



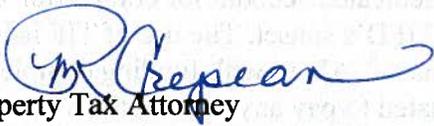
Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

MEMORANDUM

Date: February 16, 2012
To: Dan Bucks, Director
From: Michele Crepeau, Property Tax Attorney 
Subject: Question about Billings Tax Increment Finance District (TIFD)

Mr. Kevin Nelson has approach the Revenue and Transportation Interim Committee with allegations of wrongdoing by the City of Billings in relation to its use of approximately \$800,000 of TIF increment generated by a TIFD the city had established in 1997. Mr. Nelson has alleged that the city inappropriately used the increment to acquire land upon which a proposed federal courthouse was to be built. Mr. Nelson's allegation is based upon his belief that the proposed courthouse would be built and owned by a private interest group that would then lease the property back to the federal government "which would have made it taxable property."

Mr. Nelson further alleged that the TIF increment originally earmarked to fund the courthouse land acquisition was ultimately returned to the city by the private interest group in 2009. He alleges that the city's subsequent use of those revenues to fund a downtown lighting district project was improper. Mr. Nelson bases his allegations on his belief that all TIFD revenues remaining after a TIFD sunsets must be returned to the taxing jurisdictions affected by the TIFD.

Many of Mr. Nelson's statements of law are incorrect. The conclusions Mr. Nelson reaches are not supported by fact or law. The steps taken by the city to use TIF increment and the projects which it funded or attempted to fund were appropriate under Montana's TIF laws. The reasoning for this opinion is set out below.

Assemblage of Land

The City of Billings established an Urban Renewal TIF District (TIFD) in the early 1970s. That TIFD was scheduled to sunset in March, 2008. In November, 2007, prior to the date upon which the TIFD would sunset, the City entered into a development agreement with the Downtown Billings Partnership, Inc. (DBP).¹ The development agreement was adopted by Resolution 07-18636.² The development agreement between the City of Billings and the DBP identified a

¹ Section 7-15-4208 encourages municipalities to allow, to the greatest extent possible, private enterprises the opportunity to undertake the rehabilitation or redevelopment in urban renewal areas.

² Resolution 07-18636, attached.

number of projects that would be funded with TIFD money.³ Under Montana law TIF increment may be used for public purposes of which public money may be expended.⁴ Among the projects identified in the resolution was the assemblage of land to house a new federal courthouse.⁵ The courthouse land project had an estimated cost of \$1,968,000.⁶ Under Montana TIF laws the assemblage of land is a proper use of TIF revenue⁷.

Post-Sunset Use of TIF increment

In addition to establishing various projects to be funded by the TIF increment, the city's 2007 resolution clearly indicated that any funds remaining in the TIFID account when the TIFD sunset would be transferred to a dedicated account for completion of projects that had been identified and approved prior to the TIFD's sunset. The use of TIF increment after the TIFD sunsets is allowable under Montana law.⁸ Along with funding completion of the planned projects, the increment was also designated to pay any administrative cost that resulted from the completion of those projects and any administrative costs incurred as a result of closing out the TIFID. Despite Mr. Nelsons allegations to the contrary, the law allows a municipality to use funds that remain following a TIF's sunset if the increment is used to fund urban renewal projects that were identified prior to the sunset date. In this case, the city properly identified its proposed project prior to the sunset date. Its proposed projects were appropriate under the state's TIF laws and the use of TIF increment to fund those projects was allowed by law.

In February, 2008, the City amended Resolution 07-18636 through the adoption of Resolution 08-18680.⁹ The amendment was necessary because, as Resolution 08-18680 stated: the projects identified in Resolution 07-18636 had "changed slightly and additional funding has been identified that could be used to further enhance downtown redevelopment."¹⁰ To address these changes, Resolution 08-18680 amended the estimated cost of the land assemblage project downward to \$800,000 and combined with that project a prior stand alone project designed to create county parking space.¹¹ The resolution also extended the scheduled completion date to June, 2009.¹² The amended resolution also struck one planned street conversion project and added four new projects to the agreement.¹³ One of the four new projects involved the downtown light district.¹⁴ The estimated cost of the downtown light district project was

³ Id.

⁴ Section 7-15-4204.

⁵ Resolution 07-18636, attached.

⁶ Id.

⁷ Section 7-15-4258 allows a municipality to acquire real or personal property necessary for the administration of any TIF purposes. Land may be acquired by purchase, lease, option, gift grant, bequest, devise, eminent domain or in other manner. Section 7-15-4288 provides for the use of tax increments to pay the cost of or incurred in connection with urban renewal projects. The statute specifically provides for the use of tax increments for the "assemblage of land for development or redevelopment by private enterprise or public agencies".

⁸ Section 7-15-4292(2)(b) proves that a municipality may use of TIF funds remaining in the special fund or a reserve fund relating to a binding loan commitment, construction contract or development agreement for an approved urban renewal project that the local government entered into before the TIFD sunset.

⁹ Resolution 08-18680, attached.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

identified as \$900,000.¹⁵ The 2008 amendment was finalized on February 25, 2008, prior to the sunset date of the original TIFD.

Each of the projects identified in both Resolutions 07-18636 and 08-18680 constituted public purposes for which public money could be expended¹⁶. Both resolutions were timely passed before the original TIFD's sunset date. The use of TIF increment to fund these project post-sunset is legal. Based on these facts, the city's use of the TIF increment to which Mr. Nelson refers was appropriate under Montana law.

Return of Increment to Taxing Jurisdictions

Mr. Nelson's has argued that the TIF increment used by the city to fund the completion of projects after the TIFD sunset should have been returned to the affected taxing jurisdictions. His argument is based upon his misunderstanding of the governing TIF laws. Section 7-15-4292(2), which is cited by Mr. Nelson to support his argument, states: *[e]xcept as provided in subsection (2)(b)*, any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the district. The exception provided by subsection (2)(b), however, is the portion on Montana law addressed above, that allows the municipality to use any remaining increment to fund the projects that were identified prior to the TIF's sunset but not completed prior to that sunset date. Mr. Nelson's understanding of this law is incorrect and does not support his arguments.

Conclusion

Mr. Nelson's allegations and arguments regarding the City of Billings' use of TIF increment are not supported by law. The city's use of those funds was made in accordance with Montana's TIF laws.

¹⁵ Id.

¹⁶ Section 7-15-4204.

RESOLUTION NO. 07-18636

RESOLUTION RELATING TO CITY OF BILLINGS
DOWNTOWN URBAN RENEWAL DISTRICT; PROVIDING FOR
TERMINATION OF TAX INCREMENT FINANCING; AND
ALLOCATING FUNDS.

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

SECTION I: RECITALS

1.01. Pursuant to Title 9, Chapter 14, Part 43, (the Act) and Resolution No.12303, (the "Resolution") the City, on December 20, 1976, established its Downtown Urban Renewal District (the "District"), approved an Urban Renewal Plan and elected to use tax increment financing to implement the goals of the Plan.

1.02. Pursuant to Section 7-15-4292 of the Act, the tax increment financing for the District is to terminate on the later of (a) fifteen years from the date of its adoption or (b) the date on which any bonds issued under the Act secured by the tax increment from the District are fully paid or discharged. Pursuant to the Act, the Tax Increment Financing provision for the District shall terminate on March 1, 2008, which is the date on which the last remaining bonds of the District issued by the City in the amount of \$1,345,000 and payable from tax increment derived in the District will be discharged.

1.03. Pursuant to the Act, for the fiscal year beginning July 1, 2008 the taxes levied against the incremental taxable revenues of the District will be allocated to all taxing jurisdictions based on the respective number of mills levied and no additional funds from taxes levied after July 1, 2008 against properties located in the District shall be deposited in the Tax Increment Fund. The taxing jurisdictions levying mills against the property in the District are: the City of Billings, Yellowstone County, School District 2, the Big Sky Economic Development Authority and the State of Montana (the "Taxing Jurisdictions").

1.04. Pursuant to 7-15-4292 of the Act, upon termination of a tax increment district, a municipality may retain and use in accordance with the provisions of the urban renewal plan any tax increment remaining in the Tax Increment Fund related to a binding loan commitment, construction contract or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision.

**SECTION II: FINDINGS, DETERMINATION, ALLOCATING FUND FOR PROJECTS
AND PROVIDING FOR THE REMITTANCE OF EXCESS TAX INCREMENT REVENUE**

2.01. The City has approved and allocated tax increment funds for the projects in the District as shown on Schedule 1 (the "Projects") and costs associated with administering those Projects through completion.

2.02. The City has entered into a development agreement with the Downtown Billings Partnership (the "DBP") to complete each of the Projects. It is anticipated that some but not all of the Projects will be completed by July 1, 2008.

2.03. Pursuant to Section 7-15-4292 of the Act and under authority of this Resolution, the City shall retain on July 1, 2008 tax increment revenues on hand for the completion of each of the Projects shown in Schedule 1, administrative costs related thereto and administrative costs of closing out the District, and effective June 30, 2008, such funds shall be transferred to a Projects and Close Out Account to be maintained by the City.

2.04. If upon completion of any of the Projects, there is a contingency amount remaining and if any other Project currently under contract not yet complete requires additional money to complete, the City may authorize the use of such excess money for such Project. Upon completion of the Projects and the payment in full of all costs of the Projects, including the costs of all administrative activities associated with the Projects and closing out the District, any unexpended moneys shall be remitted to

the Yellowstone County Treasurer for distribution to the Taxing Jurisdictions in accordance with the law.

SECTION III: TERMINATION OF DISTRICT AND PLAN

3.01. Upon completion of the Projects herein described and the close out of all District accounts and business, the DBP shall notify the City that the work of the Partnership with respect to the District is complete. The City shall certify the amounts, if any, then on hand in the Project and Close Out Account, which shall then be transferred to the County Treasurer as provided in Section 2.04.

3.02. As of that date, the District and the Plan shall no longer be in effect and neither the City nor the DBP shall have any obligation with respect to the implementation of the Plan in the District.

3.03. Nothing herein shall preclude the City from including in other tax increment districts as may be authorized by law or transferring to other duly created districts land that was originally included in the District as long as such land meets the requirements for inclusion in a new or existing tax increment district.

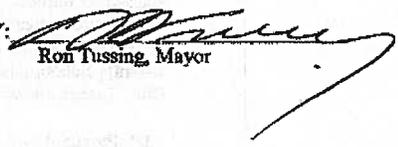
SECTION IV: EFFECTIVE DATE

4.01. This Resolution shall become effective on the date of adoption hereof.

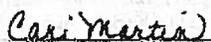
Passed by the City Council of the City of Billings, Montana, this 13th day of November, 2007.



CITY OF BILLINGS

BY: 
Ron Tussing, Mayor

ATTEST:

BY: 
Cari Martin, City Clerk

SCHEDULE 1
Resolution No. 07-18636

PROJECT	COST EST.	COMPLETION SCHEDULE
GSA land assemblage	\$1,968,000	December 31, 2007 - December 31, 2009
County parking lot construction	\$237,000 - \$567,500	December 31, 2009
Railroad quiet zone	\$1,000,000	December 31, 2009
One-way street conversion	\$500,000/intersection	December 31, 2009

RESOLUTION NO. 08-18680

A RESOLUTION AMENDING BILLINGS RESOLUTION NO. 07-18636 RELATING TO THE DOWNTOWN TAX INCREMENT DISTRICT, TERMINATING THE DISTRICT AND ALLOCATING FUNDS

WHEREAS, the Billings City Council approved Resolution No. 07-18636 on November 26, 2007; and,

WHEREAS, Resolution No. 07-18636 outlined the conditions under which the 1976 Downtown Tax Increment District will sunset in March, 2008 and stated the City's intention to retain tax increment funds on hand at the end of Fiscal Year 2008 for projects that are identified in the Resolution; and

WHEREAS, some of the projects described in the Resolution have changed slightly and additional funding has been identified that could be used to further enhance downtown redevelopment.

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

1. Resolution No 07-18636, Schedule 1 is hereby amended as follows:

SCHEDULE 1		
PROJECT	COST EST.	COMPLETION SCHEDULE
GSA land assemblage and County parking	\$800,000	December June, 2009
Railroad quiet zone	\$1,000,000	December, 2009
One-way street conversion	\$500,000/intersection	December 31, 2009
Downtown light district	\$900,000	December, 2008
ArtSpace market study	\$35,000	December, 2008
Large project gap funding project	\$1,700,000	December 2008/2009*
Cooperative security program	\$252,000	December 2009**

*If the large project gap financing element is not under contract by December 31, 2008, the funds dedicated to this project and any remaining funds will be allocated first to the cooperative security program and then to the downtown light district.

**If the Development agreement is reached by December 31, 2008, the Developers MUST begin construction BEFORE December 31, 2009 or the funding will be allocated to the cooperative security program and then to the downtown light district.

2. This resolution shall become effective on the date of adoption hereof.

PASSED by the City Council of the City of Billings, Montana, this 25th day of February, 2008.



CITY OF BILLINGS

BY:

Ron Tussing
Ron Tussing, Mayor

ATTEST:

BY: *Cari Martin*
Cari Martin, City Clerk

RESOLUTION NO. 08-18680

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WHEREAS, some of the projects described in the Resolution have changed slightly and additional funding has been identified that could be used to further enhance downtown redevelopment.

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

1. Resolution No 07-18636, Schedule 1 is hereby amended as follows:

PROJECT	SCHEDULE I	
	COST EST.	COMPLETION SCHEDULE
GSA land assemblage and County parking	\$800,000	December June, 2009
Railroad quiet zone	\$1,000,000	December, 2009
One-way street conversion	\$500,000/intersection	December 31, 2009
Downtown light district	\$900,000	December, 2008
ArtSpace market study	\$35,000	December, 2008
Large project gap funding project	\$1,700,000	December 2008/2009*
Cooperative security program	\$252,000	December 2009**

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PASSED by the City Council of the City of Billings, Montana, this 25th day of February, 2008.



CITY OF BILLINGS

BY:

Ron Tussing
Ron Tussing, Mayor

ATTEST:

BY: *Cari Martin*
Cari Martin, City Clerk

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into as of January 29, 2008 by and between the City of Billings, a municipality of the State of Montana ("City"), Downtown Billings Partnership, Inc., an I.R.C. §501(c)(4) Montana non-profit corporation, ("DBP") and Downtown Development Corporation, an I.R.C. §501(c)(3) Montana non-profit corporation, ("DDC"), The White Family LLC, a Montana limited liability company ("White Family"), the County of Yellowstone, a county of the State of Montana ("County") and Big Sky Economic Development Authority, a duly organized and existing port authority under the laws of the State of Montana, ("Big Sky EDA"). DBP and DDC are collectively referred to herein as "DBP/DDC". DBP/DLC, White Family, County and Big Sky EDA are collectively referred to herein as the "Development Entities".

WHEREAS, DBP is the entity responsible for administration of Tax Increment Financing ("TIF") funds for City; and

WHEREAS, County, DBP and Big Sky EDA have entered into a Development Agreement dated July 3, 2007 whereby DBP agreed to construct a parking lot for the County in order to provide certain replacement parking for County as a result of an exchange of property between City and County.

WHEREAS, DBP and City have entered into a Development Agreement dated November 26, 2007 and approved by the Billings City Council on November 19, 2007 for approved urban renewal projects described therein, including land acquisition and assemblage for the purpose of development or redevelopment of a site for construction of a new Federal Courthouse ("Federal Courthouse Project") in the Civic Plaza area roughly located between N. 25th Street and N. 27th Street and 2nd Avenue North and 3rd Avenue North in Billings, Montana.

WHEREAS, the Development Entities have reached an agreement for resolution of replacement parking for County and for the acquisition and assemblage of land for the Federal Courthouse Project.

WHEREAS, the agreement between the Development Entities requires that the land assemblage and acquisition be accomplished in two phases in order to provide for the acquisition of property by County for replacement parking and future expansion.

WHEREAS, the Development Entities wish to establish the terms, conditions and sequence of the transactions for the acquisition and assemblage of land for the Federal Courthouse Project.

NOW, THEREFORE, subject to the terms and conditions of this Agreement, the Development Entities agree as follows:

SECTION 1: SUBJECT OF AGREEMENT

1.1 Purpose of Agreement. The Development Entities shall assemble, acquire and make ready for sale to the developer selected by the United States General Services Administration ("GSA Developer") approximately 63,000 square feet of land within the area defined by the Downtown Billings Framework Plan as the Civic District, specifically located between 2nd Avenue North and 3rd Avenue North and between North 25th Street and North 27th Street, Billings, Montana as more specifically depicted on Exhibit 1 ("Preferred Site") for an agreed upon value and within an agreed upon period of time. The purpose of the acquisition and assemblage of land is to develop or redevelop a site for construction of a new Federal Courthouse building in the Civic District by the GSA Developer as part of an urban renewal project for the City ("Federal Courthouse Project"). Further, this Agreement provides

for the use of City Fund 202 Tax Increment Funds to acquire or assemble land for the Federal Courthouse Project as set forth in the Development Agreement between City and DBP/DDC dated November 26, 2007. Further, this Agreement sets forth the required land exchanges, purchases, sales and development contingencies to accomplish the land assemblage for the Federal Courthouse Project and to assure compliance with the Montana Urban Renewal Law.

SECTION 2: DEFINITIONS/EXHIBITS AND TABLE

2.1 **County Lots.** The term "County Lots" shall mean the real property presently owned by County consisting of two (2) lots (totaling 7,000 sq. ft.) directly north of the MDU Property, as more particularly described in Exhibit 2 to this Agreement.

2.2 **MDU Site.** The term "MDU Site" shall mean the real property presently owned by Big Sky EDA in the location of the former MDU building, as more particularly described in Exhibit 2 to this Agreement.

2.3 **Preferred Site.** The term "Preferred Site" shall mean the real property depicted on Exhibit 1 to this Agreement. The Preferred Site consists of approximately 63,000 square feet of land to be assembled under this Agreement for ultimate sale to the GSA Developer. The description of the Preferred Site will be approximate until the specific legal description has been determined to include any required set-backs for the Federal Courthouse building; however the Preferred Site shall include the real property identified and/or assembled pursuant to the Phase 2 Transactions described in Section 5.3 of this Agreement.

2.4 **SFH Property.** The term "SFH Property" shall mean the real property owned by SFH II, LLC and Jones Enterprises, LLC, as more particularly described in Exhibit 2 to this Agreement. The SFH Property is presently subject to a buy sell agreement between County and SFH II, LLC and Jones Enterprises, LLC.

2.5 **Wells Fargo Site.** The term "Wells Fargo Site" shall mean the real property presently owned by County in the location of the former Wells Fargo Drive-In Bank, as more particularly described in Exhibit 2 to this Agreement.

2.6 **White Family Property.** The term "White Family Property" shall mean the real property presently owned by White Family, as more particularly described in Exhibit 2 to this Agreement.

2.7 **Exhibits and Table.** Attached to this Agreement and incorporated herein are the following Exhibits and Table:

Exhibit 1 shows the Preferred Site and the proposed land use scenario for the Federal Courthouse Project.

Exhibit 2 shows the legal descriptions of the properties identified in this Agreement.

Exhibit 3 is the Release Agreement between County, DBP/DDC and Big Sky EDA related to satisfaction of their respective obligations under the Development Agreement dated July 3, 2007.

Exhibit 4 describes the Transaction Documents for the real estate transactions set forth in Section 5.3 of this Agreement and the terms and provisions of the Transaction Documents.

Table 1 describes the sources and uses of funds for the Federal Courthouse Project.

SECTION 3: PROPERTY OWNERSHIP/ACQUISITION AND ASSEMBLAGE

3.1 Ownership. The Development Entities own fee title to, or have binding purchase rights to, the respective properties identified below as of the date of this Agreement:

County Lots	County
SFH Property	County has binding buy sell agreement to purchase
MDU Site	Big Sky EDA
Wells Fargo Site	County
White Family Property	White Family

3.2 Ownership of Preferred Site. The Development Entities agree that upon completion of the land acquisition, assemblage and transactions identified in this Agreement, and immediately prior to the ultimate sale and transfer of title to the Preferred Site to the GSA Developer, that the Preferred Site will be owned and titled as follows:

- (a) DBP/DDC will have title to that part of the Preferred Site east of the centerline of North 26th Street.
- (b) Big Sky EDA will have title to that part of the Preferred Site west of the centerline of North 26th Street.

SECTION 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent. The Development Entities' obligation to complete the transactions set forth in Section 5.3 of this Agreement is subject to and contingent upon each of the following terms and conditions:

- (a) The GSA Developer must purchase the entire Preferred Site (including the portion of North 26th Street within the Preferred Site) for the appraised value at the time of transfer, but not less than \$35.00 per square foot nor more than \$40.00 per square foot.
- (b) The GSA Developer must be responsible for all demolition costs (including demolition of the former MDU building and former Wells Fargo drive up bank building) and any infrastructure and site development expenses, including but not limited to, utility relocation due to construction of the Federal Courthouse Project on any portion of the Preferred Site including those portions that were formerly part of North 26th Street.
- (c) The GSA Developer must be responsible for all of its legal and professional fees related to the Federal Courthouse Project.
- (d) The GSA Developer must purchase the Preferred Site "as is" without warranty or indemnifications from the Development Entities regarding its environmental condition. The Development Entities will provide copies of any existing environmental studies or reports concerning any portion of the Preferred Site to the GSA Developer and will cooperate with the GSA Developer to permit reasonable access to their properties for purposes of environmental studies or inspections.

4.2 Closing of Phase 2 Transactions. The transactions described in Section 5.3 of this Agreement as the Phase 2 Transactions, are mutually dependent and conditioned upon the performance of each of the other transactions. Although the Phase 2 Transactions will close into escrow sequentially,

they will be consummated only as part of a unitary closing that will include the contemporaneous closing of the purchase of the Preferred Site by the GSA Developer, and completion of the closing of the Phase 2 Transactions will occur if and only if the closing of the purchase of the Preferred Site by the GSA Developer is completed.

4.3 Appraisals. The Development Entities have agreed to the sale prices and exchange values for their properties as described in Section 5.3 of this Agreement; however certain of these transactions as identified in Section 5.3 require appraisals to demonstrate that the agreed sale price or exchange value is at least equal to, or within the range of, the appraised value. If the appraised value does not justify the sales price or exchange value, then the conditions set forth in Section 5.3 of this Agreement will fail and the Agreement shall terminate without further obligation on the part of any of the Development Entities pursuant to this Agreement; provided, that the Development Entities may agree to modify and extend this Agreement.

4.4 Expenditure of TIF funds. DBP's obligation to be bound by the provisions of Section 5.3 Phase 2 Transactions of this Agreement is subject to and contingent upon its commitment to ultimately expend no more than a net amount of \$800,000 of TIF funds when the sale to the GSA Developer is completed. This net amount of TIF funds of \$800,000 includes the \$446,200 of TIF funds expended under Phase 1 of this Agreement.

SECTION 5: LAND ASSEMBLAGE TRANSACTIONS

5.1 General. The Development Entities agree to perform and complete the following transactions set forth in Phases 1 and 2 below (Sections 5.2 and 5.3), for the acquisition and assemblage of land for the Federal Courthouse Project, subject to the terms and conditions below.

5.2 Phase 1. Within 30 days of execution of this Agreement by the Development Entities, DBP/DDC will authorize and City will pay a \$446,200 parking and site acquisition grant to County for the acquisition and development of replacement parking within the 1976 Downtown Tax Increment District pursuant to the Development Agreement dated July 3, 2007. County agrees to remit back to City any of the \$446,200 grant funds not expended for such purposes. Upon funding the parking and site acquisition grant, County, DBP/DDC and Big Sky EDA shall execute the Release Agreement attached hereto as Exhibit 3.

5.3. Phase 2. The Development Entities shall perform and complete the following transactions in the sequence indicated below, subject to the terms and conditions of this Agreement ("Phase 2 Transactions"). The Phase 2 Transactions will be completed in a single closing contemporaneously with the completion of the closing of the sale of the Preferred Site to the GSA Developer. The closing documents shall be delivered by the Development Entities and the GSA Developer to a single closing agent, acceptable to all Development Entities and the GSA Developer, which shall hold all of the closing documents until all transactions set forth in this Section 5.3 have been executed and deposited with the closing agent and all conditions for the release of all closing documents have been fully satisfied, at which time the closing of all the Phase 2 Transactions shall be completed. The Phase 2 Transactions are as follows:

- (a) County will transfer and convey the Wells Fargo Site to White Family in exchange for the White Family Property. White Family will transfer and convey the White Family Property to County in exchange for the Wells Fargo Site. White Family will pay to County the greater of: (1) \$297,500; or, (2) the difference between the appraised value of the White Family Property and the appraised value of the Wells Fargo Site. The appraised value of Wells Fargo Site is agreed to be \$787,500, based on current appraisal

of \$35.00 per square foot.

- (b) DBP/DDC will purchase from White Family and White Family will sell to DBP/DDC the Wells Fargo Site acquired by White Family from County pursuant to Section 5.3(a) above. The purchase price will be \$900,000 plus the amount necessary to fully reimburse White Family for cash paid to County by the White Family pursuant to Section 5.3(a) above. DBP/DDC and County will cooperate with The White Family with respect to compliance with the requirements of IRC section 1033.

GSA has indicated to DBP that it was prepared to begin condemnation proceedings to acquire the parcels necessary to assemble the Preferred Site for the Federal Courthouse Project, including the White Family Property. In addition to verbal statements about condemnation, the GSA, consistent with preparations for condemnation and with knowledge of negotiations leading to this Agreement, has obtained a real estate appraisal of the White Family Property and environmental studies of the properties involved in assembling the Preferred Site for the Federal Courthouse Project.

- (c) DBP/DDC will purchase from City and City will vacate and sell to DBP/DDC that portion of North 26th Street, as well as that portion of 2nd Avenue North, within the Preferred Site and East of the centerline of the street, for the sum of \$126,075.
- (d) Big Sky EDA will purchase from County and County will sell to Big Sky EDA the County Lots for the greater of: (1) \$245,000; or (2) appraised value.
- (e) Big Sky EDA will purchase from City and City will vacate and sell to Big Sky EDA, that portion of North 26th Street, as well as that portion of 2nd Avenue North, within the Preferred Site and West of the centerline of the street for the sum of \$126,075.
- (f) Upon completion of the land assemblage described herein, DBP/DDC will sell to the GSA Developer the portion of the Preferred Site east of the centerline of North 26th Street. The final sale price for the Preferred Site to the GSA Developer shall be subject to final negotiation and approval of DBP/DDC, but shall not be less than \$35.00 per square foot.
- (g) Upon completion of the land assemblage described herein, Big Sky EDA will sell to the GSA Developer the portion of the Preferred Site west of the centerline of North 26th Street (including the MDU Site). The final sale price for the Preferred Site to the GSA Developer shall be subject to final negotiation and approval of DBP/DDC, but shall not be less than \$35.00 per square foot.
- (h) The sales proceeds of the Preferred Site shall be paid as follows: (1) Big Sky EDA shall receive payment of \$756,000 for the MDU Site, \$126,075 for the street purchase, and the amount paid for the County Lots pursuant to Section 5.3(d); and, (2) DBP/DDC shall receive the balance of the sale proceeds.
- (i) City and GSA Developer will cooperate with one another to facilitate adequate redistribution of traffic, parking and sidewalk configurations on 2nd Ave. North between North 25th Street and North 27th Street to facilitate the Federal Courthouse Project and to accommodate the required set-backs for the new Federal Courthouse as estimated on Exhibit 1.

5.5 **Costs of Administration.** The Development Entities shall each bear their own reasonable legal costs regarding their respective portions of the purchase/exchange agreements listed above. DBP/DDC shall pay the costs of the appraisals of the properties identified in this Agreement, except any appraisal of the SFH Property.

5.6 **Use of TIF Funds.** The TIF funds which are the subject of this Agreement shall be used only for urban renewal activities, including the rehabilitation and redevelopment of the Preferred Site, in accordance with the Urban Renewal Law of the State of Montana.

5.7 **Availability of TIF Funds.** City has committed TIF Funds to the Federal Courthouse Project subject to availability of funds. In the event TIF Funds are not available due to causes beyond control of City, this Agreement shall terminate, and upon such termination, no Development Entity shall have further obligations or liability to the others under this Agreement.

5.8 **Extent of Commitment.** Neither DBP, DDC or City shall have any obligation for any costs associated with the transactions described in this Agreement which exceed the amount of the TIF Funds approved in accordance with Section 4.4 of this Agreement.

5.9 **Other Documents.** The Development Entities agree to execute any and all other documents that are reasonably needed to effectuate the Phase 2 Transactions and any other obligations in this Agreement ("Transaction Documents"). The Development Entities agree that the Transaction Documents shall contain usual and customary real estate transaction terms and provisions as set forth in Exhibit 4 to this Agreement.

SECTION 6: WARRANTIES

6.1 **Joint Representations and Warranties.** The following representations and warranties are made by each party to the other as of the date hereof:

- (a) **Authority.** Each party has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate this transaction.
- (b) **Actions.** All requisite action has been taken by each party in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of this transaction. No further consent of any partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party is required.
- (c) **Due Execution.** The individuals executing this Agreement and the instruments referenced herein on behalf of each party and the partners, officers or trustees of each party, if any, have the legal power, right, and actual authority to bind each party to the terms and conditions of those documents.

6.2 **Representations regarding SFH Property.** County represents that its agreement to purchase the SFH Property is a separate arms-length transaction providing for the future expansion of the County. The Development Entities acknowledge that they do not assert any interest in the SFH Property, on behalf of themselves or the federal government or its agencies, as a result of this Agreement.

6.3 **Consideration for Local Developers.** The Development Entities desire equal and fair consideration by GSA for local developers and contractors to bid on development or construction the Federal Courthouse.

SECTION 7: TERM and TERMINATION/ DEFAULTS AND REMEDIES

7.1 Term of Agreement. If the Phase 2 Transactions have not been completed by June 30, 2009, this Agreement shall terminate automatically unless extended by mutual written agreement of all of the Development Entities.

7.2 Default/General. The failure or delay by any party to perform any term or provision of this Agreement constitutes a default; however, if the defaulting party commences to cure such default within 60 days after receipt of a notice specifying the default, and thereafter diligently prosecutes such cure to completion, then such party shall not be deemed to be in default. The injured party shall give written notice of default to the defaulting party, specifying the default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until 60 days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies or deprive such party of its rights to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

7.3 Rights and Remedies. Any Development Entity may seek any legal or equitable remedy to cure, correct or remedy any default, to recover any damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

7.4 Dispute Resolution. Prior to commencing any litigation, the parties shall first attempt to resolve the dispute informally in accordance with this section. In the event a dispute arises, the complaining party shall deliver notice of the matter in dispute to the other party at the address and in the manner provided for in Section 8.2 hereof. Each party shall thereafter promptly designate a representative to address the matter, which representatives shall attempt, in good faith, to resolve the disputed matter. In the event the designated representatives are unable, despite their good faith efforts, to resolve the disputed matter within fifteen days of the initial notice thereof, then, any party may commence litigation.

SECTION 8: GENERAL PROVISIONS

8.1 Litigation. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of any other party arising out of this Agreement, the prevailing party will be entitled to have the recovery of and from the other party all costs and expenses of the action or suit, actual attorneys' fees (including the allocated costs of in-house counsel), witness fees and any other professional fees resulting therefrom.

8.2 Notices. All notices or other communications required or permitted hereunder must be in writing, and must be personally delivered (including by a professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below. All notices sent by mail will be deemed received 2 (two) days after the date of mailing and all notices sent by other means permitted herein shall be deemed received on the date delivered. Notices will be sent as follows to:

City: Billings City Administrator
P.O. Box 1178
Billings, MT 59103

With a copy to: City of Billings
Attn: Brent Brooks City Attorney
210 North 27th Street
Billings, MT 59101
Telephone: (406) 657-8205

DBP: Downtown Billings Partnership, Inc.
Attn: Executive Director
2815 2nd Ave. N
P. O. Box 2117
Billings, MT 59103
Telephone: (406) 294-5060
Facsimile: (406) 294-5061

DDC: Downtown Development Corporation
Attn: Executive Director
2815 2nd Ave. N
P.O. Box 2117
Billings, MT 59103
Telephone: (406) 259-5454
Facsimile: (406) 294-5061

Yellowstone County: Yellowstone County Commission
P.O. Box 35000
Billings, MT 59107

With a copy to: Yellowstone County
Attn: Dan Schwarz Deputy County Attorney
P.O. Box 35025
Billings, MT 59107-5025

Big Sky EDA: Big Sky Economic Development Authority
Attn: Executive Director
222 N. 32nd Street, Ste. 200
Billings, MT 59101-1948

White Family: The White Family LLC
Attn: Patrick J. White, Managing Member
P.O. Box 21495
Billings, MT 59104

8.3 Nonliability of Officials and Employees. No director, officer, member, official, employee or agent of any Development Entity shall be personally liable to any party or any successor-in-interest thereto, in the event of any default or breach by any party or for any amount which may become due to any party or its successor, or any obligations under the terms of this Agreement.

8.4 Headings. Any title of the several parts and sections of this Agreement are inserted for

convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

8.5 Time of Essence. Time is of the essence of this Agreement. All obligations of the Development Entities to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

8.6 Construction/Governing Law/Venue. The Development Entities and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any Development Entity. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties. The parties hereto expressly agree that this Agreement will be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Montana. Any action in law or equity, or judicial proceeding for the enforcement of this Agreement or any of the provisions contained herein, shall be instituted and maintained only in Thirteenth Judicial District Court for Yellowstone County, Montana.

8.7 Severability. If any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

8.8 No Partnership. Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

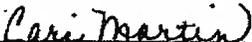
8.9 Government Rights. Except as provided herein, by making this Agreement, the Development Entities are not obligating themselves or any other agency with respect to any discretionary action relating to the development of the Federal Courthouse Project or development, operation and use of the improvements to be constructed on the Preferred Site, including but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals which are or may be required.

8.10 Non-Waivers. No waiver of any breach of any covenant or provision contained herein will be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act will be deemed an extension of the time for performance of any other obligation or act except those of the waiving party, which will be extended by a period of time equal to the period of the delay.

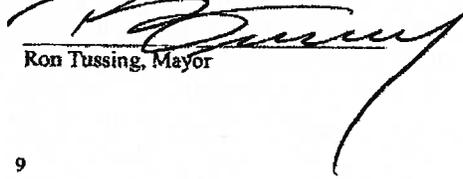
8.11 Entire Agreement/Counterparts. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. This Agreement may be signed in counterparts.

8.12 Successors. This Agreement shall be binding upon and inure the benefit of the parties, their successors and assigns.

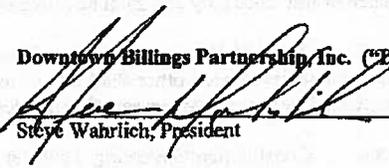
Attest:


Cari Martin, City Clerk
City of Billings

City of Billings ("City")


Ron Tussing, Mayor

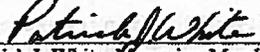
Downtown Billings Partnership, Inc. ("DBP")


Steve Wahrlich, President

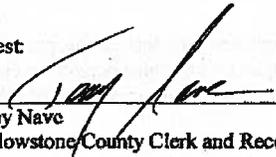
Downtown Development Corporation ("DDC")


Don Olsen, Chairman

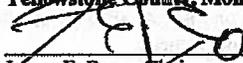
The White Family LLC ("White Family")


Patrick J. White, Managing Member

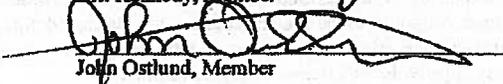
Attest


Tony Nave
Yellowstone County Clerk and Recorder

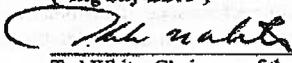
**Board of County Commissioners
Yellowstone County, Montana ("County")**


James E. Reno, Chairman


Bill Kennedy, Member


John Ostlund, Member

**Big Sky Economic Development Authority
("Big Sky EDA")**


Ted White, Chairman of the Board

