding. Upon the each advance of the Series 2009B Bond and the Series 2009C Bond, the deposit to the Reserve Account shall be sufficient to cause the balance in the Reserve Account to equal the Reserve Requirement in respect of the Series 2005 Bond and the principal of the Series 2009B Bond and the Series 2009C Bond so advanced. The Series 2009A Bond is a Subordinate Lien Obligation issued under Section 10.4 of the Original Resolution, as amended hereby. in the event the principal of and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge becomes payable under the Series 2009A Bond, the Borrower shall cause rates and charges to be increased to produce Net Revenues at least equal to the amount required under Section 6.7 of the Original Resolution, as amended hereby. The Borrower shall keep, perform and observe each and every one of its covenants and undertakings set forth in the Resolution for the benefit of the registered owners from time to time of the Series 2005 Bond and the Series 2009 Bonds.

**OO.**

**TAX MATTERS**

**Use of 2009 Project. The 2009 Project will be owned and operated by the Borrower and available for use by members of the general public on a substantially equal basis. The Borrower shall not enter into any lease, use or other agreement with any non-governmental person relating to the use of the 2009 Project or the System or security for the payment of the Series 2009B Bond and the Series 2009C Bond which might cause the Series 2009B Bond or the Series 2009C Bond, or any one of them, to be considered a “private activity bond” or “private loan bond” within the meaning of Section 141 of the Code.**

**General Covenant. The Borrower covenants and agrees with the owners from time to time of the Series 2009B Bond and the Series 2009C Bond that it will not take or permit to be taken by any of its officers, employees or agents any action which would cause the**

interest on the Series 2009B Bond and the Series 2009C Bond to become includable in gross income for federal income tax purposes under the Code and the Regulations, and covenants to take any and all actions within its powers to ensure that the interest on the Series 2009B Bond and the Series 2009C Bond will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

**Arbitrage Certification.** The Mayor and the City Clerk, being the officers of the Borrower charged with the responsibility for issuing the Series 2009B Bond and the Series 2009C Bond pursuant to the Resolution, are authorized and directed to execute and deliver to the DNRC a certificate in accordance with the provisions of Section 148 of the Code, and Section 1.148-2(b) of the Regulations, stating that on the basis of facts, estimates and circumstances in existence on the date of issue and delivery of the Series 2009B Bond and the Series 2009C Bond, it is reasonably expected that the proceeds of the Series 2009B Bond and the Series 2009C Bond will be used in a manner that would not cause the Series 2009B Bond and the Series 2009C Bond to be an “arbitrage bond” within the meaning of Section 148 of the Code and the Regulations.

**Arbitrage Rebate.** The City acknowledges that the Series 2009B Bond and the Series 2009C Bond are subject to the rebate requirements of Section 148(f) of the Code. The City covenants and agrees to retain such records, make such determinations, file such reports and documents and pay such amounts at such times as are required under said Section 148(f) and applicable Treasury Regulations to preserve the exclusion of interest on the Series 2009B Bond and the Series 2009C Bond from gross income for federal income tax purposes, unless the Series 2009B Bond and the Series 2009C Bond qualify for the exception from the rebate requirement under Section 148(f)(4)(B) of the Code and no “gross proceeds” of the Series 2009B Bond and the Series 2009C Bond (other than amounts constituting a “bona fide debt service fund”) arise during or after the expenditure of the original proceeds thereof. In furtherance of the foregoing, the Mayor, the Financial Services Manager, and the City Clerk are hereby authorized and directed to execute a Rebate Certificate, substantially in the form to be prepared by Bond Counsel, and the City hereby covenants and agrees to observe and perform the covenants and agreements contained therein, unless amended or terminated in accordance with the provisions thereof..

**Information Reporting.** The Borrower shall file with the Secretary of the Treasury, not later than November 15, 2009, a statement concerning the Series 2009B Bond and the Series 2009C Bond containing the information required by Section 149(e) of the Code.

**“Qualified Tax-Exempt Obligations.”** Pursuant to Section 265(b)(3)(B)(ii) of the Code, the Borrower hereby designates the Series 2009B Bond and the Series 2009C Bond as a “qualified tax-exempt obligation” for purposes of Section 265(b)(3) of the Code. The Borrower has not designated any obligations in 2009 other than its \$495,000 Special Improvement District No. 1384 Bonds, the Series 2009B Bond and the Series 2009C Bond under Section 265(b)(3). The Borrower hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other

**“private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the Borrower and all “subordinate entities” of the Borrower in 2009 in an amount greater than \$30,000,000.**

**PP.**

#### **CONTINUING DISCLOSURE**

The Borrower understands and acknowledges that the DNRC is acquiring the Series 2009 Bonds under the Program pursuant to which the State issues from time to time State Bonds to provide funds therefor. The Borrower covenants and agrees that, upon written request of the DNRC from time to time, the Borrower will promptly provide to the DNRC all information that the DNRC reasonably determines to be necessary or appropriate to offer and sell State Bonds or to provide continuing disclosure in respect of State Bonds, whether under Rule 15c2-12 (17 C.F.R. § 240.15c2-12) promulgated by the Securities and Exchange Council under the Securities Exchange Act of 1934, as amended, or otherwise. Such information shall include, among other things and if so requested, financial statements of the Borrower prepared in accordance with generally accepted accounting principles promulgated by the Financial Accounting Standards Board as modified in accordance with the governmental accounting standards promulgated by the Governmental Accounting Standards Board or as otherwise provided under Montana law, as in effect from time to time (such financial statements to relate to a fiscal year or any period therein for which they are customarily prepared by the Borrower, and, if for a fiscal year and so requested by the DNRC, subject to an audit report and opinion of an accountant or government auditor, as permitted or required by the laws of the State). The Borrower will also provide, with any information so furnished to the DNRC, a certificate of the Mayor and the City Clerk of the Borrower to the effect that, to the best of their knowledge, such information does not include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make the statements made, in light of the circumstances under which they are made, not misleading.

**QQ.**

#### **AMENDMENTS**

**RR. Authorization.** Pursuant to Article XV of the Original Resolution, the Borrower reserved the right to amend the Resolution upon notice to and with the consent of the holders of all outstanding Bonds affected thereby.

**SS. Consent of DNRC.** The DNRC, which holds all of the outstanding Bonds, has consented in writing to the amendments of the provisions of the Original Resolution set forth herein.

**TT. Amendment of Section 1.1 of Original Resolution by Amending Existing Terms.** Section 1.1 of the Original Resolution is hereby amended by amending the following term in the Original Resolution to read as follows in its entirety and such definition shall amend and supersede the definition of such terms given in the Original Resolution (underlining indicates additions; strike-through deletions):

“Safe Drinking Water Act” means Title XIV of the Public Health Service Act, commonly known as the Safe Drinking Water Act, 42 U.S.C. §§300f et seq., as amended, and all regulations, rules and interpretations issued by the EPA thereunder, as amended or informed by ARRA.

**UU. Amendment of Section 1.1 of Original Resolution by Adding New Defined Terms.** Section 1.1 of the Original Resolution is hereby amended by adding thereto the following defined term to read as follows in its entirety:

“Subordinate Lien Obligations” mean the Series 2009A Bond and any other subordinate lien obligations issued under Section 10.4 of the Original Resolution, as amended hereby.

**VV. Amendment of Section 6.7 of Original Resolution.** Section 6.7 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

“Section 6.7. Rate Covenant. While any Bonds are outstanding and unpaid, the rates, charges and rentals for all services and facilities furnished and made available by the System to the Borrower and its inhabitants, and to all customers within or without the boundaries of the Borrower, shall be reasonable and just, taking into consideration the cost and value of the System and the cost of maintaining and operating them, and the amounts necessary for the payment of all Bonds and the interest accruing thereon, and the proper and necessary allowances for the depreciation of the System, and no free service shall be provided to any person or corporation. It is covenanted and agreed that the rates, charges and rentals to be charged to all recipients of water services shall be maintained and shall be revised, whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the current expenses of operation and maintenance as herein defined, to maintain the Operating Reserve herein established, and to produce net revenues Net Revenues during each fiscal year commencing with the fiscal year ending June 30, 20052010, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year (assuming, if no DNRC Statement has been delivered by the date of such determination, that a DNRC Forgiveness Statement has been delivered) and to produce Surplus Net Revenues during each fiscal year commencing with the fiscal year in which the DNRC delivers a DNRC Noncompliance Statement in an amount at least sufficient to pay the principal of and interest on the Series 2009A Bond and the Series 2009B Bond as and when due. As of the date of this Resolution, for purposes of the calculation described in the immediately preceding sentence, principal of and interest on the Series 2009A Bond shall be disregarded and interest on the Series 2009B Bond is assumed to be 1.75%. However, in the event the DNRC delivers a DNRC Noncompliance Statement, the Borrower shall forthwith (and in any event no later than three months after the delivery of such DNRC Noncompliance Statement) cause the rates, charges and rentals charged to all recipients of water services to be revised whenever and as often as may be necessary, according to schedules such that the revenues for each fiscal year will be at least sufficient to pay the Operating Expenses, to maintain the Operating Reserve herein established, to produce Net Revenues during each fiscal year commencing with the fiscal year ending June 30 of that fiscal year in which the DNRC shall have delivered such DNRC Noncompliance Statement, not less than 125% of the maximum annual principal and interest payable on any outstanding Bonds in the current or any future fiscal year, including, without

limitation, the maximum annual principal and interest payable on the Series 2009B Bond calculated at 3.75% per annum, and to produce Surplus Net Revenues adequate to pay the principal of and interest on the Series 2009A Bond as and when due.

If at the close of any fiscal year the ~~net revenues~~ Net Revenues actually received during such year have been less than required hereby, the Borrower will forthwith prepare a schedule of altered rates, charges and rentals which are just and equitable and sufficient to produce Net Revenues and Surplus Net Revenues in such amount, and will do all things necessary to the end that such schedule will be placed in operation at the earliest possible date.

The establishment of the above ratio of ~~net revenues~~ Net Revenues available for the Revenue Bond Account and the provision for adequate Surplus Net Revenues in the event the Borrower's obligation to repay the principal of the Series 2009A Bond is not forgiven is are deemed necessary for the DNRC to make the Loan 2009 Loans to the Borrower upon terms most advantageous. The excess of the Net Revenues over the annual principal and interest and reserve ~~requirements of the Series 2005 Bond~~ Reserve Requirement may be used as authorized in Article XI of this Resolution. The Series 2005 Bond, the Series 2009B Bond and the Series 2009C Bond may be prepaid according to ~~its~~ their terms on any date, and in the estimation of the governing body of the Borrower any excess, prior to that date, of Net Revenues over principal and interest payments actually due and the balance required to be maintained in the Reserve Account, will be needed to pay or to provide reserves for payment of replacements, renewals and improvement costs, in order to provide adequate service for the present population and the increase thereof reasonably to be expected; and after that date, any excess not required for such purposes in the judgment of the governing body of the Borrower may be used to prepay the Series 2005 Bond or the Series 2009B Bond or the Series 2009C Bond and thereby reduce the interest cost thereon to the Borrower and to the persons served by the System."

**WW. Amendment of Section 10.3 of Original Resolution.** Section 10.3 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

"Section 10.3. Other Parity Bonds. The Borrower reserves the right to issue additional Bonds payable from the Revenue Bond Account of the Fund, on a parity as to both principal and interest with the Series 2005 Bond, the Series 2009B Bond and the Series 2009C Bond, if the Net Revenues of the System for the last complete fiscal year preceding the date of issuance of such additional Bonds have equaled at least 125% of the maximum amount of principal and interest payable from said Revenue Bond Account in any subsequent fiscal year during the term of the outstanding Bonds (assuming, if no DNRC Statement has been delivered by the date of such determination, that a DNRC Forgiveness Statement has been delivered), on all Bonds then outstanding and on the additional Bonds proposed to be issued. For the purpose of the foregoing computation, the net revenues for the fiscal year preceding the issuance of additional Bonds shall be those shown by the financial reports caused to be prepared by the Borrower pursuant to Section 2.2(f), except that if the rates and charges for services provided by the System have been changed since the beginning of such preceding fiscal year, then the rates and charges in effect at the time of issuance of the additional Bonds or finally authorized to go into effect within 60 days thereafter shall be applied to the quantities of service actually rendered and made available during such preceding fiscal year to ascertain the gross revenues, from which there shall be

deducted to determine the ~~net revenues~~ Net Revenues, the actual operation and maintenance cost plus any additional annual costs of operation and maintenance which the Consultant estimates will be incurred because of the improvement or extension of the System to be constructed from the proceeds of the additional Bonds proposed to be issued. In no event shall any additional Bonds be issued and made payable from the Revenue Bond Account if the Borrower is then in default in any payment of principal or interest on any outstanding Bonds payable therefrom or if there then exists any deficiency in the balances required by this Resolution to be maintained in any of the accounts of the Fund, which will not be cured or restored upon the issuance of the additional Bonds. In connection with the issuance of a series of additional Bonds, the Borrower shall cause amounts in the Reserve ~~in the Revenue Bond~~ Account to be increased, from the proceeds of the additional Bonds or from surplus Net Revenues, to an amount equal to the Reserve Requirement during the term of the outstanding Bonds or so much thereof as will not cause the Borrower to violate the provisions of Section 11.5 hereof.”

**XX.** Amendment of Section 10.4 of Original Resolution. Section 10.4 of the Original Resolution is hereby amended to read as follows in its entirety (underlining indicates additions; strike-through deletions):

“Section 10.4 Subordinate Bonds. Nothing in this Resolution shall preclude the Borrower from issuing additional ~~Bonds~~ bonds or notes which are expressly made a charge on only the Surplus Net Revenues of the System subordinate to the pledge of Net Revenues to the Revenue Bond Account (such additional bonds, the “Subordinate Obligations”), or designating Water Debt that is subordinate to the Bonds as Subordinate Obligations; provided, however, no obligations may be issued pursuant to this Section 10.4 if a deficiency exists in the Revenue Bond Account or the Reserve Account which is not to be restored by the issuance of the Subordinate Obligations. Any Surplus Net Revenues segregated to pay such Subordinate Obligations in the Fund are subject to the prior appropriation thereof to the Revenue Bond Account or the Reserve Account if necessary to meet the requirements thereof.”

**YY.** Effect of Amendments. Except as amended by this Article XII, the provisions of the Original Resolution as now in effect remain unamended and the Original Resolution, as amended hereby, continues in full force and effect.

**ZZ.**

#### **MISCELLANEOUS**

**Notices.** All notices or other communications hereunder shall be sufficiently sent or given and shall be deemed sent or given when delivered or mailed by certified mail, postage prepaid, to the parties at the following addresses:

DNRC: Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
P. O. Box 201601  
Helena, Montana 59620-1601  
Attn: Conservation and Resource  
Development Division

Trustee: U.S. Bank National Association  
c/o Corporate Trust Services  
1420 Fifth Avenue, 7<sup>th</sup> Floor  
Seattle, Washington 98101

Borrower: City of Billings  
PO Box 1178  
Billings, Montana 59103  
Attn: City Clerk

**Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices or other communications shall be sent.**

**Binding Effect. This Supplemental Resolution shall inure to the benefit of and shall be binding upon the DNRC, the Borrower and their respective successors and assigns.**

**Severability. If any provision of this Supplemental Resolution shall be determined to be unenforceable at any time, it shall not affect any other provision of the Resolution or the enforceability of that provision at any other time.**

**Amendments. This Supplemental Resolution may not be effectively amended without the written consent of the DNRC.**

**Applicable Law. This Supplemental Resolution shall be governed by and construed in accordance with the internal laws of the State.**

**Captions; References to Sections. The captions in this Supplemental Resolution are for convenience only and do not define or limit the scope or intent of any provisions or Sections of this Supplemental Resolution.**

**No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Supplemental Resolution shall be had against any director, officer or employee, as such, past, present or future, of the DNRC, the DEQ or the Trustee, either directly or through the DNRC, the DEQ or the Trustee, or against any officer, or member of the governing body or employee of the Borrower, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer or member of the governing body or employee of the DNRC, the Trustee or the Borrower is hereby expressly waived and released by the Borrower and by the DNRC as a condition of and in consideration for the adoption of this Supplemental Resolution and the making of the Loan.**

**Payments Due on Holidays. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Supplemental Resolution or the Series 2009 Bonds, shall not be Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the**

same force and effect as if done on the nominal date provided in this Supplemental Resolution or the Series 2009 Bonds.

**Right of Others To Perform Borrower's Covenants.** In the event the Borrower shall fail to make any payment or perform any act required to be performed hereunder, then and in each such case the DNRC or the provider of any Collateral Document may (but shall not be obligated to) remedy such default for the account of the Borrower and make advances for that purpose. No such performance or advance shall operate to release the Borrower from any such default and any sums so advanced by the DNRC or the provider of any Collateral Document shall be paid immediately to the party making such advance and shall bear interest at the rate of ten percent (10.00%) per annum from the date of the advance until repaid. The DNRC and the provider of any Collateral Document shall have the right to enter the 2009 Project or the facility or facilities of which the 2009 Project is a part or any other facility which is a part of the System in order to effectuate the purposes of this Section.

**Authentication of Transcript.** The officers of the Borrower are hereby authorized and directed to furnish to the DNRC and to Bond Counsel certified copies of all proceedings relating to the issuance of the Series 2009 Bonds and such other certificates and affidavits as may be required to show the right, power and authority of the Borrower to issue the Series 2009 Bonds, and all statements contained in and shown by such instruments, including any heretofore furnished, shall constitute representations of the Borrower as to the truth of the statements of fact purported to be shown thereby.

**Date.** This Supplemental Resolution shall take effect immediately.

Adopted by the City Council of the City of Billings, Montana, on this 27th day of July, 2009.

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Mayor

Attest: \_\_\_\_\_  
City Clerk

(SEAL)

## APPENDIX A

### Description of the 2009 Project

[The 2009 Project generally consists of replacing existing water mains with new PVC water mains as well as replacing approximately 95 valves.]

### Estimated 2009 Project Budget

<u>2009 Project Costs</u>	<u>Series 2009A Bond</u>	<u>Series 2009B Bond</u>	<u>Series 2009C Bond</u>	<u>Borrower Funds</u>	<u>Total</u>
Preliminary Engineering				\$16,750.00	\$16,750.00
Engineering/Arch. Design				\$328,875.00	\$328,875.00
Construction Engineering Services				\$425,988.00	\$425,988.00
Construction	\$416,300.00	\$333,700.00	\$2,750,000.00	\$679,445.00	\$4,179,445.00
Contingency				\$451,243.00	\$451,243.00
Audit Fees				\$5,000.00	\$5,000.00
Loan Reserves				\$217,633.00	\$217,633.00
Bond Counsel				\$10,000.00	\$10,000.00
<b>TOTALS</b>	<b>\$416,300.00</b>	<b>\$333,700.00</b>	<b>\$2,750,000.00</b>	<b>\$2,134,934.00</b>	<b>\$5,634,934.00</b>

### Green Infrastructure

Of the amount shown above for construction of and improvements to be included in the 2009 Project, the Borrower estimates that \$750,000 of the proceeds of the Series 2009A Bond and of the Series 2009B Bond will be applied to the costs of Green Infrastructure.

## APPENDIX B-1

[Form of the Series 2009A Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

SUBORDINATE LIEN WATER SYSTEM REVENUE BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
TAXABLE SERIES 2009A

R-1	\$416,300
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FOR VALUE RECEIVED, THE CITY OF BILLINGS, MONTANA (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond from the date of each advance of principal at the rate of seventy-five hundredths of one percent (0.75%) and one percent (1.00%) per annum, respectively. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing with the Loan Repayment Date that is the first to occur following delivery by the DNRC to the Borrower of a statement that the Borrower's obligation to repay the principal amount of the 2009A Loan is not forgiven, all as described in the Resolution (as hereinafter defined). Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest and the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B attached hereto. Upon each disbursement of 2009A Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the supplemental resolution authorizing this Bond. Schedule B shall be calculated and recalculated on a level debt service

basis assuming an interest rate of three and seventy-five hundredths percent (3.75%) per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS BOND, IN THE EVENT THAT THE BORROWER TIMELY DELIVERS AN ARRA CERTIFICATE AND REQUEST (AS DEFINED IN THE RESOLUTION) IN FORM AND SUBSTANCE SATISFACTORY TO THE DNRC AND THE DNRC IN RESPONSE THERETO SUPPLIES TO THE BORROWER A STATEMENT THAT THE BORROWER'S OBLIGATION TO REPAY PRINCIPAL ADVANCED UNDER THIS BOND IS FORGIVEN, THEN THEREUPON INTEREST SHALL BE DEEMED TO ACCRUE ON THE PRINCIPAL OF THIS SERIES 2009A BOND FROM THE DATE OF EACH ADVANCE AT THE RATE OF ZERO PERCENT (0.00%) PER ANNUM AND THE BORROWER'S OBLIGATION TO REPAY PRINCIPAL ADVANCED HEREUNDER SHALL BE FORGIVEN, AND THE BORROWER SHALL HAVE NO OBLIGATION TO REPAY THE DNRC OR ITS REGISTERED ASSIGNS ANY AMOUNTS ADVANCED HEREUNDER OR INTEREST OR ANY SURCHARGE THEREON. THIS BOND SHALL THEREUPON BE MARKED "CANCELLED" AND RETURNED BY THE HOLDER TO THE BORROWER, AND THIS BOND SHALL NO LONGER CONSTITUTE AN OBLIGATION OF THE BORROWER OR OF THE SYSTEM (AS HEREINAFTER DEFINED).

This Bond is one of an issue of Water System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time and constitutes a series in the maximum authorized principal amount of \$416,300 (the "Series 2009A Bond"). The Series 2009A Bond is issued to finance a portion of the costs of the construction of certain improvements to the water system of the Borrower (the "System") and to pay costs of issuance of the Series 2009A Bond. The Series 2009A Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44 and 45, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution 05-18329 (the "Original Resolution"), adopted by the City Council on September 12, 2005, as amended and supplemented by Resolution No. \_\_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the "Resolution"). The Series 2009A Bond is issuable only as a single, fully registered bond. The Series 2009A Bond is issued as a Subordinate Lien Obligation payable out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account in the Fund of the Borrower. The Borrower has issued its outstanding Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2005 (the "Series 2005 Bond"), and is issuing simultaneously herewith its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B (the "Series 2009B Bond") and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009C (the "Series 2009C Bond"). The Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond are parity lien bonds payable from the Revenue Bond Account in the Fund of the

Borrower. Following the 2009B First Advance, principal amounts of this Series 2009A Bond are advanced until all of the principal of this Series 2009A Bond is advanced and then the remaining amounts of principal of the Series 2009B Bond or the principal amounts of the Series 2009C Bond are advanced. Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009A Bond has been issued, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009A Bond.

The Borrower may prepay the principal of the Series 2009A Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment on the amount of principal prepaid. If the Series 2009A Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

This Series 2009A Bond, including interest and any premium for the redemption thereof, are payable solely from the Surplus Net Revenues available for the payment hereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009A Bond is registered as the absolute owner hereof, whether this Series 2009A Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009A Bond may be transferred as hereinafter provided.

The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$3,500,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts. The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the

Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Resolution within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Water System Fund into which the gross revenues of the System will be paid, and a separate and special Replacement and Depreciation Account and Surplus Account in that Fund, into which will be paid, subject to the prior lien thereon of the Revenue Bond Account and the Reserve Account, Surplus Net Revenues; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System, to produce in each fiscal year Net Revenues in excess of such current expenses, equal to at least 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year and to produce in each fiscal year adequate Surplus Net Revenues to pay the principal of and interest on the Series 2009A Bond as and when due; that additional bonds issued on a parity with the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond (such bonds, collectively with the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond, the "Bonds") and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond, and other parity Bonds, upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2009B Bond, the Series 2009C Bond, and additional parity Bonds on such Net Revenues (such as is the case with this Series 2009A Bond); that all provisions for the security of the holder of this Series 2009A Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2009A Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in regular and due form, time and manner as so required; and that this Series 2009A Bond and the interest hereon are payable solely out of available Surplus Net Revenues in the Replacement and Depreciation Account or the Surplus Account of the Fund and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2009A Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Mayor

(SEAL)

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City Clerk

## ***REGISTRATION AND TRANSFER***

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

### **REGISTER**

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
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\_\_\_\_\_, 2009      Department of Natural Resources and Conservation  
1625 Eleventh Avenue  
Helena, MT 59620

### ***THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER***

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby  
irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the Bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

**Notice: The assignor's signature to this assignment must correspond with the name as it appears  
upon the face of the within Bond in every particular, without alteration or any change whatsoever.**

***SCHEDULE A***  
***SCHEDULE OF AMOUNTS ADVANCED***

### ***Total Amount***

***SCHEDULE B***

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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## APPENDIX B-2

[Form of the Series 2009B Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

WATER SYSTEM REVENUE BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
SERIES 2009B

R-1 \$333,700

FOR VALUE RECEIVED, THE CITY OF BILLINGS, MONTANA (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. In addition, the Borrower shall pay an Administrative Expense Surcharge and Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond from the date of each advance of principal at the rate of seventy-five hundredths of one percent (0.75%) and one percent (1.00%) per annum, respectively. Interest and Administrative Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing with the Loan Repayment Date that is the first to occur following delivery by the DNRC of a DNRC Noncompliance Statement (as defined in the Resolution described below) and taking into account payments, if any, made on each Loan Repayment Date prior to the deliver of such statement, all as described in the Resolution. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of 2009B Loan amounts to the Borrower pursuant to the Resolution, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of three and seventy-five hundredths percent (3.75%) per

annum. Past-due payments of principal, interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY HEREIN, IN THE EVENT THE BORROWER TIMELY DELIVERS AN ARRA CERTIFICATE AND REQUEST (AS DEFINED IN THE RESOLUTION) IN FORM AND SUBSTANCE SATISFACTORY TO THE DNRC AND THE DNRC IN RESPONSE THERETO SUPPLIES TO THE BORROWER A DNRC FORGIVENESS STATEMENT AS SET FORTH IN THE RESOLUTION, THEN AMOUNTS ADVANCED HEREUNDER FROM AND AFTER THE 2009B FIRST ADVANCE (AS DEFINED IN THE RESOLUTION) SHALL BEAR INTEREST AT A RATE OF ONE AND SEVENTY-FIVE HUNDREDTHS PERCENT (1.75%), AND THE BORROWER SHALL HAVE NO OBLIGATION TO PAY ANY ADMINISTRATIVE EXPENSE SURCHARGE OR ANY LOAN LOSS RESERVE SURCHARGE. If the DNRC delivers a DNRC Forgiveness Statement, the Trustee shall revise Schedule B to the Series 2009B Bond reflecting a debt service schedule with payments at 1.75% per annum in accordance with the Resolution, and the Trustee shall send a copy of such revised Schedule B to the Borrower within one month after the delivery of such statement.

In the event any Loan Repayment Date occurs prior to the delivery by the DNRC of a DNRC Statement (as defined in the Resolution), the amount of interest, Administrative Expense Surcharge and Loan Loss Reserve Surcharge payable on each such Loan Repayment Date will be calculated as if the DNRC has previously delivered to the Borrower DNRC Forgiveness Statement.

This Bond is one of an issue of Water System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$333,700 (the "Series 2009B Bond"), issued to finance a portion of the costs of construction of certain improvements to the water system of the Borrower (the "System") and to pay costs of issuance of the Series 2009B Bond. The Series 2009B Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44 and 45, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution 05-18329 (the "Original Resolution"), adopted by the City Council on September 12, 2005, as amended and supplemented by Resolution No. \_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the "Resolution"). The Series 2009B Bond is issuable only as a single, fully registered bond. The Series 2009B Bond is issued on a parity and is equally and ratably secured by the Net Revenues of the System with the Borrower's outstanding Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2005 (the "Series 2005 Bond") and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009C (the "Series 2009C Bond"), which is being issued simultaneously herewith. The Borrower is also issuing simultaneously herewith its Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program),

Taxable Series 2009A (the “Series 2009A Bond”). The 2009B First Advance has been advanced at Closing. Following the 2009B First Advance, the remaining principal amounts of this Series 2009B Bond are advanced immediately after the full advance of the principal amount of the Series 2009A Bond. Terms used with initial capital letters but not defined herein have the meanings given to them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009B Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond (collectively, the “Bonds”) or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009B Bond.

The Borrower may prepay the principal of the Series 2009B Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge, if any, to the date of prepayment on the amount of principal prepaid. If the Series 2009B Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Bonds, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional, statutory or charter limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009B Bond is registered as the absolute owner hereof, whether this Series 2009B Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009B Bond may be transferred as hereinafter provided.

This Series 2009B Bond has been designated by the Borrower as a “qualified tax-exempt obligation” pursuant to Section 265 of the Internal Revenue Code of 1986, as amended.

The Borrower understands that the principal amounts of the 2009A Loan and the 2009B Loan have been sized based on the understanding and expectation that the 2009 Project costs at least \$3,500,000 and that the Borrower will request disbursement of the full amount of the 2009A Loan and 2009B Loan. Notwithstanding any provision to the contrary herein, the Borrower acknowledges and agrees that in the event there is any Undisbursed Committed Amount, then the DNRC reserves the right in its sole and complete discretion to reallocate loan amounts as between the 2009A Loan and 2009B Loan on the basis of the amounts of the 2009A Loan and the 2009B Loan that the Borrower would have been entitled to had the 2009 Loans initially equaled the Committed Amount less the Undisbursed Committed Amount. The reallocation between the 2009A Loan and 2009B Loan will reflect the same percentage of the total amount of the 2009 Loans as initially used. Upon making such reallocation, the DNRC shall deliver to the Borrower a replacement Series 2009A Bond and a replacement Series 2009B

Bond reflecting adjusted principal amounts, which bonds shall supersede and render of no effect the original bonds and be payable on the same dates as described in the original bonds, but in an adjusted amount owing on each Payment Date because of the reallocation of principal amounts. The Borrower shall execute and deliver the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC within thirty (30) days after delivery of such bonds to the Borrower by the DNRC. Contemporaneous with the delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower, the Borrower shall determine whether the Net Revenues of the System total at least 125% of the maximum principal of and interest payable on the Bonds outstanding in any fiscal year, and, if they do not, the Borrower shall increase its rates and charges to satisfy the rate covenant set forth in Section 6.7 of the Resolution within three (3) months after the date of delivery of the replacement Series 2009A Bond and the replacement Series 2009B Bond to the DNRC by the Borrower.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower has duly authorized and will forthwith undertake the improvements to the System hereinabove described, has fixed and established and will collect reasonable rates and charges for the services and facilities afforded by the System, and has created a special Water System Fund into which the revenues of the System as defined in the Original Resolution (the "Revenues"), including all additions thereto and replacements and improvements thereof, will be paid, and a separate and special Revenue Bond Account in that fund, into which will be paid each month, Net Revenues of the System then on hand (the Revenues remaining after the payment of Operating Expenses (as defined in the Original Resolution) of the System), an amount equal to not less than the sum of one-sixth of the interest due within the next six months and one-twelfth of the principal due within the next twelve months with respect to all outstanding Bonds payable from that account, and a Reserve Account in that fund into which shall be paid additional Net Revenues sufficient to establish and maintain a reserve therein equal to, as of the date of calculation, the Reserve Requirement (as defined in the Resolution); that the Revenue Bond Account and the Reserve Account will be used only to pay the principal of, premium, if any, and interest on the Bonds issued pursuant to the authority herein recited; that the rates and charges for the System will from time to time be made and kept sufficient to provide Net Revenues for each fiscal year at least equal to 125% of the maximum principal and interest payable from the Revenue Bond Account in any subsequent fiscal year (calculated assuming the DNRC has delivered a DNRC Forgiveness Statement), to maintain the balance in the Reserve Account at the Reserve Requirement, to pay promptly the reasonable and current expenses of operating and maintaining the System, and to provide reserves for the repair and replacement of the System; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2009B Bond, and the Series 2009C Bond, and other parity Bonds on such Net Revenues and such obligations are payable only from Surplus Net Revenues (as is the case with the Series 2009A Bond); that all provisions for the security of this Series 2009B Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series

2009B Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed as so required; and that this Series 2009B Bond and the premium, if any, and interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional, statutory or charter limitation or provision and the issuance of the Series 2009B Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional, statutory or charter limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of its Mayor and City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Mayor

(SEAL)

---

City Clerk

## ***REGISTRATION AND TRANSFER***

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
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\_\_\_\_\_, 2009      Department of Natural Resources and Conservation \_\_\_\_\_  
1625 Eleventh Avenue \_\_\_\_\_  
Helena, MT 59620

### ***THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER***

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## FORM OF ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby  
irrevocably constitute and appoint \_\_\_\_\_  
attorney to transfer the Bond on the books kept for the registration thereof, with full power of  
substitution in the premises.

Dated: \_\_\_\_\_

**Notice: The assignor's signature to this assignment must correspond with the name as it appears  
upon the face of the within Bond in every particular, without alteration or any change whatsoever.**

***SCHEDULE A***  
***SCHEDULE OF AMOUNTS ADVANCED***

### ***Total Amount***

***SCHEDULE B***

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	Administrative <u>Expense Surcharge</u>	Loan Loss Reserve <u>Surcharge</u>	Total Loan <u>Payment</u>
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## APPENDIX B-3

[Form of the Series 2009C Bond]

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF YELLOWSTONE

### CITY OF BILLINGS

WATER SYSTEM REVENUE BOND  
(DNRC DRINKING WATER STATE REVOLVING LOAN PROGRAM)  
SERIES 2009C

R-1	\$2,750,000
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FOR VALUE RECEIVED, the City of Billings, Montana (the "Borrower"), a duly organized municipal corporation and political subdivision of the State of Montana, acknowledges itself to be specially indebted and, for value received, hereby promises to pay to the Department of Natural Resources and Conservation of the State of Montana (the "DNRC"), or its registered assigns, solely from the Revenue Bond Account of its Water System Fund, the principal sum equal to the sum of the amounts entered on Schedule A attached hereto under "Total Amount Advanced," with interest on each such amount from the date such amount is advanced hereunder at the rate of two percent (2.00%) per annum on the unpaid balance until paid. As described more particularly in the Resolution (defined below), the 2009C First Advance will be made, if at all, following the advance of the full principal amount of the Series 2009A Bond and the Series 2009B Bond (as such terms are defined below or in the Resolution), and upon the making of the 2009C First Advance, the DNRC shall enter the applicable amount on Schedule A hereto and attach the applicable Schedule B hereto. In addition, the Borrower shall pay an Administrative Expense Surcharge and a Loan Loss Reserve Surcharge on the outstanding principal amount of this Bond at the rates of seventy-five hundredths of one percent (0.75%) and one percent (1.00%), respectively, per annum. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be payable in semiannual installments payable on each January 1 and July 1 (each a "Loan Repayment Date") commencing on the date first set forth in the column headed "Date" or "Payment Date" on Schedule B attached hereto. Principal shall be payable on the dates set forth in Schedule B hereto. Each installment shall be in the amount set forth opposite its due date in Schedule B attached hereto under "Total Loan Payment." The portion of each such payment consisting of principal, the portion consisting of interest, the portion consisting of Administrative Expense Surcharge, and the portion consisting of Loan Loss Reserve Surcharge shall be as set forth in Schedule B hereto. Upon each disbursement of Loan amounts to the Borrower pursuant to the Resolution described below, the DNRC shall enter (or cause to be entered) the amount advanced on Schedule A under "Advances" and the total amount advanced under the Resolution (as hereinafter defined), including such disbursement, under "Total Amount Advanced." The DNRC shall prepare Schedule B and any revised Schedule B, or cause Schedule B and any revised Schedule B to be

prepared, as provided in Section 5.1 of the Resolution. Schedule B shall be calculated and recalculated on a level debt service basis assuming an interest rate of 3.75% per annum. Past-due payments of principal and interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall bear interest at the rate of ten percent (10.00%) per annum, until paid. Interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge shall be calculated on the basis of a 360-day year comprising 12 months of 30 days each. All payments under this Bond shall be made to the registered holder of this Bond, at its address as it appears on the Bond register, in lawful money of the United States of America.

This Bond is one of an issue of Sewer System Revenue Bonds of the Borrower authorized to be issued in one or more series from time to time, and constitutes a series in the maximum authorized principal amount of \$2,750,000 (the "Series 2009C Bond"). The Series 2009C Bond is issued to finance a portion of the costs of the construction of certain improvements to the sewer system of the Borrower (the "System"), to fund deposits to the Reserve Account, and to pay costs of issuance of the Series 2009C Bond. The Series 2009C Bond is issued pursuant to and in full conformity with the Constitution and laws of the State of Montana thereunto enabling, including Montana Code Annotated, Title 7, Chapter 7, Part 44, as amended, and ordinances and resolutions duly adopted by the governing body of the Borrower, including Resolution 05-18329 (the "Original Resolution"), adopted by the City Council on September 12, 2005, as amended and supplemented by Resolution No. \_\_\_\_\_, adopted July 27, 2009 (as so amended and supplemented, the "Resolution"). The Series 2009C Bond is issuable only as a single, fully registered bond. The Series 2009C Bond is issued on a parity with the Borrower's outstanding Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2005 (the "Series 2005 Bond") and Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B (the "Series 2009B Bond"), which is being issued simultaneously herewith. The Borrower is also issuing simultaneously herewith its Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2009A (the "Series 2009A Bond"). Principal amounts of this Series 2009C Bond are advanced only after the full principal amount of the Series 2009A Bond and the Series 2009B Bond have been advanced. Terms used with initial capital letters but not defined herein have the meanings given them in the Resolution.

Reference is made to the Resolution for a more complete statement of the terms and conditions upon which the Series 2009C Bond has been issued, the Net Revenues of the System pledged and appropriated for the payment and security thereof, the conditions upon which additional bonds may be issued under the Resolution and made payable from such Net Revenues on a parity with the Series 2005 Bond, the Series 2009B Bond, and Series 2009C Bond (collectively, the "Bonds") or otherwise, the conditions upon which the Resolution may be amended, the rights, duties and obligations of the Borrower, and the rights of the owners of the Series 2009C Bond.

The Borrower may prepay the principal of the Series 2009C Bond only if (i) it obtains the prior written consent of the DNRC thereto, and (ii) no Loan Repayment or Administrative Expense Surcharge or Loan Loss Reserve Surcharge is then delinquent. Any prepayment permitted by the DNRC must be accompanied by payment of accrued interest, and Administrative Expense Surcharge and Loan Loss Reserve Surcharge to the date of prepayment

on the amount of principal prepaid. If the Series 2009C Bond is prepaid in part, such prepayments shall be applied to principal payments in inverse order of maturity.

The Series 2009C Bond, including interest and any premium for the redemption thereof, are payable solely from the Net Revenues pledged for the payment thereof and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision.

The Borrower may deem and treat the person in whose name this Series 2009C Bond is registered as the absolute owner hereof, whether this Series 2009C Bond is overdue or not, for the purpose of receiving payment and for all other purposes, and the Borrower shall not be affected by any notice to the contrary. The Series 2009C Bond may be transferred as hereinafter provided.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND AGREED that the Borrower will forthwith construct and complete the improvements to the System hereinabove described; that it will prescribe and collect reasonable rates and charges for all services and facilities afforded by the System, including all additions thereto and replacements and improvements thereof, and has created a special Sewer System Fund into which the gross revenues of the System will be paid, and a separate and special Revenue Bond Account in that Fund, into which will be paid each month, from and as a first and prior lien on the Net Revenues of the System then on hand, an amount equal to not less than the sum of one-sixth of the interest to become due within the next six months and one-twelfth of the principal to become due within the next twelve months with respect to all Bonds payable from that Account; that the Borrower has created a Reserve Account in such fund into which shall be paid additional Net Revenues, after required credits to the Revenue Bond Account sufficient to maintain a reserve therein equal to the maximum amount of principal and interest payable in any subsequent fiscal year on all such Bonds; that the Revenue Bond Account will be used only to pay the principal of, premium, if any, and interest on the Bonds and any other additional Bonds issued pursuant to the Resolution on a parity therewith; that the rates and charges for the System will from time to time be made and kept sufficient, to provide gross income and revenues adequate to pay promptly the reasonable and current expenses of operating and maintaining the System and to produce in each fiscal year Net Revenues in excess of such current expenses, equal to 125% of the maximum amount of principal and interest payable from the Revenue Bond Account in any subsequent fiscal year; that additional Bonds and refunding Bonds may be issued and made payable from the Revenue Bond Account on a parity with the Series 2005 Bond, the Series 2009B Bond, Series 2009C Bond, and other parity Bonds, upon certain conditions set forth in the Resolution, but no obligation will be otherwise incurred and made payable from the Net Revenues of the System, unless the lien thereof shall be expressly made subordinate to the lien of the Series 2005 Bond, the Series 2009B Bond, Series 2009C Bond, and additional parity Bonds on such Net Revenues; that all provisions for the security of the holder of this Series 2009C Bond set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that all acts, conditions and things required by the Constitution and laws of the State of Montana and the ordinances and resolutions of the Borrower to be done, to exist, to happen and to be performed in order to make this Series 2009C Bond a valid and binding special obligation of the Borrower according to its terms have been done, do exist, have happened and have been performed in

regular and due form, time and manner as so required; and that this Series 2009C Bond and the interest hereon are payable solely from the Net Revenues of the System pledged and appropriated to the Revenue Bond Account and do not constitute a debt of the Borrower within the meaning of any constitutional or statutory limitation or provision and the issuance of the Series 2009C Bond does not cause either the general or the special indebtedness of the Borrower to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City of Billings, Montana, by its governing body, has caused this Bond to be executed by the signatures of the Mayor and the City Clerk, and has caused the official seal of the Borrower to be affixed hereto, and has caused this Bond to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Mayor

(SEAL)

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City Clerk

## REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

### REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
, 2009	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> <u>Helena, MT 59620</u>	_____

### THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

## FORM OF ASSIGNMENT

For value received, this Bond is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
(Authorized Signature)

For: \_\_\_\_\_  
(Holder)

**SCHEDULE A**  
**SCHEDULE OF AMOUNTS ADVANCED**

## SCHEDULE B

<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Administrative Expense Surcharge</u>	<u>Loan Loss Reserve Surcharge</u>	<u>Total Loan Payment</u>
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APPENDIX C  
ADDITIONAL REPRESENTATIONS AND COVENANTS

None

## APPENDIX D

\$3,500,000  
Water System Revenue Bonds  
(DNRC Drinking Water State Revolving Loan Program)  
Consisting Of  
\$416,300 Subordinate Lien Taxable Series 2009A Bond,  
\$333,700 Series 2009B Bond  
And  
\$2,750,000 Series 2009C Bond

### ***ARRA CERTIFICATE AND REQUEST***

We, \_\_\_\_\_ and \_\_\_\_\_, hereby certify that we are on the date hereof the duly qualified and acting Mayor and City Clerk, respectively, of the City of Billings, Montana (the “Borrower”), and that:

1. Pursuant to Resolution 05-18329, duly adopted by the City Council of the Borrower on September 12, 2005, entitled “Resolution Relating to \$17,300,000 Water System Revenue Bond (DNRC Drinking Water Revolving Loan Program), Series 2005; Authorizing the Issuance and Fixing the Terms and Conditions Thereof,” as amended and supplemented by Resolution No. \_\_\_\_, duly adopted by the City Council of the Borrower on July 27, 2009, entitled “Resolution Relating to \$3,500,000 Water System Revenue Bonds (DNRC Drinking Water State Revolving Loan Program), Consisting of \$416,300 Series 2009A Bond, \$333,700 Series 2009B Bond, and \$2,750,000 Series 2009C Bond; Authorizing the Issuance and Fixing the Terms and Conditions Thereof” (as so amended and supplemented, the “Resolution”), the Borrower issued its Subordinate Lien Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Taxable Series 2009A, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$416,300 (the “Series 2009A Bond”), its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009B, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$333,700 (the “Series 2009B Bond”), and its Water System Revenue Bond (DNRC Drinking Water State Revolving Loan Program), Series 2009C, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$2,750,000 (the “Series 2009C Bond”). The Series 2009A Bond and the Series 2009B Bond are referred to herein collectively as the “ARRA Bonds.” The Borrower has reviewed the Resolution, including, without limitation, Articles II and III thereof, and the definitions relating thereto. The Borrower acknowledges and agrees that the ARRA Bonds evidence loans made to the Borrower from the DNRC from funds made available to the DNRC under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) (“ARRA”), and that this Certificate is being relied upon by the DNRC for ensuring compliance with ARRA requirements applicable to the Borrower, the DNRC, and the 2009 Project (as hereinafter defined). Capitalized terms used herein without definition shall have the meanings given them in the Resolution.

2. The ARRA Bonds were issued to finance a portion of the costs of construction and installation of various improvements to the System, generally described as the 2009 Project

(the “2009 Project”) in the Resolution. Construction of the 2009 Project has complied with all federal and state standards, including, without limitation, EPA regulations and standards and the requirements of ARRA. The 2009 Project is expected to be completed and placed in service on or about \_\_\_\_\_, 20\_\_\_.

3. Costs of the 2009 Project in the amount of \$\_\_\_\_\_ have been paid as of the date of delivery of this Certificate. The Borrower hereby waives its right to any remaining 2009A Committed Amount or 2009B Committed Amount not advanced or to be advanced upon delivery hereof, and acknowledges that the DNRC has reserved the right to reallocate amounts of the Series 2009A Bond and Series 2009B Bond and deliver a replacement Series 2009A Bond and Series 2009B Bond, which shall each be a binding obligation of the City, as described more particularly in the Resolution. The Borrower specifically confirms and agrees that any remaining amounts of the 2009 Loans to be lent to the Borrower, if any, shall be evidenced by the Series 2009C Bond.

4. As of the date hereof, the Borrower has spent the following amounts in connection with the 2009 Project and costs related thereto:

Preliminary Engineering	\$
Engineering/Arch. Design	
Construction Engineering Services	
Construction	
Contingency	
Audit Fees	
Loan Reserves	
Bond Counsel	
TOTAL	\$

Of such amounts, \$750,000 were paid from advances of proceeds of the ARRA Bonds, \$2,750,000 from the Series 2009C Bond, and \$\_\_\_\_\_ were paid from funds the Borrower had on hand and available therefor. In addition, as of the date hereof, and \$\_\_\_\_\_ of the proceeds of the ARRA Bonds have been applied to Green Infrastructure. The Borrower certifies that proceeds of the ARRA Bonds, once made available to the Borrower, were applied to costs of the 2009 Project before other funds available to the Borrower.

5. The Trustee has delivered to the Borrower a copy of Schedule B to be attached to the Series 2009A Bond and Schedule B to be attached to the Series 2009B Bond, each of which reflects the amortization of all advances made or to be made on the date hereof of proceeds of the Series 2009A Bond and the Series 2009B Bond, respectively (i.e., \$\_\_\_\_\_ in respect of the Series 2009A Bond (the sum of the amounts of the Series 2009A Bond applied to pay costs of the 2009 Project or costs of issuance of the Series 2009 Bonds) and \$\_\_\_\_\_ in respect of the Series 2009B Bond (the sum of the amounts of the Series 2009B Bond applied to pay costs of the 2009 Project or costs of issuance of the Series 2009 Bonds or deposited in the Reserve Account as described in paragraph 6 hereof)), as required under Section 7.08(a) of the Indenture. The Borrower hereby acknowledges and agrees that each Schedule B has been calculated in accordance with the provisions of the Resolution and the Indenture, and that each of the Series 2009A Bond and the Series 2009B Bond, with said Schedule B attached thereto, has been duly issued pursuant to the Resolution and is a valid and binding obligation of the Borrower in

accordance with its terms and the terms of the Resolution; provided, however, if the DNRC issues a statement to the Borrower to the effect that the Borrower's obligation to repay the principal amount of the Series 2009A Bond is forgiven in response to the Borrower's request made in paragraph 10 below, the Borrower's obligation to repay the principal of the Series 2009A Bond and interest and surcharges thereon will be forgiven.

6. Pursuant to the Resolution, the Borrower has established a Reserve Account in the Fund (the "Reserve Account") to secure its outstanding Water System Revenue Bond (DNRC Drinking Water State Revolving Fund, Series 2005 (the "Series 2005 Bond"), its Series 2009B Bond, and its Series 2009C Bond (the Series 2005 Bond, Series 2009B Bond, and Series 2009C Bond, collectively, the "Bonds"). The amount on deposit therein on the date hereof totals \$\_\_\_\_\_, of which \$\_\_\_\_\_ secures the Series 2005 Bond and \$\_\_\_\_\_ secures the Series 2009B Bond and Series 2009C Bond. The amount in the Reserve Account is equal to the lesser of: (i) 10 percent of the original principal amount of all series of parity Bonds now outstanding (i.e., \$\_\_\_\_\_), or (ii) the maximum amount of principal and interest payable on the parity Bonds in the current or any future fiscal year (i.e. \$\_\_\_\_\_), based on the amortization of the Series 2009B Bond in accordance with Schedule B thereto.

7. The representations of the Borrower contained in Articles II and III of the Resolution are true and complete as of the date hereof as if made on this date, except to the extent that the Borrower has specifically advised the DEQ and the DNRC otherwise in writing.

8. No default in any covenant or agreement on the part of the Borrower contained in the Resolution has occurred and is continuing.

9. The Borrower is delivering this Certificate to the DNRC, in part, to ensure compliance with ARRA. The Borrower certifies that all iron, steel and manufactured goods (as defined by 2 CFR part 176) used or to be used in the 2009 Project have been and will be produced in the United States and the Borrower accepts the responsibility of compliance with this requirement. The Borrower further certifies that all laborers and mechanics employed by contractors and subcontractors on the 2009 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

10. The Borrower acknowledges and agrees that this Certificate completed in form satisfactory to the DNRC must be executed and delivered to the DNRC by the date that is 30 days after receipt of the form of this Certificate from the DNRC. By submitting this Certificate, the Borrower requests that the DNRC forgive the obligation of the Borrower to repay the principal of the Series 2009A Bond, together with interest and surcharges thereon. The Borrower acknowledges and agrees that (i) the forgiveness of principal of and interest and surcharges on the Series 2009A Bond by the DNRC is contingent on the timely delivery of this Certificate by the Borrower in satisfactory form as determined in the DNRC's sole and complete discretion, (ii) the DNRC has no obligation to grant such forgiveness; (iii) if the DNRC delivers to the Borrower a statement that the obligation of the Borrower to repay the principal of the Series 2009A Bond is not forgiven, the obligation of the Borrower to repay the principal of the Series 2009A Bond plus interest and Administrative Expense Surcharge and Loan Loss Reserve

Surcharge thereon shall continue in full force and effect until the principal of the Series 2009A Bond advanced and interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge thereon are paid in full, as set forth in Schedule B delivered pursuant to paragraph 5 above, and as provided in the Series 2009A Bond and the Resolution;; and (iv) the Borrower shall, as necessary, within the 3-month period specified in the Resolution, adjust its rates and charges to produce Net Revenues required by the rate covenant in the Resolution.

WITNESS our hands on behalf of the Borrower and the seal of the Borrower as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF BILLINGS, MONTANA

By \_\_\_\_\_  
(SEAL) Mayor

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

## REGISTRATION AND TRANSFER

This Bond shall be fully registered as to both principal and interest. No transfer of this Bond shall be valid unless and until (1) the registered holder of the Bond, or his duly authorized attorney or legal representative, executes the form of assignment appearing on this Bond, and (2) the City Clerk as bond registrar (the "Registrar"), has duly noted the transfer on the Bond and recorded the transfer on the Registrar's registration books. The Borrower shall be entitled to deem and treat the person in whose name this Bond is registered as absolute owner thereof for all purposes, notwithstanding any notice to the contrary. Payments on account of the Bond shall be made only to the order of the registered holder thereof, and all such payments shall be valid and effectual to satisfy and discharge the Borrower's liability upon the Bond to the extent of the sum or sums so paid.

### REGISTER

The ownership of the unpaid Principal Balance of this Bond and the interest accruing thereon is registered on the books of the City of Billings, Montana in the name of the registered holder appearing on the first page hereof or as last noted below:

<u>Date of Registration</u>	<u>Name and Address of Registered Holder</u>	<u>Signature of City Clerk</u>
, 2009	<u>Department of Natural Resources and Conservation</u> <u>1625 Eleventh Avenue</u> <u>Helena, MT 59620</u>	_____

### THE FOLLOWING ENTRIES ARE TO BE MADE ONLY BY THE BOND REGISTRAR UPON REGISTRATION OF EACH TRANSFER

The City Clerk of the City of Billings, Montana, acting as Bond Registrar, has transferred, on the books of the Borrower, on the date last noted below, ownership of the principal amount of and the accrued interest on this Bond to the new registered holder noted next to such date, except for amounts of principal and interest theretofore paid.

<u>Date of Transfer</u>	<u>Name of New Registered Holder</u>	<u>Signature of Bond Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

## FORM OF ASSIGNMENT

For value received, this Bond is hereby transferred and assigned by the undersigned holder, without recourse, to \_\_\_\_\_  
on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
(Authorized Signature)

For: \_\_\_\_\_  
(Holder)

**SCHEDULE A**  
**SCHEDULE OF AMOUNTS ADVANCED**

## SCHEDULE B

Total Loan		Administrative	Loan Loss	Reserve
<u>Date</u>	<u>Principal</u>	<u>Interest</u>	<u>Expense</u>	<u>Surcharge</u>
<u>Payment</u>				

APPENDIX C  
ADDITIONAL REPRESENTATIONS AND COVENANTS

None

## APPENDIX D

\$6,137,000  
Sewer System Revenue Bonds  
(DNRC Water Pollution Control State Revolving Loan Program)  
Consisting Of  
\$390,700 Subordinate Lien Taxable Series 2009A Bond  
\$359,300 Series 2009B Bond  
And  
\$5,387,000 Series 2009C Bond

### ***ARRA CERTIFICATE AND REQUEST***

We, \_\_\_\_\_ and \_\_\_\_\_, hereby certify that we are on the date hereof the duly qualified and acting Mayor and City Clerk, respectively, of the City of Billings, Montana (the “Borrower”), and that:

11. Pursuant to Resolution No. 05-18326 of the City adopted on August 22, 2005, as amended and supplemented by Resolution No. 08-18738, adopted on July 28, 2008, as futher amended and supplemented by Resolution No. \_\_\_\_, duly adopted by the City Council of the Borrower on July 27, 2009, entitled “Resolution Relating to \$6,137,000 Sewer System Revenue Bonds (DNRC Water Pollution Control State Revolving Loan Program), Consisting of \$390,700 Series 2009A Bond, \$359,300 Series 2009B Bond, and \$5,387,000 Series 2009C Bond; Authorizing the Issuance and Fixing the Terms and Conditions Thereof” (as so amended and supplemented, the “Resolution”), the Borrower issued its Subordinate Lien Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Taxable Series 2009A, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$390,700 (the “Series 2009A Bond”), its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009B, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$359,300 (the “Series 2009B Bond”), and its Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Loan Program), Series 2009C, dated, as originally issued, as of \_\_\_\_\_, 2009, in the maximum aggregate principal amount of \$5,387,000 (the “Series 2009C Bond”). The Series 2009A Bond and the Series 2009B Bond are referred to herein collectively as the “ARRA Bonds.” The Borrower has reviewed the Resolution, including, without limitation, Articles II and III thereof, and the definitions relating thereto. The Borrower acknowledges and agrees that the ARRA Bonds evidence loans made to the Borrower from the DNRC from funds made available to the DNRC under the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (2009) (“ARRA”), and that this Certificate is being relied upon by the DNRC for ensuring compliance with ARRA requirements applicable to the Borrower, the DNRC, and the 2009 Project (as hereinafter defined). Capitalized terms used herein without definition shall have the meanings given them in the Resolution.

12. The ARRA Bonds were issued to finance a portion of the costs of construction and installation of various improvements to the System, generally described

as the 2009 Project (the “2009 Project”) in the Resolution. Construction of the 2009 Project has complied with all federal and state standards, including, without limitation, EPA regulations and standards and the requirements of ARRA. The 2009 Project is expected to be completed and placed in service on or about \_\_\_\_\_, 20\_\_\_.

13. Costs of the 2009 Project in the amount of \$\_\_\_\_\_ have been paid as of the date of delivery of this Certificate. The Borrower hereby waives its right to any remaining 2009A Committed Amount or 2009B Committed Amount not advanced or to be advanced upon delivery hereof, and acknowledges that the DNRC has reserved the right to reallocate amounts of the Series 2009A Bond and Series 2009B Bond and deliver a replacement Series 2009A Bond and Series 2009B Bond, which shall each be a binding obligation of the City, as described more particularly in the Resolution. The Borrower specifically confirms and agrees that any remaining amounts of the 2009 Loans to be lent to the Borrower, if any, shall be evidenced by the Series 2009C Bond.

14. As of the date hereof, the Borrower has spent the following amounts in connection with the 2009 Project and costs related thereto:

Preliminary Engineering	\$
Engineering/Arch. Design	
Construction Engineering Services	
Construction	
Contingency	
Audit Fees	
Loan Reserves	
Bond Counsel	
<hr/> TOTAL	\$

Of such amounts, \$750,000 were paid from advances of proceeds of the ARRA Bonds, \$5,387,000 from the Series 2009C Bond, and \$\_\_\_\_\_ were paid from funds the Borrower had on hand and available therefor. In addition, as of the date hereof, and \$\_\_\_\_\_ of the proceeds of the ARRA Bonds have been applied to Green Infrastructure. The Borrower certifies that proceeds of the ARRA Bonds, once made available to the Borrower, were applied to costs of the 2009 Project before other funds available to the Borrower.

15. The Trustee has delivered to the Borrower a copy of Schedule B to be attached to the Series 2009A Bond and Schedule B to be attached to the Series 2009B Bond, each of which reflects the amortization of all advances made or to be made on the date hereof of proceeds of the Series 2009A Bond and the Series 2009B Bond, respectively (i.e., \$\_\_\_\_\_ in respect of the Series 2009A Bond (the sum of the amounts of the Series 2009A Bond applied to pay costs of the 2009 Project or costs of issuance of the Series 2009 Bonds) and \$\_\_\_\_\_ in respect of the Series 2009B Bond (the sum of the amounts of the Series 2009B Bond applied to pay costs of the 2009 Project or costs of issuance of the Series 2009 Bonds or deposited in the Reserve Account as described in paragraph 6 hereof)), as required under Section 7.08(a) of the Indenture. The Borrower hereby acknowledges and agrees that each Schedule B has been calculated in accordance with the provisions of the Resolution and the Indenture, and that each of

the Series 2009A Bond and the Series 2009B Bond, with said Schedule B attached thereto, has been duly issued pursuant to the Resolution and is a valid and binding obligation of the Borrower in accordance with its terms and the terms of the Resolution; provided, however, if the DNRC issues a statement to the Borrower to the effect that the Borrower's obligation to repay the principal amount of the Series 2009A Bond is forgiven in response to the Borrower's request made in paragraph 10 below, the Borrower's obligation to repay the principal of the Series 2009A Bond and interest and surcharges thereon will be forgiven.

16. Pursuant to the Resolution, the Borrower has established a Reserve Account in the Fund (the "Reserve Account") to secure its outstanding Sewer System Revenue Bond (DNRC Water Pollution Control State Revolving Fund, Series 2005 (the "Series 2005 Bond"), its Series 2009B Bond, and its Series 2009C Bond (the Series 2005 Bond, Series 2009B Bond, and Series 2009C Bond, collectively, the "Bonds"). The amount on deposit therein on the date hereof totals \$\_\_\_\_\_, of which \$\_\_\_\_\_ secures the Series 2005 Bond and \$\_\_\_\_\_ secures the Series 2009B Bond and Series 2009C Bond. The amount in the Reserve Account is equal to the lesser of: (i) 10 percent of the original principal amount of all series of parity Bonds now outstanding (i.e., \$\_\_\_\_\_), or (ii) the maximum amount of principal and interest payable on the parity Bonds in the current or any future fiscal year (i.e. \$\_\_\_\_\_), based on the amortization of the Series 2009B Bond in accordance with Schedule B thereto.

17. The representations of the Borrower contained in Articles II and III of the Resolution are true and complete as of the date hereof as if made on this date, except to the extent that the Borrower has specifically advised the DEQ and the DNRC otherwise in writing.

18. No default in any covenant or agreement on the part of the Borrower contained in the Resolution has occurred and is continuing.

19. The Borrower is delivering this Certificate to the DNRC, in part, to ensure compliance with ARRA. The Borrower certifies that all iron, steel and manufactured goods (as defined by 2 CRF part 176) used or to be used in the 2009 Project have been and will be produced in the United States and the Borrower accepts the responsibility of compliance with this requirement. The Borrower further certifies that all laborers and mechanics employed by contractors and subcontractors on the 2009 Project have been and will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

20. The Borrower acknowledges and agrees that this Certificate completed in form satisfactory to the DNRC must be executed and delivered to the DNRC by the date that is 30 days after receipt of the form of this Certificate from the DNRC. By submitting this Certificate, the Borrower requests that the DNRC forgive the obligation of the Borrower to repay the principal of the Series 2009A Bond, together with interest and surcharges thereon. The Borrower acknowledges and agrees that (i) the forgiveness of principal of and interest and surcharges on the Series 2009A Bond by the DNRC is

contingent on the timely delivery of this Certificate by the Borrower in satisfactory form as determined in the DNRC's sole and complete discretion, (ii) the DNRC has no obligation to grant such forgiveness; (iii) if the DNRC delivers to the Borrower a statement that the obligation of the Borrower to repay the principal of the Series 2009A Bond is not forgiven, the obligation of the Borrower to repay the principal of the Series 2009A Bond plus interest and Administrative Expense Surcharge and Loan Loss Reserve Surcharge thereon shall continue in full force and effect until the principal of the Series 2009A Bond advanced and interest, Administrative Expense Surcharge, and Loan Loss Reserve Surcharge thereon are paid in full, as set forth in Schedule B delivered pursuant to paragraph 5 above, and as provided in the Series 2009A Bond and the Resolution;; and (iv) the Borrower shall, as necessary, within the 3-month period specified in the Resolution, adjust its rates and charges to produce Net Revenues required by the rate covenant in the Resolution.

WITNESS our hands on behalf of the Borrower and the seal of the Borrower as of this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

CITY OF BILLINGS, MONTANA

(SEAL)

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

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