



# City Commission Agenda

for

## October 20, 2009

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*Please Note: The City Commission agenda format allows citizens to speak on each issue prior to Commission action. We encourage your participation. Please keep your remarks concise and to the topic under consideration.*

**CALL TO ORDER: 7:00 P.M.**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**PROCLAMATIONS**

Red Ribbon Week

White Ribbon Against Pornography Week

**NEIGHBORHOOD COUNCILS**

1. Miscellaneous reports and announcements.

**PUBLIC HEARINGS**

**OLD BUSINESS**

**NEW BUSINESS**

2. Development Agreement between the City and West Bank Properties, LLC (Talcott). Action: Authorize or deny agreement. (***Presented by: Coleen Balzarini***)

**ORDINANCES/RESOLUTIONS**

3. Res. 9843, Resolution relating to \$900,000 Tax Increment Urban Renewal Subordinate Lien Revenue Note, Series 2009. Action: Adopt or deny Res. 9843. (***Presented by: Coleen Balzarini***)

**CONSENT AGENDA** *The Consent Agenda is made up of routine day-to-day items that require Commission action. Items may be pulled from the Consent Agenda for separate discussion/vote by any Commissioner.*

4. Minutes, October 6, 2009, Commission meeting.
5. Total Expenditures of \$2,347,156 for the period of September 25 through October 14, 2009, to include claims over \$5000, in the amount of \$2,023,001.
6. Contracts list.
7. Grants list.
8. Lien release.
9. Approve Final Payment to United Materials of Great Falls, Inc. and the State Miscellaneous Tax Division in the amount of \$17,305.81 for the Third Avenue Northwest Roadway Improvements, Phase 2.
10. Approve Change Order No. 1 to Kuglin Construction in the amount of \$73,489 for the 22<sup>nd</sup> Street South Storm Drain Extension.

Action: Approve Consent Agenda or remove items for further discussion and approve remaining items.

**BOARDS & COMMISSIONS**

11. Miscellaneous reports and announcements.

**CITY MANAGER**

12. Miscellaneous reports and announcements.

**PETITIONS AND COMMUNICATIONS** (*Public comment on any matter that is not on the agenda of the meeting and that is within the jurisdiction of the City Commission. Please keep your remarks to a maximum of 5 minutes*)

13. Miscellaneous reports and announcements.

**CITY COMMISSION**

14. Miscellaneous reports and announcements.

**MOTION TO ADJOURN**



**Item:** Development Agreement between the City of Great Falls and West Bank Properties, LLC

**From:** Martha Capps, Operations Supervisor

**Initiated By:** West Bank Properties, LLC, and Bond Counsel

**Presented By:** Coleen Balzarini, Fiscal Services Director

**Action Requested:** Authorize the City Manager to execute the Development Agreement

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (authorize/deny) the City Manager to execute the Development Agreement between the City of Great Falls and West Bank Properties, LLC.”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Staff recommends the authorization of the City Manager to execute the Development Agreement between the City of Great Falls and West Bank Properties, LLC.

**Background:** On March 20, 2007 the City Commission approved Ordinance 2967 which established the Great Falls West Bank Urban Renewal Plan. This plan included a Tax Increment Financing provision to give the City an additional funding tool in the redevelopment effort. Ordinance 3027, adopted December 16, 2008 and Ordinance 3035, adopted May 5, 2009 by the City Commission, approved the West Bank Properties Projects, for specific planned public infrastructure improvements within the District Boundaries, and authorized the reimbursement to West Bank Properties, LLC for costs from District tax increment revenues. These improvements include the burying of existing power lines, cable and phone lines, relocation of gas lines, installation of water, sanitary sewer, and storm drain utilities, roads, curbs, gutters and sidewalks. All projects are eligible activities under Montana Urban Renewal Law (Section 7-15-4288, MCA). The City will reimburse the Developer for the approved costs incurred from these projects in an amount up to \$900,000.

In accordance with Part 2.04 of Ordinance 3027, this agreement specifies the terms, conditions and financial arrangements including the use of tax increment revenues to pay costs or reimburse the costs of the Public Improvements, and the design, funding, oversight and construction of the Public Improvements.

**Concurrences:** Representatives from Fiscal Services, City Manager's Office, Planning, Engineering, and Public Works have been working with Bond Counsel and the Developer throughout the entire process.

**Fiscal Impact:** No direct fiscal impacts to the City are anticipated as a result of providing tax increment funds for the improvements associated with the development project.

**Alternatives:** The City Commission may revise or could deny the execution of the development agreement; however, the City has already committed to the developer and would have to find alternative funding for repayment of cost associated with infrastructure improvements within the District.

**Attachments/Exhibits:** Development Agreement between City of Great Falls, MT and West Bank Properties, LLC

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DEVELOPMENT AGREEMENT

between

CITY OF GREAT FALLS, MONTANA

and

WEST BANK PROPERTIES, LLC

Dated as of October 20, 2009

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Exhibit C—Tax Increment Financed Improvements

Exhibit D—Additional Tax Increment Financed Improvements

Exhibit E—Form of Developer Request for Payment/Reimbursement

Exhibit F—Form of Note Resolution

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT, dated as of October 20, 2009, between the CITY OF GREAT FALLS, a municipal corporation of the State of Montana (the “City”), and WEST BANK PROPERTIES, LLC, a limited liability company (the “Developer”).

### WITNESSETH:

WHEREAS, Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), authorizes the City to issue and sell its tax increment urban renewal revenue bonds for the purpose of financing all or a portion of the costs of the acquisition, construction and installation of public improvements and related financing costs; and

WHEREAS, the City has, pursuant to the Act, established an urban renewal tax increment district known as the West Bank Urban Renewal District and has provided for the segregation of the tax increment derived therefrom as permitted by the Act; and

WHEREAS, the Developer, proposes to undertake the acquisition, construction, installation and operation of a mixed use commercial property to include a Staybridge Hotel complex with future sites for a restaurant, office building and retail shops to be located generally along the east side of 3<sup>rd</sup> Street NW between 1<sup>st</sup> and 3<sup>rd</sup> Avenues NW in the District as further provided herein; and

WHEREAS, the City Commission, pursuant to Ordinance No. 3027, duly adopted on December 16, 2008, after a duly called and noticed public hearing thereon, approved the Developer Project and associated public improvements as an urban renewal project and authorized financing of certain public improvements as hereafter described with tax increment revenues; and

WHEREAS, Ordinance No. 3027 authorizes the City to enter into a development agreement with the Developer which will set forth the obligations and commitments of the parties with respect to the Developer Project, the Infrastructure Improvements and the use of tax increment revenues; and

WHEREAS, the City Commission, pursuant to Resolution No. 9626, which was adopted on December 5, 2006, and amended Ordinance No. 2967, which was adopted on March 20, 2007 (along with any amendments, the “Ordinance”), created its West Bank Urban Renewal District and adopted an urban renewal plan containing a tax increment financing provision. Pursuant to Ordinance No. 3028, which was adopted on December 16, 2008, the City approved the Federal Courthouse/4th Ave NW Project as an Urban Renewal Project and set forth its intention to issue tax increment urban renewal revenue bonds in the amount of \$2,000,000 to pay the costs of certain public improvements and the Federal Courthouse/4th Ave NW Project, as defined in the Ordinance; and

WHEREAS, the City and the Developer approved on December 17, 2008 a plan that set forth the basic terms and conditions of this Agreement.



NOW THEREFORE, the City, pursuant to the Act, and the Developer, each in consideration of the representations, covenants and agreements of the other, as set forth herein, mutually represent, covenant and agree as follows:

Section 1. Definitions; Rules of Interpretation; Exhibits.

1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context clearly requires otherwise, the following terms have the meanings assigned to them, respectively:

“Act” has the meaning given to it in the Recitals.

“Actual Taxable Value” means the taxable value of the Taxable Property as shown on or calculated from the assessment roll last equalized before the date of reference.

“Additional Bonds” means any Bonds issued pursuant to Section 4 of the Bond Resolution.

“Additional Tax Increment Financed Improvements” means those improvements set forth on Exhibit D to be completed by the Developer.

“Agreement” means this Development Agreement, including any amendment hereof or supplement hereto entered into in accordance with the provisions hereof and of the Bond Resolution.

“Approved Tax Increment Financed Improvements” means those completed improvements described on Exhibit C.

“Available Tax Increment” means the Tax Increment remaining after (i) the annual payment of principal and interest on the Bonds, (ii) the City’s legal cost relating to the Note, and (iii) the City’s cost of administering the District.

“Base Taxable Value” means the Actual Taxable Value of the Taxable Property as of January 1, 2008, as such value is adjusted as part of the “base taxable value” of the District from time to time in accordance with the Act.

“Bond Resolution” means Resolution No. 9815.

“Bonds” means the West Bank Urban Renewal District Bonds to be issued in the estimated amount of \$2,000,000 in one or more series to pay the costs of improvements to the Federal Courthouse and 4<sup>th</sup> Avenue NW and any Additional Bonds.

“Commission” means the City Commission or any successor governing body of the City, however denominated by statute.

“Developer” has the meaning given to it in the preamble.

“Developer Certificate” means the certificate attached hereto as Exhibit E.

“Developer Project Phase I” means the Land, the Facility, the Equipment, and other real and personal property located on the Land, as such may at any time exist, as further described in Exhibit B hereto.

“District” means the West Bank Urban Renewal District created by the Ordinance, as such may be enlarged or reduced in accordance with the provisions of the Act and the Bond Resolution.

“Environmental Laws and Regulations” means and includes the Federal Comprehensive Environmental Compensation Response and Liability Act (“CERCLA” or the “Federal Superfund Act”) as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. §§ 9601 et seq.; the Federal Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. §§ 6901 et seq.; the Clean Water Act, 33 U.S.C. § 1321 et seq.; and the Clean Air Act, 42 U.S.C. §§ 7401 et seq., all as the same may be from time to time amended, and any other federal, state, county, municipal, local or other statute, code, law, ordinance, regulation, requirement or rule which may relate to or deal with human health or the environment including without limitation all regulations promulgated by a regulatory body pursuant to any such statute, code, law or ordinance.

“Equipment” means the items of furniture, equipment and other personal property to be acquired and installed by the Developer on the Land as further described in Exhibit B hereto.

“Event of Default” has the meaning given to it in Section 8.1.

“Facility” means the Staybridge Hotel complex and related improvements to be constructed by the Developer on the Land pursuant to this Agreement, as further described in Exhibit B hereto.

“Incremental Taxable Value” means the amount, if any, by which the Actual Taxable Value of all Taxable Property, as of the date of reference, exceeds the Base Taxable Value.

“Indemnified Parties” has the meaning given to it in Section 7.1.

“Infrastructure Improvements” means the work, materials, and equipment constituting all public infrastructure required by the City and its applicable regulations to be constructed by the Developer as part of the Developer Project Phase I.

“Land” means the real property and interests in real property located in the City and described in Exhibit A hereto.

“Land Use Regulations” means all federal, state and local laws, rules, regulations, ordinances and plans relating to or governing the development or use of the Land or the Facility.

“Mortgage” means any mortgage or security agreement in which the Developer grants a mortgage or other security interest in the Land, or any portion or parcel thereof, any improvements constructed thereon, this Agreement, or otherwise.

“Mortgagee” means any financial or other Person in favor of which a Mortgage is granted.

“Notes” has the meaning given to it in Section 5.1.

“Note Resolution” means the Resolution, in substantially the form attached hereto as Exhibit F, to be adopted by the City Commission of the City authorizing the issuance of the Note, including any amendment thereof or supplement thereto entered into in accordance with the provisions thereof.

“Ordinance” has the meaning given to it in the recitals.

“Person” means any individual, corporation, partnership, joint venture, association, committee, limited liability company, limited liability partnership, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

“State” means the State of Montana.

“Tax Increment” means the amount received by the City pursuant to the Act from the extension of levies of Taxes against the Incremental Taxable Value of the Taxable Property and shall include all payments in lieu of Taxes or beneficial use taxes attributable to the Incremental Taxable Value and all payments received by the City designated as replacement revenues for lost Tax Increment, as provided in Section 6.13 of the Bond Resolution.

“Tax Increment Financed Improvements” means the work activities and the Infrastructure Improvements approved to be financed, as described herein, from the proceeds of the Notes.

“Tax Increment Obligations” means the Bonds and the Note, as long as and to the extent each is outstanding.

“Taxable Property” means all real and personal property located in the District and subject to Taxes, including the Land, the Improvements and the Equipment.

“Taxes” means all taxes levied on an ad valorem basis by any Taxing Jurisdiction against the Taxable Property and includes all payments in lieu of taxes or beneficial use taxes received by the City with respect to the Incremental Taxable Value of the Taxable Property.

“Taxing Jurisdiction” means the State, the City, any school district, local government, municipal corporation, political subdivision or other government entity that levies, during any Fiscal Year during which the tax increment provision of the District is effective under the Act, ad valorem taxes against real or personal property in the District.

“Unavoidable Delay” means a delay resulting from a cause over which the party required to perform does not have control and which cannot or could not have been avoided by the exercise of reasonable care, including but not limited to acts of God, accidents, war, civil unrest, embargoes, strikes, unavailability of raw materials or manufactured goods, litigation and the delays of the other party or its contractors, agents or employees in the performance of their duties under or incident to this Agreement.

1.2. Rules of Interpretation.

(1) This Agreement shall be interpreted in accordance with and governed by the laws of the State without giving effect to the conflicts-of-laws principles thereof.

(2) The words “herein,” “hereof” and words of similar import, without reference to any particular section or subdivision, refer to this Agreement as a whole rather than to any particular section or subdivision hereof.

(3) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed unless otherwise indicated.

(4) Any capitalized terms not defined herein but defined in the Bond Resolution shall have the same meanings herein unless the context hereof clearly requires otherwise.

1.3. Exhibits. The following Exhibits are attached to and by reference made a part of this Agreement:

Exhibit A—Legal Description of the Land

Exhibit B—Description and Costs of the Developer Project Phase I

Exhibit C—Tax Increment Financed Improvements

Exhibit D—Additional Tax Increment Financed Improvements

Exhibit E—Form of Developer Request for Payment/Reimbursement

Exhibit F—Form of Note Resolution

Section 2. Representations.

2.1. City Representations. The City hereby represents as follows:

(a) The City is authorized by law to enter into this Agreement and to adopt the Note Resolution and to carry out its obligations hereunder and thereunder and to issue the Note.

(b) Pursuant to the Act, and after public hearing duly called and held, the City by the Ordinance has duly created the District.

(c) Pursuant to the Act , and after a public hearing duly called and held, the City by Ordinance No. 3027 approved the use of Tax Increment to pay costs of Tax Increment Financed Improvements in an amount not to exceed \$900,000.

(d) The State Department of Revenue has advised the City that the Base Taxable Value of the District was, as of January 1, 2008, \$292,250.

(e) The State Department of Revenue has advised the City that the Base Taxable Value of the Land was, as of January 1, 2008, \$24,214.

(f) Based on the representations of the Developer and the Department of Revenue, the City estimates that upon completion, the Developer Project Phase I will have a market value of \$9,373,000 and will generate Tax Increment revenues of approximately \$170,000 commencing for the tax year 2010-2011. The City makes no representation for the benefit of the Developer as to the amount of Tax Increment the Developer's Project Phase I will generate.

(g) The City Commission has duly authorized the execution and delivery of this Agreement.

2.2. Developer Representations. The Developer hereby represents as follows:

(a) The Developer is a limited liability company, validly existing and in good standing under the laws of the State and is duly qualified to do business in the State. The Developer has the power to enter into this Agreement and by all necessary corporate action has duly authorized the execution and delivery of this Agreement.

(b) The Developer has good marketable title to the Land, subject only to those easements, restrictions and encumbrances listed on Exhibit A hereto.

(c) The Developer has substantially completed the Developer Project Phase I at a cost, exclusive of the Infrastructure Improvements, of \$13,925,825, which costs are set forth on Exhibit B.

(d) The Developer has completed the Tax Increment Financed Improvements to date in the amount of \$761,463 as shown on Exhibit C hereto.

(e) The Developer has completed all public Infrastructure Improvements necessary for the occupancy of the Developer Project Phase I, except as described on Exhibit D.

(f) The Developer has the financial capability or commitments to complete the Additional Tax Increment Financed Improvements shown on Exhibit D, at an estimated cost of \$138,537 and intends to complete the Additional Tax Increment Financed Improvements no later than June 30, 2011.

(g) The Developer is not, or should not reasonably be, aware of any facts the existence of which would cause Developer to be in violation in any material respect of any Environmental Laws and Regulations applicable to the Developer Project Phase I or the Additional Tax Increment Financed Improvements. The Developer has not received from any local, state or federal official any notice or communication indicating that the activities of the Developer may be or will be in violation of any Environmental Laws and Regulations applicable to the Facility.

(h) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prohibited or limited by, conflicts with or results in a breach of the terms, conditions or provisions of the certificate of formation or operating agreement of the Developer or any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(i) There is no action, suit, investigation, or proceeding now pending or, to the knowledge of the Developer, threatened against or affecting the Developer or its business, operations, properties, or condition (financial or otherwise) before or by any governmental department, commission, board, authority, or agency, or any court, arbitrator, mediator or grand jury, which could, individually or in the aggregate, materially and adversely affect the business, operations, properties, or condition (financial or otherwise) of the Developer.

### Section 3. Developer's Undertakings.

#### 3.1. Undertaking and Completion of Developer Project.

(a) Subject to Unavoidable Delays, the Developer will construct the Additional Tax Increment Financed Improvements at the costs shown on Exhibit D in accordance with: (i) this Agreement, (ii) a site plan approved by the City, and (iii) all applicable Land Use Regulations and Environmental Laws and Regulations.

(b) At all times during the term of this Agreement, the Developer will operate and maintain, preserve and keep the Facility or cause the Facility to be operated, maintained, preserved and kept for the purposes for which it was constructed, and with the appurtenances and every part and parcel thereof, in good repair and condition.

(c) The Developer shall not interfere with, or construct any improvements over, any public street or utility easement without the prior written approval of the City. All connections to public utility lines and facilities shall be subject to approval of the City and any private utility company involved. The Infrastructure Improvements, all street and utility installations, relocations, alterations and restorations shall be at Developer's expense and without expense to the City except as specifically provided in Section 4 hereof. The Developer at its own expense shall replace any public facilities or utilities damaged during the construction of the Developer Project Phase I.

#### 3.2. Conditions and Obligations for Construction of the Infrastructure Improvements.

The Developer understands that the City is obligated to follow certain laws with respect to the expenditure of public funds, which includes tax increment revenues. In furtherance of those requirements, the Developer agrees that in the awarding of contracts or subcontracts for the Tax Increment Financed Improvements and the Additional Tax Increment Financed Improvements: (i) it will assure its contractor competitively bids the subcontracts for each of those components and (ii) it will assure that its contractor and subcontractors pay the Montana Prevailing Wage on such contracts or subcontracts related to Tax Increment Financed Improvements. The Developer

will provide to the City all documentation requested to verify the Developer's and its contractor's compliance with the foregoing requirements. Any failure of the Developer's contractors and subcontractors to pay the State Prevailing Wage Rates shall be considered a breach of this Agreement by the Developer, and, in the event of such a breach, in addition to any other remedies provided by this Agreement or by law, the City shall be entitled to exercise any and all measures to assure compliance and retroactive compensation plus interest to employees not paid in accordance with this Agreement, and recovery of any penalty or fine assessed by the State attributed to the Developer's or any of its contractors' or subcontractors' failure to pay Prevailing Wage Rates.

3.3. Construction of Infrastructure Improvements. The Developer has or will construct or otherwise provide all Infrastructure Improvements that are needed for the construction of the Developer Project Phase I. The Developer shall be responsible for coordinating and completing relocation or vacation of utilities and creating and recording of any necessary utility easements in the area of the Developer Project site.

3.4. Easements. To the extent that Infrastructure Improvements are to be located on property of the Developer, the Developer hereby agrees to grant to the City from time to time such easements, rights-of-way and similar licenses as are reasonably necessary to permit the City to own, operate and maintain such Infrastructure Improvements, all as contemplated by this Agreement.

3.5. Permits; Environmental Laws. The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner and in all material respects, all requirements of all local, state and federal laws and regulations which must be obtained or met in connection with the acquisition and construction of the Facility. Without limiting the foregoing, the Developer will request and seek to obtain from the City or other appropriate governmental authority all necessary variances, conditional use permits and zoning changes. The Developer will comply in all material respects with all Environmental Laws and Regulations applicable to the construction, acquisition, and operation of the Facility, will obtain any and all necessary environmental reviews, licenses or clearances under, and will comply in all material respects with, the National Environmental Policy Act of 1969.

#### Section 4. Reimbursement of Tax Increment Financed Improvements.

4.1. Reimbursement of Costs. Subject to the provisions of Sections 4.2 and 4.3, the City will reimburse the Developer for costs of Tax Increment Financed Improvements in the maximum principal amount that can be amortized from the tax increment revenues to be generated by the Developer Project Phase I over a term of twenty-five years at the rate of 5.60% per annum, provided that such principal amount will in no event exceed \$900,000 or the actual amount of approved Tax Increment Financed Improvements.

4.2. Reimbursement Limitations. Any reimbursements paid by the City to the Developer for costs associated with the Tax Increment Financed Improvements will be based on actual paid invoices for incurred costs provided by the Developer, its contractors and subcontractors or utilities. The City may reject any invoice amounts to the extent not related to Tax Increment Financed Improvements. For the avoidance of doubt, the parties agree that not all Infrastructure

Improvements will be reimbursed by the City. The City and the Developer understand and acknowledge that costs of permits and fees, professional consultants, design, engineering, bid specifications, soils, material compaction, testing and engineering and oversight-related costs may be eligible project costs and are included in the costs of Tax Increment Financed Improvements. The City has approved for reimbursement all of the costs shown for the Approved Tax Increment Financed Improvements.

4.3. Reimbursement Conditions. Notwithstanding Section 4.1, the parties agree that the City will not be required to reimburse the Developer for any costs (including costs associated with the Tax Increment Financed Improvements) unless:

(a) all of the Developer's representations as set forth in Section 2.2 are true and correct as of the date of this Agreement,

(b) the Developer is not in breach of any covenant or undertaking as set forth in Section 3 as of the time of such reimbursement,

(c) the Developer and the City have executed a right-of-way agreement granting the City a right of way for entrance and construction with respect to Parcels 3 and 4 of Subdivision SE 1/4SW/14; Section 2, Township 20N, Range 3E, as further described in such right-of-way agreement.

(d) a certificate signed by the Developer in substantially the form attached hereto as Exhibit E shall accompany any invoices or requests for payment to be reimbursed by the City.

## Section 5. Form and Terms of Reimbursement.

5.1. Increment Note Amount and Issuance. To reimburse the Developer for approved costs of Tax Increment Financed Improvements, the City agrees to issue to the Developer its West Bank Urban Renewal District Subordinate Lien Tax Increment Revenue Notes payable from Available Tax Increment, in a determinable principal amount as set forth in Section 4.1, subject to the limitations provided in Section 4 and subject to the satisfaction of all conditions precedent specified herein (the "Series 2009 Notes" or "Notes"). The Notes will be issued in accordance with the terms set forth in this Agreement and the Note Resolution. In the event of any inconsistency between this Agreement and the Note Resolution, the Note Resolution shall control.

The Notes will be issued upon completion of the Developer Project Phase I, the completion and acceptance by the City of the Infrastructure Improvements, the approval of the costs thereof, and the presentation to the City of a Certificate of Occupancy for the Facility. The principal amount of the Notes will be equal to the total amount of all paid invoices submitted by the Developer for the Tax Increment Projects, not to exceed the amount determined in Section 4.1, subject to the limitations provided in Section 4. The Developer must submit the executed Exhibit E with accompanying invoices to the City at least 45 days prior to the date of the issuance of the Notes.



5.2. Terms and Interest Rate of the Notes. The Notes will be issued in two separate series and will be payable over a term ending July 1, 2034. The Series 2009A Note will be issued in the amount of \$761,463 as reimbursement in full for the Approved Tax Increment Financed Improvements. The Series 2009B Note will be issued upon completion of the Additional Tax Increment Financed Improvements and approval of the invoices and costs thereof, in an amount equal to the approved paid invoices, not to exceed \$138,537. The Notes will bear interest at the rate of 5.60% per annum. The Notes will be payable solely from Available Tax Increment in accordance with the Note Resolution. The City's obligation to issue the Series 2009B Note for the Additional Tax Increment Financed Improvements will terminate on September 1, 2011.

5.3. Priority of the Notes. The City agrees not to issue any additional Bonds payable from Tax Increment as long as the Notes are outstanding, unless such Bonds would be used in part to fully pay and redeem the Notes.

5.4. Additional Bonds to Redeem Notes. The City agrees to use its best efforts to issue Additional Bonds in a principal amount sufficient to redeem the Notes and to pay the costs associated therewith as soon as sufficient Tax Increment is available and market conditions reasonably allow.

5.5. Special Limited Obligation. The Developer acknowledges that the Notes are special obligations of the City payable solely from the Available Tax Increment as set forth in the Note Resolution. The Developer understands that the City has no control over the amount of Tax Increment that may be available to pay the principal of and interest on the Notes as due or to issue the Additional Bonds.

## Section 6. Taxes and Tax Increment.

6.1. Taxes. The Developer shall pay or cause to be paid when due and prior to the imposition of penalty all Taxes and all installments of any special assessments payable with respect to the Land, Facility and Equipment.

6.2. Maintenance of Facility, No Appeal of Value. The Developer acknowledges the interest of the City that the Facility should be so maintained and operated so that the Incremental Taxable Value of the District, so long as there are any outstanding Tax Increment Obligations, will generate Tax Increment sufficient to pay the principal of and interest on outstanding Tax Increment Obligations and provide debt service coverage as provided in the Bond Resolution. Accordingly, the Developer agrees to use its commercially reasonable best efforts to maintain and operate the Facility so as to be able at all times to pay promptly and when due all property taxes levied with respect to the Facility. The Developer agrees not to seek, through administrative or judicial review or otherwise, any abatement, deferral or waiver of property taxes lawfully payable with respect to the Facility or contest any such property taxes or the valuation of properties comprising the Facility for tax purposes if the effect thereof would be to reduce the amount of Tax Increment to be received in a Fiscal Year of the City to an amount less than 125% of the amount of debt service payable on the Notes during the twelve-month period commencing on July 2 of such Fiscal Year and ending on the next succeeding July 1.

6.3. City Not To Take Action To Reduce Tax Increment. The City agrees that it will take no action that would limit the amount of Tax Increment below the amount that would be generated absent such actions. In the event that at any time following the date hereof: (i) either (A) the Act is amended in such a manner as to reduce Tax Increment, or (B) Tax Increment is reduced as a result of changes in the law regarding the privilege of public entities to levy real property taxes; and (ii) in lieu of such reduced Tax Increment, the City is authorized to receive and receives revenues in any form in substitution for the lost Tax Increment which additional revenues the City is authorized to spend for the same purposes and under the same conditions that apply to Tax Increment, then the share of such additional revenues attributable to the reduced Tax Increment shall be deemed to be Tax Increment for all purposes of this Agreement, subject, however, to the application of those revenues to the payment of outstanding Bonds as provided in Section 6.13 of the Bond Resolution.

6.4. Injunction; Specific Performance. The parties agree that, in the event of a breach of this Section 6 by any party or its successors or assigns, the non-breaching party would suffer irreparable harm. Therefore, in the event any party or its successors or assigns fails to comply with the provisions of this Section 6, the parties expressly agree that the non-breaching party may pursue any remedy at law or in equity, including without limitation, the remedies of injunction and specific performance.

Section 7. Release and Indemnification Covenants. (a) The Developer releases the City and the Commission members, officers, agents, servants and employees thereof (the “Indemnified Parties”) from, and covenants and agrees that the Indemnified Parties shall not be liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person arising out of or resulting from the construction, installation, operation, ownership or maintenance of the Land or the Facility by the Developer or which is proximately caused by the Developer; provided that, subject to subsection (c) below, the indemnity shall not apply if and to the extent such loss or damage is caused by the gross negligence, willful misconduct or willful misrepresentation of the City, its agents or employees.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, subject to subsection (c) below, the Developer agrees to protect, indemnify and defend the Indemnified Parties and further agrees to hold the Indemnified Parties harmless from and against, any loss, damage, cost (including reasonable attorneys’ fees), claim, demand, suit, action or other proceeding whatsoever initiated by any Person whatsoever (other than the City or a Person claiming by, through or on behalf of the City) and arising or purportedly arising out of (i) violation by the Developer of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding relating to default by Developer of the nature described in Section 6 or brought by the Developer against the City to enforce its rights under this Agreement), or (ii) the acquisition, construction, installation, ownership, maintenance and operation by the Developer of the Facility, or (iii) from the presence on any portion of the Land, of any dangerous, toxic or hazardous pollutants, contaminants, chemicals, waste, materials or substances, as defined in or governed by the provisions of any federal, state or local law, statute, code, ordinance, regulation, requirement or rule relating thereto, and also including ureaformaldehyde, polychlorinated biphenyls, asbestos, asbestos containing materials, nuclear fuel or waste, radioactive materials, explosives, carcinogens and petroleum products, or

any other waste, material, substance, pollutant or contaminant which would subject the owner of the Land to any damages, penalties, liabilities or expense of clean up under any applicable Environmental Control.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or their officers, agents, servants or employees or any other person who may be about the Land to the extent such damage or injury is due to any act of negligence of any person (other than any act of negligence on the part of any such Indemnified Party).

## Section 8. General Provisions.

8.1. Conflicts of Interest; City's Representatives Not Individually Liable. No member, officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement, the Developer Project or the Infrastructure Improvements, nor shall any such member, officer or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, officer or employee of the City shall be personally liable to the Developer in the event of any default under or breach of this Agreement by the City, or for any amount which may become due to the Developer for any obligation issued under or arising from the terms of this Agreement, except for any fraudulent misrepresentation made by any such member, officer or employee in violation of the first sentence of this Section 8.1.

8.2. Rights Cumulative. The parties agree that all rights and remedies of the parties of this Agreement, whether provided by law or by this Agreement, shall be available to the parties and shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by such party, at the same or different times, of any other remedy for the same default or breach or of any of its remedies for any other default or breach of the party. No waiver made by such party with respect to the performance or the manner or time thereof, of any obligation under this Agreement, shall be considered a waiver with respect to the particular obligation of the other party or a condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver of any obligations of the other party. Delay by a party hereto instituting or prosecuting any cause of action or claim hereunder shall not be deemed a waiver of any rights hereunder.

8.3. Term of Agreement. This Agreement shall remain in effect until July 1, 2034 (unless the Developer is then in default hereunder), or such earlier date upon which no Notes or Bonds are outstanding and all obligations of the City under the Note Resolution and the Bond Resolution if Additional Bonds have been issued to redeem the Notes, have been satisfied or discharged, provided that the obligations of the Developer under Section 6 will in any event continue until the termination of the District.

8.4. Limitation on City Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the City contained in any document executed by the City in connection with the Infrastructure Improvements or the Notes shall give rise to any pecuniary liability of the City or a charge against its general credit or taxing powers,

or shall obligate the City financially in any way except with respect to the Available Tax Increment. No failure of the City to comply with any term, condition, covenant or agreement herein shall subject the City to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Available Tax Increment; and no execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the City (except as such constitute Available Tax Increment). Nothing herein shall preclude a proper party in interest from seeking and obtaining specific performance against the City for any failure to comply with any term, condition, covenant or agreement herein; provided that no costs, expenses or other monetary relief shall be recoverable from the City except as may be payable from the Available Tax Increment or proceeds of the Bonds.

8.5. Notices. All notices, certificates or other communications required to be given to the City and the Developer hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid and addressed as follows:

If to the City:	City of Great Falls P.O. Box 5021 Great Falls, Montana 59403 Attn: Fiscal Services Director
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If to the Developer:	West Bank Properties, LLC 4415 River Drive North Great Falls, Montana 59403
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The City and the Developer, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications should be sent.

8.6. Binding Effect. The right and obligations set forth in this Agreement shall inure to the benefit of and shall be binding upon the City and the Developer and their respective successors and assigns.

8.7. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8.8. Amendments, Changes and Modifications. This Agreement may be amended or any of its terms modified only by written amendment authorized and executed by the City and the Developer.

8.9. Further Assurances and Corrective Instruments. The City and the Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Developer Project or the Infrastructure Improvements or for carrying out the expressed intention of this Agreement.

8.10. Execution Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

8.11. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope of intent of any provisions or Sections of this Agreement.

*[remainder of page left intentionally blank]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY OF GREAT FALLS**  
Party of the First Part

REVIEWED FOR LEGAL CONTENT:

\_\_\_\_\_  
Gregory T. Doyon, City Manager

\_\_\_\_\_  
Chad Parker, Acting City Attorney

ATTEST:

**(Seal of the City)**

\_\_\_\_\_  
Lisa Kunz, City Clerk

**WEST BANK PROPERTIES LLC**  
Party of the Second Part

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

Its: \_\_\_\_\_

STATE OF MONTANA            )  
County of Cascade            ) ss.  
City of Great Falls            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, before me, a Notary Public in and for the State of Montana, personally appeared [\_\_\_\_\_], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she/they executed the same.

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

(NOTARIAL SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Printed name: \_\_\_\_\_  
Residing at \_\_\_\_\_, Montana  
My Commission expires:

## EXHIBIT A

### LEGAL DESCRIPTION OF THE LAND

The real property and interests in such property located in the City of Great Falls, County of Cascade, State of Montana, and described as follows:

#### **TALCOTT PROPERTIES/WEST BANK PROPERTIES**

A parcel of land located in the Southeast Quarter of the Southwest Quarter (SE $\frac{1}{4}$ , SW $\frac{1}{4}$ ) and Government Lot 7, of Section 2 and Government Lot 2 of Section 11, all in T.20N., R.3E., P.M.M., City of Great Falls, Cascade County, Montana described as follows:

Commencing at the south quarter corner of said Section 2, said point being the Point of Beginning, Extending thence along the south line of said Section 2, N89°59'54"W, a distance of 112.00 feet, to a point on the east right-of-way line of Third Street Northwest (M.D.O.T. Proj. #F-278 (4)): thence N0°42'32"E, a distance of 539.77 feet; thence N81°41'02"E, a distance of 186.29 feet to the point of curvature of a non-tangent curve, concave to the north, having a radius of 430.00 feet, a central angle of 19°59'33", and a chord of 149.28 feet bearing N71°41'10"E; thence easterly along said curve a distance of 150.04 feet to the point of curvature of a non-tangent curve, concave to the south, having a radius of 120.00 feet a central angle of 49°13'28", and a chord of 99.95 feet bearing N86°18'16"E; thence Northeast along said curve, a distance of 103.10 feet; thence S69°05'00"E, a distance of 30.51 feet, the last three courses along the south line of Third Avenue Northwest to a point on the west right-of-way line of the Burlington Northern and Santa Fe Railway; thence S16°59'39"W, a distance of 326.07 feet to the point of curvature of a tangent curve, concave to the east, having a radius of 855.06 feet, a central angle of 4°13'49", and a chord of 63.12 feet bearing S15°03'25"W; thence South along said curve, a distance of 63.13 feet; thence S12°45'50"W, a distance of 269.94 feet to the point of curvature of a tangent curve, concave to the west having a radius of 753.24 feet, a central angle of 8°09'10", and a chord of 107.09 feet bearing S16°50'26"W, thence south along said curve a distance of 107.18 feet, thence S20°55'00"W a distance of 121.03 feet, the last five courses being along the west right-of-way line of the Burlington Northern and Santa Fe Railway; thence N69°00'21"W, a distance of 38.07 feet; thence N20°57'01"E, a distance of 245.03 feet; thence N89°59'54"W, a distance of 155.48 feet to the point of beginning

EXHIBIT B

DESCRIPTION AND COSTS OF THE DEVELOPER PROJECT PHASE I  
EXCLUSIVE OF INFRASTRUCTURE IMPROVEMENTS

**Staybridge Suites Great Falls Montana**

Land (Equity)	\$	1,960,200
Site Utilities	\$	197,750
	\$	<u>2,157,950</u>
James Talcott Construction	\$	8,023,000
Landscape	\$	100,000
Front Desk System	\$	175,000
Phones, Signs	\$	189,275
Furniture, Fixtures and Equipment	\$	2,000,000
Pre-Opening Expense	\$	280,000
Construction Interest/ Lease Exp	\$	497,000
Contingency	\$	200,000
	\$	<u>11,464,275</u>
Architectural Design/Supervision	\$	192,100
Permits	\$	40,000
Title/Escrow	\$	15,000
Franchise Fee	\$	56,500
	\$	<u>303,600</u>
Total Project Development Costs	\$	13,925,825



## EXHIBIT C

### DESCRIPTION OF THE TAX INCREMENT FINANCED IMPROVEMENTS

#### Tax Increment Financed Improvements

##### Burying of Existing Utility Lines

<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
Northwestern Energy	Power Lines	90135876	1/26/2009	1030	268,000	268,000
Qwest	Telephone Lines	H94A015	4/17/2009	1076	31,500	31,500
Energy West	Gas Lines	8903	1/13/2009	1024	4,270	4,270
City of Great Falls	Inspection				10,863	10,863
					<b>314,633</b>	<b>314,633</b>

##### Water, Sanitary Sewer and Storm Sewer Requirements

<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
Cretex	Concrete pipe & manholes	300087	4/24/2009	1089	6,099	6,099
		300116	4/25/2009	1089	6,247	6,247
		300371	5/13/2009	1119	6,887	6,887
		300422	5/15/2009	1119	2,266	2,266
		300482	5/20/2009	1119	34,482	34,482
		300624	5/29/2009	1119	2,890	2,890
300690	5/30/2009	1119	16,145	16,145		
Schumaker	Site utilities				155,480	155,907
James Talcott Const	Site utilities				791	791
James Talcott Const	Side grading				4,998	7,697
	Payroll burden				3,126	0
Schumaker	Asphalt & subgrade prep work				57,093	33,683
James Talcott Const	Project admin				2,147	2,147
	Field supervision				7,030	7,030
	Payroll burden				4,956	4,956
	Equipment				10,000	10,000
					<b>320,637</b>	<b>297,226</b>

##### Curb & Gutter

<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
Schumaker	Gravel base @ curb/gutter				2,700	19,100
James Talcott Const	Labor to date				21,761	
	Payroll burden to date				12,056	
	Material to date				24,352	
	Labor to complete				4,934	
	Payroll burden to complete				2,664	
	Material to complete				5,525	
					<b>73,992</b>	<b>19,100</b>

<b>Sidewalks</b>						
<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
James Talcott Const	Labor to date				9,371	22,155
	Payroll burden to date				5,060	
	Material to date				1,030	
	Labor to complete				13,166	
	Payroll burden to complete				7,110	
	Material to complete				13,970	
					<u>49,707</u>	<u>22,155</u>
<b>Engineering</b>						
<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
NCI	Engineering	1	4/1/2009	1059	33,595	29,221
		2	5/13/2009	1094	33,035	29,530
		3	5/31/2009	1123	31,996	31,718
		4	7/14/2009	1155	12,760	12,760
		5	8/13/2009		5,120	5,120
					<u>116,506</u>	<u>108,349</u>
<b>Traffic Study</b>						
<u>Vendor:</u>	<u>Description:</u>	<u>Invoice:</u>	<u>Payment Date:</u>	<u>Check #:</u>	<u>Amount Submitted:</u>	<u>Amount Approved:</u>
TIS	Traffic Study				11,000	0
					<u>11,000</u>	<u>0</u>
				<b>TOTAL</b>	<u>\$886,474</u>	<u>\$761,463</u>

# EXHIBIT D

## DESCRIPTION OF ADDITIONAL TAX INCREMENT FINANCED IMPROVEMENTS

Installation of sidewalks, curbs & gutters in the areas depicted on the attached Site Plan as “Areas Remaining”; and

If the Developer acquires the “Pizza Hut” property, the installation of sidewalks on both sides of 1<sup>st</sup> Ave N.W.; extension and burying of public utilities to the area, including electricity, gas, cable and telephone.

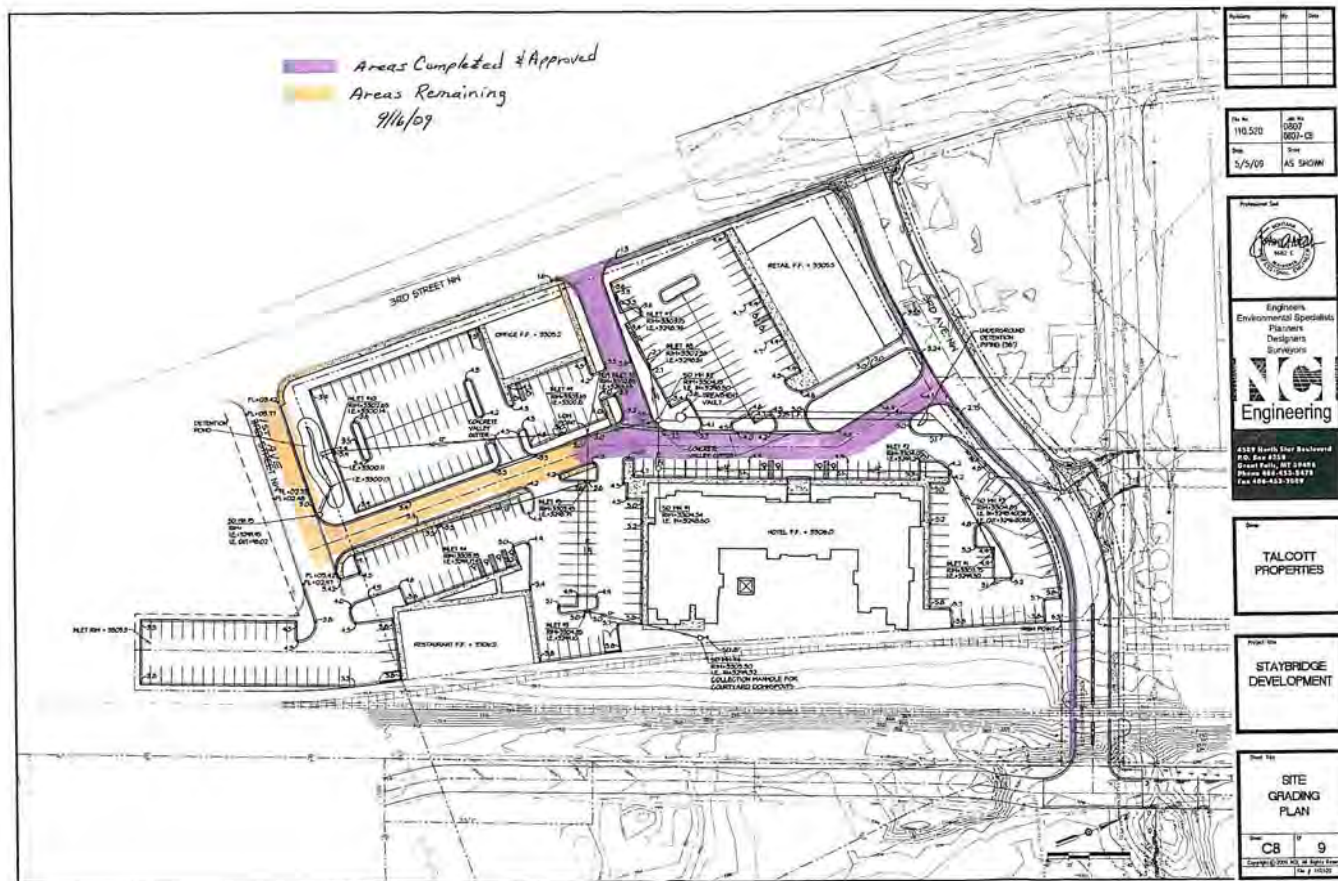


EXHIBIT E

FORM OF DEVELOPER REQUEST FOR PAYMENT/REIMBURSEMENT

**Requisition Certificate**

TO: City of Great Falls, Montana (the "City")  
FROM: West Bank Properties LLC (the "Developer")  
SUBJECT: Reimbursements for Tax Increment Financed Improvements (Costs of Project)

This represents Requisition Certificate No. \_\_\_\_\_ in the total amount of \$ \_\_\_\_\_ for payment of the Additional Tax Increment Financed Improvements.

The undersigned, as Authorized Developer Representative, intends that this certificate will satisfy the requirements of Section 4.3(d) of the Development Agreement and does hereby certify on behalf of the Developer that:

- a) the expenditures for which payment is to be made or for which reimbursement is requested are listed in summary form in the attached schedule;
- b) the amounts requested are to be or have been paid by the Developer for property or to contractors, subcontractors, materialmen, engineers, architects, or other persons who will perform or have performed necessary or appropriate services or will supply or have supplied necessary or appropriate materials for the acquisition, construction, renovation, equipping, and installation of the Project, as the case may be, and that, to the best of my knowledge, the fair value of such property, services, or materials is not exceeded by the amounts requested to be paid;
- c) the costs of work to be reimbursed has been competitively bid and the contractor or subcontractor has paid the Montana prevailing wage for such work;
- d) no part of the several amounts requested to be paid to the Developer, as stated in such certificate, has been or is the basis for the payment of any money in any previous or then pending request; and
- e) the payment of the amounts requested will not result in a breach of any of the covenants of the Developer contained in the Development Agreement.

Dated: \_\_\_\_\_, 200\_\_

WEST BANK PROPERTIES LLC

By: \_\_\_\_\_  
Authorized Developer Representative

SCHEDULE TO REQUISITION CERTIFICATE NO. \_\_\_\_\_

Payee

Purpose

Amount

EXHIBIT F  
FORM OF NOTE RESOLUTION



**Item:** Resolution 9843, Resolution relating to \$900,000 Tax Increment Urban Renewal Subordinate Lien Revenue Note, Series 2009 Authorizing and directing the issuance, awarding the sale, and prescribing the form, terms and security thereof

**From:** Martha Capps, Operations Supervisor

**Initiated By:** Bond Counsel

**Presented By:** Coleen Balzarini, Fiscal Services Director

**Action Requested:** Adoption of Resolution 9843

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**Suggested Motion:**

1. Commissioner moves:

“I move that the City Commission (adopt/deny) Resolution 9843”

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Staff recommends adoption of Resolution 9843.

**Background:** On March 20, 2007 the City Commission approved Ordinance 2967 which established the Great Falls West Bank Urban Renewal Plan. This plan included a Tax Increment Financing provision to give the City an additional funding tool in the redevelopment effort. Ordinance 3027, adopted December 16, 2008 and Ordinance 3035, adopted May 5, 2009 by the City Commission, approved the West Bank Properties Projects, for specific planned public infrastructure improvements within the District Boundaries, and authorized the reimbursement to West Bank Properties, LLC for costs from District tax increment revenues. These improvements include the burying of existing power lines, cable and phone lines, relocation of gas lines, installation of water, sanitary sewer, and storm drain utilities, roads, curbs, gutters and sidewalks. All projects are eligible activities under Montana Urban Renewal Law (Section 7-15-4288, MCA). The City will reimburse the Developer for the approved costs incurred from these projects in an amount up to \$900,000.

In accordance with Part 2.04 of Ordinance 3027, the City and West Bank Properties, LLC will enter into a Development Agreement, approved at this same meeting by the City Commission. This agreement specifies the terms, conditions and financial arrangements including the use of tax increment revenues to pay costs or reimburse the costs of the Public Improvements, and the design, funding, oversight and construction of the Public Improvements.

The approval of Resolution 9843 will authorize and direct the issuance of subordinate notes to West Bank Properties, LLC and prescribe the form, terms and security. The notes will be repaid with tax increment funds generated within the West Bank Urban Renewal District in a subordinate position to the previously authorized \$2,000,000 Tax Increment Revenue Bonds, Series 2009A for improvements in the Federal Courthouse/4<sup>th</sup> Avenue NW project. A default in any semi-annual interest payment due does not constitute a note default, but interest shall accrue on any unpaid interest from the interest due date. Default in the payment of interest and principal caused by insufficient Tax Increment shall not constitute a note default before the final stated maturity of the note so long as interest shall accrue on the over-due installments of interest. Staff anticipates closing on the note November 1, 2009.

**Concurrences:** Representatives from Fiscal Services, City Manager's Office, Planning, Engineering, and Public Works have been working with Bond Counsel and the Developer throughout the entire process.

**Fiscal Impact:** No direct fiscal impacts to the City are anticipated as a result of providing tax increment funds for the improvements associated with the development project.

**Alternatives:** The City Commission could deny adoption of Resolution 9843; however, the City has already committed to the developer and would have to find alternative funding for repayment of cost associated with infrastructure improvements within the District.

**Attachments/Exhibits:** Resolution 9843



CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Great Falls, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO \$900,000 TAX INCREMENT URBAN RENEWAL SUBORDINATE LIEN REVENUE NOTES, SERIES 2009; AUTHORIZING AND DIRECTING THE ISSUANCE, AWARDED THE SALE AND PRESCRIBING THE FORM AND TERMS THEREOF AND THE 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 Commission of the City at a regular meeting on October 20, 2009, and that the meeting was duly held by the City Commission 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 Commissioners voted in favor thereof: \_\_\_\_\_

\_\_\_\_\_ ; voted against the same: \_\_\_\_\_ ; abstained from voting thereon: \_\_\_\_\_ ; or were absent: \_\_\_\_\_ .

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

\_\_\_\_\_  
Lisa Kunz, City Clerk

RESOLUTION NO. 9843

RESOLUTION RELATING TO \$900,000 TAX INCREMENT  
URBAN RENEWAL SUBORDINATE LIEN REVENUE  
NOTES, SERIES 2009; AUTHORIZING AND DIRECTING THE  
ISSUANCE, AWARDED THE SALE AND PRESCRIBING  
THE FORM AND TERMS THEREOF AND THE SECURITY  
THEREFOR

BE IT RESOLVED by the City Commission (the “Commission”) of the City of Great Falls, Montana (the “City”), as follows:

Section 1. Authorization and Recitals.

1.01. Authorization. Under the provisions of Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the “Act”), the City is authorized to create urban renewal areas, prepare and adopt an urban renewal plan therefor and amendments thereto, undertake urban renewal projects therein, provide for the segregation and collection of tax increment with respect to property taxes collected in such areas, issue its bonds to pay the costs of such projects and to refund bonds previously issued under the Act and pledge to the repayment of the bonds the tax increment and other revenues derived from projects undertaken within the urban renewal area.

1.02. Prior City Actions. Pursuant to the Act, the City has created the City of Great Falls West Bank Urban Renewal District as an Urban Renewal Area (the “Urban Renewal Area”) and has approved the West Bank Urban Renewal Plan as an Urban Renewal Plan, as amended (the “Urban Renewal Plan”) in accordance with the provisions of the Act. The Urban Renewal Plan provides for the segregation and collection of Tax Increment with respect to the Urban Renewal Area. The Urban Renewal Area and the Urban Renewal Plan providing for the segregation and collection of the Tax Increment have been duly and validly created and adopted in strict accordance with applicable provisions of the Act and are in full force and effect.

1.03. The Federal Courthouse/4th Avenue NW Project. Pursuant to the Act and Ordinance No. 3027, the City approved the construction of a 64,133 square foot building, which will be leased to the United States General Accounting Office for use as the Federal Courthouse, as an Urban Renewal Project and set forth its intention to finance the costs of various public improvements through the issuance of tax increment revenue bonds. The improvements to be financed include various improvements to the City’s West Bank Park including improved access, parking lot, fire protection, landscaping, and rehabilitation of facilities; the 4<sup>th</sup> Avenue NW Reconstruction Project consisting of a track crossing and rail signals, realignment and reconstruction of 3rd Avenue NW, including land acquisition; improvements to the intersection with 3<sup>rd</sup> Street NW; the extension and looping of the City’s water main to connect 3<sup>rd</sup> Street NW to Central Avenue West and the Federal Courthouse; relocation of existing utilities; and cleanup as necessary of contaminated soils (the “Brownfield Cleanup”) (collectively, the “Public Projects”) (together with the Federal Courthouse, the “Federal Courthouse/4<sup>th</sup> Avenue NW Project”).

1.04. The West Bank Properties Project. Pursuant to the Act and the procedures contained in the Plan, as amended by Ordinance No. 3027, adopted December 16, 2008, the City designated and approved the West Bank Properties Project consisting of developing in the Urban Renewal Area a mixed use commercial project to include a Staybridge Hotel complex with future sites for a restaurant, office building and retail shops to be located generally along the east side of 3<sup>rd</sup> Street NW between 1<sup>st</sup> and 3rd Avenues NW as an urban renewal project (the “West Bank Properties Project”) and authorized the use of tax increment revenues in an amount not to exceed \$900,000 to pay for or reimburse West Bank Properties, LLC (the “Developer”) for the costs of designing, constructing and installing the following infrastructure improvements to be designated the Tax Increment Financed Infrastructure Improvements:

- i. moving and/or burying the existing power lines, cable lines and telephone lines;
- ii. rerouting and extending existing gas lines;
- iii. installing water, sanitary sewer and storm sewer facilities as required by the City;
- iv. installing street and roadway improvements and adjacent curbs, gutters and sidewalks within the interior confines of the West Bank Properties Project; and
- v. in the event the Developer acquires the property in the Urban Renewal Area currently owned by Pizza Hut, designing and constructing underground power lines and other City utilities running across such property.

1.05. The Series 2009A Bonds. Pursuant to the Act and Resolution No. 9815, adopted by the Commission on July 21, 2009 (the “Original Resolution”), the City has issued its \$2,000,000 Tax Increment Revenue Bonds, Series 2009A (Federal Courthouse/4th Avenue NW Project) (the “Series 2009A Bonds”).

1.06. Definitions. Terms used with initial capital letters but not defined herein have the meanings given them in the Original Resolution.

1.07. Adequacy of Tax Increment. The City has been advised by D.A. Davidson & Co., of Great Falls, Montana, as its financial advisor that the projected Tax Increment revenues of the Urban Renewal Area will not allow for issuance of an additional series of bonds in the principal amount of \$900,000 on a parity with the Series 2009A Bonds.

1.08. Development Agreement. The City and the Developer will enter into the Development Agreement, to be dated as of October 20, 2009 a copy of which has been presented to the commission and which is hereby approved (the “Development Agreement”). Pursuant to the Development Agreement, the City agreed to issue its West Bank Urban Renewal Area Tax Increment Subordinate Lien Revenue Notes in an aggregate principal amount not to exceed \$900,000 as specified herein (the “Series 2009 Notes”) to the Developer for the purposes of reimbursing the costs of the Tax Increment Financed Infrastructure Improvements.

1.09. Tax Increment. Based on the certificate of the City Manager and City Fiscal Services Director, it is estimated that the Tax Increment to be received from the Urban Renewal

Area upon completion of the Federal Courthouse/4<sup>th</sup> Avenue NW Project and the West Bank Properties Project will be at least \$316,000 per year. The maximum annual debt service on the Series 2009A Bonds is \$153,810 and the proposed maximum annual debt service on the Series 2009 Notes, assuming they are issued in the aggregate principal amount of \$900,000, is \$70,073, which equals \$223,883.

1.10. Subordinate Obligations. The City has reserved the right under Section 4.04 of the Original Resolution to issue Subordinate Obligations for the purpose of financing urban renewal projects. The pledge and appropriation of such Tax Increment for the payment and security of such subordinate bonds, notes or other evidence of indebtedness is expressly subordinated to the pledge and appropriation made for the benefit and security of the Series 2009A Bonds and all Additional Bonds issued and to be issued under and secured by the Original Resolution in accordance with Sections 4.01 to 4.03. In the event of the issuance of any such Subordinate Obligations, the principal, interest and redemption premiums thereon will be made payable from one or more additional accounts created within the Tax Increment Funds for that purpose, and the balance of funds at any time on hand in any such accounts shall be available and shall be transferred whenever needed to meet the current requirements of the Bond Account and Reserve Account set forth in Sections 5.03 and 5.04 of the Original Resolution.

1.11. Conditions Precedent to Issuance of Note. The City has accepted a portion of the Tax Increment Financed Infrastructure Improvements and other public infrastructure and has received and approved paid invoices for costs of the approved Tax Increment Financed Infrastructure Improvements in the principal amount of \$761,463. The Developer has requested and the City has agreed in the Development Agreement to issue the Series 2009 Notes in two separate installments: one to reimburse the Developer for the total approved invoices to date; and one to be issued upon completion of construction of any Tax Increment Financed Infrastructure Improvements and approval of the invoices and costs related thereto, but no later than June 30, 2011 (the “Additional Tax Increment Financed Infrastructure Improvements”).

1.12. The Developer has represented in the Development Agreement that it will retain the Series 2009 Notes in its investment portfolio and has no present intention to offer or sell the Series 2009 Notes to members of the public.

1.13. Findings and Determinations. This Commission made certain findings and determinations in Section 2 of the Original Resolution. Those findings and determinations are hereby ratified and confirmed in light of the findings in this Section 1 and the terms and conditions of the Series 2009 Notes as provided in this Supplemental Resolution. In particular, it is hereby found, determined and declared that the estimated Tax Increment to be received by the City from the Urban Renewal Area, upon completion of the Federal Courthouse/4<sup>th</sup> Avenue NW Project and the West Bank Properties Project as set forth in Section 1.08, and pledged to the payment of the Series 2009A Bonds and to be pledged to the Series 2009 Notes will be sufficient to pay the principal thereof and interest thereon when due.

## Section 2. Issuance of Series 2009 Notes; Form.

2.01. Issuance of Series 2009 Notes. Based on the findings set forth in Section 1, this Commission hereby authorizes the issuance of the Series 2009 Notes, to be denominated “Tax

Increment Urban Renewal Subordinate Lien Revenue Notes, Series 2009,” in the aggregate principal amount of \$900,000, in accordance with the provisions of the Original Resolution and this Supplemental Resolution.

2.02. Form of Series 2009 Notes. The Series 2009 Notes to be issued pursuant to this Supplemental Resolution shall be issued in two installments designated the Series 2009A Note and the Series 2009B Note and shall be prepared in substantially the form attached hereto as Exhibit A (which is incorporated by reference and made a part hereof) with such appropriate variations, omissions and insertions as may be required to denote the separate series thereof and as are permitted or required by the Original Resolution or this Supplemental Resolution.

### Section 3. The Series 2009 Notes.

3.01. Terms of Notes, Interest Rate, and Payment Dates. The Series 2009 Notes shall bear interest at the rate of 5.60% from their date of delivery, until paid or discharged.

The Series 2009 Notes shall be prepayable, at the option of the City, in whole or in part on any Business Day. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months. The Series 2009 Notes shall be issuable only in fully registered form, and the ownership of the Series 2009 Notes shall be transferred only upon the note register of the City hereinafter described. Principal of and interest on the Series 2009 Notes are payable in lawful money of the United States of America. Interest only on the Series 2009 Notes shall be payable on July 1, 2011. Principal and interest on the Series 2009 Notes shall be payable on January 1 and July 1 in each year, commencing January 1, 2012, and continuing through July 1, 2034, by check or draft of the Registrar mailed to the owners of record thereof as such appear in the note register as of the close of business on the last day of the immediately preceding month, whether or not such day is a business day.

The Series 2009 Notes shall bear an original issue date as of their respective dates of execution, authentication, and delivery to the Developer.

3.02. Series 2009A Note. The Series 2009A Note shall be issued in the principal amount of \$761,463. Principal of and interest on the Series 2009A Note shall be paid in the amounts and on the dates as shown on a schedule of payments to be appended to the Series 2009A Note as of its date of issuance and delivery.

3.03. Series 2009B Note. The Series 2009B Note will be issued by the City in a principal amount equal to the approved paid invoices for the Additional Tax Increment Financed Infrastructure Improvements approved in accordance with the Development Agreement, not to exceed \$138,537. Principal of and interest on the Series 2009B Note will be paid in the amounts and the dates as shown on a schedule of payments to be appended to the Series 2009B Note as of its date of issuance and delivery.

3.04. System of Registration. The City hereby appoints the City Fiscal Services Director to act as registrar, transfer agent and paying agent (the “Registrar”). The City reserves the right to appoint a bank, trust company or financial institution as successor bond registrar, transfer agent or paying agent, as authorized by the Model Public Obligations Registration Act of

Montana, Montana Code Annotated, Title 17, Chapter 5, Part 11, as amended (the “Registration Act”), but the City agrees to pay the reasonable and customary charges of the Registrar for the services performed. This Section 3.03 shall establish a system of registration for the Series 2009 Notes as defined in the 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) Register. The Registrar shall keep at its principal office a bond register in which the Registrar shall provide for the registration of ownership of Series 2009 Notes and the registration of transfers and exchanges thereof.

(b) Transfer. Upon surrender for transfer of any Series 2009 Notes 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 Series 2009 Notes of the same series and a like aggregate principal amount, interest rate and maturity as requested by the transferor. The Registrar may, however, close the books for registration of the transfer of any Series 2009 Notes or portion thereof selected or called for redemption.

(c) Exchange. Whenever any Series 2009 Notes is surrendered by the registered owner for exchange, the Registrar shall authenticate and deliver one or more new Series 2009 Notes of the same series and a like aggregate principal amount, interest rate and maturity, as requested by the registered owner or the owner’s attorney in writing.

(d) Cancellation. All Series 2009 Notes surrendered upon any transfer or exchange shall be promptly canceled by the Registrar and thereafter disposed of as directed by the City.

(e) Improper or Unauthorized Transfer. When any Series 2009 Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such Series 2009 Note or separate instrument of 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 Series 2009 Notes is at any time registered in the bond register as the absolute owner of such Series 2009 Note, whether such Series 2009 Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, premium, if any, and interest on such Series 2009 Note 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 of the City upon such Series 2009 Note to the extent of the sum or sums so paid.

(g) Taxes, Fees and Charges. For every transfer or exchange of Series 2009 Notes (except upon a partial redemption of Series 2009 Notes pursuant to Section 3.05), 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 Series 2009 Notes. In case any Series 2009 Notes shall become mutilated or be lost, stolen or destroyed, the Registrar shall deliver a new Series 2009 Note of the same series and a like amount, number, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Series 2009 Notes or in lieu of and in substitution for any such Series 2009 Notes lost, stolen or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of a Series 2009 Note lost, stolen or destroyed, upon filing with the Registrar of evidence satisfactory to it that such Series 2009 Note was lost, stolen or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of 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 Series 2009 Notes so surrendered to the Registrar shall be canceled by it and evidence of such cancellation shall be given to the City. If the mutilated, lost, stolen or destroyed Series 2009 Notes have already matured or such Series 2009 Notes have been called for redemption in accordance with its terms, it shall not be necessary to issue new Series 2009 Notes prior to payment.

3.05. Prepayment; Redemption. The Series 2009 Notes are prepayable by the City, at its option, in whole or in part on any business day upon 30 days written notice to the Purchaser. Upon partial prepayment of a Series 2009 Note, the outstanding principal amount thereof will be reamortized by the City Fiscal Services Director who shall deliver a copy of the new amortization schedule to the holder of the Series 2009 Note.

3.06. Execution and Delivery. The Series 2009 Notes shall be forthwith prepared for execution under the direction of the City Clerk, at the expense of the City, and shall be executed on behalf of the City by the signatures of the Mayor, the City Manager, the City Fiscal Services Director, and the City Clerk; provided that said signatures may be printed, engraved or lithographed facsimiles thereof. The seal of the City need not be affixed to or imprinted on any Series 2009 Notes. In case any officer whose signature or a facsimile of whose signature shall appear on the Series 2009 Notes shall cease to be such officer before the delivery of any Series 2009 Notes, 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 Series 2009 Notes shall be valid or obligatory for any purpose or be entitled to any security or benefit under the Note Resolution unless and until a certificate of authentication on such Series 2009 Note has been duly executed by the manual signature of an authorized representative of the Registrar. Certificates of authentication on each Series 2009 Note need not be signed by the same representative. The executed certificate of authentication on each Series 2009 Note shall be conclusive evidence that it has been authenticated and delivered under the Note Resolution and in accordance with the provisions hereof. When the Series 2009 Notes have been fully executed and authenticated, 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, and the Purchaser shall not be obligated to see to the application of the purchase price.

3.07. Transcript Certification. The officers of the City are directed to furnish to the Purchaser and to bond counsel certified copies of all proceedings and information in their official records relevant to the authorization and issuance of the Series 2009 Notes, and such certificates and affidavits as to other matters appearing in their official records or otherwise known to them as may be reasonably required to evidence the validity and security of the Series 2009 Notes, and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations and recitals of the City as to the correctness of all facts stated therein and the completion of all proceedings stated therein to have been taken.

#### Section 4. Security for the Series 2009 Notes.

4.01. Creation of Series 2009 Subordinate Lien Note Account. Pursuant to Section 4 of the Original Resolution, there is hereby created in the Tax Increment Fund a Series 2009 Subordinate Lien Note Account. There are hereby established within the Bond Account two separate subaccounts, designated as the Interest Account and the Sinking Fund Account.

4.02. Pledge of Tax Increment to the Subordinate Lien Note Account. All Tax Increment remaining after the allocation required in Section 5.02 of the Original Resolution to the Interest Account, the Sinking Fund Account, and the Reserve Account for the Bonds, and the payment of the City's annual costs in administering the District in an amount not to exceed the amount approved for the administration of the District pursuant to the City's annual budget, and the payment of City costs associated with Series 2009 Notes, not to exceed \$40,000, shall be credited to the Series 2009 Subordinate Lien Note Account (a) first, to the Interest Account, until the balance on hand in the Interest Account is at least equal to all interest on the Series 2009 Notes due and payable from the Interest Account within the next six full calendar months; and (b) second, after any credit to the Interest Account required by the preceding clause, to the Sinking Fund Account, until the balance on hand in the Sinking Fund Account is at least equal to the principal due and payable from the Sinking Fund within the next six full calendar months in an amount sufficient to pay the interest on the Series 2009 Notes. Any amounts remaining after deposit to the Series 2009 Subordinate Lien Note Account as required herein shall be credited to the General Tax Increment Development Fund as provided in Section 5.06 of the Original Resolution.

4.03. Failure to Pay Interest and Principal as Due. Default in the payment of any interest on the Note when it becomes due does not constitute an event of default, but interest shall accrue on any unpaid interest from the interest payment date. Default in the payment of interest and principal attributable to insufficient Tax Increment shall not constitute an Event of Default before the final Stated Maturity of the Note so long as interest shall accrue on the over-due installments of interest.

If not all principal of and accrued but unpaid interest on the Series 2009 Notes has been paid or duly provided for on July 1, 2034 when due, such shall constitute an Event of Default, and as authorized by Section 7-15-4292(1)(b) of the Act, all principal and interest then due and interest on past-due installments of interest and past-due installments of principal, if any, shall



continue to be obligations of the City payable from Tax Increment; provided, however, that, notwithstanding anything to the contrary contained in the Series 2009 Notes, interest on all such amounts shall cease to accrue from and after July 31, 2034.

Funds on hand in the Subordinate Lien Note Account shall be applied to the payment of the Series 2009 Notes as follows: first, to the payment of interest on past-due interest; second, to the payment of past-due interest; third, to the payment of accrued and unpaid interest that is then due and payable; fourth, to the payment of past-due principal; fifth, to the payment of principal due thereon.

4.04. Lien on Tax Increment. The Series 2009 Notes are issued under Section 4.04 of the Original Resolution as subordinate lien obligations and shall be payable solely out of the Tax Increment pledged to the Series 2009 Subordinate Lien Note Account. The City shall keep, perform and observe each and every of its covenants and undertakings set forth in the Original Resolution.

#### Section 5. Other Covenants of the City.

5.01. Punctual Payment. The City will punctually pay or cause to be paid the principal and interest to become due in respect to all the Series 2009 Notes, in strict conformity with the terms of the Series 2009 Notes and of this Resolution, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and all Supplemental Resolutions and of the Series 2009 Notes. Nothing herein contained shall prevent the City from making advances of its own moneys however derived to any of the uses or purposes referred to herein, nor shall be deemed or constitute a pledge or appropriation of funds or assets of the City other than those expressly pledged or appropriated hereby.

5.02. Accumulation of Claims of Interest. In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Series 2009 Notes and will not, directly or indirectly, be a party to or approve any such arrangements by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Resolution, except subject to the prior payment in full of the principal of all of the Series 2009 Notes then outstanding and of all claims for interest which shall not have been so extended or funded.

5.03. Against Encumbrances. The City will not encumber, pledge or place any charge or lien upon any of the Tax Increment superior to or on a parity with the pledge and lien herein created for the benefit of the Series 2009 Notes.

#### Section 6. Tax Matters.

6.01. Use of Tax Increment Financed Infrastructure Improvements. The Tax Increment Financed Infrastructure Improvements have been constructed by the Developer and have been accepted by the City as part of its public improvements. The Tax Increment Financed

Infrastructure Improvements will be owned and maintained 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 Tax Increment Financed Infrastructure Improvements or security for the payment of the Series 2009 Notes which might cause the Series 2009 Notes to be considered “private activity bonds” or “private loan bonds” within the meaning of Section 141 of the Code.

6.02. General Covenant. The City covenants and agrees with the owners from time to time of the Series 2009 Notes 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 either series of Series 2009 Notes to become includable in gross income for federal income tax purposes under the Code and applicable Treasury Regulations (the “Regulations”), and covenants to take any and all actions within its powers to ensure that the interest on both series of Series 2009 Notes will not become includable in gross income for federal income tax purposes under the Code and the Regulations.

6.03. Arbitrage Certification. The Mayor, City Manager and the City Fiscal Services Director, being among those officers of the City charged with the responsibility for issuing the Series 2009 Notes pursuant to this resolution, are authorized and directed to execute and deliver to the Original Purchaser thereof 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 2009 Notes, it is reasonably expected that the proceeds of the Series 2009 Notes will be used in a manner that would not cause the Series 2009 Notes to be “arbitrage bonds” within the meaning of Section 148 of the Code and the Regulations.

6.04. Arbitrage Rebate Exemption.

(a) The City hereby represents that the Series 2009 Notes qualify for the exception for small governmental units to the arbitrage rebate provisions contained in Section 148(f) of the Code. Specifically, the City represents:

(1) Substantially all (not less than 95%) of the proceeds of the Series 2009 Notes will be used for local governmental activities of the City.

(2) The aggregate face amount of all “tax-exempt bonds” (including warrants, contracts, leases and other indebtedness, but excluding private activity bonds and current refunding bonds) issued by or on behalf of the City and all subordinate entities thereof during 2009 is not reasonably expected to exceed \$5,000,000. To date in 2009, neither the City nor any such subordinate entity has issued such tax-exempt bonds.

(b) If notwithstanding the provisions of paragraph (a) of this Section 7.04, the arbitrage rebate provisions of Section 148(f) of the Code apply to the Series 2009 Notes, the City hereby covenants and agrees to make the determinations, retain records and rebate to the United States the amounts at the times and in the manner required by said Section 148(f) and applicable Regulations.

6.05. Information Reporting. The City shall file with the Secretary of the Treasury, not later than February 15, 2010, a statement concerning the Series 2009 Notes containing the information required by Section 149(e) of the Code.

6.06 Qualified Tax-Exempt Obligations. Pursuant to Section 265(b)(3)(B)(ii) of the Code, the City hereby designates the Series 2009 Notes as “qualified tax-exempt obligations” for purposes of Section 265(b)(3) of the Code. The City has not designated any obligations in 2009 other than the Series 2009 Bonds under Section 265(b)(3). The City hereby represents that it does not anticipate that obligations bearing interest not includable in gross income for purposes of federal income taxation under Section 103 of the Code (including refunding obligations as provided in Section 265(b)(3) of the Code and including “qualified 501(c)(3) bonds” but excluding other “private activity bonds,” as defined in Sections 141(a) and 145(a) of the Code) will be issued by or on behalf of the City and all “subordinate entities” of the Urban Renewal Area in 2009 in an amount greater than \$30,000,000.

Section 7. Effective Date. This Supplemental Resolution shall be in full force and effect from and after its final passage and approval according to law.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana,  
\_\_\_\_\_, 2009.

\_\_\_\_\_  
Dona R. Stebbins, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

\_\_\_\_\_  
Chad Parker, Acting City Attorney

EXHIBIT A

UNITED STATES OF AMERICA  
STATE OF MONTANA  
COUNTY OF CASCADE

**CITY OF GREAT FALLS**

TAX INCREMENT URBAN RENEWAL SUBORDINATE LIEN REVENUE NOTE  
SERIES \_\_\_\_\_

Note \_\_\_\_\_

\$ \_\_\_\_\_

REGISTERED OWNER: West Bank Properties, LLC  
4415 River Drive North  
Great Falls, Montana 59403

FOR VALUE RECEIVED, THE CITY OF GREAT FALLS (the "City"), a duly organized and validly existing municipal corporation located in Cascade County, Montana, acknowledges itself to be specially indebted and hereby promises to pay to the registered owner named above, or registered assigns, the principal amount specified above or, if this Note is prepayable as stated herein, on any date prior thereto on which this Note shall have been duly called for redemption, and to pay interest on said principal amount to the registered owner hereof from its date of delivery or from such later date to which interest has been paid or duly provided for until this Note is paid. Interest only on the Note shall be paid July 1, 2011. Installments of principal and interest on this Note in the amounts set forth on Schedule I attached hereto shall be payable on each January 1 and July 1, commencing on January 1, 2012 and continuing through July 1, 2034. Interest and principal of this Note are payable to the registered holder by check or draft of the City Fiscal Services Director of the City of Great Falls, Montana, as bond registrar and paying agent, or its successor designated under the Resolution described herein (the "Note Registrar").

This [ \_\_\_\_\_ ] Note is one of a series of two authorized "Tax Increment Urban Renewal Subordinate Lien Revenue Notes" of the City to be issued in the aggregate principal amount of \$900,000 (the "Series 2009 Notes"), issued and secured by resolutions adopted by the City Commission of the City, including Resolution No. 9815, adopted July 21, 2009, Resolution No. 9843, adopted October 20, 2009 (as so amended and supplemented and as from time to time hereafter amended and supplemented in accordance with its terms, the "Resolution"), to which Resolution, copies of which are on file with the City, reference is hereby made for a description of the nature and extent of the security, the respective rights thereunder of the Holder of the Series 2009 Notes and the City and the terms upon which the Series 2009 Notes (as defined in the Resolution) are to be delivered. As provided in the Resolution, this [ \_\_\_\_\_ ] Note is issued in the principal amount of [ \_\_\_\_\_ ] (\$[ \_\_\_\_\_ ]) by the City for the purpose of reimbursing West Bank Properties, LLC for the cost of a certain urban renewal project (the "West Bank Properties Project") within the Great Falls Urban Renewal Area (the "Urban Renewal Area") of the City, thereby assisting activities in the public interest and for the public welfare of the City.

This [ ] Note is issued pursuant to and in full compliance with the Constitution and laws of the State of Montana and the home rule charter of the City, particularly Montana Code Annotated, Title 7, Chapter 15, Parts 42 and 43, as amended (the "Act"), and pursuant to the Resolution. This [ ] Note is payable solely from Tax Increment received by the City and credited to the Series 2009 Subordinate Lien Note Account as defined in the Resolution. The payment of this [ ] Note and the lien of the Tax Increment is subordinate to the payment of the City's \$2,000,000 Tax Increment Revenue Bonds, Series 2009 (Federal Courthouse/4th Avenue NW Project) (the "Series 2009A Bonds"). Tax Increment results from the extension of ad valorem taxes levied by certain Taxing Bodies against the incremental taxable value of properties within the Urban Renewal Area pursuant to the Act and includes payments in lieu of taxes and any replacement revenues received from the City for the benefit of the Urban Renewal Area as reimbursements for lost tax increment attributable to changes in rates of taxation on classes of property or any payments received by the City designated as replacement revenues for lost tax revenues in the Urban Renewal Area. [It is anticipated that the City will issue the Series 2009B Note in the principal amount of \$138,537, on or before June 30, 2011 payable on parity with the Series 2009A Note.] By the Resolution, the City has pledged the Tax Increment received by the City to the Series 2009 Subordinate Lien Note Account after all deposits are made to the Tax Increment Debt Service Fund and Reserve Fund for the Series 2009A Bonds.

**This [ ] Note is not a general obligation of the City and the City's general credit and taxing powers are not pledged to the payment of the Series 2009 Notes or the interest thereon. The Series 2009 Notes shall not constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter limitations. The payment of the Series 2009 Notes is subordinate to the payment of the Series 2009A Bonds.**

Outstanding principal of this Note shall bear interest from its date of delivery until paid at the rate of five and sixty hundredths of one percent (5.6)% per annum. As used herein, "Business Day" means any day other than (i) a Saturday or Sunday, or (ii) a legal holiday in the State of Montana. Interest on the Note shall be calculated on the basis of a year of 360 days composed of twelve 30-day months. Closing shall mean the day of execution and delivery of the Series 2009 Notes and receipt of the purchase price thereof.

This Note is prepayable by the City, at its option, in whole or in part on any business day upon 30 days written notice to the Purchaser. Upon partial prepayment of this Note, the outstanding principal amount thereof will be reamortized by the City Fiscal Services Director who will forward a copy of the new amortization schedule to the Registered Owner. The City Fiscal Services Director, at least ten days prior to the designated redemption date, shall give the Holder notice of the date and amount of any prepayment portions thereof shall cease to bear interest.

As provided in the Resolution and subject to certain limitations set forth therein, this Note is transferable upon the books of the City at the office 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. Upon any such transfer or exchange, the City will cause a new Note 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 Note is registered as the absolute owner hereof, whether this Note 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.

IT IS HEREBY CERTIFIED, RECITED, COVENANTED AND DECLARED that all acts, conditions and things required by the Constitution and laws of the State of Montana and the home rule charter and ordinances and resolutions of the City to be done, to exist, to happen and to be performed in order to make this Note a valid and binding special, limited obligation of the City in accordance with its terms have been done, do exist, have happened and have been performed as so required; that this Note has been issued by the City in connection with urban renewal projects (as defined in the Act); that the City, in and by the Resolution has validly made and entered into covenants and agreements with and for the benefit of the holders from time to time of the Note issued thereunder including covenants that it will pledge, appropriate and credit the Tax Increment derived from the Urban Renewal Area to the Series 2009 Subordinate Lien Note Account after the required credit to the Tax Increment Debt Service Fund of the City for the payment of the Series 2009A Bonds; that the pledge of the Tax Increment to the prepayment of the Series 2009 Notes is subordinate to the Series 2009A Bonds; that no additional bonds may be issued and made payable from the Tax Increment Debt Service Fund on a parity with the outstanding Series 2009A Bonds or from the Subordinate Lien Note Account on a parity with the outstanding Series 2009 Notes until the Series 2009 Notes are paid or redeemed; that all provisions for the security of the Holders of the Notes as set forth in the Resolution will be punctually and faithfully performed as therein stipulated; that the issuance of this Note does not cause the indebtedness of the City to exceed any constitutional, statutory or charter limitation.

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

IN WITNESS WHEREOF, the City of Great Falls, Cascade County, Montana, by its City Commission, has caused this Note and the certificate on the reverse side hereof to be executed by the facsimile signatures of the Mayor, the City Manager, the City Fiscal Services Manager, and the City Clerk.

CITY OF GREAT FALLS, MONTANA

(Facsimile Signature)  
Mayor

(SEAL)

(Facsimile Signature)  
City Manager

(Facsimile Signature)  
City Fiscal Services Director

(Facsimile Signature)  
City Clerk

Dated:

CERTIFICATE OF AUTHENTICATION

This is one of the Tax Increment Urban Renewal Revenue Note, Series 2009, delivered pursuant to the Resolution mentioned within.

CITY FISCAL SERVICES DIRECTOR,  
CITY OF GREAT FALLS,  
as Note Registrar, Transfer Agent  
and Paying Agent

By \_\_\_\_\_

The following abbreviations, when used in the inscription on the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM --	as tenants in common	UTMA.....Custodian..... (Cust) (Minor)
TEN ENT --	as tenants by the entireties	
JT TEN --	as joint tenants with right of survivorship and not as tenants in common	under Uniform Transfers to Minors Act..... (State)

Additional abbreviations may also be used.

ASSIGNMENT

FOR VALUED RECEIVED the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

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

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE:

\_\_\_\_\_  
/ \_\_\_\_\_ /

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration, enlargement or any change whatsoever.

SIGNATURE GUARANTEE

\_\_\_\_\_  
Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note Registrar, which requirements include membership or participation in STAMP or such other "signature guaranty program" as may be determined by the Registrar in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.



Regular City Commission Meeting

Mayor Stebbins presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE**

**ROLL CALL:** City Commissioners present: Dona R. Stebbins, Bill Bronson, John Rosenbaum and Mary Jolley. Also present were the City Manager, Assistant City Manager, Acting City Attorney, Directors of Community Development, Fiscal Services, Park and Recreation, Planning and Public Works, Interim Library Director, the Fire Chief, Police Chief, and the City Clerk.

**PROCLAMATION:** Mayor Stebbins read a Proclamation for YWCA Week Without Violence.

**NEIGHBORHOOD COUNCILS**

1. There were no miscellaneous reports or announcements from neighborhood council representatives.

**PUBLIC HEARINGS**

**OLD BUSINESS**

**NEW BUSINESS**

**ORDINANCES/RESOLUTIONS**

Res. 9866. Adopted.

**2. RESOLUTION 9866, REMODEL TAX BENEFITS, 907 SMELTER AVENUE NORTHEAST.**

Community Development Director Mike Rattray reported that approval of the resolution will allow for the taxes generated by this project to be added to the existing tax base over the next five years in increments of 20 percent each year.

**Commissioner Rosenbaum moved, seconded by Commissioner Bronson, that the City Commission adopt Resolution 9866.**

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Mayor Stebbins asked if there were any inquiries from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, inquired about County approval, and whether the School District was getting the right to approve this request. Mr. Rattray responded that the application provided by the Department of Revenue is a four part application. It only goes to the two local governing bodies. The City and County take action separately by resolution.

Mr. Gessaman asked if he was saying the School District has no say, and were they giving up their taxes? Mr. Rattray responded that the School District does not pass a resolution relative to this. Only the City and County mills are affected by approval.

Mr. Gessaman read section (1) of § 15-24-1501, MCA. His understanding of that section is that the School District is having taxes taken away and having nothing to say about this. In addition, he is concerned that the Resolution is not in accordance with State law because it does not contain a schedule. Mr. Rattray responded that this resolution has been passed since the late-1980's and has never had one returned by the Department of Revenue. The resolution meets all of the criteria of the DOR.

Mr. Gessaman also disagreed with staff's recommendation for adoption of Resolution 9866 for a remodeling tax benefit. He said the law doesn't say complete replacement of a building. He believes the City is stretching what is allowed under § 15-24-1501, MCA. He believes this to be similar to the issue about parliamentary procedure. He stated he may be laying out the groundwork for someone to sue this Commission. Mr. Rattray responded that this Resolution does comply with the statute in that this property was destroyed by fire and it is truly a reconstruction.

Motion carried 4-0.

**Consent Agenda.  
Approved.**

**CONSENT AGENDA**

3. Minutes, September 15, 2009, Commission meeting.
4. Total expenditures of \$3,205,707 for the period of September 2-30, 2009, to include claims over \$5,000, in the amount of \$2,906,532.
5. Contracts list.
6. Award bid for Bay Drive Trail (Phase I) ARRA Project to United Materials of Great Falls in the amount of \$339,218.15. **OF 1306.5**
7. Approve the cancellation of unpaid checks over one year old.
8. Award construction contract to Paradise Fencing and Construction, Inc. in the amount of \$97,411,39 for the Water Treatment Plant fences, irrigation and lighting. **OF 1307.1**
9. Award construction contract to United Materials of Great Falls, Inc. in the amount of \$886,516.25 for Phase II – 7<sup>th</sup> and 8<sup>th</sup> Avenues South water main replacement. **OF 1515.1**
10. Award construction contract to Central Plumbing and Heating, Inc. in the amount of \$214,138,14 for the Grande Vista Storm Drainage Improvements. **OF 1520**
11. Approve final payment to Planned and Engineered Construction, Inc. and the State Miscellaneous Tax Fund in the amount of \$9,577.20 for the Sanitary Sewer Trenchless Rehabilitation. **OF 1566**

**Commissioner Jolley moved, seconded by Commissioner Bronson, that the City Commission approve the Consent Agenda as presented.**

With regard to Item 7, Commissioner Jolley asked if the terms unclaimed checks and unreturnable bonds meant the same and was responded to affirmatively.

Mayor Stebbins asked if there were any inquiries from the public.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, asked if the contract price on Agenda Item 5B was an increase from the previous year. Chief Grove responded it was an increase negotiated with the School administration for hours after duty that officers are employed to work. Mr. Gessaman asked what the percentage of increase was. Chief Grove didn't have that information in front of him.

With regard to Agenda Item 7, he noted that the list must be entered into the minutes of the City Commission proceedings. There was a similar item on the July 21, 2009, agenda, with the same notation. When he looked at the July 21<sup>st</sup> minutes, the list was not attached. City Clerk Lisa Kunz responded that, pursuant to statute, the list is attached to the written minutes. The personal information is not posted on the web.

Mr. Gessaman commented that this has been done twice in a three month period. He asked if there was a regular schedule and what was the dollar amount written off. Fiscal Services Director Coleen Balzarini responded that this listing of checks is from the court. The court has a separate checking account with regard to bonds that have been posted. It is a separate listing and so it has separate action taken on it. Typically, it is done once per year. The July agenda was for the master checking account for all the other City operations. The City attempts to contact the person of an outstanding check two times. The check will be canceled in the event the person comes in and did not cash the check. The City will reissue another check. She does not know what the total dollar amount is without doing some research.

Regarding Items 6 and 8, Mr. Gessaman commented he couldn't understand why the engineer's estimates were off by so much. Also regarding Item 6, he inquired what "one responsive bid was received" meant? He asked how many bids were received if only the responsive bid was listed. City Clerk Lisa Kunz responded that only one bid was received in response to the Invitation to Bid.

Motion carried 4-0.

## **BOARDS & COMMISSIONS**

### **12. APPOINTMENT, BOARD OF ADJUSTMENT.**

**Commissioner Bronson moved, seconded by Commissioner Rosenbaum, to appoint Jeffrey M. Foster to the Board of Adjustment to**

**Jeffrey M. Foster  
appointed to the Board  
of Adjustment.**

a three-year term through September 30, 2012.

Mayor Stebbins asked if there was any discussion amongst the Commissioners. No one responded.

Motion carried 4-0.

**Charles Fulcher and  
David A. Campbell  
appointed to the Parking  
Advisory Commission.**

**13. APPOINTMENTS, PARKING ADVISORY COMMISSION.**

**Commissioner Jolley moved, seconded by Commissioner Bronson, to appoint Charles Fulcher and David A. Campbell to the Parking Advisory Commission.**

Mayor Stebbins asked if there was any discussion amongst the Commissioners or inquiries from the public. No one responded.

Mayor Stebbins and Commissioner Jolley extended a welcome to the new members of the Parking Advisory Commission.

Motion carried 4-0.

**14. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

**CITY MANAGER**

**15. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

City Manager Gregory T. Doyon reported that he received a notice of retirement from Cheryl Patton effective December 31<sup>st</sup>. Mr. Doyon extended his gratitude to Ms. Patton for her help in his transition. She will be deeply missed.

**PETITIONS AND COMMUNICATIONS**

**16. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins opened the meeting to Petitions and Communications.

**Board appointments,  
meeting attendance,  
SME.**

**16A. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, commented that he believes it behooves the people who are appointed to show up and be present when they are appointed. Mr. Gessaman referred to the minutes of the last Commission meeting and commented that no one spoke in support of or opposition to Resolutions 9849, 9850 and 9865. Again, he believes when a resolution is being supported by someone and being acted upon, the person should appear at the Commission meeting. Next, with regard to Mr. Hubbard's comments regarding a Supreme Court ruling, he referred to an October 1<sup>st</sup> *USA Today* article regarding the EPA now establishing rules to cut emissions at factories and power plants. Lastly, Mr. Gessaman read a

quote from a local blog regarding an SME cooperative's annual meeting. He asked if anyone could remember how many times Tim Gregori said that ECP's financing for the power plant was no problem.

**Upcoming projects/  
Development.**

**16B. Brett Doney**, Great Falls Development Authority, residing at 3048 Delmar Drive, reported that he just came back from an annual Economic Development conference and wanted to update everyone and share some good news: Rainbow Dam groundbreaking; City staff working with BNSF to make the Bay Drive extension of the River Trail happen; several Brownfield loan fund deals are in the works, including two downtown projects that he hopes to close on in the next few months; two downtown projects are in development, a restaurant in the Quality Inn, and Steve Alley has started on the other half of his Central Avenue building; the Holiday Inn Express broke ground, so Great Falls will have its first water park hotel; the Department of Energy approved the loan guarantee for the MADL; and, finally, he just closed on a loan with Ashlon, a company that partnered with Cascade County to test Canadian battery technology.

**ECP's rate structure.**

**16C. Donna Zook**, 2718 Carmel Drive, referred to a September 27<sup>th</sup> *Tribune* article regarding Huntley Cooperative. She inquired how much of a rate increase did ECP have in 2008 in comparison to YVEC.

Ms. Balzarini responded that ECP's rate structure was slightly different during the transition period into the blended rate. Those rate increases being referred to were the actual final blended rates that the cooperatives pay. ECP has a transitory rate, but would be similar to those percentages.

Ms. Zook requested a copy of the rates.

Ms. Balzarini answered that the 2009 rates are posted on the City's website.

Ms. Zook requested 2008 rates.

Ms. Balzarini responded the rates were not comparable in 2008. She explained that prior to January, 2009, ECP had a pass through rate. ECP was responsible for the fixed price of the contracts, plus any imbalance sales out into the market. There was not a fixed rate from Southern Montana. ECP was totally responsible for those blocks of power being provided from PPL through Southern Montana. Ms. Balzarini invited Ms. Zook to meet with her to get the information she is requesting.

**Written response to  
accusations at prior  
meeting.**

**16D. Aart Dolman**, 3016 Central Avenue, thanked Commissioner Beecher for sending him a letter in response to his request. He requested that, in the future, individual staff members in communication with the public be refrained by the Commissioners.

**Corrected NC 8 meeting  
days.**

**16E. Karen Grove**, 1816 1<sup>st</sup> Avenue North, pointed out that the correct times for NC 8 meetings are the third Thursdays of each month at the Pre-

Release Center at 6:30 p.m., not the third Tuesdays, as reflected in the last meeting minutes.

**CITY COMMISSION**

**17. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

Mayor Stebbins thanked the anonymous poet who recently sent her mail.

**ADJOURNMENT**

**Adjourn.**

There being no further business to come before the Commission, **Commissioner Bronson moved, seconded by Commissioner Rosenbaum, that the regular meeting of October 6, 2009, be adjourned at 7:40 p.m.**

Motion carried 4-0.

\_\_\_\_\_  
Mayor Stebbins

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

Minutes Approved: October 20, 2009



**ITEM:** \$5,000 Report  
 Invoices and Claims in Excess of \$5,000

**PRESENTED BY:** Fiscal Services Director

**ACTION REQUESTED:** Approval with Consent Agenda

**TOTAL CHECKS ISSUED AND WIRE TRANSFERS MADE ARE NOTED BELOW WITH AN ITEMIZED LISTING OF ALL TRANSACTIONS GREATER THAN \$5000:**

MASTER ACCOUNT CHECK RUN FOR OCTOBER 1, 2009 TO OCTOBER 7, 2009	553,294.79
MASTER ACCOUNT CHECK RUN FOR OCTOBER 8, 2009 TO OCTOBER 14, 2009	769,642.81
MUNICIPAL COURT ACCOUNT CHECK RUN FOR SEPTEMBER 25 TO SEPTEMBER 30, 2009	69,539.58
MUNICIPAL COURT ACCOUNT CHECK RUN FOR OCTOBER 1 TO OCTOBER 8, 2009	4,290.00
WIRE TRANSFERS FROM OCTOBER 1, 2009 TO OCTOBER 7, 2009	88,737.44
WIRE TRANSFERS FROM OCTOBER 8, 2009 TO OCTOBER 14, 2009	861,651.00
<b>TOTAL: \$</b>	<b>2,347,155.62</b>

**SPECIAL REVENUE FUND**

**CTEP PROJECT**

LIGGETT CONSTRUCTION	PMT 2 OF 1508 5TH ST S STREETScape	32,963.54
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**STREET DISTRICT**

GREAT FALLS REDI-MIX INC	ASPHALT	64,992.11
MORTON SALT	BULK SALT	8,220.54

**FEDERAL BLOCK GRANTS**

AGENCY ON AGING	SEPT 09 FOOD PURCHASE FOR HOME MEAL DELIVERY	6,838.74
KUGLIN DAVID W	OF 1565.1 HANDICAP RAMPS (SPLIT AMONG FUNDS)	37,748.85
HOME DEPOT	REHAB MATERIALS 1409 1ST AVE N	5,680.88

**ENTERPRISE FUNDS**

**WATER**

HACH CHEMICAL CO	TURBIDITY SENSOR	8,081.95
ED BOLAND CONSTRUCTION INC	PMT #1 OF 1553 COMPOST FACILITY	129,448.42
	WATER MAIN EXTENSION (SPLIT AMONG FUNDS)	
DANA KEPNER CO-BILLINGS	85 510R RADIO READ UNITS	11,900.00
DEQ	WATER SERVICE CONNECTION FEE 09-10	39,600.00
CHEMTRAC SYSTEMS INC	WATER TREATMENT PROCESS CONTROL INSTRUMENTS	23,185.00

**ENTERPRISE FUNDS (CONTINUED)**

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**SEWER**

VEOLIA WATER NORTH AMERICA	MONTHLY WWTP OPERATION CONTRACT	237,651.09
VEOLIA WATER NORTH AMERICA	MONTHLY CONTRACTED CAPITAL IMPROVEMENTS	12,500.00
VEOLIA WATER NORTH AMERICA	INCENTIVE TARGET PRICE RECONCILIATION	135,047.99
ED BOLAND CONSTRUCTION INC	PMT #1 OF1553 COMPOST FACILITY WATER MAIN EXTENSION (SPLIT AMONG FUNDS)	52,053.69
COLEMAN CONSTRUCTION INC	PMT 1 OF1348.8 AGRI BUSINESS PARK SEWER LIFT STATION	41,852.25

**STORM DRAIN**

KUGLIN DAVID W	OF1565.1 HANDICAP RAMPS (SPLIT AMONG FUNDS)	14,567.40
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**SANITATION**

SOLID WASTE SYSTEMS INC	500 EA UNIVERSAL AUTOMATED CARTS	23,228.20
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**ELECTRIC**

SOUTHERN	PMT OF ENERGY SUPPLY EXPENSE SEP 09	650,000.00
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**GOLF COURSES**

MIDLAND IMPLEMENT COMPANY INC	TORO ROTARY ROUGH MOWER	46,230.00
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**CIVIC CENTER EVENTS**

LARRY SHAEFFER PRESENTS	TICKET PROCEEDS ADVANCE LIGHTFOOT	5,000.00
LARRY SHAEFFER PRESENTS	TICKET PROCEEDS LIGHTFOOT	64,896.18

**INTERNAL SERVICES FUND**

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**HEALTH & BENEFITS**

BLUE CROSS/BLUE SHIELD	HEALTH INS CLAIMS SEPT 29 - OCT 5, 2009	88,737.44
BLUE CROSS/BLUE SHIELD	HEALTH INS CLAIMS OCT 6 - OCT 12, 2009	97,450.36
BLUE CROSS/BLUE SHIELD	ADMIN & REINSURANCE OCTOBER 2009	47,735.21

**CENTRAL GARAGE**

MOUNTAIN VIEW CO-OP	FUEL	34,358.90
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**TRUST AND AGENCY**

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**COURT TRUST MUNICIPAL COURT**

CITY OF GREAT FALLS	FINES & FORFEITURES COLLECTIONS	52,125.58
CASCADE COUNTY TREASURER	FINES & FORFEITURES COLLECTIONS	8,842.00
VICTIM WITNESS ASSISTANCE SERV	FINES & FORFEITURES SURCHARGES	5,282.00

**UTILITY BILLS**

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NORTHWESTERN ENERGY	AUGUST 2009 CHARGES	24,850.95
ENERGY WEST RESOURCES INC	SEPTEMBER 2009 CHARGES	11,931.87

**CLAIMS OVER \$5000 TOTAL:** \$ 2,023,001.14



CITY OF GREAT FALLS, MONTANA

AGENDA: 6

COMMUNICATION TO THE CITY COMMISSION

DATE: October 20, 2009

**ITEM:** CONTRACT LIST  
Itemizing contracts not otherwise approved or ratified by City Commission Action  
(Listed contracts are available for inspection in the City Clerk's Office.)

**PRESENTED BY:** Lisa Kunz, City Clerk

**ACTION REQUESTED:** Ratification of Contracts through the Consent Agenda

**MAYOR'S SIGNATURE:** \_\_\_\_\_

**CONTRACT LIST**

	DEPARTMENT	OTHER PARTY (PERSON OR ENTITY)	PERIOD	FUND	AMOUNT	PURPOSE
A	Public Works	Montana Department of Transportation	09/2008 – 12/2011	N/A	N/A for this agreement; utility agreement will follow with utility costs.	Construction Agreement with MDT to design and provide water main plans, inspection, maintain sidewalks and storm drain system from 20 <sup>th</sup> to 26 <sup>th</sup> Streets on 10 <sup>th</sup> Avenue South. <b>OF 1447</b>

<b>B</b>	Public Works	Montana Department of Transportation	09/2008 – 12/2011	N/A	N/A	Construction Agreement with MDT to design and provide water main plans, inspection, and maintain sidewalks constructed for MDT's 2002 Intersection Improvements project on 10 <sup>th</sup> Avenue South at 23 <sup>rd</sup> and 38 <sup>th</sup> Streets. <b>OF 1252</b>
<b>C</b>	Public Works	Montana Department of Transportation	09/2008 – 12/2030	N/A	N/A	Memorandum of Understanding (MOU) for City maintenance of MDT completed facilities for MDT's 2002 Intersection Improvements project on 10 <sup>th</sup> Avenue South at 23 <sup>rd</sup> and 38 <sup>th</sup> Streets. <b>OF 1252</b>
<b>D</b>	Planning Department	Montana Department of Transportation	10/20//2009 – 10/20/2010	ARRA/ CTEP	\$7,502 (Local Match) ARRA - \$744,000 CTEP - \$48,398	Agreement modification with MDT for ARRA/CTEP project Bay Drive Bike/Ped Path II – GTF. <b>OF 1126.9</b>
<b>E</b>	Public Works	Montana Department of Transportation	10/2009		\$17,235 (Local Match) MACI-G - \$114,520 MDT - \$517	Memorandum of Agreement between MDOT and the City of Great Falls for (1) flusher truck to replace a 1990 flusher truck for the purposes of addressing the need for reducing PM-10 particulate matter in the city.

**CITY OF GREAT FALLS, MONTANA  
COMMUNICATION TO THE CITY COMMISSION**

**AGENDA: 7  
DATE: October 20, 2009**

**ITEM:** GRANT LIST  
Itemizing grants not otherwise approved or ratified by City Commission Action  
(Listed grants are available for inspection in the City Clerk’s Office.)

**PRESENTED BY:** Lisa Kunz, City Clerk

**ACTION REQUESTED:** Ratification of Grants through the Consent Agenda

**MAYOR’S SIGNATURE:** \_\_\_\_\_

**GRANTS**

	<b>DEPARTMENT</b>	<b>OTHER PARTY (PERSON OR ENTITY)</b>	<b>PERIOD</b>	<b>GRANT AMOUNT REQUESTED</b>	<b>CITY MATCH (INCLUDE FUND MATCH TO BE PAID OUT OF)</b>	<b>PURPOSE</b>
<b>A</b>	Great Falls Police Department	Montana Board of Crime Control Department of Justice P.O. Box 201408 Helena, MT 59620	2009 - 2010	\$67,516.80	N/A	Underage Drinking Laws grant to target and reduce underage drinking and alcohol related incidents within Great Falls and the surrounding community. # 08-U01-90462

<b>B</b>	Great Falls Police Department	Montana Board of Crime Control Department of Justice P.O. Box 201408 Helena, MT 59620	2009 – 2010	\$32,530.00	N/A	Project Safe Neighborhood grant to target and reduce gang violence and weapons incidents within Great Falls. # 08-O01-90434
<b>C</b>	Great Falls Fire Rescue	Department of Military Affairs, Disaster & Emergency Services Division P.O. Box 4789 Fort Harrison, MT 59636	07/01/2009 – 06/30/2010	\$44,167	N/A	Grant funds State HazMat team equipment, training and replenishes supplies to allow GFFR to respond to HazMat emergencies.

**CITY OF GREAT FALLS, MONTANA  
COMMUNICATION TO THE CITY COMMISSION**

**AGENDA: 8  
DATE: October 20, 2009**

**ITEM:** LIEN RELEASE LIST  
Itemizing liens not otherwise approved or ratified by City Commission Action  
(Listed liens are available for inspection in the City Clerk’s Office.)

**PRESENTED BY:** Lisa Kunz, City Clerk

**ACTION REQUESTED:** Ratification of Lien Releases through the Consent Agenda

**MAYOR’S SIGNATURE:** \_\_\_\_\_

**LIEN RELEASES**

	<b>DEPARTMENT</b>	<b>OTHER PARTY (PERSON OR ENTITY)</b>	<b>PERIOD</b>	<b>FUND</b>	<b>AMOUNT</b>	<b>PURPOSE</b>
<b>A</b>	Fiscal Services	Property Owner – 2217 7 <sup>th</sup> Avenue North Family Land Trust	Current	513-3165-532-3599	\$116.48	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at Lot 10, Blk 114, GF4. Parcel #25650
<b>B</b>	Fiscal Services	Property Owner – HSBC Mortgage Services (formerly: Scott and Brenda Held)	Current	513-3165-532-3599	\$29.74	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at Lot 12, Blk 195, GFO. Parcel #84150

<b>C</b>	Fiscal Services	Property Owner – John P. Paul, et al.	Current	513-3165-532-3599	\$441.24	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at Lot 7, E14' of Lot 6, Blk 452, GFO. Parcel #239600
<b>D</b>	Fiscal Services	Property Owner – Neil Dion Moore	Current	513-3165-532-3599	\$325.52	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at E 48' 12 of N70' 4 of Lot 7, Blk 480, GFO. Parcel #256850
<b>E</b>	Fiscal Services	Property Owner – John and Sylvia Schug, Jr.	Current	513-3165-532-3599	\$483.30	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at Lot 39-SW9' Lot 40, Blk 2, NIA. Parcel #1322400
<b>F</b>	Fiscal Services	Property Owner – Anthony and Jolena DeRosa	Current	513-3165-532-3599	\$393.03	Partial Release of Resolution #9860 to Levy and Assess Properties for Unpaid Utility Services at Lot 27, Blk 14, NR6. Parcel #1468400
<b>G</b>	Fiscal Services	Property Owner – Statewide Mortgage Loan Trust 2006 1	Current	237-3131-532-3599	\$200	Partial Release of Resolution #9762 for Assessing the Cost and Removal and Disposal of Nuisance Weeds at 3120 Central Avenue. Lot 6, Blk 7, Black Eagle Falls Addition. Parcel #366800
<b>H</b>	Fiscal Services	Property Owner – Larry E. Frates	Current	513-3165-532-3599	\$781.60	Partial Release of Resolution #9765 to Levy and Assess Properties for Unpaid Utility Services at Lot 9, Blk 133, GFO. Parcel #41200

<b>I</b>	Fiscal Services	Property Owner – Shad M. Dutcher	Current	513-3165-532-3599	\$391.11	Partial Release of Resolution #9765 to Levy and Assess Properties for Unpaid Utility Services at Lot 12, Blk 8, BO1. Parcel #447300
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**Item:** Final Payments: Third Avenue Northwest Roadway Improvements, Phase 2, O. F. 1488

**From:** Engineering Division

**Initiated By:** Public Works Department

**Presented By:** Jim Rearden, Public Works Director

**Action Requested:** Approve Final Payments

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**Suggested Motion:**

1. Commissioner moves:

"I move the City Commission approve final payments of \$17,132.75 to United Materials of Great Falls Inc. and \$173.06 to the State Miscellaneous Tax Division for the Third Avenue Northwest Roadway Improvements, Phase 2, O.F. 1488, and authorize the City Manager to execute the final payment documents."

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Approve final payments.

**Background:**

Significant Impacts

This project installed the second phase of improvements for water, storm drainage and roadway to serve the West Bank area.

Citizen Participation

Not applicable

Workload Impacts

NCI Engineering, Inc. (NCI) completed the project design and performed environmental inspection duties. City engineering staff provided project inspection and contract administration duties.

Purpose

This was the second phase of construction improvements providing access to the new



Federal Courthouse and West Bank Park. During the first phase of construction, the utilities and roadway base were constructed from the north end of the Mitchell Development property, north to the relocated West Bank parking lot and west across the railroad right-of-way. Phase 2 of the improvements included the construction of the roadway from the railroad right-of-way west to the connection with 3<sup>rd</sup> Street Northwest. Phase 2 work also installed the asphalt pavement, signage, and pavement markings for the entire newly constructed roadway.

#### Project Work Scope

Street improvements included site grading, storm drainage, curb and gutter, asphalt pavement, sidewalks, pavement markings and signing. Approximately 290 feet of new 8-inch water main was installed, including a tie-in to an existing waterline in 4<sup>th</sup> Avenue Northwest.

#### Evaluation and Selection Process

Not applicable.

#### Conclusion

City staff recommends approving final payments to United Materials of Great Falls and the State Miscellaneous Tax Division. The total final construction cost was \$264,891.22, which is \$41,753.28 under the original contract award amount of \$306,644.50. The reduced cost is attributable to encountering less contaminated soil and groundwater than was anticipated.

The two-year warranty period began on June 26, 2009 when the project was substantially complete.

#### **Concurrences:**

Not Applicable.

#### **Fiscal Impact:**

This project was funded through Tax Increment Funds.

#### **Alternatives:**

The City Commission could vote to deny approval of the final payments.

#### **Attachments/Exhibits:**

Final Payments (Not available online; on file in City Clerk's Office.)



**Item:** Change Order No. 1: 22<sup>nd</sup> Street South Storm Drain Extension, O. F. 1447.1  
**From:** Engineering Division  
**Initiated By:** Public Works Department  
**Presented By:** Jim Rearden, Public Works Director  
**Action Requested:** Approve Change Order No. 1

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**Suggested Motion:**

1. Commissioner moves:

"I move the City Commission approve Change Order No. 1 in the amount of \$73,489.00 to Kuglin Construction for the 22<sup>nd</sup> Street South Storm Drain Extension, O. F. 1447.1, and authorize the City Manager to execute the necessary documents."

2. Mayor calls for a second, discussion, inquiries from the public, and calls for the vote.

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**Staff Recommendation:** Approve Change Order No. 1.

**Background:**

Significant Impacts

This change extends the storm drain piping from 8<sup>th</sup> Avenue South to 7<sup>th</sup> Avenue South. The capacity of the storm drain will increase as a result of this extension.

Citizen Participation

Not applicable.

Workload Impacts

City engineering staff designed the piping, performed inspection and contract administration duties

Purpose

This change achieved the required clearances between utilities, and increased the storm piping size from 15 inches to 18 inches from 8<sup>th</sup> Avenue South to 7<sup>th</sup> Avenue South. The Montana Department of Transportation (MDT) will connect the 10<sup>th</sup> Avenue South storm drain piping to this new pipe when 10<sup>th</sup> Avenue is reconstructed in 2010. MDT is paying for a portion of this storm drain installation.

### Project Work Scope

The original design was to connect the new storm drain pipe into an existing manhole in 8<sup>th</sup> Avenue South. However, conflicts near this manhole with other utilities under the roadway, that were not at depths indicated on as-recorded drawings, dictated a need for a field change. Either the water main or the storm drain needed to be lowered in the 8<sup>th</sup> Avenue South intersection to obtain required clearances. A telephone duct bank in the intersection that was not located by One-Call during the design also complicated the installation. Lowering either of the mains would increase the amount of excavation into a very hard rock layer.

### Evaluation and Selection Process

Utilities and engineering staff considered the alternatives to avoid the conflicting utilities. Changing the grade and depth of the storm main to obtain the required clearances rather than adjusting the 16-inch water main was deemed more beneficial and cost effective. At the same time, extending the piping north to 7<sup>th</sup> Avenue South accomplished a future need. Given its size and age the section of pipe from 8<sup>th</sup> to 7<sup>th</sup> Avenues South would eventually need replacement anyway. This change added 263 lineal feet of pipe, additional manhole installations, and new inlet piping to the project along with increasing the replacement surfacing quantities.

### Conclusion

City staff recommends approving this change order with Kuglin Construction in the amount of \$73,489.00. This change order increases the contract amount from \$73,711 to a final cost of \$147,200.00.

### **Concurrences:**

Not applicable.

### **Fiscal Impact:**

Extension of this storm drain will increase the capacity of the storm drain system in 23<sup>rd</sup> Street. The change order will be funded by the storm drain utility. MDT will reimburse the City for the original portion of this project.

### **Alternatives:**

The City Commission could vote to deny approval of the change order.

### **Attachments:**

Change Order No. 1

October 9, 2009

Kuglin Construction  
P.O. Box 491  
Black Eagle, MT 59414

RE: 22<sup>nd</sup> Street So. Storm Drin Extension, O.F. 1447.1  
Change Order No. 1

Dear Mr. Kuglin:

Enclosed are two copies of proposed Change Order No. 1 for the above-referenced contract. Please review and sign both copies and return them to me.

This change order incorporates costs for extending the storm drain piping from 8<sup>th</sup> Avenue South to 7<sup>th</sup> Avenue South. If you have any questions, I can be reached by phone at 771-1258, Ext. 120.

Sincerely,

Jason Handl, P.E.  
Senior Civil Engineer

JTH/jth

**CHANGE ORDER**

No. 1

DATE OF ISSUANCE October 9, 2009 EFFECTIVE DATE October 21, 2009

OWNER City of Great Falls

CONTRACTOR Kuglin Construction

Contract: 22<sup>nd</sup> Street So. Storm Drain Extension, O.F. 1447.1

OWNER'S Contract No. O.F. 1447.1 ENGINEER'S Contract No. \_\_\_\_\_

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

Description: Increase the quantity of storm drain piping and manhole installations to extend the storm drain piping from 8<sup>th</sup> Avenue South to 7<sup>th</sup> Avenue South.

Reason for Change Order: To avoid conflicts with other utilities that were not located during the preliminary engineering.

Attachments: (List documents supporting change)

<p align="center"><b>CHANGE IN CONTRACT PRICE:</b></p> <p>Original Contract Price</p> <p>\$ <u>73,711.00</u></p> <p>Net changes from previous Change Orders No. _____ to _____</p> <p>\$ <u>0</u></p> <p>Contract Price prior to this Change Order</p> <p>\$ <u>73,711.00</u></p> <p>Net Increase (decrease) of this Change Order</p> <p>\$ <u>73,489.00</u></p> <p>Contract Price with all approved Change Orders</p> <p>\$ <u>147,200.00</u></p>	<p align="center"><b>CHANGE IN CONTRACT TIMES:</b></p> <p>Original Contract Times</p> <p>Substantial Completion: <u>30 days</u></p> <p>Ready for final payment: _____ days or dates</p> <p>Net change from previous Change Orders No. _____ to No. _____</p> <p align="center"><u>0</u> days</p> <p>Contract Times prior to this Change Order</p> <p>Substantial Completion: <u>30 days</u></p> <p>Ready for final payment: _____ days or dates</p> <p>Net Increase (decrease) of this Change Order</p> <p align="center"><u>15</u> days</p> <p>Contract Times with all approved Change Orders</p> <p>Substantial Completion: <u>45 days</u></p> <p>Ready for final payment: _____ days or dates</p>
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RECOMMENDED:

APPROVED:

ACCEPTED:

By: \_\_\_\_\_  
Engineer (Authorized Signature)

By: \_\_\_\_\_  
Owner (Authorized Signature)

By: \_\_\_\_\_  
Contractor (Authorized Signature)

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

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

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

Change Order No. 1 (page 2)  
Date: October 21, 2009  
Agreement Date: July 22, 2009

Project: 22<sup>nd</sup> Street So. Storm Drain Extension, O.F. 1447.1

Approvals Required:

Approved by:

Gregory T. Doyon, City Manager

Attest:

Lisa Kunz, City Clerk

(Seal of the City)

Reviewed for Legal Content: \_\_\_\_\_  
Chad Parker, Acting City Attorney