

RESOLUTION NO. 00- 17548

A RESOLUTION PROVIDING FOR THE RECEIVING OF BIDS AND THE LETTING OF A CONTRACT FOR THE CONSTRUCTION OF IMPROVEMENTS IN SPECIAL IMPROVEMENT DISTRICT NO. 1340

WHEREAS, **Special Improvement District No. 1340** has been duly created; and

WHEREAS, it is necessary to provide for the receiving of bids and the letting of a contract for the construction of improvements within said Special Improvement District;

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

1. CONSIDERATION OF BIDS. At 7:30 p.m. on Monday, **May 8, 2000**, in the Council Chambers of the Police Facility, located at 220 North 27th Street, Billings, MT, the City Council will consider the bids for construction of improvements in Special Improvement District No. 1340.

2. IMPROVEMENTS. The improvements consist of the following: **To improve water, sanitary sewer, storm drain, and street improvements for South 27th Street West and Holman Avenue adjacent to Cenex Park Subdivision** and the doing of all things found necessary and incidental to the aforesaid, all of which shall be in strict accordance with the plans and specifications approved by the City Engineer of the City of Billings, MT.

3. BID SUMITTAL. Said bids shall be submitted to the City Clerk of the City of Billings not later than 2:00 p.m. on Tuesday, **April 11, 2000**, and all bids shall be opened in public at 2:00 p.m. in the City Hall Conference Room, located on the First Floor of the Park III Facility at 210 North 27th Street, Billings, MT, on Tuesday, **April 11, 2000**.

4. BID REJECTION. The City Council shall and does hereby reserve the right to reject any or all bids.

5. NOTICE OF CALL FOR BIDS. The City Clerk is hereby authorized and directed to publish notice inviting bids, stating the time and place said bids must be submitted to the City Clerk, and the time they will be publicly opened. Said notice shall be published in the Billings Times, a newspaper published and circulated in the City of Billings, MT, in the regular issues on **March 30 and April 6, 2000**.

6. OWNERS' RIGHT TO DO WORK. The owners of over 75% of the frontage of lots and lands within said District, liable to be assessed or their agents, may elect to take such work and enter into a written contract to do the whole work at a price at least 5% less than the price at which the same would be awarded, within (3) three days after the awarding of the contract in compliance with the statutes of the State of Montana.

7. CONTRACT. In the event the owners do not elect to do the work, then said successful bidder shall immediately make and execute with the City of Billings, a contract in accordance with the provisions of the notices, resolutions, plans and specifications concerning this Special Improvement District, and all ordinances of the City of Billings. Said contract on the part of the City of Billings shall be approved by the City Council, executed in the name of the City of Billings, by its Mayor and attested by the City Clerk.

8. PERFORMANCE BOND. Upon the execution and delivery of said contract, the successful bidder or contracting owners shall give to the City of Billings a good and sufficient bond in an amount not less than 100% of the amount of the contract, conditioned to the effect that such contract or contractors shall well and truly perform all the terms, conditions and provisions of said contract. In addition, said contractor or contractors shall provide insurance to protect the City and shall be responsible to save the City of Billings harmless from negligent or willful acts of said contractor and contractors.

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9. BID SECURITY. Each bid shall be accompanied by lawful money of the United States, a cashier's check, certified check, bank money order, bank draft drawn and issued by a national banking association situated in the State of Montana, or a bid bond or bonds executed by a surety company authorized to do business in the State of Montana. Said money, check or bid bond to be in an amount equal to 10% of the amount of the bid. If said bid is accepted and the bidder complies with the terms of this resolution as to making, executing and delivering to the City of Billings said contract and bonds as herein required, then said bid security shall be returned.

10. PAYMENTS. All payments for the construction of said improvements shall be made in warrants drawn on the fund of **Special Improvement District 1340** after the bonds of said district have been sold on the estimate of the City Engineer and approved by the City Council; provided, however, that said contractor has paid for the labor performed and materials used on said improvements. Five percent (5%) of the estimates shall be reserved until the final completion of said improvements, in a manner reasonably satisfactory to the City.

11. INCIDENTAL COSTS. Subsequent to the bond sale, the City Engineer shall cause to be paid such amounts as he shall estimate are necessary to cover the actual costs of engineering, inspection, legal expense, printing, preparation of assessment rolls and other incidental expenses properly a charge against the district, by an interfund transfer, and shall be drawn on the funds of the district, processed by the Finance Office and transferred to the appropriate fund of the City.

12. WORKMENS' COMPENSATION. Provisions shall be included in the contract to comply with the City's obligation of insuring payment of the premiums of the contractor to the State of Montana Workmens' Compensation Division and the provisions required in MCA, Title 18, Part 4.

PASSED BY THE CITY COUNCIL AND APPROVED this 27th day of March 2000.

THE CITY OF BILLINGS

BY: Charles F. Tooley
Charles F. Tooley MAYOR

ATTEST:

BY: Marita Herold
Marita Herold, CMC/AE CITY CLERK



"EXHIBIT A"

**NOTICE OF BOND SALE
\$1,037,000 SPECIAL IMPROVEMENT DISTRICT NO. 1340 BONDS
CITY OF BILLINGS, MONTANA**

NOTICE IS HEREBY GIVEN that the City of Billings, Montana (the "City"), will sell to the highest and best bidder for cash, as evidenced by sealed bids, the above-described Bonds drawn against the fund of Special Improvement District No. 1340 in the principal amount of \$1,037,000.

Sealed bids for the purchase of the Bonds will be received until **2:00 p.m. on Monday, the 8th day of May, 2000**, at the office of the City Clerk, 1st Floor of Park III, at 210 North 27th Street, Billings, Montana, at which time the bids will be opened and tabulated. The City Council of the City will meet at 7:30 o'clock p.m. on the same day in the Council Chambers, Second Floor of the Police Facility, 220 North 27th Street, Billings, Montana to consider the bids and the award of sale of the Bonds.

Purpose and Security

The Bonds will be issued for the purpose of financing the cost of construction of certain local improvements (the "Improvements") within or for the benefit of Special Improvement District No. 1340 (the "District"), in accordance with the provisions of Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended (the "Act"). The Bonds will be special, limited obligations of the City and do not constitute general obligations of the City.

The Bonds are payable primarily from the collection of a special tax or assessment which is a lien against the assessable real property within the District benefitted by the Improvements to be undertaken therein or therefor. The special assessments are payable in equal, semiannual installments over a **fifteen (15)** year term, with unpaid installments of the special assessments bearing interest at a rate equal, from time to time, to the sum of (i) the average rate of interest borne by the then outstanding Bonds, plus (ii) one-half of one percent (0.50%) per annum.

The Bonds are secured by the Special Improvement District Revolving Fund of the City (the "Revolving Fund"). The City will agree to make a loan from the Revolving Fund to the district fund established for the District to make good any deficiency then existing in the principal and interest accounts therein and to provide funds for the Revolving Fund by levying a tax or making a loan from the City's general fund to the extent and for the period authorized by the Act.

Date and Type

The Bonds will be dated, as originally issued, as of **May 1, 2000**, and will be issued as negotiable investment securities in registered form as to both principal and interest.

Maturities and Form

If issued as serial bonds, the Bonds shall mature, subject to redemption, on July 1 in the following years and amounts:

<u>Year</u>	<u>Amount</u>
2001	\$62,000
2002	\$65,000

2003	\$70,000
2004	\$70,000
2005	\$70,000
2006	\$70,000
2007	\$70,000
2008	\$70,000
2009	\$70,000
2010	\$70,000
2011	\$70,000
2012	\$70,000
2013	\$70,000
2014	\$70,000
2015	\$70,000

If issued as amortization bonds, the Bonds will be issued as a single bond or divided into several bonds, as the Council may determine, and the principal of the Bonds shall be payable annually on each **July 1**, commencing **July 1, 2001** and continuing through **July 1, 2015**. Serial bonds shall be in the denomination of **\$5,000** each or any integral multiple thereof of single maturities, provided that bond Number One will have a stated maturity in 2001 and shall be in the principal amount of \$7,000. Amortization bonds shall be preferred.

Redemption

Mandatory Redemption. If on any interest payment date there will be a balance in the District Fund after payment of the principal and interest due on all Bonds drawn against it, either from the prepayment of special assessments levied in the Districts or from the transfer of surplus money from the Construction Account to the Principal Account, outstanding Bonds, or portions thereof, in an amount which, together with the interest thereon to the interest payment date, will equal the amount of such funds on deposit in the District Fund on that date are subject to mandatory redemption on that interest payment date. The redemption price shall equal the amount of the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Optional Redemption. The Bonds are subject to redemption, in whole or in part, at the option of the City from sources of funds available therefor other than those described under "Mandatory Redemption" on any interest payment date; **provided, however, the Bonds shall not be called for redemption before July 1, 2003, from the proceeds of refunding special improvement district bonds or warrants.** The redemption price shall equal the principal amount of the Bonds to be redeemed plus interest accrued to the date of redemption.

Selection of Bonds for 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.

Interest Payment Dates, Rates

Interest will be payable each **January 1** and **July 1**, commencing **January 1, 2001**, to the registered owners of the Bonds as such appear in the bond register as of the close of business on the 15th day (whether or not a business day) of the immediately preceding month. All Bonds of the same stated maturity must bear interest from date of original issue until paid at a single, uniform rate. Each rate must be expressed in an integral multiple of 1/8 or 5/100 of 1%. No supplemental or "B" coupons or additional interest certificates are permitted. Interest will be calculated on the basis of a 360-day year consisting of twelve 30-day months.

Bond Registrar, Transfer Agent
and Paying Agent

The Finance Director will act as bond registrar, transfer agent and paying agent (the "Registrar"). The bond register will be kept, transfers of ownership will be effected and principal of and interest on the Bonds will be paid by the Registrar. The City will pay the charges of the Registrar for such services. The City reserves the right to remove the Registrar and to appoint a suitable bank or trust company as successor.

Delivery

Within 45 days after the sale, the City will deliver to the Registrar the printed Bonds ready for completion and authentication. The original purchaser of the Bonds must notify the Registrar, at least five business days before issuance of the Bonds, of the persons in whose names the Bonds will be initially registered and the denominations of the Bonds to be originally issued. If notification is not received by that date, the Bonds will be registered in the name of the original purchaser and, if serial bonds, will be issued in denominations corresponding to the principal maturities of the Bonds. On the day of closing, the City will furnish to the purchaser the opinion of Bond Counsel hereinafter described, an arbitrage certification and a certificate stating that no litigation in any manner questioning the validity of the Bonds is then pending or, to the knowledge of officers of the City, threatened. Payment for the Bonds must be received by the City in immediately available funds at its designated depository on the day of closing. The successful bidder shall submit to the City Clerk not earlier than 48 hours after the award of sale and not later than the day of closing a certificate, in form satisfactory to Bond Counsel, as to the initial reoffering price of each stated maturity of the Bonds and stating that at least ten percent of the principal amount of such Bonds of each stated maturity has been sold at such respective prices.

Qualified tax-exempt Obligations

The Bonds will be designated by the City as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and financial institutions described in Section 265(b)(5) of the Code may treat the Bonds for purposes of Sections 265(b)(2) and 291(e)(1)(B) of the Code as if they were acquired on August 7, 1986.

Legal Opinion

An opinion as to the validity of the Bonds and the exclusion of the interest thereon from gross income for federal income tax purposes and Montana individual income tax purposes will be furnished by **Dorsey & Whitney of Missoula, Montana** as Bond Counsel. The legal opinion will be printed on the Bonds. The legal opinion will state that the Bonds are valid and binding special, limited obligations of the City enforceable in accordance with their terms, except to the extent to which enforceability thereof may be limited by the exercise of judicial discretion or by state or federal laws relating to bankruptcy, reorganization, moratorium or creditors' rights.

Type of Bid and Good Faith Deposit

Sealed bids for not less than **\$1,001,000** and accrued interest on the principal sum of **\$1,037,000** must be mailed or delivered to the undersigned and must be received at the office of the City Clerk prior to the time stated above. Bidders must bid for all or none of the Bonds. Each bid must be unconditional.

Except for a bid by or on behalf of the Board of Investments of the State of Montana, a good faith

deposit (the "Deposit") in the form of money, cashier's check, certified check, bank money order, or bank draft drawn and issued by a federally chartered or state chartered bank insured by the federal deposit insurance corporation or a financial surety bond in the sum of **\$20,740.00** payable to the order of the City is required for a bid to be considered. If money, cashier's check, certified check, bank money order, or bank draft is used, it must accompany the bid and be delivered to the Finance Director. If a financial surety bond is used, it must be from an insurance company licensed and qualified to issue such a bond in the State of Montana and such bond must be submitted to the Finance Director prior to the opening of the bids. The financial surety bond must identify each bidder whose Deposit is guaranteed by such financial surety bond. If the Bonds are awarded to a bidder utilizing a financial surety bond, then that purchaser is required to submit its Deposit to the City in the form of a cashier's check (or wire transfer such amount as instructed by the City or its financial advisor) not later than 1:00 p.m., Mountain Daylight Time, on the next business day following the award. If such Deposit is not received by that time, the financial surety bond may be drawn by the City to satisfy the Deposit requirement. No interest on the Deposit will accrue to the purchaser. The Deposit will be applied to the purchase price of the Bonds. In the event the purchaser fails to honor its accepted bid, the Deposit will be retained by the City as liquidated damages. The Deposit of the unsuccessful bidders will be returned immediately on award of the Bonds to the purchaser or after rejection of all bids. Instructions for wiring the Deposit may be obtained from the City's Finance Director, Robert G. Keefe, 210 North 27th Street, Billings, MT 59101; Phone: (406) 657-8222.

Award

The bid authorizing the lowest net interest cost (total interest on all Bonds from **May 1, 2000** to their maturities, less any premium or plus any discount), will be deemed the most favorable. In the event that two or more bids state the lowest net interest cost, the sale of the Bonds will be awarded by lot. No oral bid will be considered. The City reserves the rights to reject any and all bids, to waive informalities in any bid and to adjourn the sale.

CUSIP Numbers

The City will assume no obligation for the assignment or printing of CUSIP numbers on the Bonds or for the correctness of any numbers printed thereon, but will permit such numbers to be assigned and printed at the expense of the purchaser, if the original purchaser waives any delay in delivery occasioned thereby.

Official Statement

The City will prepare an Official Statement relating to the Bonds, which the City will deem, for purposes of SEC Rule 15c2-12, to be final as of its date. The City will deliver, at closing, a certificate executed by the Mayor, the City Clerk and the Finance Director to the effect that, to the best of their knowledge, as of the date of closing, the information contained in the Official Statement, including any supplement thereto, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading; provided that no comment will be made with respect to any information provided by the successful bidder for inclusion in any supplement to the Official Statement.

By submitting a bid for the Bonds, the successful bidder agrees: (1) to disseminate to all members of the underwriting syndicate copies of the Official Statement, including any supplements prepared by the City, (2) to file promptly a copy of the Official Statement, including any supplement prepared by the City, with a nationally recognized municipal securities repository, and (3) to take any and all other actions necessary to comply with applicable rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board governing the offering, sale and delivery of the Bonds to ultimate purchasers.

Within seven business days after the sale the City will furnish to the successful bidder without

charge **75** copies of the final Official Statement relating to the Bonds. The successful bidder must notify the Finance Director in writing within **three (3)** business days after the award of sale of the Bonds if it requires additional copies of the Official Statement. The cost of additional copies shall be paid by the successful bidder.

Continuing Disclosure

In order to permit bidders for the Bonds and other participating underwriters in the primary offering of the Bonds to comply with paragraph (b)(5) of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the "Rule"), the City will covenant and agree, for the benefit of the registered holders and beneficial owners from time to time of the outstanding Bonds, in the resolution awarding the sale and prescribing the terms of the Bonds, to provide annual reports of specified information and notice of the occurrence of certain events, if material. The District Fund and the Revolving Fund of the City are the only "obligated persons" in respect of the Bonds within the meaning of the Rule for the purposes of disclosing information on an ongoing basis. A description of the undertaking will be set forth in the Official Statement. Failure of the City to enter into an undertaking substantially similar to that described in the Official Statement would relieve the successful bidder of its obligation to purchase the Bonds. The City has complied in all material respects with any undertaking previously entered into by it under the Rule.

Costs

The purchaser of the Bonds shall be responsible for the cost of the printing of the Bonds, any delivery agent charges and the legal opinion.

Information for bidders and bidding forms may be obtained from Robert G. Keefe, Director of Finance, 210 North 27th Street, Billings, Montana 59101, telephone (406) 657-8222.

By order of the City Council and dated: **March 27, 2000.**

MARITA HEROLD, CMC, CITY CLERK
CITY OF BILLINGS
P.O. BOX 1178
BILLINGS, MT 59103

Finance Dept.
35 copies
Publish 4/27/00 and 5/4/00