

RESOLUTION NO. 17-10680

A RESOLUTION AMENDING SECTION NINE OF THE FUNDING AND DEVELOPMENT AGREEMENT OF DECEMBER 14, 2009, BETWEEN THE CITY OF BILLINGS AND THE BETTER BILLINGS FOUNDATION ELIMINATING FINANCIAL PERFORMANCE AND SECURITY PROVISIONS

WHEREAS, pursuant to Section 9 of a December 14, 2009, Funding and Development Agreement between the City of Billings and the Better Billings Foundation (BBF), the BBF was required to provide and maintain one of three alternative performance securities in favor of the City of Billings;

WHEREAS, the City Council has determined that such alternative performance security is no longer necessary and elimination of such provision is appropriate and in the best interest of the Funding and Development Agreement parties;

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

1. That Section Nine, page Three and Four of the Funding and Development Agreement dated December 14, 2009, shall be Amended to eliminate and delete the alternative performance security options as follows:

9. **Operation, Management and Maintenance.** The Foundation, or a single-member limited liability company owned solely by the Foundation, shall operate, manage and maintain the Aquatic Project in a manner similar to other aquatic centers and City parks operated, managed and maintained by the City including, but not limited to, parking areas, sidewalks, fencing and storm water detention. The Aquatic Facility shall be open to the public for a minimum of ten (10) weeks each season. Operation, managements and maintenance shall be conducted at the sole expense of the Foundation and the Foundation shall retain all proceeds from the operation of the Aquatic Project for use in furtherance of its tax-exempt purposes. The Foundation shall be responsible for payment of water and all other utilities serving the Aquatic Facility. The Foundation shall have no responsibility to maintain the adjacent Park Land owned by the City. ~~To secure ongoing performance of its obligations under this Agreement, prior to the start of construction, the Foundation shall establish and maintain one or more of the following at its option:~~

- ~~A) An annually renewed Irrevocable Standby Letter of Credit in the amount of One Hundred Thousand Dollars (\$100,000.00) in the form as provided in~~

~~the attached Exhibit C. In the event that all improvements (including buildings and accessory structures) and the Aquatic Project Land revert to the City pursuant to Section 4 of this Agreement, an applicable sale agreement, deed or otherwise, the City shall in its sole and singular discretion be entitled and authorized to execute upon and present for payment this Irrevocable Standby letter of Credit up to and including the full amount in order to make repairs or other expenditures to the Aquatic Project. The necessity to execute upon this security shall be determined in the sole discretion of the City.~~

- ~~B) Within five (5) years of the last signature date of this Agreement, an interest bearing escrow account in the amount of One Hundred Thousand Dollars (\$100,000.00) created by an escrow agreement. The terms of such escrow agreement shall allow the City to immediately access this money through a written demand to the Foundation without further action nor through litigation should a default in performance under this Agreement occur by the Foundation. The escrow agreement shall be reviewed and approved by the City Administrator or designee to insure the terms reflect immediate access.~~
- ~~C) An annually renewed surety bond or similar performance bond instrument in the amount of One Hundred Thousand Dollars (\$100,000.00).~~

~~The necessity to execute upon any or all of these alternative performance security instruments shall be determined in the sole discretion of the City. The Foundation shall not object to, obstruct, impair, impede, prevent or institute any legal proceeding challenging the execution upon or payment of funds provided in the attached Irrevocable Standby Letter of Credit, or an escrow account and/or the surety performance bond.~~

APPROVED AND PASSED by the City Council of the City of Billings this 11th day of December, 2017.



THE CITY OF BILLINGS:

By: Thomas W. Hanel
Thomas W. Hanel, Mayor

ATTEST:

BY: Denise R. Bohlman
Denise R. Bohlman, City Clerk