

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Billings, Montana (the City), hereby certify that the attached resolution is a true copy of Resolution No. **02-17826**, entitled: **A RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1354; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND** (the Resolution" was duly adopted by the City Council of the City at a meeting on April 22, 2002 that the meeting was duly held by the City Council and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.)

I further certify that, upon vote being taken on the Resolution at said meeting, the following Councilmembers voted in favor thereof: _____;
voted against the same: _____;
or were absent: _____.

WITNESS my hand officially this 22nd day of April, 2002.

Clerk

Marita Herold, CMC City

RESOLUTION NO. 02-17826

RESOLUTION RELATING TO SPECIAL IMPROVEMENT DISTRICT NO. 1354; DECLARING IT TO BE THE INTENTION OF THE CITY COUNCIL TO CREATE THE DISTRICT FOR THE PURPOSE OF UNDERTAKING CERTAIN LOCAL IMPROVEMENTS AND FINANCING THE COSTS THEREOF AND INCIDENTAL THERETO THROUGH THE ISSUANCE OF SPECIAL IMPROVEMENT DISTRICT BONDS SECURED BY THE CITY'S SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND

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

Section 1. Proposed Improvements; Intention To Create District. The City proposes to undertake certain local Improvements (the "Improvements") to benefit certain property located in the City. The Improvements consist of the construction of a water main, as more particularly described in Section 5. The total estimated costs of the Improvements are \$2,079,436.08. The costs of the Improvements are to be paid from the following sources: (1) \$50,000 cash contribution from Montana Department of Transportation; (2) \$723,436.08 cash contribution from City of Billings; (3) \$58,000 from a Community Development Block Grant; and (4) Special Improvement District bonds hereinafter described. It is the intention of this Council to create and establish in the City under Montana Code Annotated, Title 7, Chapter 12, Parts 41 and 42, as amended, a Special Improvement District (the "District") for the purpose of financing costs of the Improvements and paying costs incidental thereto, including costs associated with the sale and the security of Special Improvement District bonds drawn on the District (the "Bonds"), the creation and administration of the District, the funding of a deposit to the City's Special Improvement District Revolving Fund (the "Revolving Fund"). The total estimated costs of the Improvements, including such incidental costs, to be financed by the Bonds are \$1,248,000.00. The Bonds are to be payable primarily from special assessments to be levied against property in the District, which property will be specially benefited by the Improvements.

Section 2. Number of District. The District, if the same shall be created and established, shall be known and designated as Special Improvement District No. 1354 of the City of Billings, Montana.

Section 3. Boundaries of District. The limits and boundaries of the District are depicted on a map attached as Exhibit A hereto (which is hereby incorporated herein and made a part hereof) and more particularly described on Exhibit B hereto (which is hereby incorporated herein and made a part hereof), which boundaries are designated and confirmed as the boundaries of the District. A listing of each of the properties in the District is shown on Exhibit F hereto (which are hereby incorporated herein and made a part hereof).

Section 4. Benefited Property. The District and territory included within the limits and boundaries described in Section 3 and as shown on Exhibits A, B, and F are hereby declared to be the Special Improvement District and the territory which will benefit and be

benefited by the Improvements and will be assessed for the costs of the Improvements as described in Section 7.

Section 5. General Character of the Improvements. The general character of the Improvements, as shown in Exhibit E, is the construction of curb and gutter, sidewalks, sanitary sewer mains, water mains, street widening, streetlights, median placement, and traffic signal improvements to King Avenue East and Simpson Street.

Section 6. Engineer and Estimated Cost. HKM Engineering, Inc.; 222 N. 32nd Street Suite 700; Billings, MT 59107, shall be the engineer for the District. The Engineer has estimated that the costs of the Improvements, including all incidental costs, are \$2,079,436.08. A cash contribution to the project is being made in the amount of \$831,436.08 as described in Section 1 and 9(e). The remaining costs of \$1,248,000.00, which includes costs associated with the sale of Bonds and other incidental costs, will be financed by the sale of the Bonds as described in Section 1 and assessments to pay the Bonds will be levied against the remaining parcels in the District as shown in Exhibit F (which is attached hereto and incorporated herein) and as more fully explained in Section 7.

Section 7. Assessment Methods.

7.1. Property to be Assessed. All properties within the district are to be assessed for the costs of the Improvements, as specified herein. The costs of the Improvements shall be assessed against the property in the District benefiting from the Improvements based on the equal amount methods described in Section 7-12-4162, M.C.A., as particularly applied and set forth in this Section 7.

7.1.1 Actual Area Method.

Assessment #1 will include street improvements to King Avenue East between South 12th Street West and Parkway Lane along the frontage of Southgate Subdivision 1st Filing and Streeter Brothers Subdivision. The assessments to the properties in Streeter Brothers Subdivision will be covered by a Community Development Block Grant obtained by the City of Billings. The remaining improvement costs shall consist of the full Improvements to be assessed against each lot in Southgate Subdivision 1st Filing for a total of \$272,000.00. The total of \$272,000.00 shall be assessed against each lot, tract, or parcel of land in Southgate Subdivision 1st Filing for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts, or parcels of land in Southgate Subdivision 1st Filing, exclusive of streets, avenues, and alleys. The total actual area of lots to be assessed is 1,919,841 square feet. The costs of the improvements and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot of actual area shall not exceed a total of \$0.1416784. The assessment for each of the parcels for the Improvements is shown on Exhibit F.

Assessment #2 will include street improvements to King Avenue East between South 12th Street West and the East property line of Amend Park along the frontage of Southgate Subdivision 2nd Filing and Amend Park. A Cash Contribution by the City of Billings will cover the assessments to Amend Park. The remaining improvement costs shall consist of the full cost of the Improvements assessable against each lot in Southgate Subdivision 2nd Filing for a total of \$129,000.00. The total of \$129,000.00 shall be assessed against each lot, tract, or

parcel of land in Southgate Subdivision 2nd Filing for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts, or parcels of land in Southgate Subdivision 2nd Filing, exclusive of streets, avenues, and alleys. The total actual area of lots to be assessed is 1,033,765 square feet. The costs of the improvements and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot of actual area shall not exceed a total of \$0.12478658. The assessment for each of the parcels for the Improvements is shown on Exhibit F.

Assessment #5 will include utility improvements to King Avenue East along the frontage of Popelka Commerce Center Subdivision. The properties to be assessed for these utility improvements will be within Popelka Commerce Center Subdivision. The utility improvement costs shall consist of the full cost of the Improvements assessable against the lot, which will make up Popelka Commerce Center Subdivision for a total of \$68,135.05. The total of \$68,135.05 shall be assessed against each lot, tract, or parcel of land in Popelka Commerce Center Subdivision for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts, or parcels of land in Popelka Commerce Center Subdivision, exclusive of streets, avenues, and alleys. The total actual area of lots to be assessed is 776,921 square feet. The costs of the improvements and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot of actual area shall not exceed a total of \$0.08769881. The assessment for each of the parcels for the Improvements is shown on Exhibit F.

Assessment #6 will include street widening improvements to King Avenue East along the frontage of Popelka Commerce Center Subdivision and Numart Subdivision. The properties to be assessed for these street widening improvements will be within Popelka Commerce Center Subdivision and Numart Subdivision. The street widening improvement costs shall consist of the full cost of the Improvements assessable against the lot in Popelka Commerce Center Subdivision and Numart Subdivision for a total of \$470,846.33. The total of \$470,846.33 shall be assessed against each lot, tract, or parcel of land in Popelka Commerce Center Subdivision and Numart Subdivision for that part of the costs of the Improvements that the actual area of such lot, tract or parcel bears to the total actual area of all lots, tracts, or parcels of land in Popelka Commerce Center Subdivision and Numart Subdivision, exclusive of streets, avenues, and alleys. The total actual area of lots to be assessed is 1,022,904 square feet. The costs of the improvements and the incidental costs to be financed by the Bonds assessable to the District parcels per square foot of actual area shall not exceed a total of \$0.460303538. The assessment for each of the parcels for the Improvements is shown on Exhibit F.

7.1.1 Equal Amount Method.

Assessment #3 will include traffic signal, streetlight, median placement, and striping improvements to King Avenue East. These improvements will benefit properties within Southgate Subdivision 2nd Filing, Numart Subdivision, Geyser Park Subdivision, Amend Park, and Golden Arches Subdivision. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, the Engineer has determined that each lot, tract, or parcel of land, receiving a benefit from the improvements, shall equally bear the

costs of the improvements as set forth in Part III hereto to arrive at an equal cost for the improvements. The total estimated cost of Assessment #3 is \$176,483.73 and shall be assessed against each lot, tract, or parcel of land within the District, receiving a benefit from the improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment will not exceed \$14,706.98.

Assessment #4 will include traffic signal, streetlight, median placement, and striping improvements to King Avenue East. These improvements will benefit properties within Popelka Commerce Center Subdivision. These improvements are the same as the improvements outlined in Assessment #3 except Popelka Commerce Center Subdivision is currently one parcel, which is being subdivided into five parcels. Therefore Popelka Commerce Center Subdivision will be assessed at five times the rate of Assessment #3. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, the Engineer has determined that each lot, tract, or parcel of land, receiving a benefit from the improvements, shall equally bear the costs of the improvements as set forth in Part III hereto to arrive at an equal cost for the improvements. The total estimated cost of Assessment #4 is \$73,534.89 and shall be assessed against each lot, tract, or parcel of land within the District, receiving a benefit from the improvements, on an equal amount basis based on the bid price to be received. The equal amount assessment will not exceed \$73,534.89.

Assessment #7 will include street improvements to Simpson Street between Foote Street and South Billings Boulevard. The assessments to Amend Park and Lot 5 of Sugar Subdivision will be covered by a cash contribution by the City of Billings and Montana Department of Transportation. For the purposes of equitably apportioning special benefit to each lot, tract or parcel of land in the District, the Engineer has determined that each lot, tract, or parcel of land, receiving a street improvements, shall equally bear the costs of the street improvements as set forth in Part III hereto to arrive at an equal cost for the street improvements. The remaining total estimated cost of Assessment #7 is \$58,000.00 and shall be assessed against each lot, tract, or parcel of land within the District on an equal amount basis based on the bid price to be received. The equal amount assessment will not exceed \$58,000.00.

7.2. Assessment Methodologies Equitable and Consistent With Benefit. This Council hereby determines that the methods of assessment and the assessment of costs of the specific improvements against the properties benefited thereby as prescribed in this Section 7 are equitable in proportion to and not exceeding the special benefits derived from the respective improvements by the lots, tracts, and parcels to be assessed within the District.

Section 8. Payment of Assessments. The special assessments for the costs of the Improvements shall be payable over a term not exceeding 15 years, each in equal semiannual installments of principal, plus interest, or equal semiannual payments of principal and interest, as this Council shall prescribe in the resolution authorizing the issuance of the Bonds. Property

Owners have the right to prepay assessments as provided by law. Further, all owners shall have the opportunity to prepay their assessments prior to sale of the SID bonds.

Section 9. Method of Financing; Pledge of Revolving Fund; Findings and Determinations. The City will issue the Bonds in an aggregate principal amount not to exceed \$1,248,000.00 in order to finance the costs of the Improvements. Principal of and interest on the Bonds will be paid from special assessments levied against the properties in the District. This Council further finds it is in the public interest, and in the best interest of the City and the District, to secure payment of principal of and interest on the Bonds by the Revolving Fund and hereby authorizes the city to enter into the undertakings and agreements authorized in Section 7-12-4225 in respect of the Bonds.

In determining to authorize such undertakings and agreements, this Council has taken into consideration the following factors:

(a) **Estimated Market Value of Parcels.** The estimated market value of the lots, parcels, or tracts in the District as of the date of adoption of this resolution, as estimated, by the County Assessor for property tax purposes ranges from \$5,064 to \$4,281,203 and is set forth in Exhibit F. The average market value is \$465,570.40 with the median being \$82,424.00. The special assessments to be levied under Section 7 against each lot, parcel, or tract in the District is less than the increase in estimated value of the lot, parcel, or tract as a result of the construction of the Improvements.

(b) **Diversity of Property Ownership.** There are a total of 50 parcels within the district boundaries. The property owners are shown in the attached ownership report. Overall, the parcels within the district are owned by a diversity of property owners.

(c) **Comparison of Special Assessments and Property Taxes and Market Value.** Based on an analysis of the aggregate amount of the proposed, any outstanding special assessments (whether or not delinquent), and any delinquent property taxes (as well as any known industrial development bonds theretofore issued and secured by a mortgage against a parcel in the District) against each lot, parcel, or tract in the District in comparison to the estimated market value of such lot, parcel, or tract after the Improvements, the City concludes that, overall, the estimated market value of the lots, tracts, or parcels of land in the District exceeds the sum of special assessments, delinquent property taxes, and current assessments and is set forth in Exhibit F.

(d) **Delinquencies.** An analysis of the amount of delinquencies in the payment of outstanding special assessments or property taxes levied against the properties in the District shows that of 50 properties, 6 properties were delinquent which represents about 8% of the total assessments and is set forth in Exhibit F.

(e) **The Public Benefit of the Improvements.** The improvements contemplated under this SID are outlined in Section 5 and in Exhibit E. The intention of this SID is to fully construct King Avenue East to an arterial standard. The total estimated cost of installing these public improvements is \$2,079,436.08 of which the City of Billings is contributing \$723,436.08 to. \$123,436.08 of this contribution will be used to construct utilities in King Avenue East and Simpson Street. The remaining amount represents a cash contribution to the project and to Amend Park. There will also be a \$50,000.00 cash contribution from the Montana Department of Transportation and a \$58,000.00 Community Development Block Grant (CDBG). The CDBG is being used to install improvements to King Avenue East along the frontage of Streeter Brothers Subdivision and represents a cash contribution towards these improvements. All of the properties, excluding Streeter Brothers Subdivision and Amend Park, have a commercial zoning. The public improvements contemplated under the terms of this proposed District are required by the City Subdivision, Site Development, Zoning Ordinances, and existing Subdivision Improvement Agreements in order for the parcels to develop. In some cases, monetary securities were executed in order to develop the property. Currently, there is a monetary security in place for Popelka Commerce Center Subdivision, Numart Subdivision, and Southgate Subdivision 2nd Filing.

Section 10. Reimbursement Expenditures.

10.01. Regulations. The United States Department of Treasury has promulgated final regulations governing the use of proceeds of tax-exempt bonds, all or a portion of which are to be used to reimburse the City for project expenditures paid by the City prior to the date of issuance of such bonds. Those regulations (Treasury Regulations, Section 1.150-2) (the “Regulations”) require that the City adopt a statement of official intent to reimburse an original expenditure not later than 60 days after payment of the original expenditure. The Regulations also generally require that the bonds be issued and the reimbursement allocation made from the proceeds of the bonds within 18 months (or three years, if the reimbursement bond issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) after the later of (i) the date the expenditure is paid or (ii) the date the project is placed in service or abandoned, but (unless the issue qualifies for the “small issuer” exception from the arbitrage rebate requirement) in no event more than three years after the date the expenditure is paid. The Regulations generally permit reimbursement of capital expenditures and costs of issuance of the bonds.

10.02. Prior Expenditures. Other than (i) expenditures to be paid or reimbursed from sources other than the Bonds, (ii) expenditures permitted to be reimbursed under the transitional provision contained in Section 1.150-2(j)(2) of the Regulations, (iii) expenditures constituting preliminary expenditures within the meaning of Section 1.150-2(f)(2) of the Regulations, or (iv) expenditures in a “de minimus” amount (as defined in Section 1.150-2(f)(1) of the Regulations), no expenditures for

the Improvements have been paid by the City before the date 60 days before the date of adoption of this resolution.

10.03. Declaration of Intent. The City reasonably expects to reimburse the expenditures made for costs of the Improvements out of the proceeds of Bonds in an estimated maximum aggregate principal amount of \$1,248,000.00 after the date of payment of all or a portion of the costs of the Improvements. All reimbursed expenditures shall be capital expenditures, a cost of issuance of the Bonds or other expenditures eligible for reimbursement under Section 1.150-2(d)(3) of the Regulations.

10.04. Budgetary Matters. As of the date hereof, there are no City funds reserved, allocated on a long-term basis or otherwise set aside (or reasonably expected to be reserved, allocated on a long-term basis or otherwise set aside) to provide permanent financing for the expenditures related to the Improvements, other than pursuant to the issuance of the Bonds. The statement of intent contained in this resolution, therefore, is determined to be consistent with the City's budgetary and financial circumstances as they exist or are reasonably foreseeable on the date hereof.

10.05. Reimbursement Allocations. The City's financial officer shall be responsible for making the "reimbursement allocations" described in the Regulations, being generally the transfer of the appropriate amount of proceeds of the Bonds to reimburse the source of temporary financing used by the City to make prior payment of the costs of the Improvements. Each allocation shall be evidence by an entry on the official books and records of the City maintained for the Bonds or the Improvements and shall specifically identify the actual original expenditure being reimbursed.

Section 11. Public Hearing Protests. At any time within fifteen (15) days from and after the date of the first publication of the notice of the passage and approval of this resolution, any owner of real property within the District subject to assessment and taxation for the cost and expense of making the Improvements may make and file with the City Clerk until 5:00 p.m., M.T., on the expiration date of said 15-day period (May 10, 2002), written protest against the proposed Improvements, or against the extension or creation of the District or both, and this Council will at its next regular meeting after the expiration of the fifteen (15) days in which such protests in writing can be made and filed, proceed to hear all such protests so made and filed; which said, regular meeting will be held on Monday the 13th day of May 2002, at 7:30 p.m., in the Council Chambers, at 220 North 27th Street, in Billings, Montana.

Section 12. Notice of Passage of Resolution of Intention. The City Clerk is hereby authorized and directed to publish or cause to be published a copy of a notice of the passage of this resolution in the Billings Times, a newspaper of general circulation in the county on

April 25 and May 2, 2002, in the form and manner prescribed by law, and to mail or cause to be mailed a copy of said notice to every person, firm, corporation, or the agent of such person, firm, or corporation having real property within the District listed in his or her name upon the last completed assessment roll for state, county, and school district taxes, at his last-known address, on or before the same day such notice is first published.

PASSED AND ADOPTED by the City Council of the City of Billings, Montana,
this 22nd day of April 2002.

Attest:

CHARLES F. TOOLEY Mayor

MARITA HEROLD, CMC City Clerk